Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

14 November 2024*

(Failure of a Member State to fulfil obligations – Environment – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Article 6(2) – Appropriate steps to avoid, in special areas of conservation, the deterioration of natural habitats – Habitat types 6510 (lowland hay meadows) and 6520 (mountain hay meadows) protected by the Natura 2000 network – Loss of area – No specific surveillance of natural habitats – General and structural failure – Article 4(1) – Proposal by each Member State of a list of sites indicating which natural habitat types and native species the sites host – Regular updating of information relating to those sites)

In Case C-47/23,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 31 January 2023,

European Commission, represented by C. Hermes and M. Noll-Ehlers, acting as Agents,

applicant,

v

Federal Republic of Germany, represented by J. Möller and A. Hoesch, acting as Agents,

defendant,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Second Chamber, acting as President of the Third Chamber, K. Lenaerts, President of the Court, acting as Judge of the Third Chamber, N. Jääskinen, M. Gavalec (Rapporteur), and N. Piçarra, Judges,

Advocate General: N. Emiliou,

Registrar: N. Mundhenke, Administrator,

having regard to the written procedure and further to the hearing on 6 March 2024,

after hearing the Opinion of the Advocate General at the sitting on 5 September 2024,

gives the following

* Language of the case: German.

Judgment

1 By its action, the European Commission asks the Court to declare that:

– by failing, in a general and structural manner, to take appropriate steps to avoid the deterioration of habitat types 6510 (lowland hay meadows) and 6520 (mountain hay meadows) protected by the Natura 2000 network, listed in Annex I to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Habitats Directive'), in the sites designated for those habitat types, and

– by failing, in a general and structural manner, to transmit to the Commission updated data relating to habitat types 6510 and 6520 in the sites designated for those habitat types,

the Federal Republic of Germany has failed to fulfil its obligations under Article 6(2) and the second subparagraph of Article 4(1) of the Habitats Directive, respectively.

Legal context

European Union law

The Habitats Directive

2 Article 1 of the Habitats Directive provides:

'For the purpose of this Directive:

…

(b) *natural habitats* means terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural;

(c) *natural habitat types of Community interest* means those which, within the territory referred to in Article 2:
(i) are in danger of disappearance in their natural range;

or
(ii) have a small natural range following their regression or by reason of their intrinsically restricted area;

or
(iii) present outstanding examples of typical characteristics of one or more of the nine following biogeographical regions: Alpine, Atlantic, Black Sea, Boreal, Continental, Macaronesian, Mediterranean, Pannonian and Steppic.

Such habitat types are listed or may be listed in Annex I;

…

(e) *conservation status of a natural habitat* means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the territory referred to in Article 2.

The conservation status of a natural habitat will be taken as "favourable" when:

– its natural range and areas it covers within that range are stable or increasing, and

– the specific structure and functions which are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and

– the conservation status of its typical species is favourable as defined in (i);

…

(l) *special area of conservation* means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated'.

3 As set out in Article 2(2) of that directive:

'Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.'

4 Article 3(1) and (2) of that directive provides:

'1. A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to [Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)].

2. Each Member State shall contribute to the creation of Natura 2000 in proportion to the representation within its territory of the natural habitat types and the habitats of species referred to in paragraph 1. To that effect each Member State shall designate, in accordance with Article 4, sites as special areas of conservation taking account of the objectives set out in paragraph 1.'

5 Article 4 of that directive provides:

'1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and

reproduction. For aquatic species which range over wide areas, such sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction. Where appropriate, Member States shall propose adaptation of the list in the light of the results of the surveillance referred to in Article 11.

The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site. That information shall include a map of the site, its name, location, extent and the data resulting from application of the criteria specified in Annex III (Stage 1) provided in a format established by the Commission in accordance with the procedure laid down in Article 21.

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the nine biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory referred to in Article 2(1), the Commission shall establish, in agreement with each Member State, a draft list of sites of Community importance drawn from the Member States' lists identifying those which host one or more priority natural habitat types or priority species.

Member States whose sites hosting one or more priority natural habitat types and priority species represent more than 5% of their national territory may, in agreement with the Commission, request that the criteria listed in Annex III (Stage 2) be applied more flexibly in selecting all the sites of Community importance in their territory.

The list of sites selected as sites of Community importance, identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.

3. The list referred to in paragraph 2 shall be established within six years of the notification of this Directive.

4. Once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.

5. As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).'

6 As set out in Article 6 of the Habitats Directive:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species

for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. …

…'

7 Article 9 of that directive provides:

'The Commission, acting in accordance with the procedure laid down in Article 21, shall periodically review the contribution of Natura 2000 towards achievement of the objectives set out in Article 2 and 3. In this context, a special area of conservation may be considered for declassification where this is warranted by natural developments noted as a result of the surveillance provided for in Article 11.'

8 Article 11 of that directive is worded as follows:

'Member States shall undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2 with particular regard to priority natural habitat types and priority species.'

9 Article 17 of that directive provides:

'1. Every six years from the date of expiry of the period laid down in Article 23, Member States shall draw up a report on the implementation of the measures taken under this Directive. This report shall include in particular information concerning the conservation measures referred to in Article 6(1) as well as evaluation of the impact of those measures on the conservation status of the natural habitat types of Annex I and the species in Annex II and the main results of the surveillance referred to in Article 11. The report, in accordance with the format established by the committee, shall be forwarded to the Commission and made accessible to the public.

2. The Commission shall prepare a composite report based on the reports referred to in paragraph 1. This report shall include an appropriate evaluation of the progress achieved and, in particular, of the contribution of Natura 2000 to the achievement of the objectives set out in Article 3. A draft of the part of the report covering the information supplied by a Member State shall be forwarded to the Member State in question for verification. After submission to the committee, the final version of the report shall be published by the Commission, not later than two years after receipt of the reports referred to in paragraph 1, and shall be forwarded to the Member States, the European Parliament, the Council and the Economic and Social Committee.

3. Member States may mark areas designated under this Directive by means of Community notices designed for that purpose by the committee.'

10 Natural habitat types of Community interest whose conservation requires the designation of special areas of conservation, referred to in Annex I to the Habitats Directive, include, inter alia, 'lowland hay meadows' (*Alopecurus pratensis, Sanguisorba officinalis*) and 'mountain hay meadows', for which the Natura 2000 codes are 6510 and 6520, respectively.

Implementing Decision 2011/484/EU

11 Recital 4 of Commission Implementing Decision 2011/484/EU of 11 July 2011 concerning a site information format for Natura 2000 sites (OJ 2011 L 198, p. 39) states:

'The content of the Natura 2000 Standard Data Form should be updated regularly based on the best available information for each site of the network in order to allow the Commission to fulfil its coordinating role and in accordance with Article 9 of Directive 92/43/EEC to periodically review the contribution of Natura 2000 towards the achievement of the objectives set out in Articles 2 and 3 of that Directive.'

German law

12 As set out in Paragraph 3 of the Gesetz über Naturschutz und Landschaftspflege (Bundesnaturschutzgesetz) (Law on nature protection and rural conservation) of 29 July 2009 (BGBl. 2009 I, p. 2542), in the version applicable to the dispute ('the BNatSchG'), headed 'Responsibilities, tasks and powers, contractual agreements, cooperation between authorities':

'(1) The authorities responsible for nature protection and rural conservation within the meaning of this Law shall be:

1. the authorities responsible for nature protection and rural conservation under the law of the respective *Land* or

2. the Bundesamt für Naturschutz [(Federal Agency for Nature Conservation; BfN)] in so far as responsibilities are conferred on that agency under this Law.

(2) The authorities responsible for nature protection and rural conservation shall monitor compliance with the provisions of this Law and the provisions adopted on the basis of this Law, and shall take the measures which, in their professional judgment, are necessary in each individual case to ensure compliance therewith, unless otherwise provided.

(3) As regards nature protection and rural conservation measures, it should be examined, as a matter of priority, whether the objective can also be attained at reasonable expense by means of contractual agreements.

(4) In implementing rural conservation and development measures, the responsible authorities shall, so far as possible, commission agricultural and forestry enterprises, associations in which municipalities or associations of municipalities, farmers and associations whose primary objective is to promote nature protection and rural conservation are equally represented (rural

conservation organisations), recognised nature protection associations or bodies responsible for national parks. Sovereign powers may not be transferred.

…’

13 Paragraph 30 of that law, headed ‘Biotopes protected by law’, provides:

(1) Certain parts of nature and the landscape which are of particular importance as biotopes shall be legally protected (general principle).

(2) Actions that might lead to the destruction or other significant deterioration of the following biotopes shall be prohibited:

…

7. Lowland hay meadows and mountain hay meadows, within the meaning of Annex I to [the Habitats Directive], meadow orchards, clearance cairns and dry stone walls.

The prohibitions in the first sentence shall also apply to other biotopes protected by the laws of the *Länder*. …

(3) Exemptions from the prohibitions set out in subparagraph 2 may be granted upon application where it is possible for the deterioration to be offset.

…’

14 Paragraph 33 of that law, headed ‘General protective rules’, provides in subparagraph 1:

‘Any changes or disturbances which are capable of leading to the significant deterioration of a Natura 2000 site in its components that are decisive for the objectives of conservation or protection shall be prohibited. The authority responsible for nature protection and rural conservation may, subject to the conditions laid down in Paragraph 34(3) to (5), grant exemptions from the prohibition laid down in the first sentence and from prohibitions for the purposes of Paragraph 32(3).’

15 Paragraph 34 of that law, headed ‘Assessment of the implications and inadmissibility of projects; exemptions’, provides, in subparagraph 1:

‘Before they are approved or implemented, projects shall be assessed in terms of their implications in view of the conservation objectives of a Natura 2000 site, where, individually or in combination with other projects or plans, they are likely to have a significant effect on the site and do not directly contribute to the management of the site. In so far as a Natura 2000 site is a protected part of nature and the landscape within the meaning of Paragraph 20(2), the criteria for assessing the implications stem from the objective of protection and the provisions adopted for that purpose, provided that the corresponding conservation objectives have already been taken into account. The person responsible for the project shall provide the documents necessary for assessing its implications and the conditions referred to in subparagraphs (3) to (5).’

Pre-litigation procedure

16 On 7 May 2018, the Commission, having noted, based on the reports drawn up by the Federal Republic of Germany under Article 17 of the Habitats Directive, the deterioration of habitat types 6510 and 6520 in the sites hosting them in that Member State, requested information from the German authorities on the matter.

17 On 26 July 2019, the Commission, after examining the Federal Republic of Germany's letter of response of 12 October 2018, sent it a letter of formal notice containing two allegations.

18 First, the Commission alleged that the Federal Republic of Germany had infringed Article 6(2) of the Habitats Directive by systematically failing to take appropriate steps to avoid the deterioration of habitat types 6510 and 6520 in the sites designated for them. The Commission based that allegation on the loss of area covered by those habitat types in the sites designated for them, the lack of sufficient surveillance of those sites and the lack of legally binding measures against over-fertilisation and early mowing of those sites.

19 Second, the Commission alleged that the Federal Republic of Germany had infringed the second subparagraph of Article 4(1) of the Habitats Directive by systematically failing to update the standard data forms ('the SDFs') for those habitat types provided for in Implementing Decision 2011/484.

20 By letter of 26 November 2019, the Federal Republic of Germany disputed both allegations.

21 On 30 October 2020, the Commission sent the Federal Republic of Germany a reasoned opinion in which it reiterated those allegations.

22 By letter of 30 December 2020, Germany replied to the reasoned opinion, claiming that the alleged failure to fulfil obligations was unfounded.

23 The Commission reached the conclusion, after considering that reply, that the Federal Republic of Germany had failed to take the measures necessary to comply with its obligations under the second subparagraph of Article 4(1) and Article 6(2) of the Habitats Directive. On 31 January 2023, the Commission therefore brought the present action.

The action

24 In support of its action, the Commission relies on two grounds of complaint, the first alleging infringement of Article 6(2) of the Habitats Directive and the second alleging infringement of the second subparagraph of Article 4(1) of that directive.

25 The Federal Republic of Germany contends that the action for failure to fulfil obligations should be dismissed.

Admissibility

26 The Federal Republic of Germany claims that the action is in part inadmissible on the ground, first, that the reasoned opinion and the application do not correspond and, second, that the application is vague as regards the allegation of insufficient surveillance.

The objection of inadmissibility alleging that the reasoned opinion and the application do not correspond

– *Arguments of the parties*

27 The Federal Republic of Germany recalls that, in accordance with the settled case-law of the Court, the subject matter of an action under Article 258 TFEU for failure to fulfil obligations is determined by the Commission's reasoned opinion, with the result that the action must be based on the same grounds and pleas as that opinion. Furthermore, under Article 127(1) of the Rules of Procedure of the Court of Justice, no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure.

28 In the present case, while the Commission, in its application, criticises the Federal Republic of Germany for a loss of area covered by natural habitat types 6510 and 6520 in 596 and 88 Natura 2000 sites, respectively, it transpires that of those sites 99, in the case of the former, and 2, in the case of the latter, were not mentioned in the reasoned opinion. The Federal Republic of Germany argues that the first ground of complaint is therefore inadmissible in so far as it concerns those 101 sites referred to for the first time in the application.

29 The Commission contends that the objection of inadmissibility should be rejected.

30 The Commission states that the reasoned opinion and the application criticise the Federal Republic of Germany in the same terms for having 'failed in a general and structural manner to take appropriate steps to avoid the deterioration of habitat types 6510 and 6520 in the sites designated for them'.

31 In addition, it states that it is entitled, in accordance with the Court's settled case-law, when complaining of a systemic and persistent failure to fulfil obligations, to produce additional evidence intended, at the stage of proceedings before the Court, to support the proposition that the alleged failure to fulfil obligations is general and continuing. Accordingly, the fact that it mentioned, in the application, 101 sites that were not referred to in the reasoned opinion does not extend the subject matter of the dispute, but merely constitutes additional evidence of the general practice of the Federal Republic of Germany that amounts to an infringement of Article 6(2) of the Habitats Directive, a practice which already existed at the date of the reasoned opinion.

32 Lastly, the Commission observes that, in any event, it was unable to mention, in its reasoned opinion, the 86 sites situated in the Freistaat Bayern (Free State of Bavaria, Germany), because the management plans showing the loss of area were not yet available at that time.

33 In its rejoinder, the Federal Republic of Germany maintains its objection of inadmissibility.

34 It submits that, although the Commission may put forward a ground of complaint alleging a general and persistent failure to fulfil obligations, it is nevertheless required to prove the alleged failure to fulfil obligations in individual cases which are representative of the practice of the Member State concerned. Since it would then be for that Member State to challenge the data put forward by the Commission, the Commission could, admittedly, after the pre-litigation procedure, supplement its examples of the alleged failure to fulfil obligations with other examples, but ultimately it is not entitled to rely on a set of examples that is compiled differently,

without there being any apparent reasons for doing so. That is the case here, since the Commission did not merely refer to additional sites in its application, but replaced some of the sites referred to in the reasoned opinion with other sites, as confirmed by the fact that the total number of sites in the application remained substantially the same as in the reasoned opinion.

35 Lastly, the Federal Republic of Germany refutes the Commission's argument that the 86 sites in Bavaria were not yet available at the date of the reasoned opinion. It submits that, as at that date, it had in fact been possible to view 83 of them online for several months and the last three were uploaded on 21 October 2020, that is to say, prior to that date.

– *Findings of the Court*

36 It is apparent from settled case-law that, in so far as the action seeks to raise a failure of a general nature to comply with a directive's provisions, concerning in particular the national authorities' systemic and consistent tolerance of situations not in accordance with those provisions, the production by the Commission of additional evidence intended, at the stage of proceedings before the Court, to support the proposition that the failure thus alleged is general and consistent cannot be ruled out in principle (see, to that effect, judgments of 26 April 2005, *Commission* v *Ireland*, C-494/01, EU:C:2005:250, paragraph 37, and of 4 March 2021, *Commission* v *United Kingdom (Limit values – NO2)*, C-664/18, EU:C:2021:171, paragraph 80).

37 In that context, it should also be recalled that, in accordance with settled case-law, the Commission may clarify its initial grounds of complaint in its application provided, however, that it does not alter the subject matter of the dispute. By producing fresh evidence intended to illustrate the grounds of complaint set out in its reasoned opinion, which allege a failure of a general nature to comply with the provisions of the directive in question, the Commission does not alter the subject matter of the dispute (see, to that effect, judgments of 26 April 2005, *Commission* v *Ireland*, C-494/01, EU:C:2005:250, paragraph 38, and of 4 March 2021, *Commission* v *United Kingdom (Limit values – NO2)*, C-664/18, EU:C:2021:171, paragraph 81).

38 In the present case, it is common ground between the parties that although, in its application, the Commission criticises the Federal Republic of Germany for a loss of area covered by natural habitat types 6510 and 6520 in a total of 596 and 88 sites, respectively, of those sites 99 – in the case of the former – and 2 – in the case of the latter – were not, however, mentioned in the reasoned opinion.

39 However, the Federal Republic of Germany does not dispute the fact that the findings of deterioration made by the Commission in respect of those 101 sites are of the same nature as those relied on in the reasoned opinion in support of the general and structural failure to fulfil obligations alleged against that Member State. Therefore, the fact that those sites were not mentioned in the reasoned opinion, even though information relating to some of them could be accessed online before the reasoned opinion was issued, does not preclude the Commission from being able to refer to those sites in its application to illustrate the general failure for which it alleges that that Member State is responsible. In so doing, the Commission has not, in accordance with the case-law referred to in paragraphs 36 and 37 of the present judgment, altered the subject matter of the dispute, but has merely clarified its initial grounds of complaint by producing supplementary evidence intended to illustrate the general and structural failure to fulfil obligations which it alleged in the reasoned opinion.

40 It follows that the objection of inadmissibility alleging a lack of correspondence between the reasoned opinion and the application must be rejected.

The objection of inadmissibility alleging that the application is vague as regards the allegation of insufficient surveillance

– *Arguments of the parties*

41 The Federal Republic of Germany recalls that, in accordance with the Court's settled case-law, the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity to comply with its obligations under EU law and to avail itself of its right to defend itself against the objections formulated by the Commission. Furthermore, the reasoned opinion must contain a detailed and coherent statement of the reasons which have led the Commission to conclude that the Member State in question has failed to fulfil one of its obligations.

42 In the present case, although the Commission criticises it for failing to undertake 'appropriate' surveillance of habitat types 6510 and 6520, within the meaning of Article 6(2) of the Habitats Directive, it is not apparent either from the application or from the reasoned opinion what specific requirements the Commission derives, at the level of the sites hosting those habitats, from that surveillance obligation. Therefore, in the view of the Federal Republic of Germany, it remains unclear what it is required to do to remedy the alleged failure to fulfil obligations and, in particular, whether the Commission considers that it was incumbent upon it to implement specific surveillance measures for each area of conservation concerned or whether the Commission considers that such measures existed but were implemented too infrequently or too superficially. Similarly, and for the same reason, the fact that the application is vague makes it impossible to defend the present infringement proceedings.

43 Therefore, according to the Federal Republic of Germany, the first ground of complaint is inadmissible in so far as it lacks precision in that regard.

44 The Commission contends, in its reply, that the objection of inadmissibility should be rejected.

45 It submits that the Federal Republic of Germany is wrong to claim that the first ground of complaint is vague. It states that it has clearly shown, both during the pre-litigation procedure and in the application, the legal requirements for surveillance which stem from Article 6(2) of the Habitats Directive.

46 According to the Commission, it stated that 'appropriate steps' within the meaning of that provision must include regular surveillance of the Natura 2000 sites which are subject to serious pressure and threats and whose conservation status is developing negatively, as is the case for habitat types 6510 and 6520 in Germany, with the frequency and particulars of that surveillance to be adapted by the Member States according to the conservation status and trends of the habitat types within their territory.

47 The Commission adds that, as clearly stated in the application, regular site-specific surveillance at least every 12 years is in any case required by law. It states that, in the present case, however, in the light of the factual data communicated by the Federal Republic of Germany relating to

surveillance in the territory of that Member State at intervals which may be as long as 12 years, that surveillance is not 'appropriate' within the meaning of Article 6(2) of the Habitats Directive, given the unfavourable status of the habitat types and their continuing deterioration.

48 In its rejoinder, the Federal Republic of Germany maintains the objection of inadmissibility raised. While it considers that the Commission's reply clarified that the Commission's first ground of complaint essentially concerns the inadequate frequency of the surveillance of sites hosting habitat types 6510 and 6520, it nevertheless reiterates that the nature of the complaint is not clear either from the reasoned opinion or from the application.

– *Findings of the Court*

49 At the outset, it must be pointed out that the present objection of inadmissibility raised by the Federal Republic of Germany does not concern the Commission's line of argument that the significant losses of area covered by habitat types 6510 and 6520 in a considerable number of geographical sites in the territory of that Member State demonstrate the systemic failure by the competent authorities of that Member State to undertake regular surveillance of the conservation status of those habitat types.

50 The Federal Republic of Germany itself states that the Commission's line of argument concerns whether the surveillance of habitat types 6510 and 6520 undertaken in Germany meets the requirements of Article 6(2) of the Habitats Directive and whether that Member State has taken 'appropriate steps', within the meaning of that provision, to avoid deterioration.

51 In those circumstances, it must be held that the question of the scope and frequency arising from that provision, on which the Federal Republic of Germany relies in order to argue that the Commission's line of argument is inadmissible, concerns the substance of the case and the assessment of whether the conduct of that Member State constitutes an infringement of Article 6(2) of the Habitats Directive.

52 Consequently, the second objection of inadmissibility raised by the Federal Republic of Germany must also be rejected.

53 It follows that the present action for failure to fulfil obligations is admissible in its entirety.

Substance

The first ground of complaint, alleging infringement of Article 6(2) of the Habitats Directive

– *Arguments of the parties*

54 By its first ground of complaint, the Commission alleges that the Federal Republic of Germany has failed to fulfil its obligations under Article 6(2) of the Habitats Directive by failing to take, in a general and structural manner, appropriate steps to avoid the deterioration of habitat types 6510 and 6520 in the special areas of conservation in its territory.

55 The Commission submits that Germany's failure to adopt such appropriate steps is proved by the significant losses of area covered by those habitat types in those special areas of conservation, by the lack of surveillance of the specific sites hosting those habitat types and by the lack of legally binding protective measures against over-fertilisation and early mowing of those sites.

56 First, as regards the significant losses of area covered by habitat types 6510 and 6520 in the special areas of conservation, the Commission states that the BfN found, in its 2014 *Grünland-Report* (2014 meadow report), considerable losses of area and quality and a deterioration of both habitat types since 2007. Similarly, the reports forwarded by the Federal Republic of Germany under Article 17 of the Habitats Directive for the periods from 2001 to 2006, from 2007 to 2012 and from 2013 to 2018 confirm that deterioration.

57 The Commission explains that it carried out a comparative analysis of the data in the SDFs submitted by the German authorities for 2006 and of subsequent data, namely data from the most recent SDFs available and the management plans for the various special areas of conservation. According to the Commission, it is apparent from that analysis that, in 596 of the 2 027 sites hosting habitat type 6510 and in 88 of the 295 sites hosting habitat type 6520, there has been a significant loss of area covered by those habitat types. More specifically, in the sites in question, 49.52% of the area covered by habitat type 6510 and 51.07% of the area covered by habitat type 6520 have been lost.

58 The Commission adds that that appreciable number of sites is distributed throughout Germany, which reflects a general and structural development. Contrary to that Member State's submission, a global assessment of all of the sites hosting those habitat types was unnecessary because the deterioration in certain special areas of conservation cannot be offset by improvements in others.

59 Moreover, the Commission observes that the Federal Republic of Germany acknowledges a proportion of the losses of area, namely 977.44 hectares for habitat type 6510 and 110.49 hectares for habitat type 6520.

60 The Commission refutes that Member State's line of argument that a proportion of the losses of area recorded are not 'real', but are the result of the erroneous designations of certain sites as 'special areas of conservation' and of estimation errors which, in respect of 2006, vitiated the initial calculation of the extent of the sites and habitat types concerned. The Commission disputes that those alleged errors explain the fall by 6 476.61 hectares across 347 sites hosting habitat type 6510 and by 1 322.16 hectares across 75 sites hosting habitat type 6520, and submits that it was entitled, in carrying out its comparative analysis, to rely on the data provided by the Federal Republic of Germany in the SDFs for 2006 and subsequent years.

61 The Commission submits that, in any event, the losses of area which it noted are too great to be the result of simple errors, since, for more than 50% of the sites examined, approximately 60 to 100% of the area covered by the habitat types at issue had been lost during the period from 2006 to 2017.

62 Second, the Commission argues that the deterioration of the sites hosting habitat types 6510 and 6520 in Germany is due in particular to the fact that the competent German authorities have systematically failed to monitor those sites adequately and regularly. It submits that the frequency with which surveillance is to be carried out depends on the conservation status and trends of the

habitat type concerned and that a Member State whose authorities do not undertake regular and site-specific surveillance of special areas of conservation inevitably fails to fulfil its obligations under Article 6(2) of the Habitats Directive.

63 The Commission adds that, in several *Länder* of the Federal Republic of Germany, there is no specific mapping making it possible to determine to what extent the habitat types in a given area of conservation have deteriorated, or the cartographic cycle is in any case too long. Furthermore, the surveillance by the competent German authorities is often carried out only on a sample basis or as and when required.

64 Third, the Commission states that the deterioration of habitat types 6510 and 6520 in Germany also results from the fact that that Member State has not adopted legally binding measures to protect special areas of conservation against over-fertilisation and early mowing. It notes that the Federal Republic of Germany favours a contractual approach which is insufficiently binding and which, consequently, is not such as to prevent over-fertilisation and early mowing.

65 According to the Commission, recommendations, non-binding management plans and agreements on contractual nature protection, in so far as they are only voluntary and merely serve as an incentive for farmers, cannot be regarded as effectively supplementing the regime for protecting special areas of conservation.

66 In its defence, the Federal Republic of Germany contends that the first ground of complaint should be rejected, maintaining that it has not failed to fulfil its obligations under Article 6(2) of the Habitats Directive.

67 First, that Member State argues that the Commission cannot conclude, based on a global assessment of the sites hosting habitat types 6510 and 6520 in Germany, that the losses of area covered by those habitat types in those sites are such as to demonstrate a systemic and persistent failure to comply with that provision.

68 According to the Federal Republic of Germany, the Commission focused its comparative analysis on a limited number of sites the area of which is relatively small, without taking into account the increases in area which occurred in other sites.

69 Had the Commission carried out a global assessment of all of the sites hosting habitat types 6510 and 6520 submitted by the Federal Republic of Germany in the SDFs since 2006 (that is to say, 2 183 sites hosting habitat type 6510 with a total of approximately 85 000 hectares, and 330 sites hosting habitat type 6520 with a total of over 12 000 hectares), it would have found a loss of area of only 4.27% for habitat type 6520 and would even have found an increase in area of 5.22% for habitat type 6510.

70 That Member State adds that the SDFs for 2006 contained errors of estimation and scientific errors which were subsequently corrected. Those errors, it is argued, partly explain the decline in area recorded for habitat types 6510 and 6520 since 2006.

71 The Federal Republic of Germany recalls that the Commission criticises it for losses of area of 18 717.14 hectares for habitat type 6510 and 1 890.35 hectares for habitat type 6520 in the special areas of conservation selected, whereas the losses of area amount only to 977.44 hectares and 110.49 hectares, respectively. Therefore, the loss of area corresponds, in those areas, only to approximately 5.4% and 6.2% of the total areas covered by those habitat types, respectively.

72 The Federal Republic of Germany states that, taking into consideration only the sites selected by the Commission and assuming that, in those sites, all the deficits in the areas covered by habitat types 6510 and 6520 for which there is no certain cause are due to genuine reductions in area, that loss of area would amount to approximately 11 000 hectares for habitat type 6510 and approximately 360 hectares for habitat type 6520.

73 That Member State also argues that, although the 2014 meadow report and the reports forwarded under Article 17 of the Habitats Directive for the periods from 2001 to 2006, from 2007 to 2012 and from 2013 to 2018 confirm a certain loss of area covered by those habitat types, the loss thus identified is not sufficiently significant to prove a systemic and persistent breach.

74 Second, the Federal Republic of Germany argues that Article 6(2) of the Habitats Directive contains no binding requirement relating to the surveillance obligation incumbent on Member States and nor does it specify the particular steps which they are to take in that regard, with the result that Member States are granted a margin of discretion in determining surveillance procedures.

75 In the view of the Federal Republic of Germany, the surveillance envisaged by Article 6(2) of the Habitats Directive is sufficient if it identifies the steps to be taken in the various special areas of conservation in order to avoid the deterioration of habitat types effectively.

76 The Federal Republic of Germany claims to be undertaking appropriate surveillance of the sites hosting habitat types 6510 and 6520, with variations from one *Land* to another owing to the federal structure of the State.

77 According to that Member State, the Commission has not claimed that another form of surveillance could have avoided the losses of area complained of.

78 Third, the Federal Republic of Germany states that the expression 'appropriate steps' contained in Article 6(2) of the Habitats Directive confers on Member States a margin of discretion in the national transposition of that directive, that steps of a preventive nature must be regarded as appropriate and that Member States are free to decide how they implement preventive steps, prohibitions not being mandatory.

79 It submits that the fact that areas have been left to lie fallow as a result of falling into disuse is also a stress factor for habitat types 6510 and 6520 which must be counteracted by taking appropriate steps.

80 The Federal Republic of Germany contends that there is no obligation under Article 6(2) of the Habitats Directive to adopt measures which prohibit mowing during certain periods of the year and which prescribe maximum values for fertilisation. Furthermore, it is difficult to predict precisely when the first mowing should take place. The same applies to the question whether and to what extent fertilisation is permitted or even necessary.

81 That Member State submits that the Commission has neither substantiated the reasons why regulatory provisions are more effective than contractual nature protection, nor demonstrated that the national measures adopted in Germany to prevent over-fertilisation and early mowing of sites hosting habitat types 6510 and 6520 are not suitable. Furthermore, the Commission has not explained how regulatory provisions on fertilisation and mowing could have prevented the losses of area alleged.

82 Lastly, that Member State submits that contractual nature protection is better suited to the anticipatory nature of Article 6(2) of the Habitats Directive than imposing a means of management by way of regulation. Although such a contractual approach cannot guarantee that there would be no deterioration, it is generally effective and leads to regular monitoring.

– *Findings of the Court*

83 As a preliminary point, it must be pointed out that Article 6 of the Habitats Directive imposes on the Member States a series of specific obligations and procedures designed, as is apparent from Article 2(2) of that directive, to maintain, or as the case may be restore, at a favourable conservation status natural habitats and, in particular, special areas of conservation (judgment of 12 April 2018, *People Over Wind and Sweetman*, C-323/17, EU:C:2018:244, paragraph 23).

84 Article 6 of the Habitats Directive divides the measures listed in that provision into three categories, namely conservation measures, preventive measures and compensatory measures, provided for in Article 6(1), (2) and (4), respectively. In that context, the objective of the measures referred to in paragraph 2 of that article is to protect sites from deterioration (see, to that effect, judgment of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraphs 147 and 148 and the case-law cited).

85 Thus, under Article 6(2) of the Habitats Directive, Member States are to take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives set out in that directive.

86 According to that provision, the Member States have a general obligation to take appropriate steps to avoid, in special areas of conservation, the deterioration of habitats and significant disturbance of the species for which the areas have been designated (judgment of 24 June 2021, *Commission* v *Spain (Deterioration of the Doñana natural area)*, C-559/19, EU:C:2021:512, paragraph 153 and the case-law cited).

87 In order to establish an infringement of Article 6(2) of the Habitats Directive, it is not for the Commission to establish the existence of a cause-and-effect relationship between the action or inaction of the Member State concerned and a deterioration or significant disturbance caused to the habitats or species concerned. It is sufficient for the Commission to establish that there is a probability or risk that that action or inaction might cause deterioration or significant disturbance of those habitats or species (judgment of 24 June 2021, *Commission* v *Spain (Deterioration of the Doñana natural area)*, C-559/19, EU:C:2021:512, paragraph 155 and the case-law cited).

88 Next, it should be noted that, without prejudice to the Commission's obligation to satisfy in each and every case the burden of proof which it bears, in principle nothing prevents the Commission from seeking in parallel a finding that provisions of a directive have not been complied with by reason of the conduct of a Member State's authorities with regard to particular specifically identified situations and a finding that those provisions have not been complied with because its authorities have adopted a general practice contrary thereto, which the particular situations illustrate where appropriate (judgment of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 165 and the case-law cited).

89 Where the Commission has adduced sufficient evidence to show that a Member State's authorities have developed a repeated and persistent practice which is contrary to the provisions of a directive, it is incumbent on that Member State to challenge in substance and in detail the information produced and the consequences flowing therefrom (judgment of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 166 and the case-law cited).

90 At the same time, in view of its obligation to prove the alleged failure by a Member State to fulfil its obligations, the Commission cannot, under the guise of claiming that the Member State concerned has generally and persistently failed to fulfil its obligations under EU law, avoid complying with that obligation to prove the alleged failure on the basis of concrete evidence of the infringement of the specific provisions which it invokes, and rely on simple presumptions or schematic causations (judgment of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraph 167 and the case-law cited).

91 Furthermore, the Commission may ask the Court to find that, by not having achieved the result intended by a directive, a Member State has failed to fulfil its obligations (see, to that effect, judgments of 10 April 2003, *Commission* v *Germany*, C-20/01 and C-28/01, EU:C:2003:220, paragraph 30, and of 5 September 2019, *Commission* v *Italy (Bacterium Xylella fastidiosa)*, C-443/18, EU:C:2019:676, paragraph 77).

92 Lastly, it should be noted that, although Article 6(2) of the Habitats Directive lays down a general obligation to take appropriate protective measures so as to avoid, inter alia, the deterioration of habitats, that provision does not lay down precise measures which the Member States are required to adopt and therefore leaves them a margin of discretion when applying it (see, to that effect, judgment of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraphs 36, 37 and 40).

93 It follows from those introductory observations that the Commission, which alone is competent to decide whether it is appropriate to initiate proceedings for a declaration of a failure to fulfil obligations under Article 258 TFEU, may bring an action before the Court seeking a finding of a systemic and persistent failure on the part of a Member State to fulfil its obligations, consisting in a failure to comply with its general obligation to take appropriate steps, pursuant to Article 6(2) of the Habitats Directive, to avoid the deterioration of natural habitats in special areas of conservation. Where the Commission alleges a systemic and persistent failure to fulfil obligations on the part of that Member State, establishing that there is a probability or risk that the failure to take such steps might result in the deterioration of those natural habitats and setting out specific circumstances illustrating that failure, it is for that Member State to challenge the matters of law and of fact relied on by the Commission and to refute the consequence alleged.

94 In the present case, the Commission maintains that the general and structural failure of the Federal Republic of Germany to take appropriate steps to avoid the deterioration of habitat types 6510 and 6520 in the special areas of conservation designated for them in its territory constitutes a failure to comply with the obligation under Article 6(2) of the Habitats Directive. According to the Commission, that failure is proved by the significant losses of area covered by those habitat types in the sites hosting them, losses which in turn result from the failure to undertake specific surveillance of those sites and the lack of legally binding protective measures against over-fertilisation and early mowing of those sites.

95 In the first place, as regards the alleged deterioration of habitat types 6510 and 6520, within the meaning of Article 6(2) of the Habitats Directive, as a result of the significant losses of area covered by those habitat types in the special areas of conservation in Germany, the Court has previously clarified that since the purpose of that provision is to protect sites from possible deterioration, it may be necessary, in implementing it, to adopt both measures intended to avoid external man-caused impairment and disturbance and measures to prevent natural developments that may cause the conservation status of natural habitats in special areas of conservation to deteriorate (see, to that effect, judgment of 29 June 2023, *Commission* v *Ireland (Protection of special areas of conservation)*, C-444/21, EU:C:2023:524, paragraphs 148 and 149 and the case-law cited).

96 Furthermore, since Article 6(2) of the Habitats Directive applies at site level and Member States are required to avoid, in each site, the deterioration of natural habitats whose presence is significant, the deterioration established in a given site cannot be offset by improvements in other sites.

97 Therefore, in order to determine whether there is a general and structural infringement by the Federal Republic of Germany of Article 6(2) of the Habitats Directive, it is necessary to examine whether the Commission has proved that, in a considerable number of representative sites in that Member State, there have been significant losses of area covered by habitat types 6510 and 6520 and that it is probable that the deterioration of those habitat types was caused by the failure of that Member State to take appropriate steps.

98 First of all, as regards the losses of area covered by habitat types 6510 and 6520 in Germany, the Commission submits that the analysis carried out for the purposes of the present action based on a comparison between the data submitted by Germany in the SDFs for 2006 with the data from the most recent SDFs available and management plans for the various areas revealed a significant loss of area in 596 out of 2 027 sites hosting habitat type 6510 and in 88 out of 295 sites hosting habitat type 6520, that loss amounting, in the sites in question, to 49.52% of the area covered by habitat type 6510 and 51.07% of the area covered by habitat type 6520. According to the Commission, the large number of sites at which a significant decline in area has been observed, as well as the geographical distribution of the sites concerned throughout Germany, show that this is a general and structural development.

99 In challenging those assessments, the Federal Republic of Germany submits that the Commission was wrong to rely, for the purpose of assessing changes in area, on the data relating to those habitat types contained in the SDFs for 2006, since those data contained errors. However, it should be pointed out that, even after those errors are corrected, there is a loss of area in 81 sites hosting habitat type 6510 and in 15 sites hosting habitat type 6520.

100 In addition, the Federal Republic of Germany states that, according to the SDFs forwarded since 2006, habitat type 6510 covered approximately 85 000 hectares in total and habitat type 6520 more than 12 000 hectares in total, whereas, in the sites taken into consideration by the Commission, the Commission refers to losses of area of 18 717.14 hectares for habitat type 6510 and 1 890.35 hectares for habitat type 6520. However, in the opinion of that Member State, the losses of area which occurred at those sites amounted only to 977.44 hectares and 110.49 hectares, respectively.

101 The Federal Republic of Germany acknowledges that, in respect of some of the sites taken into consideration by the Commission, it is unable to provide any justification or explanation for losses of area amounting to approximately 11 000 hectares for habitat type 6510 and approximately 360 hectares for habitat type 6520.

102 This is confirmed by the data contained in Annex B.4 to that Member State's defence in so far as they indicate, as the Advocate General observes in point 73 of his Opinion, that those 'unexplained losses' represent at least 9 853.38 hectares across more than 200 sites hosting habitat type 6510 and at least 249.78 hectares across 24 sites hosting habitat type 6520.

103 In view of the above, it must be held that the Commission has proved significant losses of area covered by habitat types 6510 and 6520 in a considerable number of sites in the Federal Republic of Germany.

104 Next, as regards whether those losses of area are representative for Germany, suffice it to note that the sites in question are located, as regards habitat type 6510, in 10 *Länder* and, as regards habitat type 6520, in 5 *Länder* of that Member State, which comprises 16 *Länder*, including three cities with *Land* status, namely Berlin, Bremen and Hamburg.

105 Lastly, it is clear that the Commission has proved to the requisite standard the probability that that deterioration of habitat types was caused by the failure to take appropriate steps to avoid such deterioration and that the Federal Republic of Germany has not put forward any evidence capable of ruling out that probability.

106 In the second place, as regards the Commission's line of argument that the lack of site-specific surveillance in the special areas of conservation designated for habitat types 6510 and 6520 in Germany contributed to the deterioration of those habitat types, it should be noted that, as is apparent from paragraphs 92 and 93 of the present judgment, Article 6(2) of the Habitats Directive, which lays down a general obligation to avoid the deterioration of natural habitats, leaves each Member State a margin of discretion in its application and, in particular, where the Commission alleges a systemic and persistent failure by a Member State to comply with that obligation and in so doing establishes the probability that that Member State's inactivity has resulted in a deterioration of those natural habitats, it is for that Member State to rebut the matters of law and of fact relied on by the Commission.

107 In the present case, after having proved significant losses of area covered by habitat types 6510 and 6520 in a considerable number of geographical sites in Germany, the Commission argues that those losses constitute evidence that the competent authorities of that Member State are systematically failing to undertake regular surveillance of the conservation status of those habitat types.

108 Given that, according to the explanations provided by the Commission, it is plausible that such insufficient surveillance by those authorities has contributed to the deterioration of those habitat types in the sites hosting them and the conservation status of which is developing negatively, it is for the Federal Republic of Germany to adduce evidence to show that there was no failure on its part to undertake specific surveillance of those sites.

109 As regards the Commission's allegation concerning the lack of site-specific surveillance measures, the Federal Republic of Germany has provided a general description of the surveillance regime at both federal and *Länder* level and a description of certain site-specific surveillance measures

capable of being applied at those levels. It thus submits that it undertakes appropriate surveillance of habitat types 6510 and 6520 within its territory. It is clear, however, that, in that context, that Member State only partially refutes the Commission's claims that, in certain *Länder*, there is no specific mapping relating to the sites hosting those habitat types or that the cartographic cycle is too long or that the status of those habitat types is not monitored or monitored only on a sample basis or as and when required.

110 It must therefore be held that the surveillance measures implemented in Germany are not sufficiently site-specific, regular and consistent for that surveillance to be considered appropriate within the meaning of Article 6(2) of the Habitats Directive.

111 In the third place, as regards the Commission's line of argument that the deterioration of habitat types 6510 and 6520 in Germany also results from the fact that that Member State has not adopted legally binding measures to protect the special areas of conservation against over-fertilisation and early mowing, but instead favours agreements on contractual nature protection, recommendations and non-binding management plans, it should be pointed out that it is common ground between the parties that the over-fertilisation and early mowing of sites hosting those habitat types results in their deterioration, whereas Article 6(2) of the Habitats Directive requires Member States to take steps to avoid such deterioration.

112 As regards the nature of those measures, the Federal Republic of Germany argues, relying on paragraph 63 of the judgment of 14 October 2010, *Commission* v *Austria* (C-535/07, EU:C:2010:602), that it does not appear that attainment of that objective necessarily requires specific prohibitions to be laid down and that that objective can be attained by protective agreements which are binding on the managers of the sites concerned and by recommendations and non-binding management plans.

113 In that regard, the Court has held that the level of protection provided for by Article 6(2) of the Habitats Directive must, inter alia, be determined by reference to the conservation objectives of the site in question (judgment of 12 September 2024, *Elliniki Ornithologiki Etaireia and Others*, C-66/23, EU:C:2024:733, paragraph 43).

114 Therefore, in so far as the objective of protecting the sites covered by that provision consists, as has been pointed out in paragraph 84 of the present judgment, in protecting those sites against deterioration, the lack of a legally binding provision prohibiting the over-fertilisation and early mowing of sites hosting habitat types 6510 and 6520 means that the Federal Republic of Germany is unable to satisfy the requirements of Article 6(2) of the Habitats Directive.

115 Furthermore, although that Member State relies on the existence of protective agreements which are binding on the managers of those sites, it has not proved that those agreements have the effect of a legally binding provision prohibiting the over-fertilisation and early mowing of those sites.

116 Consequently, by failing to adopt legally binding protective measures against the over-fertilisation and early mowing of sites hosting habitat types 6510 and 6520, the Federal Republic of Germany has infringed Article 6(2) of the Habitats Directive.

117 In those circumstances, it must be held that, by failing in a general and structural manner to take appropriate steps to avoid the deterioration of habitat types 6510 and 6520 protected by the Natura 2000 network, listed in Annex I to the Habitats Directive, in the sites designated for them, the Federal Republic of Germany has failed to fulfil its obligations under Article 6(2) of the Habitats Directive.

The second ground of complaint, alleging infringement of the second subparagraph of Article 4(1) of the Habitats Directive

– *Arguments of the parties*

118 By its second ground of complaint, the Commission alleges that the Federal Republic of Germany has failed to fulfil its obligations under the second subparagraph of Article 4(1) of the Habitats Directive by failing, in a general and structural manner, to transmit to the Commission updated data relating to the sites hosting habitat types 6510 and 6520.

119 It states that, in 202 of the 596 sites hosting habitat type 6510 and in 14 of the 88 sites hosting habitat type 6520, the last SDFs were not up to date, since they did not contain the actual findings relating to the area covered by those habitat types. Since 10 of the 16 *Länder* of the Federal Republic of Germany are affected, the Commission contends that this constitutes a systemic failure to update the SDFs.

120 The Commission submits that, even if the second subparagraph of Article 4(1) of the Habitats Directive does not expressly require Member States regularly to provide updated data relating to the area of each special area of conservation, that updating obligation arises from the contextual and teleological interpretation of that provision.

121 The Commission states that it requires those data in order to ensure compliance with the conservation objectives set out in Article 2 of the Habitats Directive. In addition, it recalls that, in accordance with Article 9 of that directive, it is required periodically to review the contribution of Natura 2000 towards achievement of the objectives set out in Articles 2 and 3 of that directive.

122 According to the Commission, the importance of providing such regularly updated data is also made clear by Article 17 of that directive, which requires Member States to draw up a report every six years in which they are to set out in detail the measures taken and improvements made to each site.

123 The Commission states that an interpretation of the second subparagraph of Article 4(1) of the Habitats Directive to the effect that that provision requires only the 'first' transmission of data would not adequately ensure the attainment of the conservation objectives, since special areas of conservation and habitat types are subject to constant change.

124 The Commission adds that it has adopted Implementing Decision 2011/484, which sets out the current SDF for submitting data relating to the Natura 2000 sites, and that recital 4 of that implementing decision explains the obligation to update those data regularly, stating that 'the content of the Natura 2000 Standard Data Form should be updated regularly based on the best available information for each site of the network in order to allow the Commission to fulfil its coordinating role'.

125 Lastly, the Commission points out that the majority of Member States recognise the need to update the SDFs constantly and to provide the Commission with updated data on an annual basis.

126 The Federal Republic of Germany contends that this ground of complaint should be rejected.

127 It states that the second subparagraph of Article 4(1) of the Habitats Directive contains an obligation on Member States to transmit detailed information on sites of Community importance once, but not an obligation to update those data regularly.

128 In addition, that literal interpretation is supported by the contextual interpretation, since Article 4 of the Habitats Directive concerns the procedure for proposing sites and the drawing up of lists of sites of Community importance, and not the subsequent exchange of information with the Commission, which is governed by the provisions contained in the next section of that directive, headed 'Information', and in particular in Article 17 thereof.

129 That Member State contends that, if the EU legislature had wished to impose an obligation to update the data regularly, it would have made express provision to that effect, as it did for the obligation, set out in Article 17 of the Habitats Directive, to draw up a report every six years on the implementation of the measures taken under that directive.

130 The Federal Republic of Germany submits that the absence of any such obligation to update the data also follows from the explanatory notes set out in the Annex to Implementing Decision 2011/484, since those notes merely 'strongly recommend' that Member States keep the SDF documentation 'reasonably up-to-date' and 'based on the best information available', but do not require full updates on a regular basis.

– *Findings of the Court*

131 As set out in the first sentence of the second subparagraph of Article 4(1) of the Habitats Directive, the list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to the Member State's territory the sites host 'shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site'.

132 According to the terms of that provision, Member States are required to communicate, inter alia, the list containing the geographical sites and information on those sites within a specified period, that is to say, within three years of the notification of that directive. Therefore, and as the Federal Republic of Germany observes, those terms clearly relate to a single transmission of information.

133 It is clear, therefore, that the wording of the second subparagraph of Article 4(1) of the Habitats Directive does not give rise to an obligation on Member States, after transmitting the data provided for in that provision, to update those data on a regular basis.

134 The contextual analysis of that provision does not allow for any other interpretation.

135 First, the procedure governing the designation of sites as 'special areas of conservation' under Article 4 of the Habitats Directive comprises various stages.

136 Thus, first of all, in accordance with Article 4(1) of that directive, each Member State is to propose, inter alia, a list of sites indicating which natural habitat types the sites host and is to transmit that list to the Commission together with various information on those sites. Next, under Article 4(2) of that directive, the Commission is to adopt, drawn from the lists submitted by the Member States, a list of sites selected as 'sites of Community importance'. Lastly, under Article 4(4) of that directive, once a site of Community importance has been adopted, the Member State concerned is to designate that site as a 'special area of conservation'.

137 It follows that the second subparagraph of Article 4(1) of the Habitats Directive merely governs the first stage of the procedure which the Member States and the Commission are to follow so that special areas of conservation are properly designated.

138 Second, while it is true, as the Commission observes, that an obligation to update the data on a regular basis stems from Article 17 of that directive, in so far as that article requires Member States to draw up a report every six years in which they are to set out, inter alia, the measures taken at national level and the impact of those measures on the conservation status of each site, Article 17 contains no reference to Article 4 of the Habitats Directive or, more generally, any factor in favour of interpreting the second subparagraph of Article 4(1) as meaning that Member States are required to transmit, on a regular basis, updated data relating to the special areas of conservation.

139 As regards the conservation objectives referred to in Articles 2 and 3 of the Habitats Directive, it should be recalled that, in accordance with Article 9 of that directive, the Commission is required periodically to review the contribution of Natura 2000 towards achievement of those objectives. To that end, pursuant to the second subparagraph of Article 4(1) of that directive, the Commission adopted Implementing Decision 2011/484, recital 4 of which states that the content of the Natura 2000 SDF should be kept up-to-date regularly based on the best available information for each site of the network.

140 However, as the Advocate General observed in point 98 of his Opinion, even assuming that an obligation for the Member States to update regularly the data for each site classified as a special area of conservation could be derived from Article 9 of the Habitats Directive, such an obligation does not result from the second subparagraph of Article 4(1) of that directive.

141 An interpretation of a provision in the light of its aims cannot have the result of depriving the clear and precise wording of that provision of all effectiveness (see, to that effect, judgments of 22 March 2007, *Commission* v *Belgium*, C-437/04, EU:C:2007:178, paragraph 56, and of 20 September 2022, *VD and SR*, C-339/20 and C-397/20, EU:C:2022:703, paragraph 71).

142 Furthermore, the fact, alleged by the Commission, that the majority of Member States recognise the need for SDFs to be constantly updated is irrelevant to the interpretation of the second subparagraph of Article 4(1) of the Habitats Directive. In that regard, as the Federal Republic of Germany states, it can be assumed that if the EU legislature had intended, with that provision, to impose an obligation to update the data on a regular basis, it would have made express provision to that effect.

143 It follows that the second ground of complaint must be rejected.

144 In the light of all the foregoing considerations, it must be held that the Federal Republic of Germany has failed to fulfil its obligations under Article 6(2) of the Habitats Directive by failing in a general and structural manner to take appropriate steps to avoid the deterioration of habitat types 6510 and 6520 protected by the Natura 2000 network, listed in Annex I to that directive, in the sites designated for those habitat types.

145 The action is dismissed as to the remainder.

Costs

146 Under Article 138(3) of the Rules of Procedure, where each party succeeds on some and fails on other heads, the parties are to bear their own costs. Since the Commission and the Federal Republic of Germany have each succeeded on some and failed on other heads, they must be ordered to bear their own costs.

On those grounds, the Court (Third Chamber) hereby:

1. **Declares that the Federal Republic of Germany has failed to fulfil its obligations under Article 6(2) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2013/17/EU of 13 May 2013, by failing in a general and structural manner to take appropriate steps to avoid the deterioration of habitat types 6510 (lowland hay meadows) and 6520 (mountain hay meadows) protected by the Natura 2000 network, listed in Annex I to Directive 92/43, as amended, in the sites designated for those habitat types;**

2. **Dismisses the action as to the remainder;**

3. **Orders the European Commission and the Federal Republic of Germany to bear their own costs.**

[Signatures]