Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

24 June 2021 *

(Failure of a Member State to fulfil obligations – Article 258 TFEU – Doñana protected natural area (Spain) – Directive 2000/60/EC – Framework for European Union action in the field of water policy – Articles 4(1)(b)(i), 5 and 11(1)(3)(a), (c) and (e) and (4) – Deterioration of bodies of groundwater – Absence of further characterisation of those groundwater bodies identified as being at risk of deterioration – Appropriate basic and supplementary measures – Directive 92/43/EEC – Article 6(2) – Deterioration of natural habitats and habitats of species)

In Case C-559/19,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 22 July 2019,

European Commission, represented initially by C. Hermes, E. Manhaeve and E. Sanfrutos Cano, and subsequently by C. Hermes, E. Manhaeve and M. Jáuregui Gómez, acting as Agents,

applicant,

v

Kingdom of Spain, represented initially by L. Aguilera Ruiz and subsequently by J. Rodríguez de la Rúa Puig and M.-J. Ruiz Sánchez, acting as Agents,

defendant,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, R. Silva de Lapuerta, Vice-President of the Court, acting as a Judge of the First Chamber, M. Safjan, P.G. Xuereb, acting as a Judge of the First Chamber, and N. Jääskinen (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: L. Carrasco Marco, Administrator,

having regard to the written procedure and further to the hearing on 17 September 2020,

after hearing the Opinion of the Advocate General at the sitting on 3 December 2020,

gives the following

* Language of the case: Spanish.

Judgment

1 By its application, the European Commission seeks a declaration from the Court that the Kingdom of Spain has failed to fulfil its obligations, first, under Article 4(1)(b) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1), as amended by Council Directive 2013/64/EU of 17 December 2013 (OJ 2013 L 353, p. 8) ('Directive 2000/60'), read in conjunction with Article 1(a) of Directive 2000/60 and point 2.1.2 of Annex V thereto, Article 5 of that directive, read in conjunction with point 2.2 of Annex II thereto, and Article 11(1), (3)(a), (c) and (e) and (4) thereof, and, secondly, 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 (OJ 1992 L 206, p. 7), read in conjunction with Article 7 thereof, in so far as concerns the groundwater bodies and habitats of the Doñana protected natural area (Spain).

I. Legal context

A. Directive 2000/60

2 According to Article 1 of Directive 2000/60:

'The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

(a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;

…

and thereby contributes to:

– the provision of the sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,

– …'

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

'1. In making operational the programmes of measures specified in the river basin management plans:

…

(b) for groundwater

(i) Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);

(ii) Member States shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);

(iii) Member States shall implement the measures necessary to reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order progressively to reduce pollution of groundwater;

…

(c) for protected areas

Member States shall achieve compliance with any standards and objectives at the latest 15 years after the date of entry into force of this Directive, unless otherwise specified in the Community legislation under which the individual protected areas have been established.

…

4. The time limits laid down in paragraph 1 may be extended for the purposes of phased achievement of the objectives for bodies of water, provided that no further deterioration occurs in the status of the affected body of water when all the following conditions are met:

…'

4 Article 5 of that directive provides:

'1. Each Member State shall ensure that for each river basin district or for the portion of an international river basin district falling within its territory:

– an analysis of its characteristics,

– a review of the impact of human activity on the status of surface waters and on groundwater, and

– an economic analysis of water use

is undertaken according to the technical specifications set out in Annexes II and III and that it is completed at the latest four years after the date of entry into force of this Directive.

2. The analyses and reviews mentioned under paragraph 1 shall be reviewed, and if necessary updated at the latest 13 years after the date of entry into force of this Directive and every six years thereafter.'

5 Article 11 of that directive provides:

'1. Each Member State shall ensure the establishment for each river basin district, or for the part of an international river basin district within its territory, of a programme of measures, taking account of the results of the analyses required under Article 5, in order to achieve the objectives

established under Article 4. Such programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a Member State. Where appropriate, a Member State may adopt measures applicable to all river basin districts and/or the portions of international river basin districts falling within its territory.

2. Each programme of measures shall include the "basic" measures specified in paragraph 3 and, where necessary, "supplementary" measures.

3. "Basic measures" are the minimum requirements to be complied with and shall consist of:

(a) those measures required to implement Community legislation for the protection of water, including measures required under the legislation specified in Article 10 and in part A of Annex VI;

…

(c) measures to promote an efficient and sustainable water use in order to avoid compromising the achievement of the objectives specified in Article 4;

…

(e) controls over the abstraction of fresh surface water and groundwater, and impoundment of fresh surface water, including a register or registers of water abstractions and a requirement of prior authorisation for abstraction and impoundment. These controls shall be periodically reviewed and, where necessary, updated. Member States can exempt from these controls, abstractions or impoundments which have no significant impact on water status;

…

4. "Supplementary" measures are those measures designed and implemented in addition to the basic measures, with the aim of achieving the objectives established pursuant to Article 4. Part B of Annex VI contains a non-exclusive list of such measures.

Member States may also adopt further supplementary measures in order to provide for additional protection or improvement of the waters covered by this Directive, including in implementation of the relevant international agreements referred to in Article 1.

…'

6 Point 2.1 of Annex II to Directive 2000/60, under the heading 'Initial characterisation', states:

'Member States shall carry out an initial characterisation of all groundwater bodies to assess their uses and the degree to which they are at risk of failing to meet the objectives for each groundwater body under Article 4. Member States may group groundwater bodies together for the purposes of this initial characterisation. This analysis may employ existing hydrological, geological, pedological, land use, discharge, abstraction and other data but shall identify:

– the location and boundaries of the groundwater body or bodies,

– the pressures to which the groundwater body or bodies are liable to be subject including:

  – diffuse sources of pollution

  – point sources of pollution

  – abstraction

…’

7 Point 2.2 of Annex II to that directive, under the heading ‘Further characterisation’, states:

‘Following this initial characterisation, Member States shall carry out further characterisation of those groundwater bodies or groups of bodies which have been identified as being at risk in order to establish a more precise assessment of the significance of such risk and identification of any measures to be required under Article 11. Accordingly, this characterisation shall include relevant information on the impact of human activity and, where relevant, information on:

– geological characteristics of the groundwater body including the extent and type of geological units,

– hydrogeological characteristics of the groundwater body including hydraulic conductivity, porosity and confinement,

– characteristics of the superficial deposits and soils in the catchment from which the groundwater body receives its recharge, including the thickness, porosity, hydraulic conductivity, and absorptive properties of the deposits and soils,

– stratification characteristics of the groundwater within the groundwater body,

– an inventory of associated surface systems, including terrestrial ecosystems and bodies of surface water, with which the groundwater body is dynamically linked,

– estimates of the directions and rates of exchange of water between the groundwater body and associated surface systems,

– sufficient data to calculate the long term annual average rate of overall recharge,

– characterisation of the chemical composition of the groundwater, including specification of the contributions from human activity. Member States may use typologies for groundwater characterisation when establishing natural background levels for these bodies of groundwater.’

8 Point 2.1.2 of Annex V to that directive, under the heading ‘Definition of quantitative status’, defines the ‘groundwater level’ as follows:

‘The level of groundwater in the groundwater body is such that the available groundwater resource is not exceeded by the long-term annual average rate of abstraction.

Accordingly, the level of groundwater is not subject to anthropogenic alterations such as would result in:

– failure to achieve the environmental objectives specified under Article 4 for associated surface waters,

– any significant diminution in the status of such waters,

– any significant damage to terrestrial ecosystems which depend directly on the groundwater body,

and alterations to flow direction resulting from level changes may occur temporarily, or continuously in a spatially limited area, but such reversals do not cause saltwater or other intrusion, and do not indicate a sustained and clearly identified anthropogenically induced trend in flow direction likely to result in such intrusions.'

B. Directive 92/43

9 Article 1(e) of Directive 92/43 is worded as follows:

'For the purpose of this Directive:

…

(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)'.

10 Article 6(2) and (3) of that directive provides:

'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.'

11 Article 7 of that directive provides:

'Obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of [Council] Directive 79/409/EEC [of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)] in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive [79/409] where the latter date is later.'

II. Background to the dispute and pre-litigation procedure

12 Doñana is a protected natural area in the southwest of Spain ('the Doñana protected natural area'). That area includes both Doñana National Park, established in 1969, and Doñana Nature Park, established in 1989 and extended in 1997. By Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region (OJ 2006 L 259, p. 1), the Commission included on that list three protected areas located within the latter park, namely Doñana, regarded as a special protection area and identified by the code SPA/SCI ES0000024, Doñana Norte y Oeste, also regarded as a special protection area and identified by the code SPA/SCI ES6150009 and Dehesa del Estero y Montes de Moguer, regarded as a special area of conservation and identified by the code SAC ES6150012. Those areas are protected by the nature conservation provisions of EU law. In particular, the Mediterranean temporary ponds in the Doñana protected natural area, identified by the code 3170* as a priority habitat type, constitute the ecosystem which best characterises those areas and their importance has been recognised at international level, first, by the Convention on Wetlands of International Importance especially as Waterfowl Habitat, concluded in Ramsar on 2 February 1971, and, secondly, by the United Nations Educational, Scientific and Cultural Organisation (Unesco), which included them in the World Heritage List in 1994.

13 For the purposes of the application of Directive 2000/60, the Doñana protected natural area was amalgamated into a single body of groundwater, that of Almonte-Marismas ('the Almonte-Marismas aquifer'), in the Plan Hidrológico del Guadalquivir 2009-2015 (Guadalquivir Basin Hydrological Plan 2009 to 2015), approved, under Article 13 of that directive, by Real Decreto 355/2013 por el que se aprueba el Plan Hidrológico de la Demarcación Hidrográfica del Guadalquivir (Royal Decree 355/2013 approving the Guadalquivir River Basin Management Plan) of 17 May 2013 (BOE No 121, of 21 May 2013, p. 38229; 'the Guadalquivir Basin Hydrological Plan 2009 to 2015'). That plan was replaced by the Plan Hidrológico del Guadalquivir 2015-2021 (Guadalquivir Basin Hydrological Plan 2015 to 2021), approved by Real Decreto 1/2016 por el que se aprueba la revisión de los Planes Hidrológicos de las demarcaciones hidrográficas del Cantábrico Occidental, Guadalquivir, Ceuta, Melilla, Segura y Júcar, y de la parte española de las demarcaciones hidrográficas del Cantábrico Oriental, Miño-Sil, Duero, Tajo, Guadiana y Ebro (Royal Decree 1/2016 approving the revision of the Hydrological Plans for the River Basin Districts of Western Cantabria, Guadalquivir, Ceuta, Melilla, Segura and Júcar, and the Spanish part of the River Basin Districts of Eastern Cantabria, Miño-Sil, Duero, Tagus, Guadiana and Ebro) of 8 January 2016 (BOE No 16, of 19 January 2016, p. 2972; 'the Guadalquivir Basin

Hydrological Plan 2015 to 2021'). In that second plan, the Almonte-Marismas aquifer was divided into five groundwater bodies, namely Manto eólico de Doñana, Marismas de Doñana, Marismas, Almonte and La Rocina ('the Doñana aquifer').

14 During 2009, the Commission received several complaints concerning the deterioration of the habitats of the Doñana protected natural area. Those complaints referred, in particular, to overexploitation of the groundwater bodies of that natural area, to which the natural area's wetlands are connected. The concerns expressed in those complaints were also brought to the attention of the European Parliament in the form of written questions and petitions.

15 On 17 October 2014, following a procedure initiated under the EU-Pilot mechanism concerning the application of European environmental legislation by the Kingdom of Spain, the Commission sent that Member State a letter of formal notice, informing it that the Commission considered that the Kingdom of Spain had failed to fulfil, first, its obligations under Article 4(1)(b) of Directive 2000/60, read in conjunction with Article 1(a) and point 2.1.2 of Annex V thereto, Article 5 of that directive, read in conjunction with point 2.2 of Annex II thereto, and Article 11(1), (3)(a), (c) and (e) and (4) of that directive, and, secondly, its obligations under Article 6(2) of Directive 92/43, read in conjunction with Article 7 thereof, in so far as concerns both the groundwater bodies and the habitats of the Doñana protected natural area.

16 On 11 February 2015, the Kingdom of Spain replied to that letter of formal notice.

17 After examining the Kingdom of Spain's reply, the Commission, on 29 April 2016, sent that Member State a reasoned opinion ('the reasoned opinion') in which it maintained the position set out in its letter of formal notice, to the effect that that Member State had failed:

– first, to adopt the measures necessary to prevent the deterioration of the status of the bodies of groundwater in the Doñana protected natural area;

– secondly, to carry out further characterisation of all the groundwater bodies of the Almonte-Marismas aquifer which were at risk of deterioration;

– thirdly, to draw up appropriate basic and supplementary measures for inclusion in the Guadalquivir Basin Hydrological Plan 2009 to 2015 and the Guadalquivir Basin Hydrological Plan 2015 to 2021, and

– fourthly, to take appropriate steps to avoid the deterioration of natural habitats and habitats of species located within the protected areas of the Doñana region, in particular in the areas of Doñana (SPA/SCI ES0000024), Doñana Norte y Oeste (SPA/SCI ES6150009) and Dehesa del Estero y Montes de Moguer (SAC ES6150012), referred to in paragraph 12 of the present judgment.

18 In that reasoned opinion, the Commission called on the Kingdom of Spain to remedy the failures to fulfil obligations by 29 June 2016.

19 On 9 August 2016, the Kingdom of Spain replied to the reasoned opinion, informing the Commission of the measures adopted to remedy those failures to fulfil its obligations, which were primarily included in the Guadalquivir Basin Hydrological Plan 2015 to 2021. The Kingdom of Spain also highlighted the measures adopted in the Plan Especial de Ordenación de las Zonas de

Regadío, ubicadas al Norte de la Corona Forestal de Doñana (the Special Management Plan for the Irrigation Zones Located to the North of the Forest Crown of Doñana), approved in 2014 ('the 2014 Special Irrigation Plan for Doñana').

20 As the Commission took the view that the measures communicated by the Kingdom of Spain were insufficient to put an end to the notified failure to fulfil obligations in the Doñana protected natural area, it decided, on 24 January 2019, to bring the present action.

III. The request to submit new evidence after the close of the written part of the procedure

21 By letter of 14 April 2021, the Kingdom of Spain made a request to be allowed to produce new evidence after the close of the written part of the procedure, under Article 128(2) of the Rules of Procedure of the Court, and submitted to the Court the document entitled 'Finalised Report on the Joint World Heritage Centre/IUCN/Ramsar Reactive Monitoring Mission to Doñana National Park', which was sent by Unesco to that Member State on 8 April 2021.

22 Pursuant to Article 128(2) of the Rules of Procedure, a party wishing to produce or offer evidence after the close of the written part of the procedure must give reasons for the delay in submitting it and the President may, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, prescribe a time limit within which the other party may comment on such evidence.

23 In the present case, the Court already has available to it most of the information contained in that report and considers that it has sufficient information to give judgment, without there being any need to decide the case on the basis of new evidence which has not been the subject of debate between the parties. Consequently, there are no grounds for acceding to the request of the Kingdom of Spain.

IV. The action

24 In support of its action, the Commission submits that the Kingdom of Spain has failed to fulfil its obligations under Directive 2000/60 in so far as concerns the bodies of groundwater in the protected areas of the Doñana protected natural area and its obligations under Directive 92/43 in so far as concerns the natural habitats and habitats of species located within those areas.

A. The failure to fulfil obligations under Directive 2000/60

25 The Commission complains, in essence, that the Kingdom of Spain failed to adopt all the measures required by Directive 2000/60 to remedy the deterioration of the groundwater bodies in the Doñana protected natural area. According to the Commission, that deterioration is attributable, in particular, to anthropogenic activities which have the effect of altering the balance between abstraction and recharge of groundwater.

26 The Commission puts forward three pleas in law, the first alleging infringement of Article 4(1)(b) of Directive 2000/60, read in conjunction with Article 1(a) and point 2.1.2 of Annex V thereto, the second alleging infringement of Article 5 of that directive, read in conjunction with point 2.2 of Annex II to that directive, and the third alleging infringement of Article 11(1), (3)(a), (c) and (e) and (4) thereof.

1. The first plea in law

(a) Arguments of the parties

27 The Commission submits that, in breach of Article 4(1)(b)(i) of Directive 2000/60, the Kingdom of Spain has failed to take the measures necessary to prevent the deterioration of the status of the bodies of groundwater in the Doñana protected natural area. The Commission states that that provision, read in conjunction with point 2.1.2 of Annex V to that directive, requires Member States to ensure that anthropogenic interventions do not alter the level of groundwater, thereby causing damage to terrestrial ecosystems which depend directly on those bodies of water.

28 The Commission emphasises, in particular, that the Guadalquivir Basin Hydrological Plan 2009 to 2015 and the Guadalquivir Basin Hydrological Plan 2015 to 2021 demonstrate that the Kingdom of Spain has failed to fulfil its obligations under Article 4(1)(b) of Directive 2000/60.

29 Thus, first, the Commission claims that, by incorrectly stating in the Guadalquivir Basin Hydrological Plan 2009 to 2015 that the Almonte-Marismas aquifer was of 'good quantitative status' for the purposes of point 2.1.2 of Annex V to Directive 2000/60, the Kingdom of Spain underestimated the continuing deterioration caused by overexploitation of the aquifers in the Doñana region through the steady increase in excessive abstraction of water for irrigable land and failed to adopt the measures necessary to prevent that deterioration. The Commission points out, in that regard, that the decrease in groundwater levels in that aquifer has led to the acidification of temporary lagoons, thereby causing significant damage to terrestrial ecosystems which depended directly on that aquifer.

30 Secondly, the Commission argues that the alleged deterioration was confirmed by the approval of the Guadalquivir Basin Hydrological Plan 2015 to 2021, in which the Almonte-Marismas aquifer was divided into five groundwater bodies. The Commission notes that in that hydrological plan it was officially recognised that three of those water bodies, namely Marismas, Almonte and La Rocina ('the three water bodies'), were of poor quantitative status and that two of them, namely Marismas and Almonte, were also of poor chemical status.

31 Finally, the Commission highlights that the deterioration of the three water bodies, which feed the Almonte-Marismas aquifer, is still ongoing, as is attested by a report of the Confederación Hidrográfica del Guadalquivir (Guadalquivir Hydrographic Confederation, Spain), and continues to cause damage to terrestrial ecosystems which depend directly on those bodies of water, even after the adoption of the measures included in the Guadalquivir Basin Hydrological Plan 2015 to 2021.

32 The Kingdom of Spain disputes the Commission's arguments and maintains that the obligations arising from Article 4(1)(b) of Directive 2000/60 have been complied with fully, first of all, by the Guadalquivir Basin Hydrological Plan 2009 to 2015 and, subsequently, by the Guadalquivir Basin Hydrological Plan 2015 to 2021.

33 On the one hand, the Kingdom of Spain asserts that Article 4(4) of Directive 2000/60 provides for the possibility of postponing compliance with the obligations arising from Article 4(1)(b) thereof for the purposes of the phased achievement of the 'objectives for bodies of water'. The Kingdom of Spain maintains that it availed itself of that possibility, having determined, after the entry into

force of the Guadalquivir Basin Hydrological Plan 2015 to 2021, that it was not possible to achieve the objective of good quantitative status of the Almonte-Marismas aquifer, in particular so far as concerns the three water bodies.

34 On the other hand, the Kingdom of Spain claims that appropriate measures have been established in order to comply with the provisions of Directive 2000/60 and thus to avoid further deterioration of the water bodies concerned. Those measures include a reduction of approximately 10% of total water abstraction from the water bodies, the classification of the three water bodies not achieving the objective of 'good quantitative status' as water bodies 'at risk of not achieving good quantitative status', the replacement of groundwater abstraction with surface water abstraction, more frequent inspections in the Doñana region since 2015 in order to prevent unauthorised water abstraction, the initiation of penalty proceedings and the closure of wells from which water is illegally abstracted. The Kingdom of Spain states that the measures adopted have been effective in so far as, first, the continuing deterioration of the Almonte water body has been halted and, secondly, the status of the La Rocina and Marismas water bodies has been enhanced.

(b) Assessment of the Court

35 As a preliminary remark, it must be pointed out that Directive 2000/60 is a framework directive adopted on the basis of Article 175(1) EC (now Article 192(1) TFEU). It establishes common principles and an overall framework for action in relation to water protection and coordinates, integrates and, in a longer perspective, develops the overall principles and the structures for protection and sustainable use of water in the European Union. The common principles and overall framework for action which it lays down are to be developed subsequently by the Member States by means of the adoption of individual measures in accordance with the timescales laid down in the directive. However, the directive does not seek to achieve complete harmonisation of the rules of the Member States concerning water (judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 34 and the case-law cited).

36 According to Article 1(a) of Directive 2000/60, the purpose of the directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which prevents further deterioration and protects and enhances the status of aquatic ecosystems and terrestrial ecosystems directly depending on the aquatic ecosystems (judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 36).

37 Therefore, the ultimate objective of Directive 2000/60 is to achieve, through coordinated action, 'good status' of all EU waters, including groundwater.

38 The environmental objectives which Member States are required to achieve for groundwater are specified in Article 4(1)(b) of Directive 2000/60.

39 That provision imposes two separate, albeit intrinsically linked, obligations. First, pursuant to Article 4(1)(b)(i) of Directive 2000/60, Member States are to implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater. Secondly, pursuant to Article 4(1)(b)(ii) and (iii) thereof, Member States are to protect, enhance and restore all bodies of groundwater with the aim of achieving good status at the latest by the end of 2015. It follows that the first obligation arising

from Article 4(1)(b)(i) of Directive 2000/60 is an obligation to prevent the deterioration of the status of all bodies of groundwater, whereas the second obligation, set out in Article 4(1)(b)(ii) and (iii) of that directive, is an obligation to enhance that status (see, to that effect, judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18, EU:C:2020:391, paragraph 69).

40 Furthermore, Article 4(1) of Directive 2000/60 establishes a link between the measures of conservation necessary to prevent the deterioration of the status of all bodies of groundwater which the Member States are bound to adopt under that provision and the prior existence of a management plan for the river basin district concerned (see, to that effect, judgment of 11 September 2012, *Nomarchiaki Aftodioikisi Aitoloakarnanias and Others*, C-43/10, EU:C:2012:560, paragraph 52).

41 Furthermore, it should be recalled that, in order to ensure that Member States attain the qualitative objectives pursued by the EU legislature, namely the preservation or restoration of good quantitative and chemical status of groundwater, Directive 2000/60 lays down a series of provisions, including Articles 5 and 11 and Annex V, establishing a complex process involving a number of extensively regulated stages, for the purpose of enabling the Member States to implement the necessary measures, on the basis of the specific features and the characteristics of the bodies of water identified in their territories (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraphs 41 and 42).

42 Finally, it follows from the wording, the scheme and the purpose of Article 4 of Directive 2000/60 that the obligations laid down in Article 4(1)(a) and (b) of that directive for surface water and groundwater are binding (see, to that effect, judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18, EU:C:2020:391, paragraph 72).

43 It follows, as the Commission submits, that Article 4(1)(b) of Directive 2000/60 does not simply set out, in programmatic terms, mere management-planning objectives, but has binding effects, once the ecological status of the body of water concerned has been determined, at each stage of the procedure prescribed by that directive (judgment of 28 May 2020, *Land Nordrhein-Westfalen*, C-535/18, EU:C:2020:391, paragraph 73).

44 In the context of the present complaint, the Commission criticises the Kingdom of Spain only for failing to fulfil its obligation to prevent the deterioration of the status of bodies of groundwater under Article 4(1)(b)(i) of Directive 2000/60.

45 It follows that it is necessary, at the outset, to reject the Kingdom of Spain's argument that Article 4(4) of Directive 2000/60 allowed it to postpone compliance with the obligations arising from Article 4(1)(b) of that directive as regards, in particular, the three water bodies located within the Doñana protected natural area. As the Advocate General noted in point 153 of her Opinion, the exception of postponing achievement of the objectives laid down in Article 4(1)(b) of Directive 2000/60 is applicable only to the enhancement obligation laid down in Article 4(1)(b)(ii), but not to the obligation to prevent deterioration referred to in Article 4(1)(b)(i), which the Commission claims has not been fulfilled in the present case.

46 As regards the question whether the Kingdom of Spain has failed to fulfil its obligation to prevent the deterioration of the status of the bodies of groundwater in the Doñana protected natural area, in infringement of Article 4(1)(b)(i) of Directive 2000/60, it should be recalled, first of all, that, according to settled case-law, in proceedings for failure to fulfil obligations, it is for the Commission to prove the existence of the alleged infringement and to provide the Court with the

information necessary for it to determine whether there has indeed been an infringement, and the Commission may not rely on any presumption for that purpose (see, to that effect, judgment of 5 March 2020, *Commission* v *Cyprus (Collection and treatment of urban waste water)*, C-248/19, not published, EU:C:2020:171, paragraph 20 and the case-law cited).

47 Next, it is only where the Commission has adduced sufficient evidence to establish the existence of the alleged infringement that it is incumbent on the Member State to challenge in substance and in detail the information produced and the inferences drawn (see, by analogy, judgment of 28 March 2019, *Commission* v *Ireland (System for collecting and treating waste water)*, C-427/17, not published, EU:C:2019:269, paragraph 39 and the case-law cited).

48 Finally, according to the case-law, it is clear from the scheme of Article 4 of Directive 2000/60 that a deterioration of the status of a body of water, even if transitory, is authorised only subject to strict conditions and that the threshold beyond which breach of the obligation to prevent deterioration of the status of a body of water is found must be low (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 67).

49 As the Advocate General pointed out in points 123 to 134 of her Opinion, the concept of 'deterioration', within the meaning of that provision, in the context of groundwater which is already of poor status, presupposes a further increase of the already existing deficit and thus increased overexploitation as compared with an earlier situation. In that regard, the absence of a balance between abstraction and recharge of groundwater means that a body of groundwater is not of good quantitative status, as defined in point 2.1.2 of Annex V to Directive 2000/60, without thereby constituting in itself a deterioration, within the meaning of Article 4(1)(b)(i) of that directive. The adoption of the measures necessary to achieve that balance, such as an end to excessive abstraction, and consequently good status of the groundwater body in question, is covered by the enhancement obligation under Article 4(1)(b)(ii) of that directive. Accordingly, as long as the level of overexploitation of a body of groundwater of poor quantitative status does not increase, there cannot be any deterioration of that status which is contrary to the obligation under Article 4(1)(b)(i) of that directive.

50 The Commission considers that there is a deterioration of the status of the bodies of groundwater in the Doñana protected natural area, for the purposes of Article 4(1)(b)(i) of Directive 2000/60, on the grounds, first, that the Guadalquivir Basin Hydrological Plan 2009 to 2015 incorrectly classifies the quantitative status of the Almonte-Marismas aquifer, secondly, that the Guadalquivir Basin Hydrological Plan 2015 to 2021 classifies the three water bodies as of 'poor quantitative status' and, thirdly, that, as a result of the insufficient measures adopted in the Guadalquivir Basin Hydrological Plan 2015 to 2021, the status of the three water bodies has deteriorated.

(1) The incorrect classification, in the Guadalquivir Basin Hydrological Plan 2009 to 2015, of the quantitative status of the Almonte-Marismas aquifer

51 The Commission criticises the Kingdom of Spain, in the first place, for having incorrectly stated, in the Guadalquivir Basin Hydrological Plan 2009 to 2015, that the Almonte-Marismas aquifer had 'good quantitative status', for the purposes of point 2.1.2 of Annex V to Directive 2000/60, and for considering, therefore, that the groundwater level of that aquifer was not subject to anthropogenic alterations likely to result in a failure to achieve the environmental objectives laid down by that directive or was not likely to cause environmental damage to ecosystems which

depend directly on it. In the Commission's view, that incorrect classification is evidence that the Kingdom of Spain has not taken the measures necessary to prevent the deterioration of the status of the bodies of groundwater in the Doñana region, in particular in order to reduce excessive water abstraction.

52 As is apparent from the documents before the Court, on the date of approval of the Guadalquivir Basin Hydrological Plan 2009 to 2015, that is to say on 17 May 2013, there was sufficient evidence to conclude that the Almonte-Marismas aquifer did not fulfil the requirements laid down for classification as a body of water of 'good quantitative status', for the purposes of point 2.1.2 of Annex V to Directive 2000/60.

53 The Commission has provided several documents from various scientific and official sources, which it has annexed to its application, showing that, at the time of approval of that plan, the Almonte-Marismas aquifer was at risk of not achieving the objectives laid down by Directive 2000/60 because of anthropogenic alterations and, in particular, excessive water abstraction from irrigable land in the Doñana region.

54 Moreover, as the Commission argues, the Land Use Plan for the Doñana Region, approved by Decreto 341/2003 del Gobierno de la Comunidad Autónoma de Andalucía por el que se aprueba el Plan de Ordenación del Territorio del ámbito de Doñana y se crea su Comisión de Seguimiento (Royal Decree 341/2003 of the Government of the Autonomous Community of Andalusia approving the Land Use Plan for the Doñana Region and establishing its Monitoring Committee) of 9 December 2003 (BOJA No 22, of 3 January 2004, p. 2866), had already recommended to the Spanish Water Administration that it declare the Almonte-Marismas aquifer to be, in its entirety, overexploited or at risk of being overexploited, with a view to reducing the risk of overexploitation and deterioration of the quality of the waters in that aquifer.

55 However, although the evidence referred to in paragraphs 53 and 54 of the present judgment, which dates from 2003, 2008, 2009 and 2012, is capable of showing that the Almonte-Marismas aquifer was not of 'good quantitative status', for the purposes of point 2.1.2 of Annex V to Directive 2000/60, at the date of approval of the Guadalquivir Basin Hydrological Plan 2009 to 2015, such evidence cannot, however, support a finding that the incorrect classification of the quantitative status of that aquifer in the plan led to the groundwater bodies in the Doñana protected natural area undergoing a deterioration, as defined in paragraph 48 of the present judgment.

56 It follows from the foregoing that the Commission has not demonstrated that the Kingdom of Spain has failed to fulfil its obligations under Article 4(1)(b)(i) of Directive 2000/60, by incorrectly classifying the quantitative status of the groundwater bodies in the Doñana protected natural area in the Guadalquivir Basin Hydrological Plan 2009 to 2015.

(2) The classification of the three water bodies as of 'poor quantitative status' in the Guadalquivir Basin Hydrological Plan 2015 to 2021

57 The Commission submits that the evidence of the deterioration of the quantitative status of the Almonte-Marismas aquifer follows from the fact that, when the Guadalquivir Basin Hydrological Plan 2015 to 2021 was approved in January 2016, that aquifer was divided into five water bodies, with the three water bodies being considered to be of 'poor quantitative status', for the purposes of point 2.1.2 of Annex V to Directive 2000/60. In the Commission's view, the amendment of that

plan constitutes an implicit indication that the status of the groundwater bodies in the Doñana protected natural area has deteriorated as compared with their status as set out in the Guadalquivir Basin Hydrological Plan 2009 to 2015.

58 However, such a line of argument cannot be accepted.

59 It is apparent from the file submitted to the Court that the new classification of the quantitative status of the groundwater bodies in the Doñana protected natural area is merely the consequence of dividing the Almonte-Marismas aquifer as a whole into five separate water bodies for the purposes of its assessment. As a result of that division, the poor quantitative status of the three water bodies became apparent, whereas in the Guadalquivir Basin Hydrological Plan 2009 to 2015, the Almonte-Marismas aquifer, which was assessed as a whole, was considered to be of good quantitative status.

60 Thus, as the Kingdom of Spain has established, following approval of the Guadalquivir Basin Hydrological Plan 2009 to 2015, the information which has been gradually collected has shown that that plan was lacking technical precision as regards the initial measures implementing Directive 2000/60. For that reason, the Almonte-Marismas aquifer was divided into five separate water bodies in the Guadalquivir Basin Hydrological Plan 2015 to 2021, with a view to locating problems more easily at a territorial level, identifying more precisely the areas at risk of not achieving the objectives laid down by that directive and thus developing a more effective and appropriate response, consisting essentially in reducing groundwater abstraction.

61 Moreover, the evidence produced by the Commission is not capable of showing that the three water bodies considered to be of 'poor quantitative status' were in better status before the Almonte-Marismas aquifer was divided up. On the contrary, as is apparent from paragraph 52 of the present judgment, the documents provided by the Commission prove that, prior to the approval of the Guadalquivir Basin Hydrological Plan 2009 to 2015, there was sufficient evidence to consider that that aquifer was not of good quantitative status. Accordingly, it cannot be inferred from the reference, in the Guadalquivir Basin Hydrological Plan 2015 to 2021, to the poor quantitative status of the three water bodies that there had been a further deterioration in that status as compared with the status reported in the Guadalquivir Basin Hydrological Plan 2009 to 2015.

62 It follows that the Commission has not shown that the amendment of the 'good quantitative status' classification of the Almonte-Marismas aquifer, as contained in the Guadalquivir Basin Hydrological Plan 2009 to 2015, in the form of the reference to the three water bodies being of 'poor quantitative status' in the Guadalquivir Basin Hydrological Plan 2015 to 2021, was the consequence of a deterioration of the status of that aquifer, as defined in paragraph 48 of the present judgment.

(3) The deterioration of the water bodies in the Doñana protected natural area as a result of the allegedly insufficient measures adopted in the Guadalquivir Basin Hydrological Plan 2015 to 2021

63 The Commission maintains that, as a result of the insufficient measures adopted by the Guadalquivir Basin Hydrological Plan 2015 to 2021, a 'deterioration', within the meaning of Article 4(1)(b)(i) of Directive 2000/60, is ongoing and has not yet been reversed, with the risk that the good quantitative status of the three water bodies will not be achieved within the time limits set out in that directive.

64 As a preliminary point, it should be recalled that, according to settled case-law, as the question whether a Member State has failed to fulfil obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion, the Court cannot take account of any subsequent changes (see judgment of 28 March 2019, *Commission* v *Ireland (System for collecting and treating waste water)*, C-427/17, not published, EU:C:2019:269, paragraph 140 and the case-law cited).

65 In the present case, since the deadline laid down in the reasoned opinion is 29 June 2016, it is necessary to disregard some of the evidence produced by the Commission to demonstrate the continuing deterioration of the quantitative status of the bodies of groundwater in the Doñana protected natural area, in particular, most of the Spanish press articles and the reports of the non-governmental organisation the World Wildlife Fund (WWF) which contain information relating to 2017, 2018 and 2019.

66 As regards the question whether the Kingdom of Spain failed to fulfil its obligation to prevent the deterioration of those bodies of water up until 29 June 2016, the Commission takes the view, in essence, that the present and continuing deterioration of the quantitative status of those bodies of water is demonstrated, first, by the excessive and ongoing abstraction of groundwater in the Doñana region and, secondly, by the deterioration of surface waters and ecosystems.

67 With regard to the excessive and ongoing abstraction of groundwater in the Doñana region, the Commission claims that various items of evidence from scientific studies, reports of the Spanish authorities and press articles, copies of which are annexed to the application, bear out the slow and steady increase in the irrigated area of the Doñana region since 2000.

68 While it is true that such evidence may be indicative of continuing overexploitation of the Almonte-Marismas aquifer, the fact remains that those documents do not show that such overexploitation has increased further, causing a deterioration of that aquifer since the approval of the Guadalquivir Basin Hydrological Plan 2015 to 2021 on 8 January 2016.

69 The documents produced by the Commission, in particular the report of the Guadalquivir Hydrographic Confederation of April 2017 on the status of the Almonte-Marismas aquifer for the 2015 to 2016 hydrological year and the report of the Defensor del Pueblo (Ombudsman, Spain) of 10 August 2018, both annexed to the application, merely warn that the continuing use of groundwater resources threatens the good status of that aquifer and the terrestrial ecosystems which depend directly on it, with the risk that the three water bodies considered to be of poor quantitative status may not achieve good quantitative status. However, as pointed out in paragraph 49 of the present judgment, the fact that the bodies of groundwater remain of poor quantitative status does not in itself mean that the quantitative status of those bodies of groundwater has further deteriorated since the approval of the Guadalquivir Basin Hydrological Plan 2015 to 2021.

70 Moreover, as the Advocate General pointed out in point 130 of her Opinion, in the event of poor quantitative groundwater status, the obligation to prevent the deterioration of that status, referred to in Article 4(1)(b)(i) of Directive 2000/60, cannot require the reduction of excessive groundwater abstraction to the point of achieving a balance between groundwater abstraction and renewal. Such a balance meets the definition of good quantitative status for the purposes of the first sentence of point 2.1.2 of Annex V to that directive, which must be achieved in the context of the enhancement obligation under Article 4(1)(b)(ii) and (iii) of that directive, fulfilment of which has not been challenged in the context of the present complaint.

71 Accordingly, it follows from the foregoing considerations that, in the event that bodies of groundwater are of poor quantitative status, as found in the Guadalquivir Basin Hydrological Plan 2015 to 2021, the obligation to prevent the deterioration of the quantitative status of those bodies of water, referred to in Article 4(1)(b)(i) of Directive 2000/60, requires only that groundwater abstraction should not increase further, so as not to exacerbate the causes of the poor quantitative status established. However, the Commission has provided no evidence that groundwater abstraction increased following the approval of the Guadalquivir Basin Hydrological Plan 2015 to 2021 or that the causes of the poor quantitative status of the Almonte-Marismas aquifer were exacerbated.

72 By contrast, the Kingdom of Spain has provided monitoring data collected by the Guadalquivir Hydrographic Confederation showing that, at least since 2015, the indicator of the status of the groundwater bodies of the Almonte-Marismas aquifer shows a trend towards returning to its previous levels, which is observable for the groundwater bodies of the Almonte-Marismas aquifer as a whole as well as for the three water bodies, in particular that of La Rocina. Thus, according to the available official records, since approximately 2015 there has been a very small improvement in the groundwater bodies of the Doñana protected natural area as a result of the implementation of specific measures to reduce groundwater abstraction in the Doñana region.

73 In the light of the foregoing considerations, it must be held that the Commission has not shown that the poor quantitative status of the bodies of groundwater in the Doñana protected natural area has been worsened by increased abstraction, in breach of the obligation to prevent the deterioration of groundwater laid down in Article 4(1)(b)(i) of Directive 2000/60.

74 With regard to the deterioration of surface waters and ecosystems, it should be noted, as did the Advocate General in point 149 of her Opinion, that such deterioration may constitute evidence that the groundwater bodies concerned are of poor quantitative status but cannot constitute evidence of further deterioration of that status. Nor has the Commission established that such evidence shows a worsening of the poor quantitative status of the groundwater bodies in the Doñana protected natural area in their entirety.

75 It follows that the Commission has not demonstrated the existence of a deterioration of the three water bodies as a result of the measures which were established in the Guadalquivir Basin Hydrological Plan 2015 to 2021.

76 It follows from all the foregoing that the Commission has not shown that the Kingdom of Spain has failed to fulfil its obligation to prevent the deterioration of the status of the bodies of groundwater in the Doñana protected natural area, for the purposes of Article 4(1)(b)(i) of Directive 2000/60.

2. The second complaint

(a) Arguments of the parties

77 The Commission argues that the Kingdom of Spain has incorrectly applied Article 5(1) of Directive 2000/60, read in conjunction with point 2.2 of Annex II to that directive, by failing to carry out further characterisation of the groundwater bodies in the Doñana region which were at risk of not achieving the objectives laid down by that directive and, consequently, by failing to identify the measures necessary to achieve those objectives of that directive.

78 The Commission, in essence, criticises the Kingdom of Spain for having underestimated, in the Guadalquivir Basin Hydrological Plan 2009 to 2015, the impact of water abstraction on the groundwater bodies in the Doñana region and for having failed to identify the groundwater bodies which were at risk of not achieving the objectives of Directive 2000/60. According to the Commission, the consequence of that insufficient initial characterisation was that the Kingdom of Spain did not carry out further characterisation, as required by point 2.2 of Annex II to Directive 2000/60, which led to the subsequent failure to adopt the measures necessary to achieve those objectives.

79 Moreover, the Commission submits that the characterisation carried out in the Guadalquivir Basin Hydrological Plan 2015 to 2021 has not remedied the infringement of the provisions of Directive 2000/60, in so far as that new characterisation remains incomplete and does not fulfil all the requirements of that directive, in particular those relating to the correct determination of the quantitative status of the bodies of groundwater concerned. In that regard, the Commission states, first, that the division of the Almonte-Marismas aquifer into five separate groundwater bodies does not contain a sufficiently precise description of the chemical and quantitative status of those bodies of water, thus preventing the achievement of the objectives laid down by Directive 2000/60. Secondly, the Commission claims that the scientific information available when carrying out the characterisation of those water bodies was insufficient. Thirdly, it states that the analysis of the pressures and impacts of abstraction on the groundwater bodies in the Doñana protected natural area contains significant shortcomings.

80 The Commission concludes that the Spanish authorities have incorrectly assessed the quantitative status of those water bodies, in so far as a proper assessment would have shown that all the water bodies concerned were at risk of not achieving the environmental objectives laid down by Directive 2000/60.

81 The Kingdom of Spain disputes those arguments and submits that it has duly complied with the obligation, imposed by Article 5(1) of Directive 2000/60, to carry out an initial characterisation study of the groundwater bodies concerned, in accordance with the technical specifications set out in Annexes II and III to that directive. That study was carried out initially in 2013, in the context of the Guadalquivir Basin Hydrological Plan 2009 to 2015, and again in 2016, in the context of the Guadalquivir Basin Hydrological Plan 2015 to 2021.

82 In particular, the Kingdom of Spain maintains that it has carried out an appropriate initial characterisation of the groundwater bodies in the Doñana river basin district. It claims that in the Guadalquivir Basin Hydrological Plan 2009 to 2015 the Almonte-Marismas aquifer was considered as a whole to have 'good quantitative status', which relieved it of the obligation to carry out a further characterisation study pursuant to Article 5 of Directive 2000/60. Moreover, that hydrological plan included the Almonte-Marismas aquifer among the bodies of groundwater which are of a strategic nature and are essentially reserved for human consumption under Article 4(3) of that plan.

83 Furthermore, the Kingdom of Spain submits that, during the review carried out in the context of the Guadalquivir Basin Hydrological Plan 2015 to 2021, the characterisation of the Almonte-Marismas aquifer was amended and that aquifer was divided up for hydrogeological reasons, as well as for reasons relating to environmental protection and land use and management. It argues that the division of that aquifer into five separate groundwater bodies made it possible to assess the status of each of those bodies of water with greater precision and in a more representative way, and to apply more effectively the programme of measures established

by that hydrological plan. According to the Kingdom of Spain, that characterisation of the Almonte-Marismas aquifer is not only entirely consistent with the provisions of Directive 2000/60, but is also appropriate and sufficient to verify the extent to which the objectives laid down therein have been achieved.

84 Finally, the Kingdom of Spain, arguing that the characterisation referred to in Article 5 of the directive was carried out with the aid of numerous hydrological studies containing data and information of a volume and quality which are hard to compare with those of other hydrological plans in Spain, submits that those studies should be regarded as a valid source of information for the purposes of the present proceedings.

(b) Assessment of the Court

85 In order to achieve the environmental objectives set out in Article 4 of Directive 2000/60, Member States must have a comprehensive overview of the characteristics of the bodies of water concerned.

86 To that end, in accordance with Article 3 of Directive 2000/60, Member States are to, first, identify the individual river basins, assign them to districts and identify the competent authorities.

87 Next, they are to characterise the bodies of water as required by Article 5(1) of Directive 2000/60 and Annexes II and III thereto. Under that provision, each Member State is to ensure that for each river basin district falling within its territory, an analysis of its characteristics, a review of the impact of human activity on the status of groundwater and an economic analysis of water use are carried out, according, in particular, to the technical specifications set out in Annexes II and III.

88 Article 5(2) of that directive provides that the analyses and reviews mentioned under Article 5(1) thereof are to be reviewed and, if necessary, updated at the latest 13 years after the date of entry into force of that directive and every 6 years thereafter.

89 With regard to specific technical characteristics, it should be noted that point 2 of Annex II to Directive 2000/60 specifies the requirements which Member States must fulfil during the initial characterisation of groundwater bodies, and, where appropriate, during their further characterisation.

90 In particular, point 2.1 of Annex II to that directive sets out the details of that initial characterisation of all groundwater bodies to assess their uses and the degree to which they are at risk of failing to meet the objectives for each groundwater body under Article 4 thereof.

91 Moreover, point 2.2 of Annex II to Directive 2000/60 provides that Member States are to carry out, following that initial characterisation of all groundwater bodies, further characterisation of those which have been identified as being at risk of failing to meet those objectives in order to establish a more precise assessment of the significance of such risk and identification of any measures to be required under Article 11 thereof. That further characterisation must include relevant information on the impact of human activity on the status of those bodies of water and, where appropriate, relevant information on other characteristics of the bodies of groundwater concerned.

92 In the context of the present complaint, the Commission claims, in the first place, that the Kingdom of Spain did not carry out that further characterisation in the Guadalquivir Basin Hydrological Plan 2009 to 2015 and, in the second place, that that characterisation was incomplete in the Guadalquivir Basin Hydrological Plan 2015 to 2021.

93 As a preliminary point, it should be recalled, as the Advocate General noted in point 80 of her Opinion, that it follows from Articles 5(1) and 13(6) of Directive 2000/60, and from Annex VII thereto, that the characterisation of groundwater bodies must be drawn up before the management plan is produced and before that characterisation can serve as a basis for the content of that plan.

94 Moreover, as stated in paragraph 52 of the present judgment, it is apparent from the file submitted to the Court that, when the Guadalquivir Basin Hydrological Plan 2009 to 2015 was drawn up, there was sufficient evidence to support the conclusion that the Almonte-Marismas aquifer, as defined in that plan, was overexploited and that it was at risk of not achieving the objectives laid down by Directive 2000/60. In that regard, it must be stated that the Land Use Plan for the Doñana Region, referred to in paragraph 54 of the present judgment, proposed that that aquifer be declared overexploited or at risk of being overexploited. Furthermore, in its reply, the Commission cites two reports which are annexed to its application, one from the Instituto Geológico y Minero de España (Geological and Mining Institute of Spain) and the other from the Consejo Superior de Investigaciones Científicas (Spanish National Research Council, Spain), dated 2009 and 2017 respectively, which also found that there had been excessive abstraction of groundwater from that aquifer.

95 In that regard, the Kingdom of Spain accepts that the risk of not achieving the objectives laid down by Directive 2000/60 had already been referred to in a first report published in 2004 and 2005, drawn up in the context of the characterisation of groundwater bodies provided for in Article 5(1) of that directive. However, it states that, having carried out a global assessment of the Almonte-Marismas aquifer, it concluded that that aquifer was of 'good quantitative status' overall, in the Guadalquivir Basin Hydrological Plan 2009 to 2015, which relieved it of the obligation to carry out a further characterisation study in accordance with Article 5 of that directive. Furthermore, it argues that that assessment was corrected and improved as soon as it obtained more detailed information and that it had to wait until publication of the Guadalquivir Basin Hydrological Plan 2015 to 2021, in accordance with the timetable laid down in Directive 2000/60, to set out the observed improvements.

96 As is apparent from points 84 to 87 of the Opinion of the Advocate General, the 'global assessment' referred to in the preceding paragraph did not allow the Kingdom of Spain to rule out the risk that the Almonte-Marismas aquifer or parts thereof might not achieve the objectives laid down in Article 4 of that directive. Accordingly, that risk should have been identified in the initial characterisation of all the bodies of groundwater required by Directive 2000/60, in accordance with point 2.1 of Annex II thereto.

97 Moreover, as was also noted by the Advocate General in point 87 of her Opinion, pursuant to point 2.2 of Annex II to Directive 2000/60, further characterisation is necessary where there is a risk of the groundwater bodies concerned being of poor quantitative status, that is to say, where there is a risk that a body of water will not achieve the objectives laid down in Article 4 of that directive. Consequently, the Kingdom of Spain cannot claim that that further characterisation of

the groundwater bodies concerned was not necessary, appropriate or required in the context of the Guadalquivir Basin Hydrological Plan 2009 to 2015, since it was common ground that such a risk existed and that it could not be ruled out.

98 It follows from those considerations that the Kingdom of Spain has failed to fulfil its obligations under Article 5 of Directive 2000/60 by failing to identify, in the Guadalquivir Basin Hydrological Plan 2009 to 2015, the risk that the Almonte-Marismas aquifer might not achieve the objectives laid down by that directive, in accordance with point 2.1 of Annex II thereto, and consequently by failing to carry out further characterisation under point 2.2 of Annex II to that directive.

99 In that regard, it should be recalled, as is apparent from paragraphs 64 and 65 of the present judgment, that the existence of an infringement must be assessed in the present case by reference to the situation of the Doñana aquifer prevailing at the end of the period laid down in the reasoned opinion, that is to say on 29 June 2016. However, on that date the Guadalquivir Basin Hydrological Plan 2015 to 2021, approved on 8 January 2016, was already in force.

100 In that plan, the Kingdom of Spain carried out further characterisation pursuant to point 2.2 of Annex II to Directive 2000/60. However, the Commission argues that the scientific information used to that end was insufficient. It maintains that, for the purposes of determining the quantitative status of the bodies of groundwater in the Doñana protected natural area, the Kingdom of Spain relied solely on the changes in the water level of the Doñana aquifer, in particular on data from the Doñana piezometric network, and that, consequently, the conclusions which it drew from that information are incomplete in the light of the requirements stemming from Article 5, read in conjunction with point 2.2 of Annex II to Directive 2000/60.

101 First, the Commission submits that the scientific information available for the characterisation of the groundwater bodies concerned in the Guadalquivir Basin Hydrological Plan 2015 to 2021 is insufficient. In particular, it criticises the fact that that plan is based on a report drawn up by the Guadalquivir Hydrographic Confederation relating to the status of the Almonte-Marismas aquifer for the 2012 to 2013 hydrological year, which provides no groundwater level measurement point for the La Rocina and Marismas de Doñana groundwater bodies. Nevertheless, it should be noted that the Commission neither explains nor demonstrates that those data are essential for the purpose of establishing such a characterisation. Moreover, the Commission merely refers to an internet portal of the Spanish Government containing geographical information, without explaining how to find the information on which it relies.

102 Secondly, the Commission criticises the Spanish authorities for having made estimates based on the piezometric level of the groundwater bodies in the Doñana aquifer. It maintains that those estimates take account only of changes in the water level of that aquifer and that they are therefore not sufficient to determine the quantitative status of the groundwater bodies in the Doñana protected natural area. In addition, it notes that the overall trend of all the piezometers is negative.

103 In that regard, it should be noted, first of all, that point 2.1.2 of Annex V to Directive 2000/60 establishes the ‘groundwater level regime’ as a parameter for the classification of quantitative status of groundwater, without indicating how that level is to be determined.

104 Next, as is apparent from the file submitted to the Court, the Commission has not adduced any evidence capable of demonstrating, for the purposes of the case-law cited in paragraph 46 of the present judgment, that the method used by the Kingdom of Spain is not sufficient for carrying

out the characterisation provided for in Article 5 of Directive 2000/60. The fact that the Doñana aquifer is overexploited and that good quantitative status of the groundwater bodies of that aquifer will not be achieved by the year 2027 does not show that the level of those bodies of water is not relevant for determining the quantitative status of that aquifer in accordance with the requirements of Annex V to that directive.

105 Finally, the Kingdom of Spain states that, in the Guadalquivir Basin Hydrological Plan 2015 to 2021, it took into account other parameters in assessing the quantitative status of the Doñana aquifer, such as the balance between water abstraction and the available water resources.

106 In those circumstances, it must be concluded that the Commission has not demonstrated that the Kingdom of Spain has failed to fulfil its obligations under Article 5 of Directive 2000/60 and point 2.2 of Annex II thereto, by using piezometric data to determine the quantitative status of the bodies of groundwater in the Doñana protected natural area.

107 Thirdly, the Commission claims that the analysis of the pressures and impacts of water abstraction on the groundwater bodies in the Doñana protected natural area contains significant shortcomings. In particular, it criticises the fact that Annex 3 to the Guadalquivir Basin Hydrological Plan 2015 to 2021, based on an inventory dating from 2008, merely calculates the volumes of water required for the various uses in the region without sufficiently taking into account, as regards irrigated crops, the strong pressures exerted by illegal water abstraction. It also notes that there is no analysis of the impact of water abstraction intended for urban supply, in particular for the coastal tourist area of Matalascañas (Spain).

108 In the present case, it should be noted that the Guadalquivir Basin Hydrological Plan 2015 to 2021 does not take into account, in the context of the characterisation carried out under Article 5 of Directive 2000/60, the pressures resulting from illegal water abstraction and from abstraction for urban supply, in particular for that tourist area. Indeed, on the one hand, point 5.2 of Annex 2 to that plan, concerning 'the characterisation of the groundwater bodies', confines itself to a general description of the sources and methodology used to determine total abstraction from the groundwater bodies. On the other hand, point 5.2 of Annex 3 to that plan, concerning 'pressures on groundwater bodies', does not indicate that illegal water abstraction has been taken into account in determining the pressures resulting from irrigated areas. Moreover, although reference is made to the impact of urban pressures in that annex, that impact is difficult to assess.

109 However, as is clear from point 2.2 of Annex II to Directive 2000/60, a more precise assessment of the extent of the risk in question, in particular of illegal abstraction and abstraction for drinking water, is necessary in order to identify any measures to be required under Article 11 of that directive. As noted by the Advocate General in point 108 of her Opinion, without such an assessment, the status of the groundwater body cannot be correctly assessed and, consequently, it is difficult to determine whether the measures established to achieve good quantitative status of the groundwater concerned, in particular the measures to combat illegal water abstraction, are adequate.

110 It must therefore be concluded that the Guadalquivir Basin Hydrological Plan 2015 to 2021 does not contain all the information necessary to determine the impact of human activity on the bodies of groundwater in the Doñana region, for the purposes of Article 5 of the directive, read in conjunction with point 2.2 of Annex II thereto.

111 It follows from those considerations that the Kingdom of Spain has failed to fulfil its obligations under Article 5(1) of Directive 2000/60, read in conjunction with point 2.2 of Annex II to that directive, by not taking into account illegal water abstraction and the abstraction of water intended for urban supply when estimating the abstraction of groundwater from the Doñana region in the context of the further characterisation of the Guadalquivir Basin Hydrological Plan 2015 to 2021.

3. The third complaint

(a) Arguments of the parties

112 The Commission claims that the Kingdom of Spain, by omitting to include appropriate basic and supplementary measures in the Guadalquivir Basin Hydrological Plan 2009 to 2015 and the Guadalquivir Basin Hydrological Plan 2015 to 2021, has failed to fulfil its obligations under Article 11(1), (3)(a), (c) and (e) and (4) of Directive 2000/60. The Commission also submits that a significant number of measures announced by that Member State have still not been implemented and that that Member State has given no reasons for the delay.

113 In particular, the Commission argues, in the first place, that the measures set out in those plans are intended essentially to address the problem of illegal water abstraction but do not provide any solution to reduce the pressure on the aquifers of the Doñana protected natural area or current water demand. Moreover, it criticises the fact that, in the 2014 Special Irrigation Plan for Doñana, land which has been irrigated since at least 2004, the date of entry into force of the Land Use Plan for the Doñana Region referred to in paragraph 54 of the present judgment, is regarded as 'irrigable agricultural land', even though no such right has been granted.

114 In the second place, it maintains that the 2014 Special Irrigation Plan for Doñana places undue importance on water transfers without addressing the problems relating to the qualitative status of the waters and, above all, their good chemical status. According to the Commission, that plan also fails to ensure the conservation of ecosystems which depend on the groundwater. Moreover, the Commission takes the view that the reduction in levels of groundwater abstraction achieved through water transfers is sometimes nullified by the increase in irrigation rights granted by the Spanish authorities.

115 In the third place, even though the Commission acknowledges that some of the measures communicated by the Kingdom of Spain are capable of remedying the deterioration of groundwater in the Doñana protected natural area and thus of ensuring compliance with the obligations under Directive 2000/60, it maintains that the resources allocated to those measures are inadequate, which reduces their effectiveness. It refers in particular to measures to control water use, such as inspections and the detection of illegal wells, as well as measures to penalise and eliminate illegal water abstraction.

116 In the fourth place, the Commission submits that the annual report of the Ombudsman for 2018 shows that those inadequacies are due to the fact that the Guadalquivir Hydrographic Confederation is not exercising the powers conferred on it by the water legislation firmly enough. That is why, according to the Commission, the Ombudsman suggested to the Guadalquivir Hydrographic Confederation, first, that it should declare the three water bodies to be overexploited aquifers. Secondly, the Ombudsman recommended the approval of an action programme to regulate water abstraction and coordinate the measures provided for in the

various planning instruments relating to water resources, agricultural activity and the protection of natural areas, in order to ensure the sustainable use of water. The Commission maintains that non-governmental sources confirm the conclusions of the Ombudsman.

117 In the fifth place, the Commission argues that the measures announced by the Kingdom of Spain do not provide any solution to the problem of excessive use of water due to tourism, in particular in the coastal town of Matalascañas, which several studies identify as the main cause of the overexploitation of certain groundwater bodies in the Doñana protected natural area.

118 The Commission concludes that the Kingdom of Spain has failed to apply and implement the control and inspection measures and sanctions which would have been necessary in order effectively to deter persons who carry out unauthorised water abstraction and who set up illegal installations. The Commission also considers that the Kingdom of Spain has failed to adopt the appropriate measures to regulate the volume of water abstraction to a sustainable level which guarantees the achievement of good quantitative and chemical status for the groundwater in the Doñana protected natural area and a favourable conservation status for the associated habitats. Moreover, the Commission criticises the Kingdom of Spain for not having adopted measures which could adapt the volume of water available to the agricultural sector in the region, reduce consumption or encourage more rational water use.

119 The Kingdom of Spain disputes those claims, arguing that they are inaccurate and unfounded.

120 First of all, the Kingdom of Spain asserts that it has fulfilled the obligations imposed by Article 11(2), (3)(a) and (c) and (4) of Directive 2000/60 due to the measures adopted in the Guadalquivir Basin Hydrological Plan 2015 to 2021 to restore the groundwater bodies in the Doñana protected natural area to good status and guarantee the sustainable use of water resources through the management of water abstraction and the coordination of the various planning instruments relating to water resources, agricultural activity and the protection of natural areas. The Kingdom of Spain notes, in that regard, that the effectiveness of those measures has been established in the latest annual reports on the status of the aquifers in the Doñana protected natural area.

121 Next, the Kingdom of Spain states that it has adopted new measures since the drafting of the Guadalquivir Basin Hydrological Plan 2015 to 2021 in order to achieve the environmental objectives laid down by Directive 2000/60. Those measures include the development of a process for regulating water abstraction, the preparation of the report on the status of the Doñana aquifer for 2017 and 2018, the drafting of a document for the purpose of launching a public consultation procedure, the monitoring of cultivated areas by means of remote sensing techniques, the coordination of research activities relating to groundwater, the carrying out of inspections, the initiation of penalty and enforcement proceedings concerning unauthorised water abstraction, the closure of wells illegally abstracting water, a review of files concerning rights to abstract water from the water body of La Rocina and the inspection of files relating to termination on grounds of non-use or non-compliance with abstraction requirements.

122 Furthermore, the Kingdom of Spain notes the significance of the procedure for declaring the three water bodies to be water bodies ‘at risk of not achieving good quantitative status’. It points out that that procedure is the most powerful administrative tool available in the Spanish legal system in matters relating to groundwater, in so far as it allows the laying down of limits for water abstraction, the mandatory creation of communities of water users and the adoption of specific action programmes to resolve any problems detected.

123 Moreover, the Kingdom of Spain draws attention to the fact that agriculture in certain areas adjacent to the Doñana protected natural area, in particular the cultivation of berries, is the main economic driver of the region. This is a consolidated sector, which complies with the water legislation in force and cannot be phased out, in view of its essential nature for the economic sustainability of the region. According to the Kingdom of Spain, the aim is to adapt that sector to the possibilities offered by the region's water resources, while respecting users who have legal rights in relation to water use.

124 Finally, the Kingdom of Spain challenges the Commission's claims concerning the ineffectiveness of the water transfer measures applied by that Member State, taking the view that the Commission bases its criticisms on hypothetical or unverified information.

(b) Assessment of the Court

125 It should be recalled that, having established the classification of the quantitative status of groundwater in accordance with Annex V to Directive 2000/60, the Member States have the task of determining how to achieve good quantitative status for the bodies of water concerned or, at the very least, good ecological potential, and of preventing deterioration of the status of those bodies of water, in accordance with Article 4 of that directive.

126 To that end, pursuant to Article 11(1) of Directive 2000/60, Member States are to establish programmes of measures for each river basin district or for the part of an international river basin district within their territory. Those programmes constitute the basic planning instruments for responding to the identified pressures on the bodies of water concerned and for achieving good water status in the river basins or bodies of water. To that end, they must take account of the results of the analyses required under Article 5 of that directive in order to achieve the objectives established under Article 4 thereof. Moreover, those programmes of measures may make reference to measures following from legislation adopted at national level and covering the whole of the territory of a Member State.

127 Those programmes of measures are to include 'basic measures' as minimum requirements to be complied with, provided for in Article 11(3) of Directive 2000/60, and, where necessary, 'supplementary measures', provided for in Article 11(4) of that directive and defined in Part B of Annex VI thereto.

128 In the present case, the Commission contests, in the first place, a series of individual measures established by the Kingdom of Spain, as set out in paragraphs 110 to 112 of the present judgment. However, the Commission has not adduced any evidence to show that the contested measures are not appropriate for achieving 'good quantitative status' of the bodies of groundwater concerned, for the purposes of Article 4(1)(b) of Directive 2000/60.

129 Nor does the Commission explain the reasons why the Kingdom of Spain infringed Article 11(3)(a), (c) and (e) and (4) of Directive 2000/60 by adopting the contested measures or the reasons why such measures are alleged to be insufficient in the light of that provision. The Commission merely contests the fact that the measures established are intended essentially to address the problem of illegal water abstraction, that the 2014 Special Irrigation Plan for Doñana attaches excessive importance to water transfers, that the resources allocated are not sufficient, and the lack of transparency on the part of the Spanish authorities concerning the inspection and

closure of illegal wells and the problem of excessive water use as a result of tourism. However, it neither explains nor demonstrates why those contested actions or measures are contrary to or insufficient under Article 11(3)(a), (c) and (e) and (4) of Directive 2000/60.

130 Finally, the Commission maintains that the Kingdom of Spain has failed to apply and implement a series of measures. However, as that Member State has demonstrated, both in writing and at the hearing, measures have been established and implemented, in particular control and inspection measures. In that regard, it is apparent from the file submitted to the Court, more specifically from the annexes to the defence and rejoinder, that that Member State established a series of control and inspection measures, including penalties, with a view to halting illegal water abstraction.

131 In the second place, the Commission argues that the measures announced by the Kingdom of Spain in the Guadalquivir Basin Hydrological Plan 2015 to 2021 do not provide any solution to the problem of excessive use of water due to tourism, in particular in the coastal town of Matalascañas. Moreover, the Commission maintains that the impact of water abstraction intended for urban supply on the conservation of habitats, resulting from their geographical proximity, has been demonstrated by various scientific studies. In the Commission's view, the measures taken by the Kingdom of Spain, in particular those included in the 2014 Special Irrigation Plan for Doñana and the Guadalquivir Basin Hydrological Plan 2015 to 2021, are not appropriate to prevent the deterioration of natural habitats and the habitats of protected species.

132 In that regard, it should be noted, as the Advocate General has stated in points 162, 180 and 181 of her Opinion, that, in accordance, inter alia, with Article 4(1)(c) and Article 6 of Directive 2000/60, and Annex IV thereto, in adopting programmes of measures under Article 11 of that directive, the Member States must not only achieve the environmental objectives relating to water laid down in that directive but also ensure compliance with the European legislation relating to the protected areas in question prior to 2015. The Kingdom of Spain was thus also obliged to implement the mechanisms provided for in Directive 2000/60 in order to comply with the objectives laid down by Directive 92/43 concerning the habitats of the Doñana protected natural area prior to that year.

133 In particular, as is also apparent from paragraphs 152 and 153 of the present judgment, according to Article 6(2) of Directive 92/43, 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 16 July 2020, *WWF Italia Onlus and Others*, C-411/19, EU:C:2020:580, paragraph 32 and the case-law cited).

134 Consequently, the programme of measures provided for in Article 11 of Directive 2000/60 must also have as its object the adoption of the measures necessary to avoid any deterioration of the protected areas covered by Directive 92/43.

135 Moreover, as is clear from paragraph 155 of the present judgment, in order to establish an infringement of Article 6(2) of Directive 92/43, it is sufficient for the Commission to establish that there is a probability or risk that that action or inaction might cause a deterioration or significant disturbance to the habitats or species concerned. As the Advocate General pointed out, in essence, in point 185 of her Opinion, it follows that, with regard to the examination of the need to adopt measures under Article 11 of Directive 2000/60 in order to comply with the obligation arising from Article 6(2) of Directive 92/43, a higher standard of proof cannot be required.

136 It is apparent from the file submitted to the Court, first, that there is sufficient evidence to consider that excessive water abstraction for urban supply for the tourist area of Matalascañas has adversely affected the conservation of priority habitats identified by the code 3170*, such as the Mediterranean temporary ponds in the protected area of Doñana (SPA/SCI ES0000024) located in the vicinity of that urban centre, and, secondly, that the Kingdom of Spain has not adopted, pursuant to Article 11 of Directive 2000/60, the measures necessary to avoid possible deterioration of the protected areas located in the vicinity of the tourist area of Matalascañas, as required by Article 4(1)(c) of that directive.

137 Indeed, several studies which the Commission refers to and submits in support of those claims, annexed to the application and the defence, demonstrate the impact of water abstraction intended for the urban supply of the tourist area of Matalascañas on the ecosystems of the protected area of Doñana (SPA/SCI ES0000024), in particular on the priority habitats identified by the code 3170*, namely Mediterranean temporary ponds. Those studies highlight the worrying trend towards the shrinking of the temporary lagoons in the Doñana reserve and the desiccation of the Charco del Toro and El Brezo pond, which are associated with the harmful effects of water abstraction in order to supply the tourist centre of Matalascañas with drinking water and water for recreational purposes and the irrigation of golf courses. According to those studies, the localised and intensive abstraction of groundwater to supply the tourist urban area of Matalascañas also has an obvious adverse effect on the level of water tables and, consequently, on the water needs of the environment, such as vegetation, or the flooding of wetlands.

138 It follows that the Commission has adequately demonstrated the likelihood that excessive water abstraction for urban supply for the tourist area of Matalascañas has caused significant disturbance to the protected habitats of the protected area of Doñana (SPA/SCI ES0000024) located in the vicinity of the tourist centre of Matalascañas. That disturbance of protected habitats should therefore have been taken into account, as is clear from paragraphs 132 to 134 of the present judgment, in the programme of measures established by the Kingdom of Spain in the context of the Guadalquivir Basin Hydrological Plan 2015 to 2021, under Article 11 of Directive 2000/60, with a view to halting the already established deterioration of protected habitat types such as Mediterranean temporary ponds under Article 4(1)(c) of that directive.

139 It is apparent from the file submitted to the Court that the programme of measures relied on by the Kingdom of Spain, as set out in Annex 12 to the Guadalquivir Basin Hydrological Plan 2015 to 2021, does not contain any measures to halt the already established deterioration of protected habitat types in the protected area in the vicinity of Matalascañas.

140 Moreover, it should be recalled that the infringement of Article 5 of Directive 2000/60, already established in paragraphs 108 to 110 of the present judgment, justifies the conclusion that the information, in the Guadalquivir Basin Hydrological Plan 2015 to 2021, relating to the abstraction of water intended for the urban area of Matalascañas is not sufficient for the purposes of taking appropriate steps to halt the already established deterioration of protected habitat types, as referred to in Article 4(1)(c) of that directive. Without a more precise and adequate assessment of the extent of the risks arising from the abstraction of drinking water for the tourist area of Matalascañas, the Kingdom of Spain, in any event, could not take necessary and effective measures, as provided for in Article 11 of that directive, to prevent any disturbance of the protected areas in the vicinity of Matalascañas associated with the abstraction of groundwater.

141 In the light of those considerations, the Kingdom of Spain has failed to fulfil its obligations under Article 11 of Directive 2000/60, read in conjunction with Article 4(1)(c) of that directive, by failing to lay down, in the programme of measures established in the context of the Guadalquivir Basin Hydrological Plan 2015 to 2021, any measure to prevent disturbance of the protected habitat types located within the protected area of Doñana (SPA/SCI ES0000024) caused by the abstraction of groundwater for the needs of the tourist area of Matalascañas.

B. The failure to comply with the obligations resulting from Directive 92/43

1. Arguments of the parties

142 The Commission maintains that the Kingdom of Spain has failed to fulfil its obligations under Article 6(2) of Directive 92/43, read in conjunction with Article 7 of that directive. It takes the view that the Spanish authorities have failed to adopt appropriate measures to prevent the deterioration of the natural habitats and the habitats of species located within the protected areas of the Doñana region, in particular within the areas of Doñana (SPA/SCI ES0000024), Doñana Norte y Oeste (SPA/SCI ES6150009) and Dehesa del Estero y Montes de Moguer (SAC ES6150012). It states that overexploitation of the Almonte-Marismas aquifer has led to desiccation of the peridunal lagoons of Doñana National Park and, as a result, to the deterioration of the protected natural areas which depend on that aquifer, including several natural habitats and habitats of species protected by Directive 92/43.

143 In that regard, the Commission argues, first, that the deterioration of the protected habitats of the Doñana protected natural area, resulting from the overexploitation of its aquifer, has been demonstrated by a large body of scientific evidence as well as by several official reports. According to the Commission, the types of protected habitats most sensitive to desiccation, through the lowering of the water table, have been Mediterranean temporary ponds, which are protected habitats identified by the code 3170*, surface water courses (streams, canals and lower reaches) and riparian habitats (small woods and gallery forests). These host a variety of plant and animal species which exist in low numbers and are threatened by that desiccation.

144 Secondly, the Commission does not dispute that climate change may have had an impact on the progressive deterioration of those habitat types, as is claimed by the Kingdom of Spain. However, it maintains that, by way of 'appropriate steps' within the meaning of Article 6(2) of Directive 92/43, that Member State must take steps to combat the main cause of the deterioration of the protected habitats in the Doñana protected natural area, namely groundwater abstraction, even if those measures also take into account the further deterioration of the habitats attributable, concurrently and in a secondary manner, to the effects of climate change.

145 Thirdly, the Commission argues that the measures taken by the Kingdom of Spain, in particular those included in the 2014 Special Irrigation Plan for Doñana and the Guadalquivir Basin Hydrological Plan 2015 to 2021, are not appropriate to prevent the deterioration of natural habitats and habitats of species protected under Article 6(2) of Directive 92/43. Moreover, although the Commission recognises that some of the measures adopted by the Kingdom of Spain with a view to restoring the affected habitats, such as the gradual elimination of eucalyptus plantations in the Doñana protected natural area, the acquisition of land and water access rights associated with the land or transfers of water from other river basins, have potentially positive effects, it takes the view that those measures are not always sufficient for the purposes of complying with the obligations arising from Article 6(2) of Directive 92/43.

146 The Kingdom of Spain contests the Commission's arguments and takes the view that it has not failed to fulfil its obligations under that directive.

147 First, the Kingdom of Spain challenges the Commission's assertion that all the natural areas of the Doñana region are connected to the Almonte-Marismas aquifer. It states that only the protected areas of Doñana (SPA/SCI ES0000024) and Doñana Norte y Oeste (SPA/SCI ES6150009) are connected to that aquifer, as defined in the Guadalquivir Basin Hydrological Plan 2009 to 2015.

148 Moreover, it argues that the reasoned opinion concerned only the Almonte-Marismas aquifer and that, according to the case-law of the Court, the scope of the application for failure to fulfil obligations cannot be extended beyond the subject matter of that reasoned opinion. Consequently, arguments relating to links and effects concerning those three protected areas, based on the lowering of the groundwater levels of that aquifer, are not admissible as regards the protected area of Dehesa del Estero y Montes de Moguer (SAC ES6150012).

149 Secondly, the Kingdom of Spain submits that the transformation and deterioration of the protected area of Doñana (SPA/SCI ES0000024) are attributable to the damage caused over the course of the last century to the boggy areas making up Doñana and that they cannot therefore be regarded as forming the basis of the infringements of Directive 92/43. Moreover, that Member State asserts that large boggy areas and wetland systems are currently undergoing ecological restoration as a result of the various action plans which have been implemented.

150 Thirdly, the Kingdom of Spain argues that it has adopted appropriate and effective measures to prevent the deterioration of natural habitats and the habitats of species protected under Article 6(2) of Directive 92/43. On the one hand, it maintains that those measures contributed to resolving the problems affecting the Doñana region which arose before the Commission designated that region as a site of Community interest. On the other hand, the Kingdom of Spain argues that Article 2(3) of Directive 92/43 provides that measures taken pursuant to that directive must take account of economic, social and cultural requirements and regional and local characteristics.

151 Fourthly, the Kingdom of Spain submits that the Commission has not demonstrated in a sufficiently probative manner the existence of the alleged deterioration of the natural habitats and habitats of species.

2. Assessment of the Court

152 Under Article 6(2) of Directive 92/43, 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.

153 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 16 July 2020, *WWF Italia Onlus and Others*, C-411/19, EU:C:2020:580, paragraph 32 and the case-law cited).

154 That general obligation is consistent with the objective, pursued within the framework of European Union policy on the environment under the first indent of Article 191(1) TFEU, of preserving, protecting and improving the quality of the environment and with the principle that environmental damage should as a priority be rectified at source, as set out in Article 191(2) TFEU.

155 Nevertheless, according to settled case-law, in order to establish an infringement of Article 6(2) of Directive 92/43, 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 significant deterioration or 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 significant deterioration or disturbance to those habitats or to those species (see, to that effect, judgment of 14 January 2016, *Commission* v *Bulgaria*, C-141/14, EU:C:2016:8, paragraph 58 and the case-law cited).

156 Moreover, in so far as paragraphs 2 and 3 of Article 6 of Directive 92/43 ensure the same level of protection, it is the criterion of an examination as to compatibility under Article 6(3) of that directive which must be applied. Under that provision, a plan or project may be authorised only on condition that the competent authorities have become certain that that plan or project will not have lasting adverse effects on the site concerned or where no reasonable scientific doubt remains as to the absence of such effects (see, to that effect, judgment of 17 April 2018, *Commission* v *Poland (Białowieża Forest)*, C-441/17, EU:C:2018:255, paragraph 117 and the case-law cited).

157 In those circumstances, it is necessary to examine whether the Commission has demonstrated the existence of a likelihood that the abstraction of groundwater from the Doñana region may significantly disturb natural habitats or the habitats of species located within the three protected areas, as referred to in paragraph 12 of the present judgment, and, if so, whether the Kingdom of Spain has scientifically refuted that likelihood.

158 It should be noted at the outset that that Member State pleads that the Commission's complaints in the present infringement proceedings are inadmissible in so far as they relate to the protected area of Dehesa del Estero y Montes de Moguer (SAC ES6150012), for the reasons set out in paragraphs 147 and 148 of the present judgment. In that regard, that Member State argues that the reasoned opinion related only to infringement of the obligations arising from Directive 92/43 in so far as concerns the Almonte-Marismas aquifer and that only the protected areas of Doñana (SPA/SCI ES0000024) and Doñana Norte y Oeste (SPA/SCI ES6150009) are connected to that aquifer.

159 The Commission rejects those arguments, while pointing out that the protected area of Dehesa del Estero y Montes de Moguer (SAC ES6150012) has, since the start of the pre-litigation procedure, been one of the areas concerned by the present failure to fulfil obligations.

160 According to the Court's settled case-law, the subject matter of an action under Article 258 TFEU for failure to fulfil obligations is determined by the Commission's reasoned opinion, so that the action must be based on the same grounds and pleas as that opinion (judgments of 8 July 2010, *Commission* v *Portugal*, C-171/08, EU:C:2010:412, paragraph 25, and of 5 April 2017, *Commission* v *Bulgaria*, C-488/15, EU:C:2017:267, paragraph 37).

161 In the present case, it is sufficient to note that both the Commission's invitation to the Kingdom of Spain to submit comments and the reasoned opinion expressly state that the subject matter of the present infringement proceedings concerned the overexploitation of groundwater in the Doñana region and the subsequent deterioration of habitats and ecosystems located in several areas protected by EU law, in particular the protected areas of Doñana (SPA/SCI ES0000024), Doñana Norte y Oeste (SPA/SCI ES6150009) and Dehesa del Estero y Montes de Moguer (SAC ES6150012). Thus, although the protected area of Dehesa del Estero y Montes de Moguer (SAC ES6150012) is connected not to the Almonte-Marismas aquifer but to the groundwater body of Condado, covered by a management plan different from those referred to in paragraph 13 of the present judgment, it must be pointed out, as is noted by the Advocate General in point 38 of her Opinion, that that fact has no bearing on the present action, since that protected area was, from the start of the pre-litigation procedure, the subject matter of the present infringement proceedings.

162 In the light of the foregoing, it is therefore necessary to reject the plea of inadmissibility put forward by the Kingdom of Spain and, consequently, to consider that the complaints relating to the failure to fulfil its obligations under Directive 92/43 are also admissible in so far as they concern the protected area of Dehesa del Estero y Montes de Moguer (SAC ES6150012).

163 As regards the substance, the Kingdom of Spain maintains that the transformation and deterioration of the protected areas in the Doñana protected natural area are attributable to the damage caused over the course of the last century to the boggy areas making up Doñana and that, consequently, they cannot be regarded as forming the basis of the infringements of Directive 92/43.

164 It is true, as was noted by the Advocate General in point 60 of her Opinion, that the earlier transformation and deterioration cannot be regarded as an infringement of Article 6(2) of Directive 92/43.

165 However, it should be recalled that, in the case of sites eligible for identification as sites of Community importance (SCI) which are included in the lists drawn up by the Commission under Article 4(2) of Directive 92/43 and, in particular, sites hosting priority natural habitat types, the Member States are, by virtue of that directive and from the point of view of that directive's conservation objective, required to take protective measures that are appropriate for the purpose of safeguarding the relevant ecological interest which those sites have at national level (see, to that effect, judgment of 13 January 2005, *Dragaggi and Others*, C-117/03, EU:C:2005:16, paragraph 30).

166 In that regard, the Court has also held that in order for the integrity of a site as a natural habitat not to be adversely affected for the purposes of the second sentence of Article 6(3) of Directive 92/43, the site needs to be preserved at a favourable conservation status; this entails the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site in the list of SCIs, in accordance with that directive (judgment of 7 November 2018, *Holohan and Others*, C-461/17, EU:C:2018:883, paragraph 35).

167 In the present case, it should be recalled, on the one hand, that the protected areas of Doñana (SPA/SCI ES0000024), Doñana Norte y Oeste (SPA/SCI ES6150009) and Dehesa del Estero y Montes de Moguer (SAC ES6150012) were placed on the list of SCIs by the Commission on 19 July 2006 and that, consequently, Article 6(2) of Directive 92/43 has been applicable since that

date pursuant to Article 4(5) of that directive. The evidence relating to an earlier period submitted by the Commission cannot therefore be taken into account for the purposes of finding an infringement of that directive.

168 On the other hand, it should be recalled that Article 6(2) of Directive 92/43 lays down a general obligation to take the appropriate protective measures, consisting in preventing, in special areas of conservation such as that in the present case, 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 is likely to have significant effects having regard to the objectives laid down by that directive.

169 However, it is apparent from several pieces of scientific evidence before the Court that the overexploitation of the Doñana aquifer has led to a fall in the level of groundwater which has caused a continuing disturbance of the protected areas of the Doñana protected natural area. In particular, as stated in paragraph 137 of the present judgment, various scientific studies bear witness to the impact of water abstraction intended for the urban supply of the tourist area of Matalascañas on the ecosystems of the protected area of Doñana (SPA/SCI ES0000024), in particular on the priority habitat types identified by the code 3170*, namely Mediterranean temporary ponds. Those data confirm, on the one hand, that the deterioration of those habitats persists and that the status of those habitats will continue to deteriorate on account of the lowering of the groundwater level of that aquifer and, on the other hand, that the Kingdom of Spain has not taken the measures necessary to halt such deterioration.

170 As the Advocate General noted in points 70 and 73 of her Opinion, in order to invalidate those findings, the Kingdom of Spain should have submitted evidence to remove any reasonable doubt that, from a scientific point of view, continuation of the current practice of groundwater abstraction has no adverse effect on those protected habitats. To that end, as has been pointed out in paragraph 156 of the present judgment, Directive 92/43 requires an examination as to compatibility such as that which must be carried out under Article 6(3) of that directive.

171 However, as is apparent from the file submitted to the Court, the Kingdom of Spain has not carried out any study capable of satisfying the requirements arising from that provision and, consequently, has not shown that continuation of the current practice of water abstraction in the Doñana protected natural area has no impact on the habitats of the protected areas in question.

172 In the light of the foregoing, it must be concluded, first, that the Commission has adequately established, for the purposes of the case-law cited in paragraph 155 of the present judgment, the existence of a likelihood that the abstraction of groundwater in the Doñana protected natural area has led, since 19 July 2006, to a deterioration of the protected habitats in the protected areas of Doñana (SPA/SCI ES0000024), Doñana Norte y Oeste (SPA/SCI ES6150009) and Dehesa del Estero y Montes de Moguer (SAC ES6150012) and, secondly, that the Kingdom of Spain has failed to take appropriate steps to avoid that deterioration.

173 It must therefore be held that the Kingdom of Spain has failed to fulfil its obligations under Article 6(2) of Directive 92/43, by failing to take appropriate steps to avoid significant disturbance of the types of protected habitats located within the protected areas of Doñana (SPA/SCI ES0000024), Doñana Norte y Oeste (SPA/SCI ES6150009) and Dehesa del Estero y Montes de Moguer (SAC ES6150012) caused by the abstraction of groundwater from the Doñana protected natural area since 19 July 2006.

174 In the light of all the foregoing considerations, it must be held that the Kingdom of Spain has failed to fulfil its obligations under:

– Article 5(1) of Directive 2000/60, read in conjunction with point 2.2 of Annex II to that directive, by not taking into account illegal water abstraction and the abstraction of water intended for urban supply when estimating the abstraction of groundwater from the Doñana region in the context of the further characterisation of the Guadalquivir Basin Hydrological Plan 2015 to 2021;

– Article 11 of Directive 2000/60, read in conjunction with Article 4(1)(c) of that directive, by failing to lay down, in the programme of measures established in the context of the Guadalquivir Basin Hydrological Plan 2015 to 2021, any measure to prevent disturbance of the protected habitat types located within the protected area of Doñana (SPA/SCI ES0000024) caused by the abstraction of groundwater for the needs of the tourist area of Matalascañas, and

– Article 6(2) of Directive 92/43, by failing to take appropriate steps to avoid significant disturbance of the protected habitat types located within the protected areas of Doñana (SPA/SCI ES0000024), Doñana Norte y Oeste (SPA/SCI ES6150009) and Dehesa del Estero y Montes de Moguer (SAC ES6150012), caused by the abstraction of groundwater from the Doñana protected natural area since 19 July 2006.

Costs

175 Pursuant to Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

176 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.

177 In the present case, since the Commission and the Kingdom of Spain have each been unsuccessful in respect of certain complaints, they must each bear their own costs.

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

1. Declares that the Kingdom of Spain has failed to fulfil its obligations under:

– **Article 5(1) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, as amended by Council Directive 2013/64/EU of 17 December 2013, read in conjunction with point 2.2 of Annex II to that directive, by failing to take into account illegal water abstraction and the abstraction of water intended for urban supply when estimating the abstraction of groundwater from the Doñana region (Spain) in the context of the further characterisation of the Plan Hidrológico del Guadalquivir 2015-2021 (Guadalquivir Basin Hydrological Plan 2015 to 2021), approved by Real Decreto 1/2016 por el que se aprueba la revisión de los Planes Hidrológicos de las demarcaciones hidrográficas del Cantábrico Occidental, Guadalquivir, Ceuta, Melilla, Segura y Júcar, y de la parte española de las demarcaciones hidrográficas del Cantábrico Oriental, Miño-Sil, Duero, Tajo, Guadiana y Ebro (Royal Decree 1/2016 approving the revision of the Hydrological Plans for the River Basin Districts of**

Western Cantabria, Guadalquivir, Ceuta, Melilla, Segura and Júcar, and the Spanish part of the River Basin Districts of Eastern Cantabria, Miño-Sil, Duero, Tagus, Guadiana and Ebro) of 8 January 2016;

– **Article 11 of Directive 2000/60, read in conjunction with Article 4(1)(c) of that directive, by failing to lay down, in the programme of measures established in the context of the Guadalquivir Basin Hydrological Plan 2015 to 2021, any measure to prevent disturbance of the protected habitat types located within the 'Doñana' protected area, with identification code SPA/SCI ES0000024, caused by the abstraction of groundwater for the needs of the tourist area of Matalascañas (Spain), and**

– **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, by failing to take appropriate steps to avoid significant disturbance of the protected habitat types located within the protected area of 'Doñana', with identification code SPA/SCI ES0000024, the protected area of 'Doñana Norte y Oeste', with identification code SPA/SCI ES6150009, and the protected area of 'Dehesa del Estero y Montes de Moguer', with identification code SAC ES6150012, caused by the abstraction of groundwater in the Doñana protected natural area since 19 July 2006;**

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

3. **Orders the European Commission and the Kingdom of Spain to bear their own costs.**

[Signatures]