OPINION OF ADVOCATE GENERAL SHARPSTON
delivered on 25 February 2010[1]

1. These are the second set of infringement proceedings[2] contesting Austria's transposition of the Birds Directive;[3] and raise issues concerning the extent of Member States' margin of discretion in implementing that directive. The Commission seeks a declaration under Article 226 EC[4] that Austria has failed to meet its obligations under Article 4(1) and (2) of the Birds Directive and Article 6(2) read in conjunction with Article 7 of the Habitats Directive.[5]

2. The Commission makes two complaints: first, that Austria failed to designate correctly two sites as special protection areas ('SPAs') under Article 4(1) and (2) of the Birds Directive, namely the Hansag in the province of Burgenland and Niedere Tauern in the province of Styria; second, that Austria has failed to introduce adequate legal protection for part of the SPAs that are already designated.

Relevant Community legislation

The Birds Directive

3. The Birds Directive, according to Article 1(1), 'relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies'. Article 2 requires Member States to 'take the requisite measures to maintain the population of the species referred to in Article 1 at a level which corresponds in particular to ecological, scientific and cultural requirements, while

1 — Original language: English.

2 — The first was Case C-507/04 *Commission* v *Austria* [2007] ECR I-5939, where the Commission alleged a failure to implement Articles 1(1) and (2), 5, 6(1), 7(1) and (4), 8, 9(1) and (2) and 11 of the Birds Directive. In addition, in Case C-209/04 *Commission* v *Austria* [2006] ECR I-2755, the Commission alleged a failure to classify certain sites as SPAs under the Birds Directive and to meet the requirements of the Habitats Directive in relation to a construction project.

3 — Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1).

4 — See, now, Article 258 TFEU.

5 — 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).

taking account of economic and recreational requirements, or to adapt the population of these species to that level.'

4. Article 3(1) states that '[i]n the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.' Article 3(2) identifies the 'creation of protected areas' as one of the measures to 'preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds referred to in Article 1.'

5. Article 4 provides:

'1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

(a) species in danger of extinction;

(b) species vulnerable to specific changes in their habitat;

(c) species considered rare because of small populations or restricted local distribution;

(d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

3. Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 above form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.

4. In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.'

6. Article 18 of the Birds Directive provides:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification. They shall forthwith inform the Commission thereof.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.'

The Habitats Directive

7. The following recitals in the preamble to the Habitats Directive are relevant to the present case:

'[1] ... the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community, as stated in Article 130 r [6] of the Treaty;

...

[5] ... in view of the threats to certain types of natural habitat and certain species, it is necessary to define them as having priority in order to favour the early implementation of measures to conserve them;

6 — See, now, Article 191 TFEU.

[6] … in order to ensure the restoration or maintenance of natural habitats and species of Community interest at a favourable conservation status, it is necessary to designate special areas of conservation in order to create a coherent European ecological network according to a specified timetable;

…

[7] … all the areas designated, including those classified now or in the future as special protection areas pursuant to [the Birds Directive], will have to be incorporated into the coherent European ecological network;

…

[8] … it is appropriate, in each area designated, to implement the necessary measures having regard to the conservation objectives pursued;

…'

8. The following definitions appear in Article 1:

'(a) *conservation* means a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status …;

…

(j) *site* means a geographically defined area whose extent is clearly delineated;

…

(l) *special area of conservation* [7] means a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated;

…'

7 — Hereinafter "SACs".

9. The purpose of the Habitats Directive is set out in Article 2, which provides that the aim of the directive is 'to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies'; and that measures taken under the directive are to be 'designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest' and to 'take account of economic, social and cultural requirements and regional and local characteristics'.

10. Article 3(1) provides: 'A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000.' That network is to include the special protection areas classified by the Member States pursuant to the Birds Directive.

11. The conservation measures to be established for SACs are set out in Article 6(1) and (2):

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

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.'

12. Article 7 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 [the Birds Directive] 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 [the Birds Directive], where the latter date is later.'

13. Under Article 23, Member States were required to implement the Habitats Directive within two years of its notification.

Relevant facts and procedure

14. Following an evaluation of Austria's network of protected areas during 1999 and 2000, the Commission considered that there were gaps in the designation of protected sites and in the legal regime for protecting wild birds and their habitats found in those sites. On 23 October 2001, it sent a letter of formal notice, to which the Austrian authorities replied in 2002 and in 2003.

15. On 18 October 2004, the Commission sent a complementary letter of formal notice, alleging that the Hansag in the province of Burgenland had not been designated as a protected area for birds and that the surface area of the site at Niedere Tauern in the province of Styria had been illegally reduced. Austria replied by letter dated 21 December 2004 and made a number of supplementary observations in 2005 and 2006.

16. The Commission took the view that Austria remained in breach of its obligations under Community law. It therefore issued a reasoned opinion on 15 December 2006. The deadline for responding to that reasoned opinion expired on 15 February 2007. The Austrian authorities replied on 20 February 2007 and sent a supplementary letter on 24 September 2007.

17. The Commission was not satisfied with Austria's response and accordingly brought the present action on 27 November 2007. It asks the Court:

— to declare that, by failing

(a) to designate (in the case of '*Hansag*' in the province of Burgenland) or delimit (in the case of '*Niedere Tauern*' in the province of Styria) correctly, in accordance with ornithological criteria, the most suitable territories in Austria, in number and size, as special protection areas for the conservation of bird species under Article 4(1) and (2) of the Birds Directive; and

(b) to provide legal protection, in accordance with the requirements of Article 4(1) and (2) of the Birds Directive or Article 6(2) in conjunction with Article 7 of the Habitats Directive for part of the special protection areas already designated,

the Republic of Austria has failed to fulfil its obligations under Article 4(1) and (2) of the Birds Directive and Article 6(2) in conjunction with Article 7 of the Habitats Directive; and

— to order the Republic of Austria to pay the costs.

18. The Commission, Austria and the German Government (which intervened in the proceedings) presented oral argument at the hearing.

Admissibility

19. Austria challenges the admissibility of the action, claiming that the scope of the application extends beyond that of the pre-litigation procedure and that it lacks coherency and precision.

The scope of the application

20. Austria submits that the scope of the application goes beyond that of the pre-litigation procedure in three respects. First, the Commission had obviously excluded Austria's national regulations on European conservation zones [8] from the scope of the action in its reasoned opinion, but nevertheless introduces these in its application. Secondly, the Commission's complaint that SPAs have no or inadequate legal protection is not identical to that made in the pre-litigation stage: rather the application introduces new demands that implementing measures should contain specific obligations and prohibitions for specific SPAs and particular species and habitats. Thirdly, the alleged failure to provide legal protection in the province of Salzburg, although mentioned in the reasoned opinion, is not included in the letter of formal notice, and the alleged failure to provide legal protection in Lower Austria is mentioned for the first time in the application itself.

21. In my view, the Commission's application is consistent with the complaints set out in the pre-litigation procedure as to the alleged failure to provide a legal protection regime throughout Austria.

22. In accordance with the Court's settled case-law, the subject-matter of proceedings brought under Article 226 EC is circumscribed by the pre-litigation procedure and the Commission's application must be based

8 — The term 'European conservation zone' is not defined by either party. From the Commission's reasoned opinion I understand it to refer to areas that have been designated as national parks or nature reserves that fall under the competence of the relevant provincial authorities. The term does not appear to bear the same meaning as either an SPA or a SAC. However, it also appears that a 'European conservation zone' may be coterminous with either an SPA or a SAC.

upon the same complaints.[9] This principle does not prevent the Commission from setting out its complaint in greater detail in its application, provided it does not alter the subject-matter of the dispute.[10]

23. As regards Austria's first argument, it seems to me that the Commission explains in its reasoned opinion that European conservation zones (sites which fall under the competence of the provincial authorities[11]) may also be designated as SPAs. However, it alleges that no specific legal protection measures have been introduced for many such areas. Therefore, it appears that the Commission refers to sites classified as European conservation zones at national or provincial level that are also designated as SPAs under the Birds Directive as being included within the scope of the proceedings in the reasoned opinion. Accordingly, I do not agree with Austria's argument that this ground of complaint has been included in the application without first being raised in the pre-litigation correspondence.

24. Regarding Austria's second and third arguments, the Commission's complaint that legal protection for SPAs must be targeted and specific elaborates on its earlier contention that legal protection for designated sites is inadequate. In so doing the Commission does not alter the scope of the action by introducing a new ground of complaint. In both the reasoned opinion and the application, the Commission confirms that the grounds of complaint are not restricted to the particular sites mentioned by way of example in the pre-litigation phase, but extend throughout Austria.

25. Thus, it seems to me that although the application is more detailed than the letter of formal notice and the reasoned opinion, the scope of the subject-matter of the dispute as set out in the pre-litigation procedure and the application are the same. Accordingly, I do not believe that the case is inadmissible on those grounds.

Lack of coherency and precision

26. Austria submits that the Commission fails to specify in its grounds of complaint which regulations relating to identified SPAs fail to provide adequate legal protection. Austria claims that it cannot therefore establish what specific measures the Commission contends that it should adopt in order to remedy the alleged breach.

27. It is settled case-law that the reasoned opinion and the application must set out the grounds of complaint coherently and

9 — Case C-67/99 *Commission* v *Ireland* [2001] ECR I-5757, paragraph 22 and the case-law cited there; see also Case C-195/04 *Commission* v *Finland* [2007] ECR I-3351, paragraph 18.

10 — *Commission* v *Ireland,* cited in footnote 9 above, paragraph 23; see *Commission* v *Finland*, also cited in footnote 9 above, paragraph 18 and the case-law cited there.

11 — See footnote 6.

precisely to enable the defendant Member State to appreciate the exact scope of the alleged infringement and to prepare its defence. [12]

28. Thus, where the Commission alleges a lack of legal protection, it must identify what, if any, legal protection exists and explain why it considers that legal protection to be insufficient. However, a failure by the Commission to specify details concerning, for example, particular SPAs does not necessarily render the application imprecise or incoherent.

29. There is no doubt that the subject of the Commission's second ground of complaint is the alleged inadequate legal protection of SPAs in Austria. The Commission's argument that legal protection should be targeted and specific is neither unclear nor unintelligible.

30. It therefore seems to me that, Austria has had sufficient indication of the Commission's case to prepare its defence.

12 — Case C-186/06 *Commission* v *Spain* [2007] ECR I-12093, paragraph 18 and the case-law cited there.

The declaration sought

31. The Court's case-law states that only areas already classified as SPAs fall under Articles 6(2) to(4) and 7 of the Habitats Directive, which replace the provision in the first sentence of Article 4(4) of the Birds Directive. [13] Areas that have not yet been designated as SPAs, but which ought to have been so designated, continue to fall under the first sentence of Article 4(4) of the Birds Directive. [14] Therefore, one might have expected the Commission in advancing the second ground of complaint to have identified clearly the specific sites [15] that have not been designated as SPAs, to explain why it considers that they ought to have been so designated and then to make submissions as to why it considers that the first sentence of Article 4(4) of the Birds Directive has not been respected. [16]

32. The Commission has not identified the areas that should have been classified as SPAs by reference to information on the delimitation of the relevant sites or to ornithological criteria on which the suitability for

13 — Case C-374/98 *Commission* v *France* [2000] ECR I-10799, paragraphs 43 to 46.

14 — *Commission* v *France*, cited in footnote 13 above, paragraph 47.

15 — Regarding its second ground of complaint the Commission identifies certain sites which the Austrian authorities classified as SPAs after the expiry of the deadline in the reasoned opinion (for example in the provinces of Burgenland and Vienna). However, the Court is not in a position to assess whether the first sentence in Article 4(4) of the Birds Directive applies to those sites for the reasons set out in point 80 below.

16 — See, by way of contrast, Case C-418/04 *Commission* v *Ireland* [2007] ECR I-10947, paragraphs 169 to 175, where the Commission chose to include sites that had not been classified as SPAs within the scope of the action, alleging a failure to apply the first sentence in Article 4(4) of the Birds Directive.

classification is to be assessed.[17] It has likewise failed to make any specific submission as to whether the first sentence of Article 4(4) applies to those areas and, if so, why it considers that Austria has failed to comply with its obligations under that provision.

Substance

The first ground of complaint – failure to designate the Hansag as an SPA and reduction of the Niedere Tauern SPA

33. Consequently, the Court is not in a position to assess whether the first sentence in Article 4(4) should apply to areas in Austria that are not classified as SPAs, but should have been so designated.

Hansag

34. The Court has emphasized that the Member States' obligation to effect a faithful implementation of the Birds Directive is particularly important, because they are entrusted with the management of the common heritage.[18] In a case where inadequate implementation is alleged, it is correspondingly important for the Commission to ensure that the Court has all the necessary elements at its disposal to enable it to scrutinise and assess whether the defendant Member State has discharged its obligations under Community law. This the Commission has signally failed to do.

35. The Commission submits that the Birds Directive requires Member States to classify as SPAs all the most suitable sites in number and size for the conservation of the species listed in Annex I and to take similar measures for regularly occurring migratory species (not listed in Annex I) regarding their breeding, moulting and wintering areas and staging posts along their migration routes. The Hansag has been identified as the most appropriate territory for the protection of certain species of bird, namely *Otis tarda,* (great bustard) *Circus pyargus* (Montagu's harrier) and *Asio flammeus* (short-eared owl).

36. Austria has confirmed that the Hansag was classified as an SPA on 3 August 2008.

17 — Cf. *Commission* v *Ireland,* cited in footnote 16 above, paragraph 47, where the Court indicated that in order to classify the most suitable areas as SPAs it is necessary to update scientific data to determine the situation of the most endangered species and the species constituting the common Community heritage.

18 — Case C-6/04 *Commission* v *United Kingdom* [2005] ECR I-9017, paragraph 25 and the case-law cited there; see also Case C-507/04 *Commission* v *Austria*, cited in footnote 2 above, paragraph 277.

37. Self-evidently, Austria had not classified the Hansag as an SPA within the period laid down in the reasoned opinion which expired on 15 February 2007. The Commission's action is therefore well founded in this respect.

Niedere Tauern

38. The Commission considers that Austria's original decision on 3 November 1997 to classify the site as comprising a surface area of 169 000 hectares was made in accordance with Article 4(1) of the Birds Directive. However, the Commission submits that by subsequently deciding twice to reduce the size of the Niedere Tauern SPA (by 31 258 hectares in 1999 and then by a further 50 600 hectares in 2001), in a manner inconsistent with the available ornithological information, Austria has failed to meet its obligations. The Commission claims that both reductions have had an adverse impact on certain forest species of birdlife that commonly nest at less than 1 500 metres above sea level – *Aegolius funereus* (boreal owl), *Glaucidium passerinum* (pygmy owl), *Dryocopus martius* (black woodpecker) and *Picoides tridactylus* (three-toed woodpecker) – and the nesting areas for fledgling *Charadrius morinellus* (Eurasian dotterel) *Bonasa bonasia* (hazel grouse) and *Picus canus* (grey-headed woodpecker).

39. Austria accepts that the reduced area is insufficient to provide protection for three species of birds (fledgling *Charadrius morinellus*, *Bonasa bonasia* and *Picus canus*) and should therefore be enlarged. However, it does not agree that the SPA needs to be extended to its original boundary to include the forest species *Aegolius funerus*, *Glaucidium passerinum*, *Dryocopus martius* and *Picoides tridactylus*.

40. According to settled case-law, [19] Member States are obliged to classify as SPAs all the sites which, applying ornithological criteria, appear to be the most suitable for conservation of the species listed in Annex I, and similar measures must be taken for migratory species in accordance with Article 4(2). The Court has also held that the Member States' margin of discretion in choosing the most suitable territories for classification as SPAs concerns not the appropriateness of classifying as SPAs the territories which appear the most suitable according to ornithological criteria, but only the application of those criteria so as to identify the most suitable territories for conservation of the species listed in Annex I. [20]

19 — Case C-418/04 *Commission* v *Ireland*, cited in footnote 16 above, paragraph 37 and the case-law cited there.

20 — Case C-209/04 *Commission* v *Austria*, cited in footnote 2 above, paragraph 33 and the case-law cited there.

41. The Commission relies upon an ornithological report [21] (commissioned by the province of Styria) in support of its argument that the original boundary of the site should be reinstated.

42. Austria acknowledges that the scientific and ornithological information shows Niedere Tauern to be amongst the most important areas in the country as a habitat for at least nine species of forest and alpine birds. [22] Austria accepts that the study relied upon by the Commission includes ornithological criteria, but then queries what it describes as 'the absence of sufficient data to provide a basis for a delimitation that is technically certain' in establishing that report. [23] Finally, Austria argues that although it accepts that the alpine forest provides a habitat for the species identified by the Commission, that is not a sufficient basis of itself for including those areas within the SPA.

43. It appears to be common ground that the original delimitation of the site was based upon ornithological criteria and was therefore made in accordance with Article 4(1) of the Birds Directive. The parties disagree, however, as to whether reducing the surface area of the site is consistent with the directive.

44. The Birds Directive itself is silent as to what is to happen if a Member State wishes to reduce the surface area of an existing site. It is therefore necessary to extrapolate, having regard to the aims and objectives of both the Birds and Habitats Directives.

45. It seems to me that, once an SPA has been designated which, in accordance with the ornithological material, appears to be the most suitable for the species in question, [24] a Member State that wishes subsequently to reduce the geographical extent of that SPA must have up-to-date scientific and ornithological evidence to support its (implied) contention that it can do so without jeopardising the required level of protection. [25] If that test is satisfied, it seems to me that a Member State may adjust the geographical extent of an SPA. It would then be necessary for the Commission, which bears the onus of proof in the context of any

21 — The report of Gallaun, H., Sackl, P., Praschk, C., Schardt, M., and Trinkaus, P. (2006), cited at point 44, footnote 48, of the Commission's application ('Gallaun et al (2006)'). The Commission also refers in its application to the Lentner report of 2004, 'Ornithological observations in the framework of the reduction of the Special protection area Niedere Tauern in the context of the Birds Directive 79/409/EEC' ('Lentner (2004)').

22 — Since Austria does not identify these, nor can I.

23 — Austria relies on a later study of M. Josef Eisner dated 18 December 2007 on the SPA Niedere Tauern AT2209000 ('Eisner (2007)').

24 — Case C-418/04 *Commission* v *Ireland*, cited in footnote 16 above, paragraph 37 and the case-law cited there.

25 — See point 40 above. A Member State ought to assure itself, by commissioning or obtaining an appropriate study, that the area of an SPA can be reduced without jeopardising the directive's objectives before it authorises such a reduction. I accept that a Member State can supplement the available evidence during the precontentious procedure, up to the deadline set in the Commission's reasoned opinion. See also Case C-235/04 *Commission* v *Spain* [2007] ECR I-5415, paragraphs 23 and 24.

subsequent infringement proceedings, [26] to adduce the necessary material to show that the evidence relied upon by the Member State was inadequate or flawed. [27]

46. In the present case, Austria has presented no ornithological material to the Court to show that either the 1999 or the 2001 reduction in the size of the Niedere Tauern SPA was justified at the time when those reductions took place. According to the Court's settled case-law, in order to classify the most suitable areas as SPAs, Member States must use the most up-to-date scientific information available – in cases where infringement proceedings have been started, this material should be available by the end of the period laid down in the reasoned opinion. [28]

47. Austria now seeks to rely on Eisner (2007) to undermine the scientific material put forward by the Commission. In my view, however, that study – which was completed on 6 December 2007, well after the deadline for compliance with the reasoned opinion had expired (15 February 2007) – cannot now be relied upon to make good the apparent lack of technical justification for the 1999 and 2001 reductions. Accordingly, Austria has not adduced relevant scientific information demonstrating that its obligations under Article 4(1) and (2) of the Birds Directive could be satisfied by reducing the Niedere Tauern SPA.

48. I add that Austria's argument that an obligation to extend the site to its original boundary must be based upon data that are certain is not supported by the wording of the Birds Directive; and that no scientific information has been placed before the Court to show that Article 4(1) and (2) of the Birds Directive could be satisfied by classifying other sites as SPAs in relation to the species of birds identified by the Commission.

49. I therefore consider this ground of complaint to be well founded.

The second ground of complaint – failure to introduce an effective legal regime for SPAs

50. In the interests of clarity, I shall divide my analysis of the second ground of complaint into two parts. I shall first consider the Commission's general argument of principle

26 — Case C-434/01 *Commission* v *United Kingdom* [2003] ECR I-13239, paragraph 21 and the case law cited there; see also Case C-418/04 *Commission* v *Ireland*, cited in footnote 16 above, paragraph 167.

27 — According to the Court's settled case-law the Inventory of Important Bird Areas in the European Community, published in 1989 and 2000 and known respectively as 'IBA 1989' and 'IBA 2000', is regarded as the most authoritative study: see *Commission* v *Ireland*, cited in footnote 16 above, paragraphs 40 and 48. In the present case, the Commission has relied on two reports: Lentner (2004) and Gallaun et al (2006).

28 — See Case C-418/04 *Commission* v *Ireland*, cited in footnote 16 above, paragraph 47 and the case-law cited there.

as to the extent to which Member States enjoy discretion in the way in which they implement the Birds and Habitats Directives (the issue that prompted Germany's intervention in these proceedings). I shall then go on to examine, province by province, the Commission's specific complaints.

The margin of discretion

51. The Commission argues that, to effect proper implementation of the Birds and Habitats Directives, special conservation measures must be adopted in a form which ensures that legally binding obligations and prohibitions are introduced to provide protection for SPAs, and those measures must be adopted in the same act that classifies the area as an SPA.

52. Austria contends that the wording of the Birds and Habitats Directives does not prescribe the form of measures required for their implementation. It is only necessary to consider introducing specific prohibitions where there are indications that deterioration in existing conditions in a site is likely. Moreover, where sites are subject to existing general conservation measures under national rules that protect all species, a de facto protection exists over and above that required by the Birds Directive.

53. The German Government argues that it is not necessary to introduce specific obligations and prohibitions for each SPA in a binding legal act.

54. In my view the Commission's main contention that special conservation measures must be adopted by way of binding obligations or prohibitions is not supported by the general principles of Community law or by the wording of the Birds or Habitats Directives. [29]

55. It is trite law that, according to the third paragraph of Article 249 EC, [30] a directive is binding upon each Member State to which it is addressed as to the result to be achieved, but leaves it to the national authorities to choose the form and methods of implementation. [31] It follows that Austria, just like any other Member State, may choose the form and methods for its implementation of the Birds and Habitats Directives.

56. At the hearing the Commission acknowledged that nothing in the wording of either the Birds or the Habitats Directives suggests that the legal protection of SPAs must be embodied in the same act which classifies a site

29 — In what follows, references to the Birds and Habitats Directives are to the specific provisions here at issue – Article 4(1) and (2) of the Birds Directive; and Article 6(2) in conjunction with Article 7 of the Habitats Directive.

30 — See, now, Article 288 TFEU.

31 — In the present context, see Case C-418/04 *Commission* v *Ireland*, cited in footnote 16 above, paragraph 157 and the case-law cited there.

as an SPA. Similarly, the wording of the directives does not prescribe that special conservation measures can only take the form of specific obligations and prohibitions.

57. Thus, it seems to me that an approach which purports to prescribe the form and method of implementation is inconsistent both with the wording of the specific legislation here at issue and with the general principles of Community law.

58. A number of other considerations also militate against the approach advocated by the Commission.

59. The Birds and Habitats Directives have similar objectives, namely to contribute to ensuring bio-diversity through the conservation of natural habitats and, in the case of birds, of all species that occur naturally in the wild state. [32] SPAs established under the Birds Directive are brought within the ambit of Natura 2000, which is established as a coherent European ecological network under the Habitats Directive. [33] It therefore seems to me, as I stated in the *Stadt Papenburg* case, [34] that there is a close link between the two directives and they should be construed consistently.

60. Article 6(1) of the Habitats Directive sets out a number of possible measures that may be adopted for SACs, including statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat of the species in question. It seems to me that Member States should be able to have recourse to a similar range of options when adopting special conservation measures under the Birds Directive. [35]

61. In that respect, Article 4(1) and (2) of the Birds Directive provide that the objective of special conservation measures concerning the habitats of the species listed in Annex I and for migratory species (not listed in the Annex) is to ensure the survival and the reproduction in their area of distribution. To transpose that obligation, Member States must assess and introduce appropriate measures to ensure that a habitat is preserved, maintained and/or restored in order to meet the objectives of Article 4(1) and (2) of the Birds Directive. But, it does not follow that *only* measures introducing prohibitions and obligations can be used to give effect to the Birds and Habitats Directives. Neither does it mean that prohibitions and obligations must be used in every case (even where other measures have also been enacted).

32 — Article 1 of the Birds Directive and Article 2 of the Habitats Directive.

33 — Article 3(1) of, and the seventh recital in the preamble to the Habitats Directive.

34 — Case C-226/08 [2009] ECR I-131, point 34 of my Opinion.

35 — The SAC is introduced in the Habitats Directive, see points 8 to 11 above. The SPA is the parallel classification for sites under the Birds Directive.

62. For example, prohibitions are a useful instrument to give protection against an identified source of harm. Obligations are likewise useful where the person who should be made the subject of the rule is easily identifiable. However, such measures will not necessarily deal comprehensively with every eventuality. Thus, neither might be appropriate to provide effective protection against potential harm that has not been fully identified. In such a case it might be necessary to confer powers upon the competent authorities to take positive action rather than to react by issuing prohibitions or obligations.

63. The need to introduce special conservation measures must also be subject to review. Environmental conditions change. Member States therefore need to have a degree of flexibility in the tools that they use. [36]

64. The Commission argues that Member States cannot use different measures in different regions. I disagree. The Birds Directive requires Member States to adopt measures that are appropriate to the species in question. Inevitably, different measures may be appropriate to protect a species that nests in grassland compared to a forest dwelling species that nests in trees. Measures will also differ according to whether they are needed to preserve, to maintain or to restore a sufficient diversity and area of habitats for the conservation of birds.

65. Accordingly, it seems to me that Member States must have at their disposal a full range of measures from which to choose in order to give effect to the Birds and Habitats Directives.

66. The Commission makes three specific submissions regarding the substance of the special conservation measures that it considers Member States must adopt. First, designation of the site and the relevant measures must be publicised in a binding instrument that is enforceable against third parties. Second, Member States must introduce measures to ensure that the particular objectives

36 — See, for example, Case C-209/04 *Commission* v *Austria*, cited in footnote 2 above, paragraph 20. The issue in that case was the classification of sites, which the Court describes as being subject to an ongoing obligation. It seems to me that the same principle applies equally to the introduction of conservation measures.

of the Birds and Habitats Directives are met. Third, special conservation measures must be specific: that is, they must apply to a specific SPA taking account of its characteristics and environmental conditions and the particular species which it shelters.

67. Before dealing with those submissions, it is important to stress two underlying points.

68. First, in infringement proceedings such as these, the onus is on the Commission to demonstrate that the Member State has failed to implement the Birds and Habitats Directives. [37] Therefore the Commission must identify that the deficiency in protection it alleges subsists in relation to a specific species and/or its habitat. Second, the Member States are also under an obligation to cooperate with the Commission by providing information on the position within their respective territories. That is particularly so in cases such as the present, where the detailed information about environmental characteristics of a particular site and the species that are to be found there is vital to assessing whether effective measures are in place to afford suitable protection. Without such cooperation it is difficult for the Commission to obtain the necessary material to discharge its functions under Article 211 EC [38] and to ensure that the directives are in fact being applied. [39]

Legally binding instrument

69. According to the Court's case-law, the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity required in order to satisfy the need for legal certainty, which requires that, in the case of a directive intended to confer rights on individuals, the persons concerned must be enabled to ascertain the full extent of their rights. [40]

70. I agree with the Commission that the principle of legal certainty requires that the designation of SPAs and the measures introduced to protect them must be adopted in such a way as to enable the persons concerned by such measures to ascertain the scope of their rights and obligations. This has already been recognised by the Court which has stated that SPAs must be invested with unquestionable binding force. [41]

37 — Case C-434/01 *Commission* v *United Kingdom*, cited in footnote 26 above, paragraph 21 and the case-law cited there; see also Case C-418/04 *Commission* v *Ireland*, cited in footnote 16 above, paragraph 167.

38 — See, now, Article 17 TEU for the general functions of the Commission.

39 — Case C-427/07 *Commission* v *Ireland* [2009] ECR I-6277, paragraph 105.

40 — Case C-427/07 *Commission* v *Ireland*, cited in footnote 39 above, paragraph 55 and the case-law cited there.

41 — Case C-415/01 *Commission* v *Belgium* [2003] ECR I-2081, paragraphs 21 and 22.

Specific transposition measures

71. The Commission contends that implementation in Austria is inadequate because the legislation that transposes the directive merely refers to the general objective of 'maintaining and re-establishing a favourable state of conservation in conformity with the Birds Directive' [42] rather than repeating the objectives expressed in the Birds and Habitats Directives.

72. The Court's case-law shows, however, that it is not necessary for transposing measures to reproduce the exact wording of directives. [43] In any event, even if the words of the directive are reproduced verbatim, it does not follow that the 'copy and paste' technique for transposition results in faithful implementation. In order to establish whether there has been proper implementation, it is always necessary to consider the effect of the implementing measure in its entirety and whether it achieves the specific objectives of the directive in question.

73. In that respect, the Court has held that the objectives of Article 4(1) and (2) of the Birds Directive require the Member States to provide SPAs with a legal protection regime that is capable, in particular, of ensuring both the survival and reproduction of the bird species listed in Annex I to the directive and the breeding, moulting and wintering of migratory species (not listed in Annex I) which are, nevertheless, regular visitors. In particular, the protection of SPAs may not be limited to avoiding harmful human effects, but must also include positive measures to preserve or improve the state of the area, as the case may be. [44]

74. It follows that the assessment of whether a Member State has faithfully transposed a directive can never be a mere semantic exercise. Rather, a judgment must be made as to whether the national measures give effect to the objectives of the Birds and Habitats Directives.

Specific measures for specific SPAs

75. The Commission's contention that measures must be specific cannot be assessed in the abstract. To establish that its second ground of complaint is well founded, the Commission must submit to the Court evidence demonstrating that its concerns are justified. A general clause may constitute adequate implementation if it is clear that it gives effect to the requirements of the Birds and Habitats Directives on the part of the

42 — This wording, given by way of example by the Commission in paragraph 68 of its reply is taken from the provincial legislation in the province of Styria.

43 — Case C-507/04 *Commission* v *Austria*, cited in footnote 2 above, paragraph 89.

44 — Case C-293/07 *Commission* v *Greece*, paragraphs 22 to 24.

national authorities applying the law and the persons who are affected by the provisions. [45]

76. Moreover, since the Commission bears the burden of proof, if it wishes to make a complaint based on a lack of specific provision, [46] it must demonstrate that there has been failure to protect a particular species in relation to which (or to whose habitat) there is an identified concern.

77. The Commission has chosen to present the second ground of complaint in a very general manner. It refers to extracts from the legislative provisions in the various Austrian provinces. It does not identify the species of birds, and the environmental characteristics of the relevant habitats, for which it claims that a concern exists and in general it does not provide evidence to substantiate that concern. It seems to me that, by pleading its case in this way, the Commission fails to discharge the burden of proof in respect of its allegations that Austria has failed to introduce specific measures.

78. The Court is further hindered in its assessment by the fact that neither party has provided a clear explanation of the legislative framework for implementing the Birds and Habitats Directives in Austria. Nor is the position in each province explained with any clarity. The Court merely has selected extracts of legislation that have been submitted by the Commission and Austria in support of their respective positions. It does not have the complete picture.

79. To summarise my conclusions on the second ground of the Commission's application: I do not accept the Commission's general argument of principle as to the limited ways in which Member States may properly implement the Birds and Habitats Directives. I have indicated, province by province, the limited extent to which I consider that the Commission has demonstrated that it is entitled to the declaration that it seeks. This should not be taken to mean that I am satisfied that in every other respect Austria has complied fully with its obligations under the articles of those two directives invoked by the Commission in this action. It is rather, the inevitable consequence of the way that the Commission has presented the case. At the end of the day, I do not think that it is right for the Court, in infringement proceedings against a Member state, to engage in extensive detective work in order to make good the deficiencies in the Commission's arguments.

45 — Case C-427/07 *Commission* v *Ireland*, cited in footnote 39 above, paragraph 54 and the case-law cited there; as to transposition of the Habitats Directive, see also Case C-6/04 *Commission* v *United Kingdom*, cited in footnote 18 above, paragraph 21.

46 — Case C-166/97 *Commission* v *France* [1999] ECR I-1719 is an example of a case where the Commission made a specific complaint that a Member State had failed to provide special conservation measures under the Birds Directive in relation to a specific area (a wetland environment in the Seine Estuary). See also judgment of 27 October 2005 in Case C-166/04 *Commission* v *Greece*.

The Commission's specific complaints

Burgenland and Vienna

80. Before considering the position in each of the other Austrian provinces in detail I wish to deal briefly with the provinces of Burgenland and Vienna. The Commission includes both provinces within its second ground of complaint. However, the Commission also states that *no* SPAs were designated in those provinces by the expiry of the deadline in the reasoned opinion. [47] It is not possible to assess the adequacy of legal protection for sites that have not been classified as SPAs. The Commission's position is therefore self-contradictory. The Commission has not included in its application an allegation that no SPAs were designated in Burgenland and Vienna by the expiry of the deadline in the reasoned opinion. Therefore, such a complaint is irrelevant to the form of declaration sought (failure to provide legal protection for SPAs already designated). Accordingly, I shall disregard this part of the Commission's second complaint.

Carinthia

81. It is common ground that only one site in Carinthia had been classified as an SPA by the expiry of the deadline in the reasoned opinion. [48] In its reply the Commission apparently sought to include for the first time *all* SPAs in the province of Carinthia within the scope of the second ground of its complaint, [49] but then contradicted that impression by stating that this ground of complaint only concerned part of the Flachwasserbiotop Neudenstein SPA.

82. The Commission alleges that the legislation under which the Flachwasserbiotop Neudenstein site is classified is deficient in so far as it does not include a map showing the boundaries of the site. The Commission also claims that there is no indication of which species are protected or of the protection and conservation objectives for the species for which the site provides a habitat.

83. I agree with the Commission that the boundaries of the site must be set out in a manner which is both clear and binding upon third parties, for the reasons given in point 70 above.

47 — The legislation designating SPAs in Burgenland and Vienna was not notified to the Commission before the expiry of the deadline in the reasoned opinion. The legislation concerning Vienna was adopted on 17 October 2007. I do not have information confirming the date(s) that legislation for Burgenland was adopted.

48 — The Flachwasserbiotop Neudenstein site was designated by Regulation of the Government of Carinthia of 15 June 2005 (LGBl. No 47/2005) European Protected Area Flachwasserbiotop Neudenstein.

49 — Reference is made to 12 other sites in paragraph 52 of the Commission's reply.

84. I do not agree that the necessary clarity can only ever be achieved by providing a map. Depending upon the complexity of the shape of the site in question, it may be possible to designate a site by reference to a series of coordinates expressing the latitude and longitude of certain points along its perimeter, perhaps relating these also to other, particularly salient, geographical features. In other circumstances a map may be necessary.

85. In the present case there is no information indicating that the boundaries of the site Flachwasserbiotop Neudenstein are set out clearly in a manner which is available to third parties either in a map or by other means.

86. It seems to me, having looked at the regulation designating the SPA, that, although it provides a degree of protection, it fails to introduce measures to give full effect to Articles 6(2) and 7 of the Habitats Directive in so far as it does not make provision for the competent authorities to take positive measures to avoid the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the areas have been designated.

87. I therefore consider the Commission's application to be well founded regarding the failure to meet the requirements of the Birds Directive to introduce measures showing the delimitation of the Flachwasserbiotop Neudenstein SPA and to meet the requirements of Articles 6(2) and 7 of the Habitats Directive.

88. The Commission also contends that specific measures should be introduced for particular species and their habitats. However, in the absence of any information on the species that exist and on whether their habitat requires protection in order to fulfil the objectives of the Birds and Habitats Directives, I consider this ground of the complaint to be unfounded for the reasons given in point 77.

Lower Austria

89. The Commission states that by the expiry of the deadline in the reasoned opinion one site had been classified as an SPA,[50] but that the legal protection regime for that site is inadequate because it does not contain specific measures for particular species of birds and their habitats.

50 — The Tullnerfelder Donau-Auen site classified under LG.5505-1 of 2001 (Lower Austrian National Park Law).

90. Austria argues that the site is covered by existing legislation which protects all birds living naturally in the wild state for the purposes of the directive. The objectives of the existing legislation are stated to be to attain a favourable state of conservation and to protect what are described as priority species and priority habitats.

91. The Commission advanced its case in the abstract. It has failed to identify the particular species of birds and their habitats for which it considers specific measures should be taken and the concerns it has relating to those species and their habitats. Accordingly, I consider this ground of complaint to be unfounded in that regard. [51]

Upper Austria

92. The Commission confirms that it has been notified of 11 sites designated as SPAs, but claims that there is no legal protection for 5 of them [52] and that legal protection is inadequate for the 6 others. [53]

93. The Commission's complaint is clearly well founded in respect of the five SPAs for which no measures have been notified.

94. The measures for the Ettenau, Trau-Donau-Auen and Frankinger Moos SPAs [54] appear to be inadequate in so far as migratory species of birds (not listed in Annex I) are not included within the scope of the legislation. Therefore the Commission's application is founded regarding its complaint of failure to provide adequate legal protection under Article 4(1) and (2) of the Birds Directive.

95. It is also unclear what measures, if any, the competent authorities are able to take to avoid 'the deterioration of natural habitats and the habitats of species as well as the disturbance of the species for which the areas have been designated' in accordance with Articles 6(2) and 7 of the Habitats Directive (for the sites Ettenau, Trau-Donau-Auen and Frankinger Moos SPAs). The measures concerning the Dachstein, Unterer Inn and Kalkalpen National Park SPAs [55] also appear to be inadequate on this point.

96. The Commission's complaint is therefore well founded in this respect.

51 — See point 77 above.

52 — The Maltsch, Wiesengebiete im Freiwald, Pfeifer Anger, Oberes Donautal and Untere Traun sites.

53 — The Ettenau, Traun-Donau-Auen, Frankinger Moos, Dachstein and Unterer Inn sites and the Kalkalpen National Park.

54 — The provincial legislation is to be found as follows: Ettenau – LGBl. No 110/2005, Trau-Donau-Auen – LGBl. No 32/2004, Frankinger Moos – LGBl. No 25/2005.

55 — The relevant legislation is to be found as follows: Dachstein – LGBl. No 6/2005, Unterer Inn – LGBl. No 69/2004, Kalkalpen National Park – LGBl. No 58/2005.

97. The Commission also argues that legal protection must be specifically targeted, but has again regarding the sites Dachstein, Unterer Inn and Kalkalpen National Park, failed to identify the species for which it considers specific measures should be introduced and the concerns it has relating to them and their habitats. This ground of complaint is accordingly unfounded in that regard. [56]

Salzburg

98. The Commission states that it had been notified of legal protection measures for 15 SPAs in this province. [57] It has withdrawn its claim in respect of nine of those sites.

99. The Commission maintains its complaint in respect of six sites: Bürmooser Moor, Salzachauen, Hochgimpling, Oichtenriede, Wallersee-Wengermoor and Hohe Tauern. Austria confirms that for the Bürmooser Moor and Salzachauen sites no protection had been put in place by the expiry of the deadline in the reasoned opinion. As regards the site at Hochgimpling, the national regulations were notified after the expiry of the deadline in the reasoned opinion, and therefore cannot be taken into account.

100. It follows that the Commission's complaint is well founded in respect of those three SPAs. [58]

101. Austria argues that the legislation concerning the Oichtenriede and Wallersee-Wengermoor sites introduces similar provisions to those that were accepted by the Commission as providing adequate legal protection for the Winklmoos site, in respect of which it has withdrawn its complaint. The legislation is described in Austria's defence as having been promulgated – by which I understand it to have been made public – on 1 July 2006. However, the Commission claims that it has not been notified of any implementing measures for those two sites.

102. Member States have a duty under the Birds and Habitats Directives both to transpose the directives and to notify the transposing measures. [59] Therefore, in the absence of information indicating that measures introducing adequate legal protection for the Oichtenriede and Wallersee-Wengermoor sites were duly notified, I consider the Commission's complaint founded in this respect.

56 — See point 77 above.

57 — Klemmerich, Dürrnbachhorn, Martinsbichl, Hochgimpling, Joching, Weidmoos, Winklmoos, Gernfilzen-Bannwald, Kematen, Obertauern-Hundsfeldmoor, Salzachauen, Oichtenriede, Bürmooser Moor, Wallersee-Wengermoor and Hohe Tauern.

58 — Case C-418/04 *Commission* v *Ireland*, cited in footnote 16 above, paragraph 74.

59 — Article 18 of the Birds Directive and Article 23 of the Habitats Directive should have been fully transposed in Austria by 1 January 1995. See also C-427/07 *Commission* v *Ireland*, cited in footnote 39 above, paragraph 105 to 108, on the duty to notify transposition to the Commission.

103. Regarding the site at Hohe Tauern, Austria claims that protection is provided by provincial legislation LGBl. No 58/2005 and the law of the province of Salzburg on the protection of nature (the Salzburger Naturschutzgesetz). Although these measures introduce a degree of protection for wildlife that occur in the Hohe Tauern SPA, they do not appear to give full effect to Articles 6(2) and 7 of the Habitats Directive, in so far as they do not make provision for the competent authorities to take positive measures to avoid 'the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated'. I therefore consider this ground of complaint to be well founded regarding Hohe Tauern in so far as the Commission has demonstrated a failure to provide legal protection in accordance with Article 6(2) read in conjunction with Article 7 of the Habitats Directive.

104. It follows that, in my view, that the Commission is entitled to the declaration that it seeks in respect of the six sites Bürmooser Moor, Salzachauen, Hochgimpling, Oichtenriede, Wallersee-Wengermoor and Hohe Tauern.

105. Finally as regards Hohe Tauern, the Commission has argued that legal protection must be specifically targeted. It has again failed to identify the species for which it considers specific conservation measures should be introduced and the concerns it has relating to those species and their habitats. Accordingly, I consider this ground of complaint unfounded in that regard. [60]

Styria

106. The Commission acknowledges that a legal protection regime for each classified SPA exists under the provincial law on the protection of nature, [61] but contends that it is too general to meet the requirements of the Birds and Habitats Directives. The Commission has again failed to identify the species for which it considers specific measures should be taken and the concerns it has relating to those species and their habitats. Accordingly, I consider this ground of complaint to be unfounded in that regard. [62]

Tyrol

107. The Commission contends that the existing legislation [63] provides a general power [64] to adopt specific conservation measures to introduce legal protection for the purposes of

60 — See point 77 above.

61 — The Styrian Nature Protection Law of 1976 (NschG 1976), LGBl. No 65, amendment published in LGBl. No 71/2007 of 22 May 2007.

62 — See point 77 above.

63 — The Tiroler Naturschutzgesetz (TNSchG) (Law of the Land of Tyrol on the protection of nature) of 12 May 2004.

64 — Article 14(3) TNSchG.

the Birds Directive. However, no such measures were adopted by the expiry of the deadline given in its reasoned opinion.

108. Austria does not dispute that that is the position.

109. As I have already recalled, the Court considers faithful transposition of the Birds and Habitats Directives to be particularly important. [65] Furthermore, the principle of legal certainty requires that the implementation framework should be precise and clear. In my view that cannot be assured by reference to a general power under which no binding measures are then introduced. [66]

110. Accordingly, I am of the view that the Commission's complaint is well founded in respect of the Tyrol.

Vorarlberg

111. The Commission claims that no specific measures are in place setting out the specific protection and conservation objectives or obligations or prohibitions for the sites classified as SPAs in this province.

112. However, yet again the Commission has failed to identify the species for which it considers specific measures should be taken and the concerns it has relating to those species and their habitats. I therefore consider that the Commission's complaint is unfounded in that regard. [67]

Costs

113. Both the Commission and Austria have asked for costs. On my analysis, the Commission is entitled to some parts only of the declaration that it seeks.

114. Pursuant to the first subparagraph of Article 69(3) of the Rules of Procedure each party should therefore bear its own costs.

65 — Point 34.

66 — See Case 96/81 *Commission* v *Netherlands* [1982] ECR 1791, paragraph 12.

67 — See point 77 above.

Conclusion

115. In light of the considerations set out above, I therefore propose that the Court should:

(1) declare that Austria has infringed Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ('the Birds Directive') by failing to designate (in the case of '*Hansag*' in the province of Burgenland) or delimit in the case of '*Niedere Tauern*' in the province of Styria correctly, in accordance with ornithological criteria, the most suitable territories in Austria, in number and size, as special protection areas for the conservation of bird species under Article 4(1) and (2) of that directive on the conservation of wild birds;

(2) declare that Austria has failed to provide adequate legal protection in the following respects:

— in the province of Carinthia, in accordance with Article 4(1) and (2) of the Birds Directive by failing to delineate the extent of the Flachwasserbiotop Neudenstein SPA in a binding instrument capable of being publicised to and relied upon by third parties, and by failing fully to transpose Articles 6(2) and 7 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive') in respect of that SPA;

— in the province of Upper Austria, in accordance with Article 4(1) and (2) of the Birds Directive and by failing fully to transpose in accordance with Articles 6(2) and 7 of the Habitats Directive for the Maltsch, Wiesengebiete

im Freiwald, Pfeifer Anger, Oberes Donautal, Untere Traun, Ettenau, Trau-Donau-Auen and Frankinger Moos SPAs and by failing fully to transpose in accordance with Articles 6(2) and 7 of the Habitats Directive for the Dachstein and Unterer Inn sites and the Kalkalpen National Park SPAs;

— in the province of Salzburg, in accordance with Article 4(1) and (2) of the Birds Directive and by failing fully to transpose in accordance with Articles 6(2) and 7 of the Habitats Directive for the Bürmooser Moor, Salzachauen, Hochgimpling, Oichtenriede and Wallersee-Wengermoor sites, and by failing fully to transpose in accordance with Articles 6(2) and 7 of the Habitats Directive for the Hohe Tauern site;

— in the province of Tyrol, in accordance with Article 4(1) and (2) of the Birds Directive and by failing fully to transpose in accordance with Articles 6(2) and 7 of the Habitats Directive for the SPAs already designated.

(3) dismiss the remainder of the application;

(4) order each party to bear its own costs.