



Press and Information

Court of Justice of the European Union

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Judgment in Case C-383/09  
Commission v France

## **In 2008, France did not take adequate measures to protect the European Hamster in Alsace**

*The Habitats Directive requires Member States to ensure strict protection of that species in order to enable effective avoidance of deterioration or destruction of breeding sites and resting places.*

The Commission has brought an action before the Court of Justice because it is of the opinion that, by failing to institute a programme of measures ensuring strict protection of the European Hamster, France has failed to fulfil all its obligations under the Habitats Directive<sup>1</sup>, the objective of which is to promote maintenance of biodiversity.

The Commission complains that, in 2008, France failed to take adequate measures to ensure strict protection of the European Hamster in Alsace (France), the only region where it is present, which is threatened with complete extinction in the short term by harmful agricultural practices and development of urbanisation, which disturb the breeding sites and resting places.

By its judgment, delivered today, the Court holds that the measures to protect the European Hamster in Alsace, implemented by France, were not adequate, on 5 August 2008<sup>2</sup>, to enable strict protection of that species.

The Court points out that the Habitats Directive requires Member States to adopt measures to institute a system of strict protection of animal species 'of Community interest', including the European Hamster. Such a system must therefore enable the effective avoidance of deterioration or destruction of breeding sites or resting places of the animal species covered by the Directive.

It is apparent from the file that, between 2001 and 2007, the number of burrows of the European Hamster (one burrow representing one animal) in the 'main areas' fell from 1 160 to less than 180, whereas the minimum viable population threshold is 1 500 individuals spread over an area of contiguous suitable land of 600 hectares.

Having made that finding, the Court considers the measures implemented by France, intended to have an effect on the two factors which have led to the decline of the European Hamster, namely certain agricultural practices and the development of urbanisation.

As regards agricultural practices, France accepts that the development of maize crops has been harmful to the European Hamster, such development having not been entirely halted in Alsace.

Thus, to remedy that situation, three priority action areas (PAAs)<sup>3</sup> were created – in which all changes of use of the land other than those connected with agriculture have been abandoned – and for which an objective of 22% of crops favourable to the European Hamster, namely 2% of

<sup>1</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as amended by Council Directive 2006/105/EC of 20 November 2006 (OJ 2006 L 363, p. 368).

<sup>2</sup> The question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing at the end of the period laid down in the Commission's reasoned opinion, namely 5 August 2008.

<sup>3</sup> The first action area comprises three PAAs, namely those of Geispolsheim-Blaesheim-Innenheim, Scot du Piémont des Vosges-Obernai and Grussenheim-Elsenheim. The second action area corresponds to a repopulation area of favourable land historically used by the hamster and the third action area corresponds to the historical range, that is to say 49% of the favourable land historically used by the hamster.

lucerne and 20% of standing cereals, has been established with a view to achieving, eventually, a viable population of 1 200 to 1 500 specimens per area. Although those agro-environmental measures are such as to guide agricultural practices in a way favourable to the species – in particular the financial support given to farmers to encourage the cultivation of lucerne and winter cereals – it is clear that, in 2008, that objective of 22% of crops favourable to the species had been achieved in only one of the three PAAs, which represent, moreover, only 2% of all the land favourable to the European Hamster in Alsace.

In that regard, the French authorities proposed, in September 2009, changes to the perimeters of the PAAs, in particular to cover the sectors located near thereto which contained hamsters. In addition, the French authorities had stated to the Commission that the dynamic of change to agricultural practices in the ‘repopulation area’ – which, according to France, covers 49% of land favourable to the species – which has contributed to the positive stabilisation of the numbers of the species, was to be extended and widened, particularly by localised agro-environmental measures intended to achieve, during 2011, 22% of crops favourable to the species.

As regards development of urbanisation, the Court finds, firstly, that the prohibition of all new urbanisation in PAAs, even if it is truly binding, affected only 2% of the land favourable to the European Hamster.

Secondly, in the ‘repopulation area’, any urbanisation project of a hectare or more had to prove its lack of harmful effect on that species by a specific study and, if that evidence is not adduced, could be carried out only provided a ministerial exemption was obtained. However, on the one hand, the conditions for the grant of such an exemption were not precisely specified and, on the other, there was no requirement for compensatory measures where such an exemption was granted.

Thirdly, at 5 August 2008, urbanisation projects covering an area of less than a hectare were not subject to any formalities enabling their lack of impact on the conservation of the European Hamster to be ascertained.

Consequently, the Court finds that the measures implemented by France, in 2008, were not adequate to enable effective avoidance of deterioration or destruction of the breeding sites and resting places of the European Hamster.

However, the Court rejects the Commission’s complaint regarding the alleged inadequacy of the action programme for 2008 to 2010 concerning the limitation of pollution caused by nitrates, on the ground that the Commission has not demonstrated to the requisite legal standard that there is a link between the use of nitrates in agriculture and the deterioration or destruction of the breeding sites or resting places of the European Hamster.

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**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court’s judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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