

Case C-6/04

Commission of the European Communities

v

United Kingdom of Great Britain and Northern Ireland

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC —
Conservation of natural habitats — Wild fauna and flora)

Opinion of Advocate General Kokott delivered on 9 June 2005 1 - 9020
Judgment of the Court (Second Chamber), 20 October 2005 1 - 9056

Summary of the Judgment

- 1. Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Transposition without legislative action — Limits — Management of a common heritage — Need for faithful transposition by the Member States
(Art. 249, para. 3, EC; Council Directive 92/43, Arts 11, 12(4) and 14(2))*

2. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Special areas of conservation — Obligation to avoid the deterioration of natural habitats and the habitats of species — Scope*
(Council Directive 92/43, Art. 6(2))
3. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Special areas of conservation — Obligations of the Member States — Assessment of a project's implications for a site — Coming into being of the obligation to carry out an assessment*
(Council Directive 92/43, Art. 6(3))
4. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Protection of species — Derogations — Restrictive interpretation — Derogations incompatible with the directive — Breach both of the measures for the protection of species set out in Articles 12 and 13 of the directive and of the derogations laid down in Article 16*
(Council Directive 92/43, Arts 12, 13 and 16)

1. While the transposition of a directive into domestic law does not necessarily require that the content of the directive be incorporated formally and verbatim in express, specific legislation and, depending on its content, a general legal context may be adequate for the purpose, that is on condition that that context does indeed guarantee the full application of the directive in a sufficiently clear and precise manner. In that regard, it is important in each individual case to determine the nature of the provision, laid down in a directive, to which the action for infringement relates, in order to gauge the extent of the obligation to transpose imposed on the Member States.

ment of the common heritage is entrusted to the Member States in their respective territories. It follows that, in the context of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which lays down complex and technical rules in the field of environmental law, the Member States are under a particular duty to ensure that their legislation intended to transpose that directive is clear and precise, including with regard to the fundamental surveillance and monitoring obligations, such as those imposed on national authorities by Articles 11, 12 (4) and 14(2) of the directive.

However, faithful transposition becomes particularly important where manage-

(see paras 21-22, 25-26)

2. In implementing Article 6(2) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which obliges the Member States to avoid, in special areas of conservation, the deterioration of natural habitats and the habitats of species, it may be necessary to adopt both measures intended to avoid external man-caused impairment and disturbance and measures to prevent natural developments that may cause the conservation status of species and habitats in those areas to deteriorate.

(see paras 33-34)

3. Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora makes the requirement for an appropriate assessment of the implications of a plan or project that is not directly connected with or necessary to the management of a site in a special area of conservation conditional on there being a probability or a risk that it will have a significant effect on the site concerned. In the light, in particular, of the precautionary principle, such a risk

exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned.

(see para. 54)

4. Article 16 of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which defines in a precise manner the circumstances in which Member States may derogate from the provisions relating to the protection of species laid down in Articles 12, 13, 14 and 15(a) and (b) thereof, must be interpreted restrictively. Furthermore, Articles 12, 13 and 16 of the directive form a coherent body of provisions intended to protect the populations of the species concerned, so that any derogation incompatible with the directive would infringe both the prohibitions set out in Articles 12 and 13 and the rule that derogations may be granted in accordance with Article 16.

(see paras 111-112)