



EUROPEAN COMMISSION

LEGAL SERVICE

Brussels, 16 July 2021  
sj.h(2021)4754324

**TO THE PRESIDENT AND MEMBERS OF THE COURT OF JUSTICE**

**APPLICATION**

Submitted, pursuant to the second paragraph of Article 258 of the Treaty on the Functioning of the European Union, by the

**EUROPEAN COMMISSION**, represented by C [REDACTED] HERMES and M [REDACTED] NOLL-EHLERS, both members of its Legal Service, acting as agents, with an address for service at the Legal Service, Greffe contentieux, BERL 01/093, 1049 Brussels, and consenting to service by e Curia,

- Applicant

against

**IRELAND**

- Defendant

Seeking a declaration that Ireland has failed to fulfil its obligations under Article 4(4) and Article 6(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7) by failing to designate, as soon as possible and within six years at most, as special areas of conservation (SACs) 217 out of the 423 sites of Community interest (SCIs) in the Atlantic biogeographical region on its territory that had been listed by Commission Decision 2004/813/EC of 7 December 2004, as updated by Commission Decision 2008/23/EC of 12 November 2007 and Commission Decision 2009/96/EC of 12 December 2008; failing to set site-specific detailed conservation objectives for 140 out of the 423 sites in question; and by failing to establish the necessary conservation measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II of the Directive for any of the 423 sites in question.

## I. INTRODUCTION

1. This case concerns Ireland's failure to set up and manage its Natura 2000 network in line with the legal requirements set out by Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7) (hereinafter "the Directive"). The Commission considers that Ireland has failed to comply with its obligations under Art. 4(4) and 6(1) of the Directive to designate sites as special areas of conservation (SACs), to set site-specific conservation objectives and establish the necessary conservation measures with regard to a large number of sites on its territory.
2. Strict compliance with these obligations is crucial in order to achieve the objective of the Directive. Sites left without proper SAC designation, specific conservation objectives or the necessary conservation measures cannot effectively contribute to the goal of maintaining or restoring the relevant natural habitats and species at favourable conservation status (see Art. 2(2) and 3(1) of the Directive).
3. Therefore, the Commission has pursued infringement procedures against a number of Member States, which in its view fail to comply with these obligations. In the cases against Portugal and Greece, the Court found violations of Articles 4(4) and 6(1) of the Directive and clarified the content of these obligations.<sup>1</sup> This is the third case of this type to reach the Court. There are several other pending infringement procedures of the same type.<sup>2</sup>

## II. LEGISLATION

### 1. EU law

4. Art. 4(4) of the Habitats Directive provides:

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

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<sup>1</sup> Judgment of 5 September 2019, *Commission v Portugal*, C-290/18, EU:C:2019:669; judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047.

<sup>2</sup> Infringement cases 2014/2262 Germany, 2015/2003 Spain, 2015/2163 Italy, 2020/2290 Latvia, 2021/2064 Cyprus, 2021/2025 Poland.

*in the light of the threats of degradation or destruction to which those sites are exposed.”*

5. Art. 6(1) of the Habitats Directive sets out:

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

## **2. National law – Main Provisions**

6. Ireland transposed the Habitats Directive into Irish law with the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011).<sup>3</sup>
7. These Regulations contain rules on SAC designation (Part 3, section 14) and on setting of “site-specific conservation objectives (SSCOs)” as well as conservation measures (Part 4, section 26).

## **III. FACTS AND PROCEDURE**

8. The present case concerns the implementation of Articles 4(4) and 6(1) of Directive 92/43/EEC on the conservation of natural habitats and wild flora and fauna (hereafter "Habitats Directive" or "the Directive") in Ireland. The biogeographical region concerned in the present case is the Atlantic one.
9. The Commission adopted a list of 413 Sites of Community Importance (SCIs) in the Atlantic biogeographical region within the territory of Ireland on 7 December 2004.<sup>4</sup> The six-year deadline for designating these SCIs as Special Areas of Conservation (SACs) pursuant to Art. 4(4) of the Directive expired on 7 December 2010. The Commission updated this list on 12 November 2007<sup>5</sup> and 12 December 2008<sup>6</sup>

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<sup>3</sup> Available at <http://www.irishstatutebook.ie/eli/2011/si/477/made/en/print> .

<sup>4</sup> Commission Decision 2004/813/EC of 7 December 2004 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Atlantic biogeographical region (OJ L 387, 29.12.2004, p. 1).

<sup>5</sup> Commission Decision 2008/23/EC of 12 November 2007 adopting, pursuant to Council Directive 92/43/EEC, a first updated list of sites of Community importance for the Atlantic biogeographical region (OJ L 12, 15.1.2008, p. 1).

merging two sites and adding 11 sites to the list with regard to Ireland. The six-year deadline for these additional sites expired on 12 December 2014. This case concerns the 423 SCIs listed by the initial list and its updates adopted by the three aforementioned Commission decisions.

10. After expiry of the first six-year deadline, the Commission sent an EU-Pilot letter on 23 April 2013 (ref. EU-PILOT n° 4998/13/ENVI - Annex A.1) to which the Irish authorities replied on 11 September 2013 and on 29 November 2013 (Annexes A.2 and A.3).
11. On 27 February 2015, the Commission sent a letter of formal notice identifying breaches of Art. 4(4) and 6(1) of the Directive for Ireland's failure to designate SACs, to set site-specific detailed conservation objectives and to adopt the necessary conservation measures (Annex A.4).
12. The Irish authorities replied by letter of 5 May 2015 (Annex A.5) and provided progress reports on 9 December 2015 (Annex A.6), 15 January 2016 (Annex A.7) and 4 March 2016 (Annex A.8). As regards the designation of SACs, the Irish authorities indicated that they were aiming at designating all SCIs (which they referred to as "candidate SACs") through so-called "statutory instruments" as SACs until the end of 2017 or, in case landowners appealed such designations, until 2018. They also mentioned that Irish law protects sites before their designation as SACs. The Irish authorities referred to some site-specific conservation objectives (SSCOs) that existed (e.g. for 82 sites by 9 December 2015) and others that were planned until 2018. As regards the establishment of conservation measures, the Irish authorities submitted information on 973 measures in or around Natura 2000 sites, without however providing details about the measures taken.
13. On 29 April 2016, the Commission issued a reasoned opinion (Annex A.9). The Commission considered that the infringements of Art. 4(4) and 6(1) of the Directive set out in the letter of formal notice persisted for the majority of sites. The Commission identified a failure to designate sites as SACs for 401 cases, a failure to set site-specific detailed conservation objectives in 335 cases and a general failure to establish the necessary conservation measures in any of the 423 sites.

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<sup>6</sup> Commission Decision 2009/96/EC of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Atlantic biogeographical region (OJ L 43, 13.2.2009, p. 466).

14. The Irish authorities replied on 27 June 2016 (Annex A.10). Ireland presented a “SAC designation and management work programme” for the completion of SAC designation and the development of conservation measures until the end of 2018.
15. On 9 November 2018, the Commission sent an additional reasoned opinion that contained in particular a more detailed analysis of the conservation measures presented by Ireland (Annex A.11). The Commission considered that Ireland still failed to fulfil its obligation under Article 4(4) and 6(1) of the Directive by not designating 255 sites as SACs, by not setting site-specific detailed conservation objectives for 198 sites and by not establishing the necessary conservation measures for any of the 423 sites. The Commission gave Ireland two months to take the necessary measures to comply with these obligations of the Directive. This time period ended on 9 January 2019.
16. In its response of 11 January 2019 (Annex A.12), Ireland informed the Commission that it had designated 212 SACs and was planning to gradually designate the remaining 211 sites by the end of 2020. As regards the conservation objectives, Ireland referred to SSCOs in 288 sites and planned to gradually cover the remaining 135 sites by the end of 2020. Ireland also described its efforts to develop conservation measures and set out its plans to sequentially cover all sites by 2021.
17. Subsequently, Ireland provided updates on the number of sites designated as SACs and covered with conservation objectives in its letters of 26 April 2019 (Annex A.13), 2 May 2019 (Annex A.14), 11 October 2019 (Annex A.15), 12 December 2019 (Annex A.16), 14 January 2020 (Annex A.17), 14 April 2020 (Annex A.19). Based on this information and the information on conservation objectives published on the web site of National Parks and Wildlife Service<sup>7</sup>, Ireland has currently, out of the 423 sites covered by this case, designated 269 sites as SACs and set conservation objectives for 364 sites. Concerning the conservation measures, Ireland has repeatedly set out its plans for developing such measures. The Commission and the Irish authorities discussed Ireland’s lack of progress in establishing necessary conservation measures for the individual SACs at a technical meeting in July 2019.
18. On 2 July 2020, the Commission decided to bring this matter before the Court pursuant to Art. 258 TFEU.

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<sup>7</sup> Available at <https://www.npws.ie/protected-sites/conservation-management-planning/conservation-objectives>.

#### IV. LEGAL ANALYSIS

19. The Commission considers that Ireland has failed to comply with its obligations under Art. 4(4) and 6(1) of the Directive by (1) failing to designate 217 out of the 423 sites in question as SACs, by (2) failing to set site-specific detailed conservation objectives for 140 out of these 423 sites and by (3) failing to establish the necessary conservation measures, which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II of the Directive, for any of these 423 sites.

##### 1. Failure to designate SACs

20. The Commission considers that Ireland has failed to comply with its obligation under Art. 4(4) of the Directive by not designating as SACs 217 of the 423 SCIs mentioned above (see at paragraph 9).

21. Pursuant to Art. 3(2) of the Directive, Member States shall contribute to the Natura 2000 network by designating sites as SACs in accordance with Art. 4 of the Directive. Art. 4(2) of the Directive sets out that the Commission selects sites by adopting lists of SCIs based on this provision. Art. 4(4) provides: *“Once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most, (...)”* This third step in the establishment of Natura2000 sites<sup>8</sup> is crucial because it is in the SACs where *“the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the population of the species for which the site is designated”* (see Art. 1(l) of the Directive).

22. With regard to SAC designation, the Court referred to its settled case-law according to which the provisions of a directive must be implemented with unquestionable binding force and the specificity, precision and clarity required to satisfy the requirement of legal certainty.<sup>9</sup> The Court explained that this legal certainty requirement means for special protection areas (SPAs) under the Birds Directive

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<sup>8</sup> See judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, paras. 43.

<sup>9</sup> Judgment of 5 September 2019, *Commission v Portugal*, C-290/18, ECLI:EU:C:2019:669, para. 35 and case-law cited.

that the related maps demarcating the sites “must be invested with unquestionable binding force” and published in an official journal of the Member State that “ensures an irrebuttable presumption of awareness of that measure by third parties”.<sup>10</sup> The Court required the same “unquestionable binding force” for the identification of the protected species and habitats in each SPA.<sup>11</sup>

23. In the view of the Commission, analogous requirements must apply to SACs designated under the Habitats Directive since both directives pursue similar conservation objectives. Consequently, the Commission guidance on SAC designation requires a clear legal basis underpinning SAC designation, a clear indication of the name and location of the site, the species and habitat types for which the SAC is designated, the SAC boundaries (a map with binding force that does not differ from that of the underlying SCI), of the purpose of the designation and a cross-reference to the protection provisions applying to SACs.<sup>12</sup>
24. Ireland informed the Commission that it designates SACs through statutory instruments.<sup>13</sup> The Commission does not see a problem in the method of how Ireland designates SACs, but states that Ireland fails to comply with Art. 4(4) of the Directive since it has only designated part of the 423 sites in question
25. According to the established case-law of the Court, the question whether a Member State has failed to fulfil its 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.<sup>14</sup>
26. By the end of the period laid down in the additional reasoned opinion (9 January 2019), Ireland failed to designate as SACs 217 out of the 423 sites in question for which the six-year deadline of Art. 4(4) of the Directive had expired. In its reply to the additional reasoned opinion of 11 January 2019, Ireland explicitly acknowledged

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<sup>10</sup> Judgment of 27 February 2003, C-415/01, *Commission v Belgium*, EU:C:2003:118, paras. 22 and 23.

<sup>11</sup> Judgment of 14 October 2010, C-535/07, *Commission v Austria*, EU:C:2010:602, para. 64.

<sup>12</sup> Commission Note on the Designation of Special Areas of Conservation of 14 May 2012, available at [http://ec.europa.eu/environment/nature/natura2000/management/docs/commission\\_note/commission\\_note\\_EN.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/commission_note/commission_note_EN.pdf), at p. 4-6.

<sup>13</sup> Ireland’s reply to the reasoned opinion (Annex A.10), para. 13.

<sup>14</sup> Judgment of 5 September 2019, *Commission v Portugal*, C-290/18, ECLI:EU:C:2019:669, para. 36 and case-law cited.



that it had by then only “completed 212 statutory designations”.<sup>15</sup> The Commission would note that six out of the 212 designations mentioned by Ireland concerned sites other than the 423 sites covered by this case. This applies to Hempton's Turbot Bank SAC, Porcupine Bank Canyon SAC, South-East Rockall Bank, Codling SAC Fault Zone SAC, Blackwater Bank SAC and West Connacht Coast SAC. Consequently, Ireland conceded that it had at that moment designated as SAC only 206 out of the 423 sites in question, which means that 217 sites remained without SAC designation at the relevant moment in time.

27. Ireland seeks to downplay this breach of Art. 4(4) of the Directive by stressing that sites may enjoy under Irish law, prior to their designation as SAC, some degree of protection as so-called “candidate SACs”.<sup>16</sup> However, this is not relevant for assessing whether Ireland complies with its obligation under Art. 4(4) of the Directive. Granting protection to sites from the moment of their listing as SCIs in line with Art. 4(5) of the Directive does not diminish the separate obligation to designate sites as SACs in line with Art. 4(4) of the Directive.
28. For the sake of completeness, the Commission would like to inform the Court that Ireland subsequently reported additional SAC designations. By April 2020, Ireland informed the Commission that it had designated 276 sites as SACs.<sup>17</sup> The Commission would note that seven out of these 276 designations concerned sites other than the 423 sites covered by this case. This applies to the six sites mentioned in the preceding paragraph and the Rockabill to Dalkey Island SAC.<sup>18</sup> To the best of the Commission’s knowledge, there have not been any further SAC designations since April 2020 so that the total remains 269 SAC designations out of the 423 sites in question. This means that Ireland still fails to designate as SAC 154 out of the 423 sites in question – contrary to its stated objective of completing designations by

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<sup>15</sup> Ireland’s reply to the additional reasoned opinion (Annex A.12), p. 2.

<sup>16</sup> See Ireland’s reply to the reasoned opinion (Annex A.10), p. 3.

<sup>17</sup> See Emails of 12 December 2019 (Ares(2019)7651168, Annex A.16), 14 January 2020 ([Ares\(2020\)286075, Annex A.17](#)) and 14 April 2020 (Ares(2020)2353486, Annex A.19).

<sup>18</sup> In total, there are seven offshore marine SACs designated by Ireland that fall outside the scope of this case: Blackwater Bank SAC (IE0002953) designated on 07-04-2017; West Connacht Coast SAC (IE0002998) designated on 08-03-2019; Hempton’s Turbot Bank SAC (IE0002999) designated on 24-02-2016; Rockabill to Dalkey Island SAC (IE0003000) designated on 19-03-2019; Porcupine Bank Canyon SAC (IE0003001) designated on 24-02-2016; South East Rockall Bank SAC (IE0003002) designated on 24-02-2016; Codling Fault Zone SAC (IE0003015) designated on 24-02-2016.



Q4 of 2020.<sup>19</sup> The Commission provides a full list of the sites Ireland has designated as SACs (indicating date of designation) in Annex A.20 to this application. The same Annex A.20 specifies the sites for which SAC designation is still missing.

29. In sum, Ireland has failed to fulfil its obligations under Art. 4(4) of the Directive by not designating as SAC as soon as possible and within a maximum period of six years all the sites listed by Decisions 2004/813/EC of 7 December 2004, 2008/23/EC of 12 November 2007 and 2009/96/EC of 12 December 2008. This omission concerned 217 sites by the end of the period laid down in the additional reasoned opinion, i.e. 9 January 2019 (see the sites in Annex A.20 at column 4, for which there is no published SAC designation by 9 January 2019), and still concerns 154 sites when filing this court application (see the sites in Annex A.20 at column 4, for which there is no SAC designation).

## **2. Failure to set conservation objectives**

30. The Commission considers that Ireland has failed to comply with its obligation under Art. 4(4) of the Directive by not setting conservation objectives for 140 out of the 423 sites covered by this case.
31. According to the judgment of the Court in case C-849/19, the obligation to set conservation objectives for every site follows, although not explicitly stated in the Directive, from an interpretation of Art. 4(4) based on its wording, its context and in light of the objective of the Habitats Directive.<sup>20</sup> The Court stressed that establishing the “priorities” mentioned in Art. 4(4) of the Directive presupposes the prior setting of conservation objectives (at para. 46). The Court also referred to the context of recital 8, recital 10 and Article 6(3), which all mention conservation objectives and underline their central role of for site management. In the view of the Court, conservation objectives are also necessary in order to establish and implement conservation measures corresponding to the ecological requirements of the site pursuant to Art. 6(1) (paras. 47-50). Finally, the Court also pointed to the objective of the Directive (paras. 50-51) in order to conclude that setting conservation

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<sup>19</sup> Ireland’s reply to the additional reasoned opinion (Annex A.12), p. 2.

<sup>20</sup> Judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047, paras. 46-52.

objectives is a mandatory and necessary step between SAC designation and the implementation of conservation measures (para. 52).

32. In the same judgment, the Court also clarified that conservation objectives must be set within the six-year deadline of Art. 4(4) of the Directive (at para. 53). In addition, the Court held that the implementation of this obligation must be sufficiently specific, precise and clear to satisfy the requirement of legal certainty (at para. 55). The Court dismissed objectives that were not site-specific, were overly generic or did not address all individual protected features of the sites in question (see paras. 58-59).
33. Ireland indicated that it sets conservation objectives in the form of “site-specific conservation objectives (SSCOs)” and repeatedly informed the Commission of its intentions to develop SSCO for all sites in question.<sup>21</sup> The Commission does not object to the modalities of how Ireland sets conservation objectives, but states that Ireland fails to comply with Art. 4(4) of the Directive by setting conservation objectives for only part of the 423 sites covered by this case.
34. By the end of the period laid down in the additional reasoned opinion (9 January 2019), Ireland informed the Commission that “[d]etailed site-specific conservation objectives have been published for 288 SACs and Ireland will complete these for all SACs by Q4 2020”.<sup>22</sup> Ireland, thus, conceded that it had set site-specific conservation objectives for only 288 out of the 423 sites in question, which would have left 135 sites without site-specific conservation objectives. However, based on the information provided by the Irish authorities and additional information available, the Commission considers that Ireland had set SSCO for only 283<sup>23</sup> out of the relevant 423 sites, which left 140 sites without site-specific conservation objectives by 9 January 2019. The sites concerned are listed in Annex A.20 (column 5).

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<sup>21</sup> Ireland’s reply to the letter of formal notice (Annex A.5), p. 4; Ireland’s reply to the reasoned opinion (Annex A.10), paras. 26-29; Ireland’s reply to the additional reasoned opinion (Annex A.12), paras. 6-13.

<sup>22</sup> Ireland’s reply to the additional reasoned opinion (Annex A.12), paras. 7 and 12.

<sup>23</sup> The Commission considers that the difference probably results from the fact that Ireland included in its figure (288 sites) five sites not covered by the 423 sites addressed in this infringement.

35. For the sake of completeness, the Commission notes that Ireland has subsequently informed the Commission about conservation objectives for additional sites.<sup>24</sup> Based on this information and the web site of Ireland's National Parks and Wildlife Service<sup>25</sup>, Ireland has by now published SSCOs for 352 out of the 423 sites in question, which currently leaves 71 sites without site-specific conservation objectives (see Annex A.20 at column 5).
36. In conclusion, Ireland has failed to fulfil its obligations under Art. 4(4) of the Directive by not setting site-specific conservation objectives for every of the 423 SCIs in question. This omission concerned 140 sites by the end of the period laid down in the additional reasoned opinion, i.e. 9 January 2019 (see the sites in Annex A.20 at column 5, for which there was no published SSCO by 9 January 2019), and still concerns 71 sites when filing this court application (see the sites in Annex A.20 at column 5, for which there is no published SSCO).

### **3. Failure to establish conservation measures**

37. The Commission considers that Ireland has failed to comply with its obligation under Art. 6(1) of the Directive by not establishing the necessary conservation measures for any of the 423 sites covered by this case.
38. Article 6(1) of the Directive provides: *"For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites."*
39. According to consistent case-law of the Court, this provision *obliges* Member States to adopt the necessary conservation measures and limits their discretion to the means to be applied and the technical choices to be made in connection with those measures.<sup>26</sup> The Court also held that conservation measures within the meaning of

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<sup>24</sup> See Ireland's letters of 2 May 2019 (Annex A.14), 11 October 2019 (Annex A.15) and 11 February 2020 (Annex A.18).

<sup>25</sup> See the web site of the National Parks and Wildlife Service at <https://www.npws.ie/protected-sites/conservation-management-planning/conservation-objectives>

<sup>26</sup> Judgment of 10 May 2007, Case C-508/04 *Commission/Austria*, EU:C:2007:274, para. 76; judgment of 17 December 2020, *Commission v Greece*, C-849/19, EU:C:2020:1047, para. 79.

Article 6(1) of the Directive measures *must be established and implemented within the framework of SACs*.<sup>27</sup> The Court held that the *effet utile* of Art. 6(1) requires implementation through *complete, clear and precise* measures.<sup>28</sup> Although the obligation under Art. 6(1) of the Directive does not set an explicit deadline, the Commission considers that Member States must establish conservation measures within the same *six-years deadline* as foreseen in Art. 4(4) for the designation of SACs. Contextually, this follows from the fact that Art. 6(1) requires establishing conservation measures for SACs, to be designated pursuant to Art. 4(4), without setting any additional deadline.

40. The Commission considers that Ireland has failed to establish the necessary conservation measures for any of the 423 sites covered by this infringement.
41. As set out in detail in the additional reasoned opinion (on pages 14 to 30), Ireland's practice with regard to conservation measures has led to a situation in which none of the 423 sites in question have conservation measures in conformity with Art. 6(1) of the Directive because sites either have (1) no conservation measures at all, (2) conservation measures for only a subset of habitat types or species, or (3) conservation measures that are not based on site-specific conservation objectives. In addition, Ireland has generally and persistently provided for conservation measures that are not sufficiently specific and detailed.
42. The Commission will below describe all aforementioned categories of non-compliance with Art. 6(1) of the Directive.

### **3.1. Sites with no conservation measures**

43. The clear wording of Art. 6(1) of the Directive obliges Member States to establish conservation measures “[f]or special areas of conservation”. This implies that they must establish conservation measures for *all* SACs on their territory. However, Ireland has failed to do so for a large number of sites.
44. By the end of the period laid down in the additional reasoned opinion (9 January 2019), Ireland failed to establish conservation measures for 230 out of the 423 sites

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<sup>27</sup> Judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047, para. 76; judgment of 5 September 2019, *Commission v Portugal*, C-290/18, EU:C:2019:669, para. 52.

<sup>28</sup> Judgment of 5 September 2019, *Commission v Portugal*, C-290/18, EU:C:2019:669, para. 53 with further references; judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047, para. 77.

covered by this case.<sup>29</sup> This number resulted from the Commission's examination of the information Ireland provided in reply to the letter of formal notice, in particular a document listing 974 measures recorded in and around sites since 1998. This document showed that for 230 sites there were no conservation measures for any of the qualifying habitat types of Annex I or species of Annex II to the Directive significantly present in the sites. The information Ireland provided in its replies to the reasoned opinion and to the additional reasoned opinion did not change this situation. Ireland merely stated its intention to establish additional conservation measures<sup>30</sup>, in particular with regard to 53 sites hosting the priority habitat type Raised Bog.<sup>31</sup>

45. For the sake of completeness, the Commission would note that Ireland has not reported any new conservation measures to the Commission since 9 January 2019.
46. In sum, the first part of Ireland's failure to comply with Art. 6(1) of the Directive consists of its failure to establish any conservation measures whatsoever for a large part of the 423 sites covered by this infringement. This concerned 230 sites by the end of the period laid down in the additional reasoned opinion (9 January 2019) and still concerns 230 sites as of today (see the sites marked with a cross in column 6 of Annex A.20 to this application).

### **3.2. Sites with conservation measures for only a subset of habitat types or species**

47. According to the Court, a proper implementation of Art. 6(1) requires *complete* conservation measures.<sup>32</sup> Completeness means that conservation measures must cover all natural habitat types in Annex I and species in Annex II for which the Member State designated the site. Thus, the Court criticized measures as incomplete

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<sup>29</sup> The additional reasoned opinion (Annex A.11), p. 15 and Annex I, 6<sup>th</sup> column considered that there were 240 sites without any conservation measures. The Commission has corrected this figure to 230 in light of the information Ireland provided in the reply to the additional reasoned opinion.

<sup>30</sup> Ireland's reply to the additional reasoned opinion (Annex A.12), p. 2 and paras. 14-24.

<sup>31</sup> Ireland's reply to the additional reasoned opinion (Annex A.12), Annex III at p. 26.

<sup>32</sup> Judgment of 5 September 2019, *Commission v Portugal*, C-290/18, EU:C:2019:669, para. 53 with further references; judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047, para. 77.

when they did not systematically include conservation measures *for each species and habitat type* present in the relevant sites.<sup>33</sup>

48. Ireland has failed to comply with this legal requirement in a large number of its sites.
49. By the end of the period laid down in the additional reasoned opinion (9 January 2019), only 44 sites out of the 193 sites for which the information provided by Ireland indicated existing conservation measures<sup>34</sup> had conservation measures to cover each species and habitat type significantly present<sup>35</sup> in the relevant site. The remaining 149 of the aforementioned 193 sites had conservation measures for only a subset of the relevant Annex I natural habitat types and Annex II species. The Commission reached this conclusion based on a comparison of the number of qualifying features of the sites, as reported by Ireland in the relevant standard data forms, with Ireland's indication for how many of these features it had established conservation measures. Whereas the additional reasoned opinion referred in one place to 41 sites with conservation measures covering all relevant features<sup>36</sup>, the Commission reassessed the table in the Annex I of the additional reasoned opinion and corrected and increased this figure slightly to 44 such sites.
50. For the sake of completeness, the Commission would note that this problem of leaving sites with conservation objectives for only a subset of its relevant features has persisted since 9 January 2019. In its reply to the additional reasoned opinion, Ireland announced it would establish additional conservation measures based on a comprehensive identification of pressures and threats and with the view to the detailed SSCOs.<sup>37</sup> However, Ireland has to date not submitted any update on how many sites it now considers to have conservation measures that cover each species and habitat type significantly present in the sites.

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<sup>33</sup> Judgment of 5 September 2019, *Commission v Portugal*, C-290/18, EU:C:2019:669, para. 55 in fine; judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047, para. 86.

<sup>34</sup> As set out above, the information provided by Ireland indicated that for 230 sites there were no conservation measures for any of the qualifying habitat types of Annex I or species of Annex II significantly present in the sites.

<sup>35</sup> The term “significantly present” means that the relevant Natura 2000 standard data form indicates for an Annex I habitat type or Annex II species a more than non-significant (category D) presence.

<sup>36</sup> Additional reasoned opinion (Annex A.11), p. 15.

<sup>37</sup> Ireland's reply to the additional reasoned opinion (Annex A.12), paras. 14-19.

51. In its reply to the additional reasoned opinion, Ireland referred to a number of projects and initiatives that in its view would deliver site-level conservation measures for a number of sites.<sup>38</sup> This information does not allow the conclusion that Ireland reduced the number of sites with incomplete conservation measures in any meaningful way. First, most of the mentioned measures were at planning stage and not yet established. Secondly, Ireland did not provide any information on the relevant sites that would have allowed concluding that the mentioned measures would complete the set of conservation measures and, thus, cover all interest features of the sites. For, example the AranLIFE project<sup>39</sup> concerns measures targeting three natural habitat types<sup>40</sup> in three sites<sup>41</sup> that host various other interest features.<sup>42</sup>
52. In conclusion, the second part of Ireland's failure to comply with Art. 6(1) of the Directive lies in the fact that of the 193 sites, for which it did indicate existing conservation measures (and which are therefore not covered by the above section 3.1), 149 sites had conservation measures for only a subset of the relevant Annex I natural habitat types and Annex II species significantly present in the sites. This was the case by the end of the period laid down in the additional reasoned opinion (9 January 2019) and is still the case today (see the sites marked with a cross in column 7 of Annex A.20 to this application).

### **3.3. Sites with conservation measures that are not based on site-specific conservation objectives**

53. Conservation measures *must be based on site-specific conservation objectives*. This nexus is set out in the eighth recital of the Directive ("implement the necessary measures having regard to the conservation objectives pursued"). In the view of the Commission, this requirement is of crucial importance. Sites can only contribute to

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<sup>38</sup> Ireland's reply to the additional reasoned opinion (Annex A.12), at Annex III.

<sup>39</sup> See Ireland's reply to the additional reasoned opinion (Annex A.12), Annex III, p. 27-28.

<sup>40</sup> Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (important orchid sites) (6210), limestone pavement (8240) and Machair (21A0).

<sup>41</sup> Inishmaan Island SAC (site code 000212), Inishmore Island SAC (site code 000213) and Inisheer Island SAC (site code 001275).

<sup>42</sup> See e.g. for <https://www.npws.ie/protected-sites/sac/000212>, according to which the site also hosts: Reefs [1170], Perennial vegetation of stony banks [1220], Vegetated sea cliffs of the Atlantic and Baltic coasts [1230], Embryonic shifting dunes [2110], Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) [2120], European dry heaths [4030], Lowland hay meadows (*Alopecurus pratensis*, *Sanguisorba officinalis*) [6510].



the overall goal of maintaining or restoring favourable conservation status (see Article 2(2) of the Directive) if Member States, translate this larger goal into site-level conservation objectives and, then, establish the measures to achieve these objectives. The Court recently confirmed the need to base conservation measures on site-specific conservation objectives. It held that measures invoked by Greece did not comply with Art. 6(1) of the Directive because Greece had not set conservation objectives for the relevant sites so that the measures were not adapted to any existing conservation objectives.<sup>43</sup>

54. In the view of the Commission, the legal requirement of basing conservation measures on site-specific and clearly defined conservation objectives, therefore, has a substantive (objectives and measures must correlate) and sequential (objectives must not succeed the measures) component. The latter aspect is confirmed by the systematic interpretation of Art. 6(1) of the Directive. According to Art. 4(5), the obligation of Art. 6(3) applies to sites from the moment of their listing as sites of community interest (SCI). The assessments pursuant to Art. 6(3) must, based on the clear wording of this provision, take into account the conservation objectives. Therefore, Member States must set them from the date of the SCI listing.<sup>44</sup> By contrast, Member States have up to six years from the SCI listing to establish conservation measures pursuant to Art. 6(1). This confirms that the aforementioned necessary sequence of first setting conservation objectives and then the conservation measures.
55. For those few sites that have a complete set of conservation measures, Ireland has failed to comply with this legal requirement.
56. By the end of the period laid down in the additional reasoned opinion (9 January 2019), there were only 44 sites with conservation measures covering all interest features of the sites.<sup>45</sup> However, based on information available to the Commission at that moment in time, none of these 44 sites had conservation measures based on

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<sup>43</sup> Judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047, para. 85.

<sup>44</sup> In view of this systemic argument, the Commission understands the Court's statement that conservation objectives must be set no later than the six-year deadline of Art. 4(4) of the Directive (see judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047, para. 53) as an outer limit but not as a six-years grace period for Member States.

<sup>45</sup> See above sections 3.1 and 3.2: Of the 423 sites covered by this case, 230 did not have any conservation measures. Of the 193 sites with measures, 149 sites had incomplete measures so that only 44 sites had conservation measures covering all relevant interest features.

site-specific clearly defined conservation objectives – either because there were no conservation objectives for these sites<sup>46</sup> or because the conservation objectives, based on the information provided by the Irish authorities, appeared to be set only after the conservation measures<sup>47</sup>.

57. The 44 sites with conservation measures covering all interest features of the sites, but which did not have conservation measures based on site-specific clearly defined conservation objectives are listed in Annex A.20 to this application (see the sites highlighted in yellow and marked with an “\*”, as set out in Fn. 3 to that Annex).
58. For the sake of clarity, the Commission would add that the very same defect of not basing conservation measures on conservation objectives applied beyond the aforementioned 44 sites to a large number of other sites. Thus, many of the 149 sites with incomplete conservation measures also suffer from the defect that measures were not based on conservation objectives – either because conservation objectives did not exist or because the conservation measures predate the conservation objectives. For only 7 of the 149 sites with incomplete conservation measures, the information provided by the Irish authorities allowed concluding that conservation objectives had been published prior to the indicated date of the establishment of conservation measures.<sup>48</sup>
59. In sum, the third part of Ireland’s failure to comply with Art. 6(1) of the Directive are the many sites, in which conservation measures are not based on site-specific clearly defined conservation objectives – either because of the absence of conservation objectives or because such objectives were only set after the establishment of the conservation measures. This defect concerns all 44 sites that do not yet suffer from the defects identified in sections 3.1 and 3.2 above, i.e. which (a) have conservation measures that (b) cover all interest features. Besides, this defect also affects the vast majority of sites (142) that already suffer from the defect identified in section 3.2, i.e. that have incomplete conservation measures. This means that all 423 sites that are subject to this infringement procedure suffer from at

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<sup>46</sup> Additional reasoned opinion (Annex A.11), p. 17, Fn. 34 referring to its Annex I (4<sup>th</sup> column).

<sup>47</sup> Additional reasoned opinion (Annex A.11), p. 17, Fn. 35 referring to its Annex I (4<sup>th</sup> column).

<sup>48</sup> These are IE0000328 (Slyne Head Islands SAC); IE0000710 (Raven Point Nature Reserve SAC); IE0001482 (Clew Bay Complex SAC); IE0001957 (Boyne Coast and Estuary SAC); IE0002162 (River Barrow and River Nore SAC); IE0002165 (Lower River Shannon SAC); IE0002170 (Blackwater River (Cork/Waterford) SAC).

least one of the defects identified in sections 3.1, 3.2 or 3.3, as set out in detail in Annex A.20 (columns 6-8).

**3.4. Additionally, there is a persistent and systematic practice to establish conservation measures that are not sufficiently precise and fail to address all significant pressures and threats**

60. The Court held that Art. 6(1) requires *clear and precise* conservation measures.<sup>49</sup> According to the Court, the accuracy of the implementation of Art. 6(1) is of particular importance in this area where Union law, as highlighted by Recitals 4 and 11 of the Habitats Directive, entrusts the management of the common natural heritage of the Union to the Member States for their respective territories.<sup>50</sup> Therefore, the Court considered conservation measures insufficient if they were generic and programmatic or required further implementing measures to become effective.<sup>51</sup> In the view of the Commission, the requirement in Art. 6(1) that the conservation measures “correspond to the ecological requirements” entails a second qualitative requirement for conservation measures, i.e. that they address *all main pressures or threats* likely to affect the habitat types and species on the site.<sup>52</sup>
61. The Commission considers that Ireland has generally and persistently failed to comply with this legal requirement under Art. 6(1) of the Directive. According to established case-law of the Court, the Commission can under Article 258 TFEU seek a finding that provisions of a directive have not been complied with because authorities of a Member State have adopted a general practice contrary thereto, which particular situations illustrate where appropriate.<sup>53</sup>
62. By the end of the period laid down in the additional reasoned opinion (9 January 2019), the Commission considered, based on a qualitative assessment of a wide

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<sup>49</sup> Judgment of 5 September 2019, *Commission v Portugal*, C-290/18, EU:C:2019:669, para. 53 with further references; judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047, para. 77.

<sup>50</sup> Judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047, para. 78 with further references.

<sup>51</sup> Judgment of 5 September 2019, *Commission v Portugal*, C-290/18, EU:C:2019:669, para. 55; judgment of 17 December 2020, *Commission v Greece*, C-849/19, ECLI:EU:C:2020:1047, para. 82.

<sup>52</sup> See Commission Note on Establishing Conservation Measures for Natura 2000 Sites of September 2013, available at [http://ec.europa.eu/environment/nature/natura2000/management/docs/commission\\_note/comNote%20conservation%20measures\\_EN.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/commission_note/comNote%20conservation%20measures_EN.pdf), p. 7.

<sup>53</sup> Judgment of 26 April 2005, C-494/01, *Commission v Ireland*, ECLI:EU:C:2005:250, para. 27.

range of Irish sites with existing conservation measures, that conservation measures in Irish sites were systematically and persistently of an insufficient quality because they were not sufficiently precise and detailed or failed to address all significant pressures and threats. The Commission illustrated this systemic defect in its additional reasoned opinion with a detailed assessment that focussed on sites protecting two important priority habitat types (coastal lagoons and blanket bogs) and one particularly endangered species (the freshwater pearl mussel).<sup>54</sup>

63. For the protection of the priority habitat type coastal lagoons (code 1150), Ireland designated 25 sites but reported to the Commission only the following conservation measures in three of these sites: "silting up" and "submersion" for the Tacumshin Lake SAC (IE0000709), "management of water levels" for the Termon Strand SAC (IE0001195) and a programme to reduce nutrient inputs, manage water levels and prevent excessive inundation of surrounding lands for the Lady's Island Lake SAC (IE0000704). These conservation measures are not sufficiently specific since they lack quantitative terms and the indication of responsible actors or timelines for action. Furthermore, Annex II to the additional reasoned opinion points out in a detailed comparison that the aforementioned conservation measures fail to address the key pressures and threats affecting this habitat that Ireland had identified itself in its standard data forms. Thus, the standard data forms for the Tacumshin Lake SAC (IE0000709) and for the Termon Strand SAC (IE0001195) list as major pressures inter alia "diffuse pollution to surface waters due to agricultural and forestry activities" whereas the indicated conservation measures of "silting up" and "submersion" as well as "management of water levels" do not address this pressure.<sup>55</sup> In the same vein, the aforementioned conservation measures for the coastal lagoon in the Lady's Island Lake SAC (IE0000704) fail to address the pressure from inter alia "discharges, pollution to surface waters, disposal of household / recreational facility waste".
64. As regards the priority habitat type blanket bog (code 7130), Ireland indicated certain measures for 13 out of the 50 sites it had designated for this interest feature. This list included items, such as "mechanical removal of peat", "peat extraction", "burning", "forestry clearance", "grazing", "general forestry management",

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<sup>54</sup> Additional reasoned opinion (Annex A.11), p. 17-29 and its Annexes II, III and IV.

<sup>55</sup> See additional reasoned opinion (Annex A.11), p. 17-21 and its Annex II, p. 25 and 26 (compare columns 7 and 8 in the rows addressing these two sites).

"management of water levels", "other leisure and tourism impacts", "hunting", "removal of undergrowth", "removal/control of invasive/non-native or problematic plant species", "cessation/reduction/control of motorised vehicles" or "fencing". The aforementioned items are extremely generic and in fact include a mixture of measures and impacts influencing conservation status. They lack proper quantitative specification of planned conservation measures with any clear determination of actors and timelines. In addition, the comparison in Annex III to the additional reasoned opinion sets out in detail to what extent the conservation measures for these 13 sites fail to address certain major pressures affecting this habitat (as identified by Ireland in its standard data forms for the relevant sites).<sup>56</sup> According to Ireland's own assessment in its 2013 report under Art. 17 of the Directive, the Irish measures focussed on the threat of overgrazing while not sufficiently addressing other important pressures and threats to blanket bog, such as windfarm and other infrastructural developments, peat cutting, erosion, burning or drainage.<sup>57</sup>

65. For the protection of the species *Margaritifera margaritifera* (freshwater pearl mussel, code 1029), Ireland designated 19 sites but reported to the Commission only conservation measures in three of these sites (Glanmore Bog SAC IE001879, Newport River SAC IE002144 and Leannan River SAC IE002176). Ireland referred in a very generic way to "discharges", "disposal of household waste", "water pollution" or "irrigation" without specifying conservation measures with quantitative terms, responsible actors or timelines. Furthermore, Annex IV to the additional reasoned opinion sets out in detail that the conservation measures Ireland reported for these three sites fail to address key pressures and threats for this habitat (as identified by Ireland in its standard data forms for these sites). Thus, the measures for the Glanmore Bog SAC IE001879, "disposal of household waste 421 – discharges (E03)" do not address the pressures, identified by Ireland itself, resulting from "diffuse pollution to surface waters due to agricultural and forestry activities", "surface water abstraction for public water supply", "burning down" or "forest planting on open ground". Similar gaps exist with regard to the conservation measures identified for the Newport River SAC IE002144 and the Leannan River

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<sup>56</sup> Additional reasoned opinion (Annex A.11), p. 21-24 and its Annex III, p. 29-36 (compare columns 7 and 8 in the rows of the 13 sites for which Ireland indicated conservation measures).

<sup>57</sup> See NPWS (2013), The Status of Protected EU Habitats and Species in Ireland, Overview Volume 1, available at <https://www.npws.ie/sites/default/files/publications/pdf/Art17-Vol1-web.pdf>, p. 53.

SAC IE002176<sup>58</sup> The Commission would note that the pressures for the freshwater pearl mussel are often indirect, arising within the catchments of the occupied rivers, and concern pollution and hydrological changes. The most significant ones result both from diffuse sources (e.g. agriculture, including overgrazing, or forestry, in particular the drainage of the catchment areas) and from point sources (e.g. quarries, sand and gravel pits, wastewater treatment plants).

66. For the sake of completeness and as demonstrated below, the Commission notes that the aforementioned systemic deficits of the conservation measures established for sites hosting these interest features persisted after the relevant moment in time (9 January 2019).
67. As regards conservation measures for the protection of coastal lagoons, Ireland's report of 2019 pursuant to Art. 17 of the Directive confirmed that there is a wide range of pressures on this habitat type, including eutrophication, modification of hydrological flow, drainage, erosion and silting up, accumulation of seaweed, and sedimentation from peat related to turf cutting and/or forestry.<sup>59</sup> The Commission considers that the few conservation measures that Ireland reported for this habitat type still fails to address this range of pressures and threats. The insufficiency of the Irish measures is confirmed by the fact that the Art. 17 report considers the overall status for coastal lagoons as "bad" (unchanged since 2013) with the overall trend changing from "stable" (in 2013) to now "deteriorating" (2019).
68. Concerning conservation measures for the protection of blanket bog, Ireland's reply to the additional reasoned opinion mentions certain restoration initiatives in four sites designated for blanket bogs.<sup>60</sup> However, Ireland does not provide any details about the conservation measures taken to rebut the Commission's conclusion in the additional reasoned opinion that the Irish measures lack clarity and precision. Ireland mentioned in its reply an application for a LIFE project (approved by the Commission in February 2020, LIFE18 IPE/IE/000002) for 24 blanket bog sites in the north and west of Ireland. However, Ireland acknowledged that it still needed to

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<sup>58</sup> See additional reasoned opinion (Annex A.11), p. 24-29 and its Annex IV, p. 37-40 (compare columns 7 and 8 in the rows for the three relevant sites).

<sup>59</sup> See NPWS (2019), The Status of EU Protected Habitats and Species in Ireland, Volume 1: Summary Overview, available at [https://www.npws.ie/sites/default/files/publications/pdf/NPWS\\_2019\\_Vol1\\_Summary\\_Article17.pdf](https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2019_Vol1_Summary_Article17.pdf), p. 13.

<sup>60</sup> Ireland's reply to the additional reasoned opinion (Annex A.12), Annex III, p. 32-33.

identify and establish the necessary conservation measures, including the development of restoration plans, for these 24 sites – and well as for the other 26 sites with significant presence of blanket bogs. Furthermore, Ireland’s Art. 17 report of 2019 confirms that the pressures on blanket bogs do not only include overgrazing, but also burning, afforestation, peat extraction, agricultural activities causing nitrogen deposition, erosion, drainage and wind farm construction.<sup>61</sup> The Commission considers these are still not sufficiently addressed by precise conservation measures, particularly in light of the conservation objective to restore the blanket bog habitat to favourable condition in each of the sites. The insufficiency of the Irish conservation measures is illustrated by the fact that Ireland’s most recent conservation status assessment of 2019 sets the overall status of blanket bog as “bad and deteriorating” (unchanged since the previous assessment in 2013).<sup>62</sup>

69. As regards conservation measures for the freshwater pearl mussel, Ireland’s reply to the additional reasoned opinion again referred (as in the reply to the reasoned opinion) to the KerryLIFE project. Ireland did not rebut the Commission’s assessment in the additional reasoned opinion that the measures supported by this project are insufficient, inter alia because they failed to address pressures resulting from forestry.<sup>63</sup> Ireland also referred to a European Innovation Partnership (EIP) project for seven sites protecting the freshwater pearl mussel.<sup>64</sup> However, Ireland did not provide information on how the related measures respond to each of the key pressures and threats the species is facing in these seven sites, especially in relation to pressures from forestry and the risk that this poses in particular to flow rates in the catchment areas. Ireland’s 2019 report under Art. 17 of the Directive confirms that pressures on the species come from a wide variety of sources, including pollution from urban wastewater, development activities, farming and forestry, and

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<sup>61</sup> See NPWS (2019), The Status of EU Protected Habitats and Species in Ireland, Volume 1: Summary Overview, available at [https://www.npws.ie/sites/default/files/publications/pdf/NPWS\\_2019\\_Vol1\\_Summary\\_Article17.pdf](https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2019_Vol1_Summary_Article17.pdf), p. 33.

<sup>62</sup> See NPWS (2019), The Status of EU Protected Habitats and Species in Ireland, Volume 1: Summary Overview, available at [https://www.npws.ie/sites/default/files/publications/pdf/NPWS\\_2019\\_Vol1\\_Summary\\_Article17.pdf](https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2019_Vol1_Summary_Article17.pdf), p. 67.

<sup>63</sup> Additional reasoned opinion (Annex A.11), p. 28.

<sup>64</sup> Ireland’s reply to the additional reasoned opinion (Annex A.12), Annex III, p. 34-37.



are often quite removed from the species' habitat. The report also indicates that the Irish conservation measures have not been sufficient since its overall status remains "bad and deteriorating" (unchanged since the previous assessment in 2013).<sup>65</sup>

70. In sum, this qualitative assessment of conservation measures for the coastal lagoons and blanket bogs habitat types and for the freshwater pearl mussel species – for which the additional reasoned opinion provides even more details<sup>66</sup> – illustrates a general and persistent breach and, thus, an additional shortcoming of why Ireland's practice with regard to conservation measures fails to comply with Art. 6(1) of the Directive. Ireland adopted a general and persistent practice of establishing conservation measures that are not sufficiently precise and detailed and fail to address all significant pressures and threats. As described above, this pattern of insufficient conservation measures persisted beyond the end of the period laid down in the additional reasoned opinion (9 January 2019).
71. In the view of the Commission, the examined situations are representative and, therefore, indicative of a general and persistent breach of Art. 6(1) of the Directive by Ireland for a number of reasons. First, the Commission based its analysis of conservation measures on a large number of sites. The additional reasoned opinion took into account sites designated for the three interest features in question. Secondly, the Commission chose to focus on these features because they are, based on the Article 17 reports from Ireland, in unfavourable/bad conservation status and represent habitat types and a species for the conservation of which the SAC network in Ireland is critical. Ireland has a particular responsibility within the Union for the conservation of both blanket bogs and freshwater pearl mussel as it hosts a major part of the resource of both features. Thirdly, the geographical distribution of the examined sites very well represents the geographical configuration of the SCI/SAC network in Ireland (see attached maps in Annexes A.21 and A.22), for which the western part of the country is especially important.

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<sup>65</sup> See NPWS (2019), The Status of EU Protected Habitats and Species in Ireland, Volume 1: Summary Overview, available at [https://www.npws.ie/sites/default/files/publications/pdf/NPWS\\_2019\\_Vol1\\_Summary\\_Article17.pdf](https://www.npws.ie/sites/default/files/publications/pdf/NPWS_2019_Vol1_Summary_Article17.pdf), p. 51.

<sup>66</sup> See additional reasoned opinion (Annex A.11), p. 17-29 and its Annexes II, III and IV.

### 3.5. Conclusion on conservation measures

72. Ireland has failed to establish the necessary conservation measures that correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II pursuant to Art. 6(1) of the Directive for the 423 sites covered by this infringement. Ireland's practice with regard to conservation measures has led to a situation in which none of the 423 sites covered by this infringement had (by 9 January 2019) conservation measures corresponding to the legal requirements of Art. 6(1) of the Directive on the following grounds. First, 230 out of these 423 sites had no conservation measures at all (see section 3.1 above). Secondly, out of the remaining 193 sites, i.e. those with at least some conservation measures, 149 sites had conservation measures for only a subset of the relevant Annex I natural habitat types and Annex II species significantly present in the sites (see section 3.2 above). Thirdly, out of the remaining 44 sites, i.e. those with a complete set of conservation measures, none had conservation measures that were based on site-specific clearly defined conservation objectives – either because of the absence of conservation objectives or because such objectives were only set after the establishment of the conservation measures (see section 3.3 above). This defect also concerned 142 out of the 149 sites that suffered already from the defect set out in section 3.2 above. Fourth, in addition, Ireland has also generally and persistently failed to comply with Art. 6(1) of the Directive by establishing conservation measures that are not sufficiently precise and detailed and fail to address all significant pressures and threats (see section 3.4 above). The affected sites are listed in Annex A.20 (columns 6 to 9) which also provides, for information, an update on the development after 9 January 2019.

## V. CONCLUSION

73. Accordingly, the Commission requests the Court to:

- (1) declare that Ireland has failed to fulfil its obligations under Article 4(4) and Article 6(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7) by
  - failing to designate, as soon as possible and within six years at most, as special areas of conservation 217 sites (see the sites in Annex A.20 at column 4, for which there is no published designation by 9 January 2019) out of the

423 sites of Community interest in the Atlantic biogeographical region on its territory that had been listed by Commission Decision 2004/813/EC of 7 December 2004, as updated by Commission Decision 2008/23/EC of 12 November 2007 and Commission Decision 2009/96/EC of 12 December 2008;

- failing to set site-specific detailed conservation objectives for 140 sites (see the sites in Annex A.20 at column 5, for which there was no published SSCO by 9 January 2019) out of the 423 sites listed in the aforementioned Commission Decisions; and
- failing to establish the necessary conservation measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II for any (see Annex A.20 at columns 6 to 9) of the 423 sites listed in the aforementioned Commission Decisions.

(2) order Ireland to pay the costs of this action.

**C** [REDACTED] **HERMES**

**M** [REDACTED] **NOLL-EHLERS**

## LIST OF ANNEXES

<b>Annex</b>	<b>Description of the Annex</b>	<b>Pages</b>	<b>First location in the Application</b>
<b>A.1</b>	EU-Pilot letter of 23 April 2013 (ref. EU-PILOT n° 4998/13/ENVI)	28-32	Paragraph 10, page 4
<b>A.2</b>	Reply of the Irish authorities to EU-pilot letter on 11 September 2013	33-60	Paragraph 10, page 4
<b>A.3</b>	Reply of the Irish authorities to EU-pilot letter on 29 November 2013	61-74	Paragraph 10, page 4
<b>A.4</b>	Letter of formal notice of 27 February 2015	75-88	Paragraph 11, page 4
<b>A.5</b>	Reply of the Irish authorities to the Letter of formal notice on 5 May 2019	89-119	Paragraph 12, page 4
<b>A.6</b>	Progress report of 9 December 2015	120-129	Paragraph 12, page 4
<b>A.7</b>	Progress report of 15 January 2016	130-135	Paragraph 12, page 4
<b>A.8</b>	Progress report of 4 March 2016	136-143	Paragraph 12, page 4
<b>A.9</b>	Reasoned Opinion of 29 April 2016	144-168	Paragraph 13, page 4
<b>A.10</b>	Reply of the Irish authorities to the Reasoned Opinion on 27 June 2016	169-198	Paragraph 14, page 5
<b>A.11</b>	Additional reasoned opinion of 9 November 2018	199-272	Paragraph 15, page 5
<b>A.12</b>	Reply of the Irish authorities to the Additional reasoned opinion on 11 January 2019	273-310	Paragraph 16, page 5
<b>A.13</b>	Letter of the Irish authorities by which they provided updates on the number of sites designated as SACs and covered with conservation objectives on 26 April 2019	311-320	Paragraph 17, page 5

<b>A.14</b>	Letter of the Irish authorities by which they provided updates on the number of sites designated as SACs and covered with conservation objectives on 2 May 2019	321-329	Paragraph 17, page 5
<b>A.15</b>	Letter of the Irish authorities by which they provided updates on the number of sites designated as SACs and covered with conservation objectives on 11 October 2019	330-338	Paragraph 17, page 5
<b>A.16</b>	Letter of the Irish authorities by which they provided updates on the number of sites designated as SACs and covered with conservation objectives on 12 December 2019	339-345	Paragraph 17, page 5
<b>A.17</b>	Letter of the Irish authorities by which they provided updates on the number of sites designated as SACs and covered with conservation objectives on 14 January 2020	346-352	Paragraph 17, page 5
<b>A.18</b>	Letter of the Irish authorities by which they provided updates on the number of sites designated as SACs and covered with conservation objectives on 11 February 2020	353-362	Footnote 24, page 11
<b>A.19</b>	Letter of the Irish authorities by which they provided updates on the number of sites designated as SACs and covered with conservation objectives on 14 April 2020	363-370	Paragraph 17, page 5
<b>A.20</b>	List of 423 sites and defects under Art 4(4) and 6(1) Habitats Directive	371—441	Paragraph 28, page 9
<b>A.21</b>	Map Blanket Bog Lagoon & Pearl Mussel sites	442-443	Paragraph 71, page 23
<b>A.22</b>	Map of SACs Ireland	444-445	Paragraph 71, page 23