

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

CASE C-444/21

EUROPEAN COMMISSION

V

IRELAND

DEFENCE

Pursuant to Article 285 of the Treaty on the Functioning of the European Union and Article 124 of the Rules of Procedure of the Court of Justice, Ireland represented by M■■■■ BROWNE, Chief State Solicitor, Osmond House, Little Ship Street, Dublin 8 acting as Agent, with an address for service at the Embassy of Ireland, 28 Route d’Arlon, Luxembourg and who consents to service by e-Curia, assisted by E■■■■ Barrington S.C and A■■■■ Carroll B.L. both of the Bar of Ireland, submits the following Defence in response to the Application of the European Commission to the Court of Justice dated 20 July 2021.

I. Introduction

1. By this Defence, Ireland responds to the Application made by the European Commission (*the Commission*) pursuant to Article 258 TFEU, 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 (*the Habitats Directive*).
2. By way of summary, Ireland submits first, that, having regard to the specific protection provided for all sites of Community interest in national law in a manner which is consistent with legal certainty, there has been no breach of Article 4(4) of the Directive.
3. Second, Ireland submits that no material breach of Article 4(4) of the Directive arises in respect of the publication of site-specific conservation objectives where they have been identified and published for 371 of the 423 sites which are the subject matter of this application and where the remaining site-specific conservation objectives will be published by the end of 2021.
4. Third, Ireland submits that it has implemented a comprehensive programme of conservation measures which has the purpose of ensuring the protection of habitats and species which are qualifying interests for the 423 sites the subject matter of this Application in a manner consistent with the requirements of Article 6(1) of the Habitats Directive. Ireland continues to develop and implement the necessary conservation measures for all the sites which fall within the scope of this Application and to further look to improve the mechanisms whereby relevant data in respect of those conservation measures is collated and published.

II. Background to the Application

5. On 7 December 2004, the Commission adopted a list of 413 Sites of Community Importance (*SCIs*) in the Atlantic biogeographical region of Ireland. That list was

updated on 12 November 2007 and 12 December 2008, resulting in the list comprising 423 sites which are the subject matter of these proceedings.

6. On 23 April 2013, the Commission sent an EU Pilot Letter to Ireland, in respect of which responses issued on 11 September 2013 and 29 November 2013.
7. A letter of formal notice issued to Ireland on 27 February 2015, in which it was alleged that Ireland had breached certain obligations under Article 4(4) and Article 6(1) of the Habitats Directive by failing to designate Special Areas of Conservation ('SACs'), to set site-specific detailed conservation objectives and to adopt necessary conservation measures.
8. A response to that notice was provided by Ireland on 5 May 2015, with progress reports subsequently being sent on 9 December 2015, 15 January 2016 and 4 March 2016. Those responses provided a detailed explanation of the steps taken by Ireland to comply with the obligations arising from Article 4(4) and Article 6(1) of the Habitats Directive.
9. On 29 April 2016, the Commission issued a Reasoned Opinion in which it maintained that Ireland had failed to fulfil its obligations under the Habitats Directive in respect of the designation of 401 SACs, the establishment of site-specific conservation objectives in 335 cases and a failure to establish necessary conservation measures in 423 sites. Ireland was invited to take the necessary measures identified in that Opinion within a two-month period. A response to the Reasoned Opinion was provided on 27 June 2016, in which Ireland explained the measures being taken to comply with its obligations under the Habitats Directive.
10. An additional Reasoned Opinion issued on 9 November 2018 in which it was maintained that Ireland had failed to designate 225 sites as SACs, had not set site specific detailed conservation objectives for 198 sites and had not established the necessary conservation measures for 423 sites. Ireland was given a period of two months to comply with the obligations identified in the additional Reasoned Opinion.
11. A response issued on 11 January 2019 in which Ireland explained the steps it had taken to comply with the obligations arising under the Habitats Directive and its intention to

implement further measures in the course of 2020 and 2021. Further updates were provided to the Commission in letters of 26 April 2019, 2 May 2019, 11 October 2019, 12 December 2019, 14 January 2020 and 14 April 2020. A technical meeting was held between the Commission and Ireland in July 2019.

12. According to the present Application, the Commission maintains that Ireland has failed to fulfil obligations under Article 4(4) of the Habitats Directive by not designating 217 sites by 9 January 2019, though it is accepted by the Commission that by the time of the filing of this Application that number had reduced to 154 sites.
13. The Commission also maintains that Ireland has failed to fulfil obligations under Article 4(4) of the Habitats Directive by not setting site specific conservation objectives for 140 sites by 9 January 2021. It is accepted that, at the time of filing this Application, the allegation concerns 71 sites.
14. The Commission maintains that Ireland has failed to comply with the obligations arising from Article 6(1) of the Habitats Directive by failing to establish the necessary conservation measures that correspond to the ecological requirements of the natural habitat types in Annex 1 and the species in Annex II. The Commission takes the position that 230 of the 423 sites had no conservation measures at all. Of the remaining 193 sites, 149 sites have conservation measures for only a subset of the relevant Annex I natural habitat types and Annex II species significantly present in the sites. The Commission also states that of the 44 sites which have a complete set of conservation measures, those measures are not based on site specific clearly defined conservation objectives.
15. Finally, it is alleged that Ireland has failed to comply with Article 6(1) of the Habitats Directive by establishing conservation measures that are not sufficiently precise and detailed and fail to address all significant pressures and threats.

III. Protection of European Sites in Irish Law

16. In order to explain the context for the manner in which Ireland has complied with its obligations, it is necessary first to explain the legal framework in Irish domestic law by

which the designation of SACs occurs. This is now carried out in accordance with the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I 477 of 2011) (*‘the 2011 Regulations’*)¹. The process of identifying candidate sites of Community Importance, their notification and ultimate designation was originally commenced under the European Communities (Birds and Natural Habitats) Regulations 1997 (S.I 94 of 1997) (*‘the 1997 Regulations’*)². The 1997 Regulations were repealed and replaced by the 2011 Regulations.

17. It is noted that the Commission does not take issue with the procedures by which SACs are designated.

18. The 2011 Regulations establish a process whereby the Minister for Housing, Local Government and Heritage (*‘the Minister’*) identifies candidate sites of Community Importance which may ultimately be designated as a special area of conservation. That process was commenced under the 1997 Regulations, but now occurs under the 2011 Regulations. The notification procedure, which is described in more detail below, was originally commenced under Regulation 4 of the 1997 Regulations.

19. Candidate sites of Community Importance are defined by Regulation 2 of the 2011 Regulations as

(a) A site

- (i) in relation to which the Minister has given notice pursuant to Regulations under the Act of 1972 that he or she considers the site may be eligible for identification as a site of Community importance pursuant to Article 4 of the Habitats Directive, which notice may be amended in accordance with such Regulations under the Act of 1972,
- (ii) that is included in a list transmitted to the European Commission in accordance with Article 4(1) of the Habitats Directive, or

¹ Appendix B.1

² Appendix B.2

- (iii) that is added in accordance with Article 5 of the Habitats Directive, to the list transmitted to the European Commission pursuant to Article 4(1) of the Habitats Directive,

but only until the adoption in respect of the site of a decision by the European Commission in accordance with the procedure laid down in Article 21 of the Habitats Directive for the purposes of the third paragraph of Article 4(2) of that Directive, or

(b) a site –

- (i) which is subject to a consultation procedure in accordance with Article 5(1) of the Habitats Directive, or
- (ii) in relation to which a Council decision is pending in accordance with Article 5(3) of the Habitats Directive;

20. A candidate site of Community Importance is one of 6 types of site which come within the definition of European Site, in respect of which protection is granted under national law. European Site is defined by Regulation 2 of the 2011 Regulations as:

- (a) A candidate site of Community importance,
- (b) A site of Community importance
- (c) A candidate special area of conservation
- (d) A special area of conservation
- (e) A candidate special protection area, or
- (f) A special protection area

21. Regulation 10 of the 2011 Regulation requires the Minister to prepare a list of sites for the purpose of identifying sites for consideration as sites of Community Importance, indicating in respect of each site the natural habitat types or types in Annex I to the Habitats Directive and the species in Annex II to the Habitats Directive that are native to the State which the site hosts. This is known as a list of candidate sites of Community Importance³. The Minister is thereafter required to transmit the list of candidate sites of

³ Regulation 10(3) of the European Communities (Birds and Natural Habitats) Regulations 2011

Community Importance to the Commission⁴. The Minister is also required to compile information on each candidate site of Community Importance and to publish that information⁵.

22. Regulation 12 of the 2011 Regulations requires to the Minister to cause a copy of (i) the particulars of the candidate sites of Community Importance, or any modifications thereof and, (ii) the particulars of any site subject to a consultation procedure in accordance with Article 5(1) of the Habitats Directive to be sent to the bodies which are listed at sub-regulation (i) – (xii) and permits the Minister to engage in consultation with those bodies.

23. In addition, the Minister is required to notify every owner and occupier of any land included in a candidate site of Community Importance, or in any modification thereof, of the inclusion of the land in the candidate site of Community Importance and that notification must include a copy of the information compiled pursuant to Regulation 11 relating to that site, any notice of a Ministerial Direction relating to activities requiring consent under Regulation 28(1) or specified activities under Regulation 29(1) relating to that site and the details of the procedures by which a person may object⁶. In addition, the Minister is required to give public notice of the inclusion of land in a candidate site of Community Importance⁷.

24. Regulation 13 of the 2011 Regulations establishes a process by which persons on whom notices have been served or any other person having an interest in the land may lodge an objection to the inclusion of the site or a part thereof in the list of candidate sites of Community Importance⁸.

25. The Minister may, following consideration of the objections submitted and having regard to the criteria contained in Regulation 10 and any submissions made under Regulation 21, modify the list of candidate sites of Community Importance and is

⁴ Regulation 10(7) of the European Communities (Birds and Natural Habitats) Regulations 2011

⁵ Regulation 11 of the European Communities (Birds and Natural Habitats) Regulations 2011

⁶ Regulation 12(2) of the European Communities (Birds and Natural Habitats) Regulations 2011

⁷ Regulation 12(3) of the European Communities (Birds and Natural Habitats) Regulations 2011

⁸ Regulation 13(1) of the European Communities (Birds and Natural Habitats) Regulations 2011

thereafter required to transmit it to the European Commission in accordance with Article 4(1) of the Habitats Directive⁹.

26. The 2011 Regulations apply to those candidate sites of Community Importance transmitted to the Commission pursuant to Article 4(1) of the Habitats Directive prior to the commencement of the Regulations¹⁰. However, the Regulations do not affect the validity of the list of candidate sites of Community Importance transmitted to the Commission prior to the commencement of the Regulations¹¹.

27. The designation of a special area of conservation occurs by way of Regulation 14 of the 2011 Regulations, which states:

14(1) Following –

- (a) Adoption of a site by the European Commission in accordance with the procedure laid down in Article 4(2) of the Habitats Directive
- (b) Adoption of a site following the procedure under Article 5(1) of the Habitats Directive, or
- (c) Adoption of a site pursuant to a decision by the council under Article 5(3) of the Habitats Directive to accept a proposal of the European Commission made under Article 5(2) of the Habitats Directive,

The Minister shall designate the site as a special area of conservation.

28. Following the designation of a site as a special area of conservation, notice is published in *Iris Oifigiúil*, a national newspaper and on the internet¹².

29. However, it is important to understand that for the purpose of compliance with Article 4(4) of the Habitats Directive the designation of SACs occurred at the time at which a site is identified as a candidate site of Community importance, either under the 1997 Regulations or the 2011 Regulations. At that point, as a matter of national law, the site

⁹ Regulation 13(5) of the European Communities (Birds and Natural Habitats) Regulations 2011

¹⁰ Regulation 13(6) of the European Communities (Birds and Natural Habitats) Regulations 2011

¹¹ Regulation 13(7) of the European Communities (Birds and Natural Habitats) Regulations 2011

¹² Regulation 14(4) of the European Communities (Birds and Natural Habitats) Regulations 2011

is granted protection equivalent to that which it would be granted following the completion of the formal designation as a special area of conservation. As a matter of national law, it is the identification of a site as a European Site, rather than the final designation as a special area of conservation, which grants the protections required by the Habitats Directive.

IV. Commission's allegations of a failure to comply with the obligations under Article 4(4) of the Habitats Directive in respect of the designation of sites as special areas of conservation

(a) Legal Framework

30. The first allegation made by the Commission is that Ireland has failed to comply with Article 4(4) of the Habitats Directive by not designating 217 of the 423 SCIs identified in the Application.
31. It can be recalled that the overall purpose of Article 6 of the Habitats Directive is to place obligations on Member States to maintain, or restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of interest for the European Union, with a view to achieving the broader aim of the Habitats Directive to ensure a high level of environmental protection (see, for example Case C-441/17 *Commission v. Poland* at §106 and Case C-461/17 *Holohan* at §30 and case law cited).
32. Article 4(4) of the Habitats Directive requires a Member State, once a site of Community Importance has been adopted in accordance with the procedure laid down in Article 4(2), to designate that site as a special area of conservation as soon as possible and within six years at most (see, for example, Case C-290/18 *Commission v. Portugal* at §34). That obligation is linked to the requirement in Article 3(2) of the Habitats Directive that Member States contribute to the establishment of the Natura2000 network (see, for example, Case C-669/16 *Commission v. United Kingdom* at §59).
33. The provisions of a Directive must be implemented with indisputable binding force, with the specificity, precision and clarity required in order to satisfy the requirement of legal certainty (see, for example, Case C-415/01 *Commission v. Belgium* at §21 and

Case C-290/18 *Commission v. Portugal* at §35 and the case law cited). In addition, the Court has held, in the context of the designation of SPAs, that the principle of legal certainty requires appropriate publicity for the national measures adopted pursuant to Community rules so that persons concerned by such measures are able to ascertain the scope of the rights and obligations in the particular area governed by Community Law (see Case C-415/01 *Commission v. Belgium* at §21 and case law cited).

34. At §23 of the present Application, the Commission suggests that the designation of an SAC 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'*.

(b) Protection of European Sites, including candidate sites of Community Importance and candidate Special Areas of Conservation, in national law

35. Ireland submits that all of the measures which have been identified by the Commission at §23 are in place in respect of each of the 423 sites which are the subject matter of the Application, including the 217 identified has not having been finally designated by Statutory Instrument. As explained above, Irish national law comprises a multi-stage process which ultimately leads to the designation of a SAC by Statutory Instrument signed by the Minister pursuant to Regulation 14 of the 2001 Regulations. However, the protection in national law which is granted to SACs applies to all European Sites, defined in national law to include not only a SAC but also includes a candidate SAC, candidate sites of Community Importance and sites of Community Importance. In other words, a candidate SAC is afforded the same legal protection under national law as that which is given to a designated SAC.

36. Therefore, at the point at which a site is identified as a candidate site of Community Importance, it has the same legal protection as that which applies to a SAC after it has been designated by the Minister using a Statutory Instrument. That protection is reflected in the different legislative regimes under which development consents are

granted in national law with the consequence that the obligations arising from the Habitats Directive with regard to the protection of those sites apply prior to the final designation of a site as a SAC in national law.

37. By way of example, Part Four of the 2011 Regulations places certain obligations on the Minister with regards to Activities, Plans or Projects which may affect European Sites. This includes Regulation 27 of the 2011 Regulations, which places a legal obligation on all public authorities to exercise all their functions (including consent functions) in compliance with the Habitats Directive, including taking the appropriate steps to avoid, in European Sites, 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 the Habitats Directive.
38. Further, it should be noted that Regulation 28 of the 2011 Regulations requires the Minister, where he has reason to believe that any activity is of a type that may have a significant effect on a European Site, have an adverse effect on the integrity of a European Site or cause the deterioration of natural habitats or the habitats of species or the disturbance of the species for which the European Site may be or has been designated pursuant to the Habitats Directive or has been classified pursuant to the Birds Directive, in so far as such disturbance could be significant in relation to the objectives of the Habitats Directive, to direct that the activity shall not be carried out, caused or permitted to be carried out by any person in the European Site, or part thereof, or at any other specified land except in accordance with a consent granted by the Minister granted under Regulation 30. In short, Regulation 28 permits the Minister to restrict activities on a European Site where there are site specific activities which have been identified as posing a risk to the qualifying interests of that site.
39. The notification issued by the Minister under Regulation 12 of the 2011 Regulations (or that which would have issued under Regulation 4 of the 1997 Regulations), upon the identification of a site as a site of Community Importance, includes a list of activities requiring consent which have been identified by the Minister under Regulation 28(1) or which had been identified pursuant to Regulation 14 of the 1997 Regulations. Public authorities are required to have regard to any identified activities requiring consent

where considering an application for a consent under any legislative regime or where they are proposing to adopt their own plans or projects.

40. Part Five of the 2011 Regulations establishes a procedure whereby a screening for appropriate assessment or, where necessary, an appropriate assessment is undertaken by a public authority in respect of a project for which an application for consent is received or which a public authority wishes to undertake. Both Part Four and Part Five of the 2011 Regulations are framed by reference to a European Site, with the consequence that the discharge of obligations or the exercise of powers under those parts apply equally to SACs which have been identified as candidate sites of Community Importance, sites of Community Importance and SACs which have been subject to final designation by the Minister.
41. In a similar manner, the Planning and Development Act, 2000 (*the 2000 Act*) as amended is the primary legislation by which contains the procedures by which applications for development consents are determined and the procedures for the implementation of other plans and projects by competent authorities. Part XAB of the 2000 Act¹³ contains the procedures by which a screening for appropriate assessment and, where necessary, appropriate assessment are completed. Those procedures apply in respect of European Sites, which are defined by section 177R of the 2000 Act in the same way as is found in the 2011 Regulations. Therefore, in the context of the assessment of applications for development consents, the obligation to carry out a screening for appropriate assessment and/or an appropriate assessment applies, as a matter of law, from the point at which the site is identified as a candidate site of Community Importance rather than from the point at which the final designation by Statutory Instrument occurs.
42. At the point at which a site is identified as a candidate site of Community Importance, the Minister is required to compile certain information on each candidate site of Community Importance¹⁴ including:

¹³ Part XAB of the Planning and Development Act, 2000 as amended. **Annex B.3**

¹⁴ Regulation 11 of the European Communities (Birds and Natural Habitats Regulations 2011)

- (a) An Ordnance map of appropriate scale, upon which the boundaries of the site are marked, so as to identify the land comprising the site and the boundaries thereof
- (b) Its name, location and extent,
- (c) The data resulting from application of the criteria specified in Annex II, Stage I, to the Habitats Directive, and
- (d) The scientific and legal criteria and rationale for the identification of the site as a candidate site of Community importance

43. That information is available for inspection at the office of the Minister and is also published on the Minister's website. In addition, on the publication of the notification that a site has been identified as a candidate site of Community importance in accordance with Regulation 11 of the 2011 Regulations, the Minister is required to notify specified bodies, landowners and members of the public. Public notification includes newspaper and radio advertisements, supply of site information to relevant location authorities, a range of Government Departments and to local stations of An Garda Síochána¹⁵.

44. It is also the case that Ireland publishes comprehensive information regarding candidate SACs and SACs on the NPWS website and other websites. This includes:

- (i) The Protected Sites in Ireland webpage¹⁶, which allows the public to search for sites by code/county/ designation/Annex habitat or species
- (ii) A page on the NPWS website which contains a list of all 439 SACs, with links, where applicable to the relevant Statutory Instruments and Site Specific Conservation Objectives¹⁷
- (iii) A Protected Sites Map Viewer, showing the location and boundaries of each protected site¹⁸

¹⁵ The national Police Force

¹⁶ www.npws.ie/protected-sites

¹⁷ www.npws.ie/maps-and-data/designated-site-data

¹⁸ <https://dahg.maps.arcgis.com/apps/webappviewer/index.html?id=8f7060450de3485fa1c1085536d477ba>

45. Further, spatial datasets, detailing the boundaries of protected sites can be downloaded from the NPWS website¹⁹ or from the Irish Government Open Data Portal.
46. Having regard to the foregoing, the requirements of the 2011 Regulations which apply at the point at which a site is identified as a candidate site of Community Importance meet the requirements identified by the Commission at §23 of the Application. The entirety of the scheme for the designation of SACs established by the 2011 Regulations, including the specific protection given to sites from the time at which they are identified as candidate sites of Community Importance, meets the requirement that measures to transpose an obligation from a Directive are implemented with indisputable binding force, with the specificity, precision and clarity in order to provide legal certainty.
47. Further, the notification provisions which were in the 1997 Regulations and are now contained in the 2011 Regulations meet the requirement of legal certainty as they provide for appropriate publicity of the relevant measures so that persons concerned can understand the scope of the rights and obligations which arise in this context.
48. Ireland has prepared a table of all 423 sites which are the subject matter of this Application²⁰, the first column of which identifies the date on which each of the sites was publicly notified as a candidate site of Community Importance/candidate SAC. It is from this date that those sites benefited from all the protections afforded to SACs. In those circumstances, Ireland submits that, even absent the final endorsement of designation in national law as an SAC, there was compliance with the requirements of Article 4(4) of the Habitats Directive as the purpose of achieving a high level of environmental protection and contributing to the establishment of the Natura 2000 network has been achieved.

(c) Completion of the final, formal designation of certain candidate sites of Community Importance

¹⁹ <https://www.npws.ie/maps-and-data/designated-site-data/download-boundary-data>

²⁰ See **Annex B.4**

49. Without prejudice to the foregoing, it is necessary to explain the steps being taken by Ireland to complete the final designation of certain candidate sites of Community Importance which are the subject matter of this Application.
50. As appears from the Application, the Commission alleges that as of 9 January 2019 Ireland had not completed the final designation of 217 sites. However, it is also accepted by the Commission that at the time of the filing of this Application that number had reduced to 154 sites.
51. The Table at Annex B.4 identifies the Statutory Instrument which has been signed in respect of each site and the date on which each Statutory Instrument was signed. At the time of the filing of this Defence, Ireland has completed the process and signed a Statutory Instrument in respect of 320 of the 423 sites which are the subject of the Application.
52. There remains 103 sites in respect of which the formal process is not finally complete, and a Statutory Instrument has not yet been signed. It is intended that the process in respect of 36 of those sites will be completed by the end of 2021. The work in relation to the remaining 67 will be completed in 2022.
53. By way of context, it must be noted that the majority of the sites which are the subject matter of this Application are held in private ownership by a multiplicity of parties.
54. In the case of each site, prior to the final designation occurring it is necessary for every landowner to be placed on notice of the proposed designation and for them to be given an opportunity to make submissions or observations on the proposed designation of their lands²¹. Giving landowners an opportunity to make a submission on the designation of the site or raise an objection to that designation is necessary as a matter of fair procedures and/or natural and constitutional justice as required by the Irish Constitution and the Charter for Fundamental Rights.

²¹ Regulation 13 of the European Communities (Birds and Natural Habitats) Regulations 2011

55. By way of illustration of the complexity of the process involved, the designation process for the 320 sites in respect of which Statutory Instruments have been signed involved individual engagement with 18,516 landowners. 674 appeals were lodged in respect of the sites, all of which are now concluded.
56. In respect of the remaining 103 sites, 1,274 appeals have been finalised.
57. In respect of the 103 sites which are still to be the subject of final designation by Statutory Instrument, it should be noted that 20 of these are Raised Bog SACs. The designation process for these 20 sites is nearing the point of completion. The finalisation of that process is dependent on agreement being reached with the Commission on the overall network solution for the management of designated raised bogs. The network of 53 raised bog SACs has been the subject of detailed engagement with the Commission.
58. While the public consultation process is being undertaken and prior to the Minister taking a final decision on designation, all sites remain classified as European Sites and therefore benefit from all the necessary protections required by the Habitats Directive.
59. The Commission purports to dismiss the legal protection provided to candidate sites of Community Importance as irrelevant (see §27 of the Application). Ireland submits that the fact that sites are precisely identified at the time of their notification as candidate sites of Community Importance and have specific legal protection in national law is of specific relevance to the allegation made by the Commission. National law provides for the identification and protection of these sites in a manner which provides legal certainty, and which contributes to the overall purpose of both Article 6 and the Habitats Directive generally as identified in the Court's case law (see, for example Case C-441/17 *Commission v. Poland* at §106 and Case C-461/17 *Holohan* at §30 and case law cited)
60. In Ireland's submission, the legal framework established in national law by which the designation of SACs occurs provides the necessary protection and legal certainty to those sites which have been adopted by the Commission in accordance with Article

4(2), such that it cannot be said that there has been any breach of the obligations arising from Article 4(4) of the Habitats Directive.

V. Commissions allegations of a failure to comply with the obligations under Article 4(4) of the Habitats Directive in respect of the setting of conservation objectives for special areas of conservation

61. The Commission alleges that Ireland has failed to comply with the obligation under Article 4(4) of the Habitats Directive to set site specific conservation objectives for 140 of the 423 sites which are the subject matter of the application.

62. Article 4(4) of the Habitats Directive does not contain an express requirement that site specific conservation objectives be set. However, it is acknowledged that the decision of the Court in Case C-894/19 *Commission v. Greece* identified that such an obligation was implied into Article 4(4) for the reasons identified at §46 – 52 of the judgment.

63. Regulation 26 of the 2011 Regulations places a mandatory obligation on the Minister to establish conservation objectives necessary to achieve the maintenance of the habitat types or species in respect of which a site has been identified as a European Site at favourable conservation status or their restoration to such favourable conservation status.

64. Once approved by the Minister, site specific conservation objectives for each European Site, and any associated supporting documents, are published on the website of the NPWS²².

65. Ireland accepts that it has not yet completed the identification and publication of site-specific conservation objectives in respect of all of the 423 sites which are the subject matter of this Application.

66. The Table at Annex B.4 identifies the date on which the Minister established generic conservation objectives in respect of each site which is the subject matter of this

²² www.npws.ie/protected-sites/conservation-management-planning/conservation-objectives

application. The Table also identifies the date on which the Minister established site specific conservation objectives for each site.

67. At the time of the filing of this Defence, Ireland has identified and published site-specific conservation objectives for 371 of the 423 sites which are the subject matter of this application. Ireland intends to have identified and published site-specific conservation objectives for the remaining sites by the end of 2021.
68. Since receipt of the additional Reasoned Opinion, Ireland has made significant efforts to identify and publish site specific conservation objectives for each of the sites which come within the scope of this application. However, unfortunately, the finalisation of that work was delayed by the Covid-19 pandemic which placed obvious limitations on the ability of Ireland to undertake and complete the necessary work.
69. The identification and publication of site-specific conservation objectives is not dependent on the final designation of a site as an SAC by way of Statutory Instrument and can be undertaken, as a matter of national law, in respect of a site which is identified as a candidate site of Community Importance and/or a candidate SAC.
70. For these reasons, Ireland submits that, in light of the significant progress made with regards to the publication of site-specific conservation objectives, there has been no material breach of Article 4(4) of the Habitats Directive.

VI. Commission's allegations of a failure to comply with the obligations under Article 6(1) of the Habitats Directive in respect of the establishment of necessary conservation measures for special areas of conservation

71. The third allegation made by the Commission is that Ireland has failed to comply with the obligations arising under Article 6(1) of the Directive by not establishing the necessary conservation measures for any of the 423 sites which are the subject matter of this Application.
72. Ireland considers that it has implemented a significant programme of conservation measures in a manner which is consistent with the obligations arising from Article 6(1)

of the Habitats Directive. These conservation measures are aimed at ensuring the protection of natural habitat types in Annex I and the species listed in Annex II of the Habitats Directive.

73. Ireland is currently implementing ten programmes across different SACs which comprise detailed and comprehensive conservation measures which apply on a site-specific basis. While these programmes have been designed by reference to the habitat or species in respect of which it has been established rather than by reference to the geographic site location, their implementation is undertaken on a site-specific basis with a view to achieving a high level of protection for relevant habitats and species.

74. The programmes currently in operation in Ireland are:

- (i) AranLIFE/Caomhnú Árann
- (ii) The Burren Programme
- (iii) KerryLIFE
- (iv) LIFE Insular
- (v) LIFE Lough Carra
- (vi) Life on Machair
- (vii) Pearl Mussel Project
- (viii) Raised Bog Conservation Projects
- (ix) LIFE IP PAF Wild Atlantic Nature
- (x) The Lesser Horseshoe Bat Conservation Programme

75. A summary of these programmes, the measures being implemented as part of them and the SACs in which they are operational is at **Annex B.5**. Ireland submits that the implementation of these measures demonstrates compliance with Article 6(1) and an intent to further comply with the requirements of Article 6(1) in a manner which is practical and which ensures appropriate protection for relevant habitats and species.

76. The core of the complaint made by the Commission is that Ireland has failed to identify a full and complete set of site specific conservation measures which are being implemented in respect of SACs following the publication of site-specific conservation objectives in respect of the 423 sites which fall within the scope of the Application. Ireland submits that the suggestion that there has been a failure to comply with the

obligations arising from Article 6(1) of the Habitats Directive in respect of all 423 sites is inaccurate. Ireland submits that there are at least 79 sites in respect of which there is a full and complete suite of measures which have been both identified and implemented. A list of these sites is at **Annex B.6**.

77. By way of illustrative example, Ireland has prepared a document in respect of six sample SACs, all of which are within the scope of this Application, which demonstrates that there are full and complete site-specific conservation measures which have been identified and implemented in line with the published site-specific conservation objectives and which address all of the qualifying interests present on those sites. These six sites are part of the 79 sites listed in Annex B.6 and demonstrate the manner in which the suite of measures has been identified and implemented in the remaining sites.

78. That document²³ addresses the following sites:

- (i) IE0000090 Glengarriff Harbour and Woodland SAC
- (ii) IE0000261 Derrycrag Wood Nature Reserve SAC
- (iii) IE0000364 Kilgarvan Ice House SAC
- (iv) IE0000412 Slieve Bloom Mountains cSAC
- (v) IE0000919 Ridge Road, SW of Rapemills SAC
- (vi) IE0001242 Carrownagappul Bog SAC

79. This document is intended to provide an illustrative example and Ireland submits that there are other sites in respect of which there are comprehensive and complete conservation measures in place. By way of example, site specific restoration and drainage plans have been developed for all of Ireland's network of raised bog SACs (53 of which fall within the scope of this Application) and conservation measures are actively being implemented across all of that network. Further, sites in respect of which the Lesser Horseshoe Bat is a Qualifying Interest have measures in place covering multiple qualifying interests and conservation measures in respect of this species have been implemented for many years.

²³ Appendix B.7

80. As a consequence of the site specific and programme conservation measures which have been implemented by Ireland, there are a substantial number of sites in respect of which conservation measures have been identified and are being implemented. It is the case that there are a substantial number of sites at which, at least, partial conservation measures are in place, which ensures a high level of environmental protection for qualifying interests in a manner consistent with the overall aims of the Habitats Directive.
81. In addition, as explained above, the 2011 Regulations require the Minister to preclude activities being carried out at a European Site which have been identified as posing a risk to the qualifying interests of that European Site without the consent of the Minister. A similar provision was contained in the 1997 Regulations. Ireland submits that the identification of an activity as one which requires consent pursuant to Regulation 30 of the 2011 Regulations is a site specific conservation measure, which operates to prevent damage from occurring to any European Site in accordance with the obligations arising under the Habitats Directive.
82. Moreover, the documentation included with the notification which issues when a site is identified as a candidate site of Community Importance includes a Direction issued under Regulation 28 of the 2011 Regulations, which contains a list activities which have been identified by Ireland as posing a site specific risk to the qualifying interests (the species or habitats which the site has been designate to protect) of each European Site and hence require the consent of the Minister before they can be permitted to proceed. At the time that the 1997 Regulations were in force, the documentation included a notice issued under Regulation 14 of the 1997 Regulations, which contained a similar list. The list of these activities is also included in the final designation of an SAC though the preclusion on them occurring operates from the point of notification of a site as a candidate site of Community Importance. It is a criminal offence to undertake an activity requiring consent at a European Site without the consent of the Minister.
83. Ireland submits that the establishment of the list of Activities Requiring Consent pursuant to either the 1997 Regulations or the 2011 Regulations in respect of each individual European Site is the implementation of a site specific conservation measure

for that European Site, as it is an action taken with a view to protecting the relevant qualifying species for that particular site. These site specific conservation measures have been in place for each site since the date of their notification as candidate sites of Community Importance.

84. Ireland can confirm that there is in place for each of the 423 sites which fall in the scope of the Application, a list of Activities Requiring Consent and that such list has been in place since the date on which each individual site was notified as a candidate site of Community Importance.
85. To date, Ireland has complied with the obligations arising from Article 6(1) of the Habitats Directive by the deployment of programmes designed to implement conservation measures on a species or habitats wide basis, rather than by reference to the geographic location of an individual site. That is reflected in the Reply to the Additional Reasoned Opinion dated 11 January 2019. Ireland submits that this has ensured that a comprehensive range of conservation measures have been implemented which ensures the protection of relevant habitats and species.
86. However, Ireland believes that there may have been a deficit in the manner in which the information on the existence and implementation of these measures has been communicated to the Commission. Further, the absence of a centralised data management system for the capture of of SAC management measures and interventions has limited the ability of Ireland to undertake comprehensive, evidence-based recording and reporting of outcomes from local site management level to national level. It will be necessary for Ireland to develop a data hub which will enable information relating to nature conservation management to be shared and analysed from multiple sources in a single portal. To meet this need, Ireland has prepared a Strategic Nature Project (SNaP) proposal. This large EU funding stream is aimed at the mainstreaming of nature and biodiversity into other policies and programmes through coherent programmes of actions in Member States, including institutional support. If the application is successful, the SNaP will provide up to €23 million in EU funding, the majority of which will be used to develop a hub that will facilitate collection, sharing and analysis of all data sources relevant to the maintenance and restoration of the Natura 2000 network.

87. In the interim, work is well advanced to develop a proof-of-concept for a harmonised spatial data model for identifying, tracking, monitoring and reporting conservation measures at different scales from site to national level. Ireland is confident that the development of these tools will enable the better sharing of data, which will demonstrate the wide range of conservation measures which are currently being implemented in SACs, in compliance with the obligations arising from Article 6(1) of the Habitats Directive.
88. It is also argued by the Commission that Ireland has failed to establish conservation measures that are sufficiently precise or address all significant pressures or threats. Ireland does not accept that there is any legal flaw in the manner in which it establishes site specific conservation objectives or conservation measures for relevant habitats or species.
89. In effect, Ireland's approach to setting detailed site-specific conservation objectives for Natura 2000 sites was specifically developed to meet the requirements of Article 6 of the Habitats Directive. The process for setting these objectives was developed by the Irish authorities, in line with recommendations from DG Environment, and is now well established. The objectives are used as tools for undertaking appropriate assessment, as well as part of the conservation planning process, whereby pressures and threats that are preventing a habitat or species meeting the targets laid out in a site-specific conservation objective are ascertained and suitable measures identified to ameliorate them.
90. By way of example, for the raised bog restoration programme, site-specific restoration plans containing specific conservation measures (such as drain blocking and tree removal) have been drafted for each of the raised bog SACs. The conservation measures outlined in each plan are designed to achieve the targets as laid out in the site-specific conservation objective for the Annex I habitat Active Raised Bog for each SAC. These plans are being implemented under various strands of the raised bog conservation programme.
91. Further, Ireland notes that the Commission purports to dismiss conservation measures which have been implemented by Ireland in certain SACs simply on the basis that they

have been implemented *prior to* site specific conservation objectives having been set for certain sites. Ireland does not accept that any violation of Article 6(1) of the Habitats Directive could arise in respect of sites where site specific conservation objectives have been established and conservation measures implemented simply because the implementation of measures occurred *after* the site-specific conservation objectives were set. By adopting the view that this temporal sequencing is required, the Commission is taking an overly prescriptive approach which fails to have regard to the spirit or wording of Article 6(1) of the Directive and which adopts an overly literal approach to the decision in Case C-849/19 *Commission v. Greece*.

92. In *Commission v. Greece*, a violation of Article 6(1) arose where conservation measures had been implemented in respect of SACs for which *no* site-specific conservation objectives were set. It does not follow from that decision that a violation of Article 6(1) will occur simply where the implementation of site-specific conservation measures preceded the establishment of site specific conservation measures, where both those requirements are now in place.

93. Ireland continues to take steps to ensure that it is compliant with the obligations arising from Article 6(1) of the Habitats Directive and continues to work towards the implementation of necessary conservation measures and the publication of the data which demonstrates such compliance.

VII. Conclusion

94. In conclusion, for the foregoing reasons, Ireland submits that:

- (i) that having regard to the specific protection provided for all sites of Community Importance in national law in a manner which is consistent with legal certainty there has been no breach of Article 4(4) of the Directive.
- (ii) no material breach of Article 4(4) of the Directive arises in respect of the publication of site-specific conservation objectives where they have been identified and published for 371 of the 423 sites which are the subject matter of this application and where the remaining site-specific conservation objectives will be published by the end of 2021.

- (iii) it has implemented a comprehensive programme of conservation measures which has the purpose of ensuring the protection of habitats and species which are qualifying interests for the 423 sites the subject matter of this Application in a manner consistent with the requirements of Article 6(1) of the Habitats Directive. Ireland continues to develop and implement the necessary conservation measures for all the sites which fall within the scope of this Application and to further look to improve the mechanisms whereby relevant data in respect of those conservation measures is collated and published.

VIII. Proposed Form of Order Sought

- (vii) In the light of the foregoing, Ireland respectfully asks the Court of Justice to:
- (i) Dismiss the Application
 - (ii) Order the Commission to pay the costs

Dated this 15th day of October 2021

Signed: M [REDACTED] LANE

STATE SOLICITOR

A [REDACTED] JOYCE

SECTION HEAD, EU LAW, CSSO

On behalf of M [REDACTED] BROWNE, CHIEF STATE SOLICITOR, Agent for Ireland.

SCHEDULE OF ANNEXES TO THE DEFENCE IN CASE C-444/21

No	Annex	No of pages	Reference in the Defence
B.1	The European Communities (Birds and Natural Habitats) Regulations 2011 (S.I 477 of 2011)	145	Sections III, IV and V
B.2	the European Communities (Birds and Natural Habitats) Regulations 199 (S.I 94 of 1997)	43	Sections III, IV and V
B.3	Part XAB of the Planning and Development Act, 2000 as amended	41	Paragraph 37
B.4	Table of 423 Special Areas of Conservation, the subject matter of this Application	8	Paragraphs 48, 51 and 66
B.5	Projects and Programmes delivering site based measures at Special Areas of Conservation on a species or habitats basis	21	Paragraph 75
B.6	List of 79 Special Areas of Conservation in respect of which a full suite of conservation measures has been identified and implemented	2	Paragraphs 76 and 77
B.7	Illustrative Examples of Special Areas of Conservation in respect of which there are complete conservation measures in place	14	Paragraph 78