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SUD EUROPSKE UNĚE
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SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN TUOMIOISTUIN
EUROPEISKA UNIONENS DOMSTOL

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 25 June 2026 ¹

Case C-196/25

European Commission

v

Ireland

(Infringement proceedings – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – Peat cutting in Natura 2000 sites designated for the protection of raised bog and blanket bog habitats – Deterioration of protected bog habitats – Obligation to restore deteriorated habitats – Assessment of the implications of the peat cutting in view of the conservation objectives of Natura 2000 sites)

¹ Original language: German.

I. Introduction

1. Since there are many bogs to be found in Ireland, peat has traditionally been used intensively there. However, for certain bog habitats, the Habitats Directive² now requires the creation of conservation areas known as ‘Natura 2000 sites’. Peat cutting must therefore cease in those sites.

2. In the present infringement proceedings, the European Commission alleges that Ireland has failed to take adequate steps to prevent peat cutting in Natura 2000 sites. Furthermore, the Commission asserts that Ireland should have restored the sites that have been adversely affected by peat cutting that was not prevented. That aspect, in particular, gives the Court the opportunity to further clarify the obligations of the Member States resulting from an infringement of EU law. Lastly, the Commission alleges, with regard to the peat cutting, that Ireland has also failed adequately to implement and enforce the rules on assessing the impact of plans and projects on Natura 2000 sites.

II. Legal framework

3. Article 4(1) of the Habitats Directive provides that Member States must propose potential conservation sites to the Commission by 10 June 1995:

‘(1) On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. ...’

The list shall be transmitted to the Commission, within three years of the notification of this Directive [notification was made on 10 June 1992], together with information on each site. ...’

4. Article 4(2) of the Habitats Directive provides that the Commission is to establish, on that basis, a list of sites of Community importance (Natura 2000 sites). Once the Commission has included a site on this list, the Member State concerned must, in accordance with Article 4(4) of the Habitats Directive, designate that site as a special area of conservation as soon as possible – and within six years at most. Article 4(5) further provides that, from the date a site is placed on the list, it is to be subject to the provisions of Article 6(2), (3) and (4).

5. Article 6(2) to (4) of the Habitats Directive govern the protection of Natura 2000 sites:

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) in the version amended by Council Directive 2013/17/EU of 13 May 2013 adapting certain directives in the field of environment, by reason of the accession of the Croatia (OJ 2013 L 158, p. 193).

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

(3) Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

(4) If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

...’

6. Annex I to the Habitats Directive specifies, inter alia, the habitat types ‘*Active raised bogs’ (Natura 2000 Code 7110, priority), ‘Degraded raised bogs still capable of natural regeneration’ (Natura 2000 Code 7120) and ‘Blanket bogs (*if active bog)’ (Natura 2000 Code 7130).

III. Background to the case and the pre-litigation procedure

7. In Ireland, there are many Natura 2000 sites where bog habitat types are protected, in particular raised bogs (Natura 2000 Codes 7110 and 7120) and blanket bogs (Natura 2000 code 7130).

8. Raised bogs are acid bogs, poor in mineral nutrients, that are sustained mainly by rainwater. The water level is generally higher than the level of the surrounding water table. They have perennial vegetation dominated by colourful *Sphagna* hummocks allowing for the growth of the bog.³ Active raised bogs are a priority habitat type, but degraded raised bogs still capable of natural regeneration also belong to the habitat types to be protected in Natura 2000 sites.

³ European Commission, Directorate-General Environment, Nature and Biodiversity Unit (ENV B.3), *Interpretation Manual of European Union Habitats – EUR 28*, April 2013, p. 82.

9. In 2004, the Commission established 48 sites of Community importance designated for the protection of active and degraded raised bogs.⁴ That was followed by the establishment of five⁵ and nine⁶ further sites in 2008 and 2018 respectively. In total, there are now 55 sites of Community importance in Ireland where active and degraded raised bogs are protected, as well as 7 sites comprising only degraded raised bogs.

10. Blanket bogs are extensive bog communities or landscapes on flat or sloping ground with poor surface drainage, in oceanic climates with heavy rainfall, characteristic of western and northern Great Britain and Ireland. *Sphagna* also play an important role in blanket bogs but the cyperaceous component is greater than in raised bogs.⁷ Active blanket bogs are a priority habitat type.

11. In 2004,⁸ the Commission established 54 Irish sites of Community importance for the protection of blanket bogs, as well as a further site in 2008.⁹

12. Since 2008, the Commission has been investigating peat cutting in those areas. An assessment of the conservation status of the active raised bog habitat revealed, at that time, that the surface area of that priority habitat type in Ireland had declined significantly over a period of about 10 years.

13. On 28 January 2011, the Commission therefore called upon Ireland, in accordance with Article 258 TFEU, to submit observations and communicated a reasoned opinion to that Member State on 17 June 2011.

14. This was followed by regular communications between the Commission and Ireland. However, as the Commission was dissatisfied with the steps taken by Ireland, it communicated an additional reasoned opinion to that Member State on 29 September 2022, in which it laid down a final period of two months, running until 29 November 2022, for Ireland to put an end to the alleged infringement of EU law.

⁴ 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 2004 L 387, p. 1).

⁵ 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 2009 L 43, p. 466).

⁶ Commission Implementing Decision (EU) 2019/19 of 14 December 2018 adopting the twelfth update of the list of sites of Community importance for the Atlantic biogeographical region (OJ 2019 L 7, p. 287).

⁷ European Commission, Directorate-General Environment, Nature and Biodiversity Unit (ENV B.3), *Interpretation Manual of European Union Habitats – EUR 28*, April 2013, p. 83.

⁸ Decision 2004/813.

⁹ Decision 2009/96.

15. On 10 March 2025, the Commission ultimately brought the present action and seeks, in essence, that the Court:

(1) declare that Ireland has failed to fulfil its obligations under the Habitats Directive by:

- (a) failing to comply with Article 6(2) of the Habitats Directive by failing to take appropriate steps to avoid the deterioration of protect¹⁰ raised bog and degraded raised bog habitats as a result of activities related to still ongoing peat cutting as last noted in the 2023 cutting season within the sites specified in Annex I;
- (b) failing to comply with Article 6(2) of the Habitats Directive by failing to take appropriate steps to avoid the deterioration of protect raised bog and degraded raised bog habitats as a result of activities related to peat cutting within the sites listed in Annex II between the periods specified therein;
- (c) failing to comply with Article 6(2) of the Habitats Directive by failing to take appropriate steps to avoid the deterioration of protect blanket bog habitats as a result of activities related to peat cutting within the sites listed in Annex III-A;
- (d) failing to comply with the Habitats Directive, as interpreted by the Court, by not ensuring the restoration of sites by the damage caused to all existing sites of Community importance designated for the protection of raised bog, degraded raised bog and blanket bog habitats in the period since they were required to be proposed for designation on 10 June 1995 or, in the alternative, since the date on which Ireland formally proposed each site to the Commission for designation;
- (e) failing to comply with the requirements of Article 6(3) and (4) of the Habitats Directive by failing to control peat extraction by the deadline in the additional reasoned opinion for the raised bog and degraded raised bog sites of Community interest listed in Annex IV;
- (f) failing to comply with the requirements of Article 6(3) and (4) of the Habitats Directive with regard to controlling activities related to peat cutting for domestic burning for all blanket bog sites of Community interest listed in Annex V;
- (g) failing to put in place a control regime compliant with Article 6(3) and (4) of the Habitats Directive to control peat extraction activities

¹⁰ Such use of the term ‘protect’ is misleading in points 1(a) and (b) of the form of order sought by the applicant, since even degraded raised bog habitats can be protected in Natura 2000 sites. What is meant is the respective protected habitat type, in this case Natura 2000 code 7110, ‘active raised bogs’.

including cutting for non-domestic use purposes by the deadline in the additional reasoned opinion for the blanket bog sites listed in Annex VI; and

(2) order Ireland to pay the costs.

16. Ireland contends that the Court should:

(1) dismiss the action; and

(2) order the Commission to pay the costs.

17. The parties submitted written observations. The Court decided not to hold a hearing pursuant to Article 76(2) of the Rules of Procedure because it considers that it has sufficient information.

IV. Legal analysis

18. The Commission alleges that Ireland has failed to fulfil three obligations arising from Article 6(2), (3) and (4) of the Habitats Directive in relation to a large number of Natura 2000 sites designated for the protection of raised bog and blanket bog habitats. Those are, first, the prohibition of deterioration under Article 6(2) (see section A of this Opinion); second, the obligation to restore deteriorated habitats (see section B of this Opinion); and third, the guarantee of protection schemes in connection with the approval of projects in accordance with Article 6(3) and (4) (see section C of this Opinion).

A. The prohibition of deterioration under Article 6(2) of the Habitats Directive

19. Points 1(a), (b) and (c) of the form of order sought by the applicant give the prima facie impression, owing to the listing of a large number of Natura 2000 sites, that the Commission is objecting to the deterioration of those sites as a consequence of peat cutting. However, that impression is misleading.

20. Rather, the Commission lists those sites as evidence that Ireland has failed to take appropriate steps to prevent the deterioration of raised bog and blanket bog habitats as a result of peat cutting.

21. Consequently, the question does not arise as to whether the Commission can, by point 1(b) of the form of order sought, object to peat cutting in specific areas where that cutting was brought to an end before the expiry of the period laid down in the reasoned opinion. The Commission cites those activities merely as evidence that the protective measures in Ireland are insufficient.

1. *Admissibility*

22. Viewed from the foregoing perspective, Ireland’s objections to the admissibility of points 1(a), (b) and (c) of the form of order sought by the applicant cannot succeed.

23. Specifically, Ireland asserts that the Commission’s submissions are ambiguous and fail to set out a coherent and precise basis for Ireland’s alleged omissions. According to Ireland’s submissions, it is neither clear which sites are at issue nor on what grounds it is alleged that no appropriate steps have been taken to prevent a deterioration in the condition of the individual sites. Reference is made to ‘several’ sites of varying numbers and imprecise descriptions. The application fails to set out with the requisite precision how the grounds relied on by the Commission relate to and support the inclusion of the specific sites mentioned in the form of order sought.

24. Viewed in isolation, the reasoning set out in the application does not actually identify which sites the Commission is objecting to. However, if the reasoning is read in conjunction with points 1(a), (b) and (c) of the form of order sought, the sites and the period of the alleged infringements are clearly defined. Annex A.2 to the application further specifies the objections relating to the sites.

25. That is sufficient to enable an assessment of the Commission’s claim.

26. The extent to which the Commission is required to set out the appropriate steps necessary to prevent damage to the sites is not a question of admissibility, but rather a question as to the merits of the case.

27. Ireland further contends that it is inadmissible for the Commission to extend the action to include events from 2023, that is to say, to a period after expiry of the deadline laid down in the reasoned opinion.

28. It is true that the assessment of the action depends on the situation prevailing at the end of the period laid down in the Commission’s reasoned opinion.¹¹ However, subsequent events may also allow conclusions to be drawn regarding the situation at the end of that period,¹² particularly if they are of the same kind as the events to which the opinion referred and constitute the same conduct.¹³ Since the Commission alleges, in respect of all the periods cited, that Ireland failed to prevent peat cutting in the Natura 2000 sites concerned, these are events of the same nature.

¹¹ Judgment of 22 June 2022, *Commission v Slovakia (Protection of the capercaillie)* (C-661/20, EU:C:2022:496, paragraph 44).

¹² Judgments of 26 April 2005, *Commission v Ireland* (C-494/01, EU:C:2005:250, paragraph 37), and of 5 April 2017, *Commission v Bulgaria* (C-488/15, EU:C:2017:267, paragraph 42).

¹³ See judgment of 5 April 2017, *Commission v Bulgaria* (C-488/15, EU:C:2017:267, paragraph 43, and the case-law cited).

29. The objections to points 1(a), (b) and (c) of the form of order sought must therefore be dismissed.

2. *The merits*

30. Under Article 6(2) of the Habitats Directive, Member States are required to take appropriate steps to avoid the deterioration of natural habitats and the habitats of species in the special areas of conservation, namely Natura 2000 sites.

31. According to Article 4(5) of the Habitats Directive, that obligation applies as soon as the Commission has included a site in the list of sites of Community importance. For most of the sites mentioned in the form of order sought by the applicant, that date is 7 December 2004, but some were included only on 12 December 2008, or 14 December 2018.

(a) *Deterioration of bog habitats as a result of peat cutting*

32. Ireland acknowledges that peat cutting and the associated drainage measures may adversely affect the integrity of the Natura 2000 sites designated for raised bog habitats.

33. The Commission explains that by stating that, for active raised bogs, mean water levels need to be near or above the bog surface for most of the year in order for the bog to be maintained. However, raised bogs are drained to prepare for peat cutting. The peat cutting itself then causes additional damage. These activities compromise the hydrological integrity of the raised bogs, leading to the lowering of the water table, which in turn causes cracking, degradation, collapse or bursts of the peat layer. Such actions can result in peat being exposed to air as water levels drop. As a result, dead plants in the peat start to decompose, releasing carbon dioxide and other gases into the atmosphere. These changes to the raised bog structure and function result in the loss of the unique raised bog ecology.

34. Although the parties do not explicitly discuss the deterioration of blanket bogs due to peat cutting, similar considerations generally apply to that habitat type. Accordingly, that type of deterioration forms the implicit basis of the dispute concerning adequate steps for the protection of blanket bogs and is furthermore undisputed. Moreover, it is also included in the reports published by Ireland under Article 17 of the Habitats Directive.¹⁴

35. Consequently, Article 6(2) of the Habitats Directive requires Ireland to take appropriate steps to prevent peat cutting in Natura 2000 sites designated for the protection of raised and blanket bogs.

¹⁴ Department of Culture, Heritage and the Gaeltacht, *The Status of EU Protected Habitats and Species in Ireland 2019* (Annex A.7a to the Application initiating proceedings, p. 33). See also National Parks and Wildlife Service, *The Status of EU Protected Habitats and Species in Ireland, Habitat Assessments*, Volume 2 (2025, p. 950, extracts in Annex D.4 to the rejoinder).

(b) Irish protection measures

36. Ireland states that it has taken adequate steps to comply with that obligation. To that end, financial incentives to compensate traditional peat cutters are combined with a consent requirement for peat cutting, active enforcement and monitoring of cutting bans, scientific monitoring and renaturation projects.

37. The suitability of those steps is demonstrated by the fact that, by the deadline for reply set in the additional reasoned opinion, namely 29 November 2022, peat cutting had ceased completely on 73% of the special areas of conservation (SACs) (45 of the 62 SACs) selected for raised bog habitats and there had been a reduction of 82% of the number of plots cut in the 19 years since 2003. The fact that a small number of persons continue to engage in illegal peat cutting in a few sites, despite the efforts of the Irish authorities, is not a sufficient basis to conclude that the measures are inadequate. Thus, unlike in previous Irish reports, the report pursuant to Article 17 of the Habitats Directive for the year 2025 no longer describes the condition of the two raised bog habitat types as ‘unfavourable, bad and deteriorating’, but rather as ‘unfavourable, bad and improving’.¹⁵

(c) Scope of the prohibition of deterioration

38. Ireland correctly asserts that Article 6(2) of the Habitats Directive does not require the Member States to prevent *any* deterioration of Natura 2000 sites.

39. More specifically, Member States need only take ‘appropriate’ protective measures and, in that respect, have a margin of discretion.¹⁶ The Court thus describes Article 6(2) as a ‘general obligation’ to avoid deterioration,¹⁷ but not as an obligation of result.¹⁸

40. However, the criteria for an assessment of the implications for the site under Article 6(3) of the Habitats Directive apply also to the prohibition of

¹⁵ National Parks and Wildlife Service, *The Status of EU Protected Habitats and Species in Ireland, Habitat Assessments*, Volume 2 (2025, pp. 898 and 925, extracts in Annex D.4 to the rejoinder).

¹⁶ Judgments of 14 January 2016, *Grüne Liga Sachsen and Others* (C-399/14, EU:C:2016:10, paragraphs 36, 37 and 40), and of 14 November 2024, *Commission v Germany (Deterioration of lowland hay meadows)* (C-47/23, EU:C:2024:954, paragraph 92).

¹⁷ Judgments of 11 April 2013, *Sweetman and Others*, (C-258/11, EU:C:2013:220, paragraph 33); of 16 July 2020, *WWF Italia Onlus and Others*, (C-411/19, EU:C:2020:580, paragraph 32); of 24 June 2021, *Commission v Spain (Deterioration of the Doñana natural area)* (C-559/19, EU:C:2021:512, paragraph 153); and of 14 November 2024, *Commission v Germany (Deterioration of lowland hay meadows)* (C-47/23, EU:C:2024:954, paragraph 86).

¹⁸ See, however, Opinion of Advocate General Emiliou in *Commission v (Deterioration of lowland hay meadows)* (C-47/23, EU:C:2024:708, point 29).

deterioration under Article 6(2) because the two paragraphs ensure the same level of protection.¹⁹

41. Under Article 6(3) of the Habitats Directive, a plan or project is permissible only if the conservation objectives of the site concerned will not be adversely affected. In order to ensure that, the first sentence of Article 6(3) provides that an ex ante assessment of the implications of a plan or project for a protected site is to be carried out, in the first stage, where there is a likelihood or risk that a plan or project will have a significant effect on the site concerned.²⁰ Thus, under the second sentence of Article 6(3), its authorisation is possible only if the assessment rules out any reasonable scientific doubt that it will not adversely affect the integrity of the site concerned.²¹

42. If there is no assessment of the implications for the site that reaches that conclusion, it is thus sufficient proof of an infringement of Article 6(2) of the Habitats Directive to establish the existence of a probability or risk that an activity might cause such adverse effects.²²

43. In such a case, Article 6(2) of the Habitats Directive requires Member States to take appropriate steps to prevent that activity. They would then also have to demonstrate, in the context of any associated infringement proceedings, that they had complied with that requirement.²³

44. Hence, there would not be an infringement of Article 6(2) of the Habitats Directive where Member States fail to avoid *unforeseeable* deteriorations. That is

¹⁹ Judgments of 24 November 2011, *Commission v Spain* (C-404/09, EU:C:2011:768, paragraph 142), and of 24 June 2021, *Commission v Spain (Deterioration of the Doñana natural area)* (C-559/19, EU:C:2021:512, paragraph 156).

²⁰ Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 43); of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 111); and of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 134).

²¹ Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 59); of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 114); and of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraph 120).

²² Judgments of 24 November 2011, *Commission v Spain* (C-404/09, EU:C:2011:768, paragraph 142); of 14 January 2016, *Commission v Bulgaria* (C-141/14, EU:C:2016:8, paragraph 58); and of 10 November 2016, *Commission v Greece* (C-504/14, EU:C:2016:847, paragraph 29). See also judgments of 14 January 2016, *Grüne Liga Sachsen and Others* (C-399/14, EU:C:2016:10, paragraph 42); of 7 November 2018, *Coöperatie Mobilisation for the Environment and Others* (C-293/17 and C-294/17, EU:C:2018:882, paragraph 85); and of 14 November 2024, *Commission v Germany (Deterioration of lowland hay meadows)* (C-47/23, EU:C:2024:954, paragraph 87).

²³ See judgment of 14 November 2024, *Commission v Germany (Deterioration of lowland hay meadows)* (C-47/23, EU:C:2024:954, paragraphs 89, 93 and 108).

because, in such cases, there would be no discernible likelihood or risk of deterioration.

(d) Application to the present case

45. In the present case, at the end of the period laid down in the additional reasoned opinion, namely on 29 November 2022, there was, however, a likelihood or risk of Irish Natura 2000 sites designated for the protection of bog habitats suffering further deteriorations from peat cutting was clear, notwithstanding the measures taken by Ireland.

46. Ireland itself acknowledges that, at that time, peat was still being cut in Natura 2000 sites designated for the protection of raised bogs and blanket bogs. Moreover, the cutting was not a surprising and unforeseeable development, but rather a manifestation of long-standing tradition. Ireland even defends itself by asserting that that cutting has reduced over the years, thus conceding that the protective measures had previously been significantly less effective.

47. Nor is that finding refuted by Ireland's most recent report pursuant to Article 17 of the Habitats Directive.

48. Ireland disputes the probative value of its own reports pursuant to Article 17 of the Habitats Directive for the years 2013 and 2019. It was stated in those reports that the condition of raised bog and blanket bog habitats was poor and that the trend was towards further deterioration.²⁴ Ireland, on the other hand, stresses that that assessment is not based on an examination of all Irish Natura 2000 sites. At the same time, the Member State submits that, whilst the 2025 report continues to identify a poor conservation status, it at least notes an improving trend for raised bog habitats.²⁵

49. The first two reports emphasise above all that, up until 2019, Ireland had itself concluded that its protective measures to prevent further deteriorations were insufficient. While the new report may be an indication pointing towards an improvement in the situation by the end of the period laid down in the additional reasoned opinion, that indication merely signifies that, in Ireland's assessment, the protective measures in combination with the restoration measures are preventing further deterioration in the overall condition of raised bog habitats. In practice, however, that means that certain raised bogs are continuing to deteriorate as a result of peat cutting, whilst restoration measures in other locations compensate for those losses. However, compensatory measures cannot justify inadequate protective measures.

²⁴ Annex A.7.a to the application, pp. 32 and 33.

²⁵ That report is now available and does indeed contain the reported finding: National Parks and Wildlife Service, *The Status of EU Protected Habitats and Species in Ireland, Habitat Assessments*, Volume 2 (2025), p. 898, extracts in Annex D.4 to the rejoinder).

50. Furthermore, unlike raised bogs, the conservation status of blanket bogs remains poor even according to the 2025 report and shows a deteriorating trend.²⁶ Although that finding is not solely attributable to peat cutting, the report cites a study submitted by Ireland stating that over 200 hectares of bog areas were adversely affected by peat cutting between 2012 and 2023.²⁷

51. It is thus evident that, whilst Ireland has reduced peat cutting in Natura 2000 sites designated for the protection of raised and blanket bogs, it has not been able to bring it to a complete end. That is certainly preferable to the continued pursuit of that activity without change, since the bog habitats to be protected will be less severely damaged. However, it is not sufficient to comply fully with the prohibition of deterioration laid down in Article 6(2) of the Habitats Directive.

52. Furthermore, Ireland has failed to demonstrate that more effective protective measures cannot be taken.

53. On the contrary, it appears entirely possible, from a purely practical point of view, that measures intended to protect bog habitats from peat cutting could be enforced more rigorously. It may well be the case that stepping up monitoring of the Natura 2000 sites concerned and imposing stricter penalties for illegal peat cutting presents difficulties. Nevertheless, there are certainly further practical protective measures that could be implemented. For example, it is likely that systematically preventing drainage – such as by blocking and/or filling in ditches – would not only improve the water balance of the affected bogs, and thus contribute to the restoration of those habitats, but would also make further peat cutting considerably more difficult, if not impossible.

54. In so far as Ireland submits that peat cutting may be subject to rights similar to property rights, the obligations to safeguard the protected bog habitat types must be invoked in order to counter those rights. Those protection obligations form part of EU law and therefore prevail over national legal positions. If that results in property rights being restricted or abolished, the persons concerned may be entitled to compensation, but that does not alter the fact that the Member State must enforce the protection obligations.

(e) *Interim conclusion on the prohibition of deterioration*

55. With regard to points 1(a), (b) and (c) of the form of order sought by the Commission, it should therefore be found that Ireland has failed to take adequate

²⁶ National Parks and Wildlife Service, *The Status of EU Protected Habitats and Species in Ireland, Habitat Assessments*, Volume 2 (2025, p. 966, extracts in Annex D.4 to the rejoinder).

²⁷ National Parks and Wildlife Service, *The Status of EU Protected Habitats and Species in Ireland, Habitat Assessments*, Volume 2 (2025, p. 953, extracts in Annex D.4 to the rejoinder), citing Compass Informatics (August 2024). *Overarching Report – GIS Review – turbary areas – Blanket bog SACs*. Commissioned by National Parks & Wildlife Service, Dept. Housing, Local Government and Heritage, Dublin, Ireland (not published), p. 11. (Annex B.12a to the defence).

steps, within the meaning of Article 6(2) of the Habitats Directive, to prevent the deterioration of raised bog habitats (Natura 2000 codes 7110 and 7120) and of blanket bog habitats (Natura 2000 code 7130) as a result of activities related to peat cutting in the Natura 2000 sites designated for the protection of those habitat types.

B. Obligation to restore

56. By point 1(d) of the form of order sought, the Commission asserts that Ireland has infringed the Habitats Directive by failing to ensure the restoration of degraded raised bog and blanket bog habitats in Natura 2000 sites designated for the protection of those habitats.

57. According to its wording, the purpose of that application concerns the restoration of sites following ‘damage’ which is not more specifically defined. In the present action, however, the Commission discusses only damage attributable to peat cutting and the drainage carried out for that purpose. It therefore follows that other forms of damage should not be considered.

58. From a temporal perspective, the Commission is seeking restoration of damage caused since the date on which Ireland should have proposed the sites in accordance with the second subparagraph of Article 4(1) of the Habitats Directive, namely since 10 June 1995. It is only in the alternative that the Commission seeks restoration of damage caused since the date on which Ireland actually proposed the sites.

59. Ireland contends, however, that it has taken adequate restoration measures. In particular, it states that up until the end of 2022, restoration measures had been undertaken on 4 766 hectares of land across 38 Natura 2000 sites designated for the protection of raised bog habitats. With regard to blanket bogs, Ireland asserts that restoration measures are being prepared.

60. It is therefore necessary to discuss the obligation to restore first (see subheading 1) and then address the particular damage that must be remedied by reference to the time of its occurrence (see subheading 2). On that basis, it will be possible to identify the Natura 2000 sites affected by that damage (see subheading 3) and to examine whether Ireland has taken adequate restoration measures (see subheading 4).

1. Obligation to restore degraded Natura 2000 sites

61. Pursuant to the principle of sincere cooperation laid down in Article 4(3) TEU, Member States are required to eliminate the consequences of a breach of European Union law.²⁸ The Court has therefore held that the Member State

²⁸ Judgments of 16 December 1960, *Humblet v Belgian State*, (6/60-IMM, EU:C:1960:48, p. 559); of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne* (C-41/11,

concerned is also required to make good any harm caused by the failure to carry out an environmental impact assessment,²⁹ including, in particular, environmental damage in Natura 2000 sites.³⁰

62. The position cannot be otherwise where damage occurs to protected habitats in Natura 2000 sites because a Member State has failed to take adequate protection measures as required under Article 6(2) of the Habitats Directive. In any event, those habitats are the common heritage of the European Union.³¹ The Member State is therefore required, in principle, to restore those degraded habitats.

63. Ireland has manifestly and significantly failed to fulfil its protection obligations over a prolonged period.

64. Rather than coming as a surprise, the peat cutting had been taking place for a long time. It does not appear that the Irish measures were designed from the outset to put an immediate end to that practice. On the contrary, Ireland introduced the protection measures gradually and, even today, exceptions apply for the cutting of peat for domestic use in blanket bogs.³² It therefore follows that the measures were, and are, manifestly inadequate. That therefore constitutes a serious infringement of the obligations laid down in Article 6(2) of the Habitats Directive.

65. In the present case, Ireland must therefore restore the bog habitats damaged by peat cutting, since it has failed to take adequate protection measures as required under Article 6(2) of the Habitats Directive.

2. Starting point for the obligation to protect bog habitats

66. The parties are in dispute, however, as to the date on which Ireland's obligation to protect the bog habitats first arose. That is because Ireland is only required to restore habitats that have suffered damage since that date.

EU:C:2012:103, paragraph 43); of 25 June 2020, *A and Others (Wind turbines in Aalter and Nevele)* (C-24/19, EU:C:2020:503, paragraph 83).

²⁹ Judgments of 7 January 2004, *Wells* (C-201/02, EU:C:2004:12, paragraph 66); of 17 November 2016, *Stadt Wiener Neustadt* (C-348/15, EU:C:2016:882, paragraph 45); and of 7 December 2023, *Latvijas valsts meži* (C-434/22, EU:C:2023:966, paragraph 82).

³⁰ Judgment of 7 December 2023, *Latvijas valsts meži* (C-434/22, EU:C:2023:966, paragraph 88). See also the Advisory Opinion of the International Court of Justice of 23 July 2025, *Obligations of States in Respect of Climate Change*, paragraph 452.

³¹ Fourth recital of the Habitats Directive, as well as judgments of 20 October 2005, *Commission v United Kingdom* (C-6/04, EU:C:2005:626, paragraph 25); and of 10 January 2006, *Commission v Germany* (C-98/03, EU:C:2006:3, paragraph 59); as well as order of 20 November 2017, *Commission v Poland Forest* (C-441/17 R, EU:C:2017:877, paragraph 59).

³² In that regard, see points 105 to 107 of this Opinion.

67. The background to that dispute lies in the regulatory programme for the designation of Natura 2000 sites under Article 4 of the Habitats Directive. According to Article 4(1), the Member States were required to propose to the Commission within a period of three years, namely by 10 June 1995, sites that were eligible, on the basis of scientific criteria, for designation as Natura 2000 sites. The Commission was to select a list of sites of Community importance drawn from those proposals within a further three years. It was only as of that date that the protection provided for under Article 6(2), (3) and (4) was to apply to the sites on that list.

68. However, from a temporal perspective the Commission is seeking restoration in respect of damage caused since the date by which Ireland was required to propose the sites, namely from 10 June 1995. It is only in the alternative that the Commission seeks restoration of the damage caused since the date on which Ireland actually proposed the sites.³³

69. By contrast, Ireland submits that, according to the relevant case-law, its protection obligation arose only as of the actual proposal of the site concerned. The obligation to restore would therefore apply only to damage that has occurred since that date.

70. The Court has ruled that, even before the applicability of Article 6(2), (3) and (4) of the Habitats Directive, Member States are required to take protective measures that are appropriate, from the point of view of the Habitats Directive's conservation objective, for the purpose of safeguarding the relevant ecological interest which those sites have at national level.

71. At first, that obligation applied from the time the Member State proposed the site to the Commission as a Natura 2000 site in accordance with Article 4(1).³⁴ The Court based that finding, *inter alia*, on the fact that, if that were not the case, the factual basis of the Commission's decision on the inclusion of sites on the Community list would be compromised,³⁵ as well as on the ground that the natural habitats, fauna and flora that the Habitats Directive is intended to protect would otherwise be jeopardised.³⁶ Ireland relies on that case-law.

³³ According to Annex A.2 to the application, Ireland proposed the first site in October 1996, and the last three sites in April 2016.

³⁴ Judgments of 13 January 2005, *Dragaggi and Others* (C-117/03, EU:C:2005:16, paragraphs 26 and 29), and of 14 September 2006, *Bund Naturschutz in Bayern and Others* (C-244/05, EU:C:2006:579, paragraphs 37 and 38).

³⁵ Judgment of 14 September 2006, *Bund Naturschutz in Bayern and Others* (C-244/05, EU:C:2006:579, paragraphs 41 and 42).

³⁶ Judgment of 13 January 2005, *Dragaggi and Others* (C-117/03, EU:C:2005:16, paragraphs 27 and 28).

72. Subsequently, however, the Court extended that protection obligation to cover sites that the Member State had not (yet) proposed, but in respect of which the Member State does not dispute that they satisfy the ecological criteria in Article 4(1) of the Habitats Directive. It therefore follows that the Member State should also have already proposed those sites to the Commission. It cannot therefore be permitted that those sites do not enjoy any protection.³⁷

73. In that context, it is true that the Court refers to a risk of distortion of the Commission's decision-making basis,³⁸ but as long as the site has not yet been proposed, it cannot yet form part of that decision-making basis. Rather, even that case-law correctly seeks to conserve the habitats and species that the Habitats Directive is intended to protect.³⁹ That conclusion is further supported by the Commission's emphasis on the notion that a Member State must not be allowed to benefit from a delay in fulfilling its obligations.⁴⁰

74. As regards the contested sites which Ireland proposed to the Commission, Ireland acknowledges that the sites in question meet the ecological criteria set out in Article 4(1) of the Habitats Directive. Otherwise, it would not have been authorised to propose them.

75. Although Ireland only recognised these characteristics of the proposed sites at the time of the proposal, in principle, however, it is to be proceeded on the basis that those sites had already met the ecological criteria under Article 4(1) of the Habitats Directive since 10 June 1995.

76. Exceptionally, there may be sites in respect of which those criteria are met only over time, for example as a result of restoration measures. Furthermore, it does not appear to be out of the question that a Member State, despite serious endeavours to identify the sites to be proposed, was not in a position to know, on 10 June 1995, that a site met the criteria. It is possible that the Member State was therefore not yet subject to a requirement to propose such sites at that time.

77. However, bog habitats are clearly identifiable and develop over such long periods of time that the requirement to propose the relevant sites must already have existed in 1995.

78. Moreover, it would have been necessary for the Member State to demonstrate that it was entitled, by way of exception, to propose a site only at a

³⁷ Judgment of 15 March 2012, *Commission v Cyprus* (C-340/10, EU:C:2012:143, paragraphs 43, 46 and 47).

³⁸ Judgment of 15 March 2012, *Commission v Cyprus* (C-340/10, EU:C:2012:143, paragraph 45).

³⁹ Judgment of 13 January 2005, *Dragaggi and Others* (C-117/03, EU:C:2005:16, paragraphs 27 and 28).

⁴⁰ See, with specific regard to the Habitats Directive, judgment of 7 December 2000, *European Commission v France* (C-374/98, EU:C:2000:670, paragraph 51).

subsequent date. There is no evidence to support such a finding in the present case.

79. It therefore follows that Ireland should have been protecting the sites designated for the protection of raised and blanket bogs that it proposed between 1996 and 2016 from as early as 10 June 1995. Consequently, any damage caused to those bog habitats as a result of peat cutting carried out since 10 June 1995 must – in so far as actually possible – be remedied by Ireland through restoration of those habitats.

3. Which sites have been damaged since 10 June 1995?

80. It is common ground that, since 10 June 1995, Irish Natura 2000 sites designated for the protection of bog habitats have been damaged by peat cutting.

81. Although Ireland strongly criticises the evidence adduced by the Commission, it does not ultimately dispute that peat cutting has taken place since 10 June 1995 in the Natura 2000 sites designated for the protection of raised bogs, as specified in point 1(a) and (b) of the form of order sought, as well as in Annexes I and II to this Opinion. That information presented by the Commission is based on information provided by Ireland itself.⁴¹

82. With regard to the 50 Natura 2000 sites designated for the protection of blanket bogs (Annex III-A), as specified in point 1(c) of the form of order sought by the applicant, it is true that Ireland disputes the allegation that peat has been cut in *all* of those sites since 1995. However, the Member State submits a study dating from 2024 concluding that at least 37 of those sites, as listed in Annex III-B to this Opinion, have been affected since that time.⁴² Furthermore, the 2025 Irish report prepared pursuant to Article 17 of the Habitats Directive also states that the condition of the blanket bog habitat type remains ‘unfavourable, bad and deteriorating’,⁴³ and attributes that finding, inter alia, to ongoing peat cutting.⁴⁴

83. The Commission counters the 2024 study with an earlier study from 2017 showing that peat was being cut in all 50 sites up until at least 2012.⁴⁵ In so

⁴¹ Reply to the additional reasoned opinion, Annex A.17 to the application, p. 20 et seq.

⁴² Compass Informatics (August 2024). *Overarching Report – GIS Review – turbary areas – Blanket bog SACs*. Commissioned by National Parks & Wildlife Service, Dept. Housing, Local Government and Heritage, Dublin, Ireland (not published), Table 4, p. 17 (Annex B.12a to the defence).

⁴³ National Parks and Wildlife Service, *The Status of EU Protected Habitats and Species in Ireland, Habitat Assessments*, Volume 2 (2025), p. 966, extracts in Annex D.4 to the rejoinder).

⁴⁴ National Parks and Wildlife Service, *The Status of EU Protected Habitats and Species in Ireland, Habitat Assessments*, Volume 2 (2025), p. 950, extracts in Annex D.4 to the rejoinder).

⁴⁵ Simon J. Barron., Botanical, Environmental and Conservation Consultants Ltd., (BEC Consultants) (March 2017) *Turf-cutting GIS Review VOLUME 1 – DRAFT*. Prepared for the

doing, however, it disregards the fact that the more recent study reviewed and reassessed the findings from the earlier study on the basis of enhanced satellite images.⁴⁶ The more recent study states that in 13 of those sites, as listed Annex III-C, there is no identifiable damage attributable to peat cutting since 1995.

84. While it must be granted to the Commission that the more recent study does not definitively rule out damage, that does not alter the fact that it undermines the evidential value of the earlier study. Moreover, the Commission has not adduced any further evidence of damage caused to those 13 sites as a result of peat cutting since 1995.

85. On the other hand, point 1(c) of the form of order sought does not list three other sites in which, according to the more recent study,⁴⁷ peat cutting has taken place since 1995, and hence those sites are not the subject of point 1(d) of the present application.

86. It should therefore be concluded that, in the Natura 2000 sites listed in Annexes I, II and III-B to this Opinion, protected bog habitats have suffered damage since 10 June 1995 as a result of peat cutting and must therefore be restored by Ireland.

4. Has Ireland taken adequate restoration measures?

87. However, Ireland asserts that it has taken adequate restoration measures. In support of that assertion, it sets out various measures for the restoration of raised bog habitats in particular, as well as measures to prepare for the restoration of further raised bog and blanket bog habitats.

88. Those measures are undoubtedly to be welcomed. However, they are not sufficient.

89. That is because, according to the undisputed information set out in Annex A.2 to the application, Ireland has still not taken adequate steps to restore all the Natura 2000 sites designated for the protection of raised bog habitats that are specified in Annexes I and II to this Opinion. The Commission acknowledges

Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs (Annex A.31 of the application).

⁴⁶ 2024 study (cited in footnote 42), in particular p. 9.

⁴⁷ Carlingford Bog SAC (IE0000453), Ben Bulbin, Gleniff and Glenade Complex SAC* (IE000623) and Comeragh Mountains SAC* (IE001952).

only that restoration has taken place for the Carrownagappul Bog site (IE0001242).⁴⁸

90. Furthermore, Ireland has taken almost no measures to restore the Natura 2000 sites designated for the protection of blanket bog habitats that are listed in Annex III-B to this Opinion. Although Ireland highlights restoration measures in the Ox Mountains Bogs (IE0002006) and Wicklow Mountains (IE0002122) sites, some of those measures date back many years and it is not apparent that they have remedied all of the damage.

5. *Interim conclusion on the obligation to restore*

91. Ireland has therefore infringed its obligations under Article 4(3) TEU and Article 6(2) of the Habitats Directive by failing to take the necessary steps to restore the raised bog habitats (Natura 2000 codes 7110 and 7120) and the blanket bog habitats (Natura 2000 code 7130) situated in the Natura 2000 sites specified in Annexes I, II and III-B of this Opinion that have been damaged by peat cutting since 10 June 1995, with the exception of the Carrownagappul Bog site (IE0001242).

C. Compliance with Article 6(3) and (4) of the Habitats Directive

92. By point 1(e), (f) and (g) of the form of order sought, the Commission alleges an infringement of the provisions governing the ‘appropriate assessment’ – that is to say, the project authorisation system provided for in Article 6(3) and (4) of the Habitats Directive – in relation to peat cutting in Natura 2000 sites.

93. The second sentence of Article 6(3) of the Habitats Directive provides that the competent national authorities are to agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the Natura 2000 site concerned. To that end, the first sentence of Article 6(3) provides that any plan or project not directly connected with or necessary to the management of the protected site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, is to be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives.

94. By way of derogation, Article 6(4) of the Habitats Directive permits the authorisation of a project if it cannot be approved in accordance with Article 6(3). Since the assessment of the implications for the site is a precondition for that

⁴⁸ Footnote 17 to the reply. As regards the other sites mentioned therein, for which adequate restoration measures have been taken, the Commission did not name those sites as part of the subject matter of the action.

derogation,⁴⁹ any deficiencies in the implementation of the rules governing the assessment of the implications for the site will also entail an infringement of Article 6(4).

95. It is common ground between the parties that the cutting of peat in Natura 2000 sites designated for the protection of raised bog and blanket bog habitats is to be regarded as a project for the purposes of Article 6(3) of the Habitats Directive, in view of the potentially significant adverse effects on those habitats.

96. Point 1(e) of the form of order sought by the applicant concerns Natura 2000 sites designated for the protection of raised bog habitats (see subheading 1), whilst point 1(f) and (g) concern Natura 2000 sites designated for the protection of blanket bog habitats (see subheadings 2 and 3).

1. Natura 2000 sites designated for the protection of raised bog habitats

97. By point 1(e) of the form of order sought, the Commission alleges that Ireland has infringed the requirements laid down in Article 6(3) and (4) of the Habitats Directive by failing to control the peat cutting in the 13 Natura 2000 sites designated for the protection of raised bog habitats, as listed in Annex IV, by the deadline set in the additional reasoned opinion.

98. Irish law subjects peat cutting at Natura 2000 sites designated for the protection of raised bog habitats to a consent requirement, which, according to the Commission, should trigger the application of Article 6(3) and (4) of the Habitats Directive to peat cutting projects. Although the Commission considers those rules to be adequate in principle for formally designated sites, it nevertheless alleges that, in practice, no consent has ever been required, assessed, granted or refused.

99. By that line of argument, the Commission raises, in factual terms, the same complaint as that raised in point 1(a) of the form of order sought, namely that the protection measures taken by Ireland in sites containing raised bogs are inadequate. However, by invoking Article 6(3) of the Habitats Directive, the Commission alleges an infringement in relation to a second provision, and is thus asserting a twofold infringement.

100. One would therefore expect the Commission to raise objections regarding the same sites as those mentioned in connection with point 1(a) of the form of order sought, which are listed in Annex I to this Opinion. It is only in respect of those Natura 2000 sites designated for the protection of raised bog habitats that the Commission asserts that peat cutting was still taking place at the end of the period laid down in the additional reasoned opinion, that is to say that the peat cutting was inadequately controlled.

⁴⁹ Judgments of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraphs 189 and 190), and of 29 July 2019, *Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen* (C-411/17, EU:C:2019:622, paragraphs 147 and 148).

101. However, the Commission raises objections only in respect of two sites listed in Annex I. With regard to those two sites, however, the complaint alleging inadequate application of Article 6(3) of the Habitats Directive contradicts the Commission’s own statements in Annex A.2 to the application, according to which Ireland had given notice that peat cutting was being assessed there in accordance with Article 6(3) of the Habitats Directive.⁵⁰ The Commission does not dispute those statements.

102. Nor does it explain why it considers that the rules on the assessment of the implications for the site are not being adequately applied at the other sites listed in Annex IV.

103. That means that the assertion alleging inadequate practical implementation of Article 6(3) of the Habitats Directive in the 13 sites listed in Annex IV has not been sufficiently substantiated and point 1(e) of the form of order sought must therefore be rejected in that respect.

104. However, Ireland’s submissions make it clear that, at the end of the period set in the reasoned opinion, the 13 sites listed in Annex IV had not yet been formally designated as special areas of conservation in accordance with Article 4(4) of the Habitats Directive. This will be addressed below in relation to point 1(g) of the form of order sought (see subheading 3).

2. *The exception in respect of peat cutting for domestic use in Natura 2000 sites designated for the protection of blanket bogs*

105. By point 1(f) of the form of order sought, the Commission objects to the rules governing peat cutting in the Natura 2000 sites designated for the protection of blanket bogs, as listed in Annex V. In principle, peat cutting is classified there as an activity requiring consent, which would trigger the application of Article 6(3) of the Habitats Directive. However, continued cutting of peat for domestic use from existing peat banks is expressly exempted from that consent requirement.

106. Ireland acknowledges that criticism and has communicated its intention to remove that restriction

107. It is therefore undisputed that Ireland has infringed Article 6(3) and (4) of the Habitats Directive by failing to provide for a consent requirement in respect of continued peat cutting for domestic use from existing peat banks in the Natura 2000 sites designated for the protection of blanket bogs, as listed in Annex V to this Opinion.

⁵⁰ The sites in question are the Lough Ree (IE0000440) and River Moy (IE0002298) sites.

3. Inadequate enforcement in Natura 2000 sites designated for the protection of blanket bogs

108. Lastly, by point 1(g) of the form of order sought, the Commission alleges that Ireland has failed to put in place a control regime compliant with the requirements of Article 6(3) of the Habitats Directive for the 14 Natura 2000 sites designated for the protection of blanket bogs listed in Annex VI. By the end of the period set in the reasoned opinion, Ireland had still not formally designated those 14 sites as special areas of conservation in accordance with Article 4(4).

109. The Commission accepts that peat cutting was subject, in principle, to a consent requirement in those areas also. *Firstly*, however, the Commission asserts that that consent requirement was communicated only to the owners of the land, even though peat is also cut by other parties. *Secondly*, the Commission asserts that that obligation has never been enforced.

(a) Notification of the control regimes

110. Although Ireland insists that, even prior to formal designation under Article 4(4) of the Habitats Directive, Natura 2000 sites benefit, under Irish law, from the full protection provided for in Article 6(3) and (4) of the Habitats Directive, the Member State has nevertheless failed to address the allegation that that protection was not notified to all persons who cut peat in these sites.

111. That cause of action is therefore well-founded in that regard.

112. The same must therefore apply to point 1(e) of the form of order sought, in so far as it is also based on the fact that the sites listed in Annex IV had not yet been formally designated in accordance with Article 4(4) of the Habitats Directive.

(b) Inadequate enforcement

113. Unlike in relation to the Natura 2000 sites designated for the protection of raised bogs, the Commission has substantiated its allegation that the existing protection rules have not been adequately enforced in relation to sites designated for the protection of blanket bogs.

114. It is true that the Commission fails to explain why it raises that objection only in relation to the 14 Natura 2000 sites listed in Annex VI, whereas at least 13 of them are included in the list of sites set out in Annex III-B, where peat cutting has taken place since 1995. In respect of the 14th site, Comeragh Mountains (IE0001952), it is apparent from the more recent study submitted by Ireland that peat cutting has also been in evidence at that site since that time. That is therefore a strong indication that Ireland has failed adequately to enforce the consent requirement.

115. It is therefore incumbent on Ireland to demonstrate that it has taken adequate steps to enforce Article 6(3) of the Habitats Directive. However, Ireland has failed to do this, just as it has failed to comply with the protection obligations under Article 6(2) of that directive.⁵¹

(c) *Interim conclusion on inadequate enforcement*

116. It therefore follows that Ireland has additionally infringed Article 6(3) and (4) of the Habitats Directive by failing to notify all persons who cut peat in the areas of the requirement to have consent for the purposes of peat cutting in the Natura 2000 sites listed in Annexes IV and VI of this Opinion, and by failing to take adequate enforcement measures in the Natura 2000 sites listed in Annex VI.

V. Costs

117. Pursuant to Article 138(3) of the Rules of Procedure, the parties are to bear their own costs where each party succeeds on some and fails on others heads. In the present case, although the Commission has predominantly succeeded, Ireland has succeeded in relation to restore certain Natura 2000 sites designated for the protection of blanket bog habitats and in relation to part of point 1(e) of the form of order sought. Hence, each party should bear its own costs.

VI. Conclusion

118. I therefore propose that the Court should rule as follows:

- (1) Ireland has failed to take adequate steps within the meaning of Article 6(2) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora in order to prevent the deterioration of raised bog habitats (Natura 2000 Codes 7110 and 7120) and of blanket bog habitats (Natura 2000: Code 7130) resulting from activities related to peat cutting in the Natura 2000 sites designated for the protection of those habitat types.
- (2) Ireland has infringed its obligations under Article 4(3) TEU and Article 6(2) of Directive 92/43 /EEC by failing to take the necessary steps to restore the raised bog and blanket bog habitats that have been damaged by peat cutting since 10 June 1995 in the Natura 2000 sites specified in Annexes I, II and III-B to this Opinion, with the exception of the Carrownagappul Bog site (IE0001242).
- (3) Ireland has infringed Article 6(3) and (4) of Directive 92/43 by:

⁵¹ See points 46 to 54 of this Opinion.

- (a) failing to provide for a consent requirement for continued cutting of peat for domestic use from existing peat banks in the Natura 2000 sites listed in Annex V to this Opinion;
 - (b) failing to notify all persons who cut peat in these areas of the consent requirement for peat cutting in the Natura 2000 sites listed in Annexes IV and VI to this Opinion; and
 - (c) failing adequately to enforce the consent requirement for peat cutting in the Natura 2000 sites listed in Annex VI.
- (4) The action is dismissed as to the remainder.
- (5) The European Commission and Ireland shall bear their own costs.

Annex I (Sites listed in point 1(a) of the form of order sought)

- Cloonmoylan Bog (IE0000248),
- Lough Lurgeen Bog/Glenamaddy Turlough (IE0000301),
- Lough Ree (IE0000440),
- Bellanagare Bog (0000592),
- Callow Bog (IE0000595),
- Cloonchambers Bog (IE0000600),
- Corliskea/Trien/Cloonfelliv Bog (IE0002110),
- River Moy (IE0002298),
- Mouds Bog (0002331),
- Coolrain Bog (0002332),
- Clooneen Bog (IE0002348),
- Corbo Bog (IE0002349),
- Monivea Bog (IE0002352),
- Ardgraique Bog (E0002356).

Annex II (Sites and periods listed in point 1(b) of the form of order sought)

2012-2016

- Lough Corrib (IE0000297),
- Camderry Bog (IE0002347),
- Curraghlahanagh Bog (IE0002350),
- Moanveanlagh Bog (IE0002351);

2012-2017

- Carrownagappul Bog (IE0001242);

2012-2018

- Kilsallagh Bog (IE0000285),
- Crosswood Bog (IE0002337);

2012-2019

- Moneybeg and Clareisland Bogs (IE0002340);

up to, and including, 2021

- Lisnageeragh Bog and Ballinastack Turlough (IE0000296);

up to, and including, 2022

- Barroughter Bog (IE0000231),
- Flughany Bog (IE0000497),
- Ballynamona Bog and Corkip Lough (IE0002339),
- Redwood Bog (IE0002353).

Annex III-A (Sites listed in point 1(c) of the form of order sought)

- Caha Mountains (IE000093),
- Croaghanagh Bog (IE0000129),
- Fawnboy Bog/Lough Nacung (IE0000140),
- Gannivegil Bog (IE0000142),
- Lough Nillan Bog (Carrickatlieve) (IE0000165),
- Magheradrumman Bog (IE0000168),
- Meenaguse/Ardbane Bog (IE0000172),
- Meentygrannagh Bog (IE0000173),
- Slieve League Bog (IE0000189),
- Slieve Tooney/Tormore Island/Loughros Beg Bog (IE0000190),
- West of Ardara/Maas Road (IE0000197),
- Loughatorick South Bog (IE0000308),
- Rosroe Bog (IE0000324),
- Killarney National Park (IE0000365),
- Mount Brandon (IE0000375),
- Slieve Bloom Mountains (IE0000412),
- Carrowmore Lake Complex (IE0000476),
- Glenamoy Bog Complex (IE0000500),
- Lough Gall Bog (Site Code IE0000522),
- Owenduff/Nephin Complex (IE0000534),
- Slieve Fyagh Bog (IE0000542),
- Cuilcagh – Anierin Uplands (IE0000584),
- Lough Hoe Bog (IE0000633),
- Lough Nabrickkeagh Bog (IE0000634),
- Galtee Mountains (IE0000646),

- Coolvoy Bog (IE001107),
- Dunragh Loughs/Pettigo Plateau (IE0001125),
- Keeper Hill (IE001197),
- Arroo Mountain (IE0001403),
- Derryclogher (Knockboy) Bog (IE0001873),
- Glanmore Bog (IE0001879),
- Maulagowna Bog (IE0001881),
- Glendree Bog (IE0001912),
- Sonnagh Bog (IE0001913),
- Bellacorick Bog Complex (IE0001922),
- Mweelrea/Sheeffry/Erriff Complex (IE0001932),
- Croaghaun/Slievemore (IE0001955),
- Tamur Bog (IE0001992),
- Ox Mountains Bogs (IE0002006),
- Maumturk Mountains (IE0002008),
- The Twelve Bens/Garraun Complex (IE0002031),
- Boleybrack Mountain (IE0002032),
- Connemara Bog Complex (IE0002034),
- Ballyhoura Mountains (IE0002036),
- Cloghernagore Bog and Glenveagh National Park (IE0002047),
- Wicklow Mountains (IE0002122),
- Lough Golagh and Breesy Hill (IE0002164),
- Slieve Mish Mountains (IE0002185),
- River Finn (IE0002301),
- Slieve Bernagh Bog (IE0002312).

Annex III-B (Sites damaged since 1995, listed in point 1(c) of the form of order sought)

- Caha Mountains (IE000093),
- Croaghanagh Bog (IE0000129),
- Fawnboy Bog/Lough Nacung (IE0000140),
- Gannivegil Bog (IE0000142),
- Lough Nillan Bog (Carrickatlieve) (IE0000165),
- Magheradrumman Bog (IE0000168),
- Meenaguse/Ardbane Bog (IE0000172),
- Slieve League Bog (IE0000189),
- Slieve Tooney/Tormore Island/Loughros Beg Bog (IE0000190),
- West of Ardara/Maas Road (IE0000197),
- Killarney National Park (IE0000365),
- Mount Brandon (IE0000375),
- Carrowmore Lake Complex (IE0000476),
- Glenamoy Bog Complex (IE0000500),
- Lough Gall Bog (Site Code IE0000522),
- Owenduff/Nephin Complex (IE0000534),
- Slieve Fyagh Bog (IE0000542),
- Cuilcagh – Anierin Uplands (IE0000584),
- Lough Hoe Bog (IE0000633),
- Lough Nabrickkeagh Bog (IE0000634),
- Dunragh Loughs/Pettigo Plateau (IE0001125),
- Arroo Mountain (IE0001403),
- Glanmore Bog (IE0001879),
- Bellacorick Bog Complex (IE0001922),

- Mweelrea/Sheeffry/Erriff Complex (IE0001932),
- Croaghaun/Slievemore (IE0001955),
- Tamur Bog (IE0001992),
- Ox Mountains Bogs (IE0002006),
- Maumturk Mountains (IE0002008),
- The Twelve Bens/Garraun Complex (IE0002031),
- Boleybrack Mountain (IE0002032),
- Connemara Bog Complex (IE0002034),
- Cloghernagore Bog and Glenveagh National Park (IE0002047),
- Wicklow Mountains (IE0002122),
- Slieve Mish Mountains (IE0002185),
- River Finn (IE0002301),
- Slieve Bernagh Bog (IE0002312).

Annex III-C (Sites not damaged since 1995, listed in point 1(c) of the form of order sought)

- Meentygrannagh Bog (IE0000173),
- Loughatorick South Bog (IE0000308),
- Rosroe Bog (IE0000324),
- Slieve Bloom Mountains (IE0000412),
- Galtee Mountains (IE0000646),
- Coolvoy Bog (IE001107),
- Keeper Hill (IE001197),
- Derryclogher (Knockboy) Bog (IE0001873),
- Maulagowna Bog (IE0001881),
- Glendree Bog (IE0001912),
- Sonnagh Bog (IE0001913),
- Ballyhoura Mountains (IE0002036),
- Lough Golagh and Breesy Hill (IE0002164).

Annex IV (Sites listed in point 1(e) of the form of order sought)

- Barroughter Bog (IE0000231),
- Lough Ree (IE0000440),
- Ballygar (Aghrane) Bog (0002199),
- Derragh Bog (0002201),
- River Moy (IE0002298),
- Tullaher Lough and Bog (IE0002343),
- Derrinlough (Cloonkeenleananode) Bog (IE0002197),
- Aughrim (Aghrane) Bog (IE0002200),
- Mount Jessop Bog (IE0002202),
- Girley (Drewstown) Bog (IE0002205),
- Wooddown Bog (IE0002205),
- Scohaboy (Sopwell) Bog (IE0002206),
- Arragh More (Derrybreen) Bog (IE0002207).

Annex V (Sites listed in point 1(f) of the form of order sought)

- Caha Mountains (IE000093),
- Croaghanagh Bog (IE0000129),
- Fawnboy Bog/Lough Nacung (IE0000140),
- Gannivegil Bog (IE0000142),
- Lough Nillan Bog (Carrickatlieve) (IE0000165),
- Magheradrumman Bog (IE0000168),
- Meenaguse/Ardbane Bog (IE0000172),
- Meentygrannagh Bog (IE0000173),
- Slieve League (IE0000189),
- Slieve Tooney/Tormore Island/Loughros Beg Bog (IE0000190),
- West of Ardara/Maas Road (IE0000197),
- Loughatorick South Bog (IE0000308),
- Rosroe Bog (IE0000324),
- Killarney National Park (IE0000365),
- Mount Brandon (IE0000375),
- Slieve Bloom Mountains (IE0000412),
- Carlingford Mountain (IE0000453),
- Carrowmore Lake Complex (IE0000476),
- Glenamoy Bog Complex (IE0000500),
- Lough Gall Bog (IE0000522),
- Owenduff/Nephin Complex (IE0000534),
- Slieve Fyagh Bog (IE0000542),
- Cuilcagh – Anierin Uplands (IE0000584),
- Ben Bulbin, Gleniff and Glenade Complex (IE0000623),
- Lough Hoe Bog (IE0000633),

- Lough Nabrickkeagh Bog (IE0000634),
- Galtee Mountains (IE0000646),
- Coolvoy Bog (IE001107),
- Dunragh Loughs/Pettigo Plateau (IE0001125),
- Keeper Hill (IE001197),
- Arroo Mountain (IE0001403),
- Derryclogher (Knockboy) Bog (IE0001873),
- Glanmore Bog (IE0001879),
- Maulagowna Bog (IE0001881),
- Mullaghanish Bog (IE0001890),
- Glendree Bog (IE0001912),
- Sonnagh Bog (IE0001913),
- Bellacorick Bog Complex (IE0001922),
- Mweelrea/Sheeffry/Erriff Complex (IE0001932),
- Comeragh Mountains (IE0001952),
- Croaghaun/Slievemore (IE0001955),
- Tamur Bog (IE0001992),
- Ox Mountains Bogs (IE0002006),
- Maunturk Mountains (IE0002008),
- The Twelve Bens/Garraun Complex (IE0002031),
- Boleybrack Mountain (IE0002032),
- Connemara Bog Complex (IE0002034),
- Ballyhoura Mountains (IE0002036),
- Cloghernagore Bog and Glenveagh National Park (IE0002047),
- Wicklow Mountains (IE0002122),
- Pollangoona Bog (IE0002126),

- Lough Golagh and Breesy Hill (IE0002164),
- Slieve Mish Mountains (IE0002185),
- River Finn (IE0002301),
- Slieve Bernagh Bog (IE0002312).

Annex VI (Sites listed in point 1(g) of the form of order sought)

- Magheradrumman Bog (IE0000168),
- West Ardara/Maas Road (IE0000197),
- Killarney National Park (IE0000365),
- Mount Brandon (IE0000375),
- Glenamoy Bog Complex (IE0000500),
- Owenduff/Nephrin Complex (IE0000534),
- Bellacorick Bog Complex (IE0001922),
- Mweelrea/Sheeffry/Erriff Complex (IE0001932),
- Comeragh Mountains (IE0001952),
- The Twelve Bens/Garraun Complex (IE0002031),
- Connemara Bog Complex (IE0002034),
- Cloghernagore Bog and Glenveagh National Park (IE0002047),
- Wicklow Mountains (IE0002122),
- River Finn (IE0002301).