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Mr Virginijus Sinkevičius, European Commissioner for Environment, Oceans and Fisheries

Subject: Report to the European Commission on Greece's non-compliance with the CJEU's judgment in C-849/19

Athens, 13th December 2022
Reference: 141/2022

Dear Commissioner,

On 17 December 2020, the Court of Justice of the European Union (Sixth Chamber) delivered its judgment in Case C-849/19 (Commission v Hellenic Republic) and declared that Greece violated its obligations under articles 4 (4) and 6 (1) of Directive 92/43/EEC by failing to establish, within the prescribed period, appropriate conservation objectives and appropriate conservation measures in relation to the Sites of Community Importance (SCIs) included in Commission Decision 2006/613/EC.

Although sufficient and reasonable time has elapsed since the delivery of this judgment, **Greece has failed to take the necessary measures to comply, and has thus failed to fulfil its obligations under article 260 (1) of the Treaty on the Functioning of the European Union (TFEU).**

In particular, as analysed in the attached document, Greece has failed to establish appropriate site-specific conservation objectives and appropriate conservation measures in relation to all 239 SCIs included in Commission Decision 2006/613/EC. It has initiated certain processes to this effect, but these processes and related actions are inappropriate, untimely and inadequate to ensure compliance with the judgment and the obligations under articles 4 (4) and 6 (1) of the Directive. What is more, the national legislation on protected areas (including Natura 2000 sites) enacted since the delivery of the judgment is, in many instances, inconsistent with the Directive, and does not create an appropriate legal framework for the adoption of the necessary measures to ensure compliance with the judgment. Overall, Greece's actions and inactions since the delivery of the judgment demonstrate its lack of resolve and determination to adopt all necessary measures to comply with its obligations under Directive 92/43/EEC.

Expressing our deep concern about the prolonged and unjustifiable non-compliance of Greece with the judgment of the CJEU, **we call upon the European Commission to take all necessary measures, including legal action,** in order for Greece to proceed without further delay with the conclusion of all procedures necessary and to take the appropriate actions for its full compliance with C-849/19**.**

At a critical time for global biodiversity, the European Commission needs to ensure that Greece complies with its obligations under Directive 92/43/EEC and the Court's judgment, and that sensitive and significant habitats and species, protected pursuant to this Directive as part of the Natura 2000 network, are effectively protected and conserved through the adoption of appropriate measures.

Given that the protected habitats and species form part of the European Community's natural heritage and that "management of this common heritage is entrusted to the member states in their respective

territories",[1] Greece's long-standing failure to comply with its obligations under 4 (4) and 6 (1) of Directive 92/43/EEC seriously compromises the Directive's objectives for the protection and conservation of biodiversity, and further jeopardises the achievement of the EU's collective vision and goals as envisaged in the European Green Deal and the European Biodiversity Strategy. The European Commission needs to ensure that EU nature law is applied correctly and timely in the member states and that the EU responds promptly and efficiently to the biodiversity crisis and the urgent need to reverse its loss.

We remain at your disposal to provide further information on Greece's non-compliance with the CJEU's judgment.

Yours sincerely,

Demetres Karavellas

CEO, WWF Greece

[1] C-6/04, Judgment of the Court (Second Chamber) of 20 October 2005 (European Commission v UK), para. 25; C-46/11, Judgment of the Court (Eighth Chamber) of 15 March 2012 (European Commission v Republic of Poland), para. 26, C-98/03, Judgment of the Court (Second Chamber) of 10 January 2006 (European Commission v Federal Republic of Germany), para. 59. C-849/19, Judgment of the Court (Sixth Chamber) of 17 December 2020 (European Commission v Hellenic Republic), para. 78.

WWF Greece Report to the European Commission on Greece's non-compliance with the CJEU's judgment in C-849/19

INTRODUCTION

On 17th December 2020, the Court of Justice of the European Union (Sixth Chamber) delivered its judgment on Case C-849/19 (Commission v Hellenic Republic). In paragraph 1 of the operative part of this Judgment, the CJEU declared that:

"*by not adopting within the prescribed periods all the necessary measures for establishing appropriate conservation objectives and appropriate conservation measures in relation to the 239 Sites of Community Importance which are on Greek territory and are included in Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Mediterranean biogeographical region, the Hellenic Republic has failed to fulfil its obligations under Articles 4(4) and 6(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2006/105/EC of 20 November 2006*".

In particular, the Court upheld both complaints raised by the European Commission against Greece:

"***On the first complaint in relation to infringement of article 4 (4) of the habitats directive" (paragraphs 29-61),*** *the Court held: "In view of the foregoing considerations, it is established that, by not having established the conservation objectives relating to the SACs located in its territory as promptly as possible and within a maximum period of six years from the date of the adoption of Decision 2006/213, the Hellenic Republic failed to fulfil its obligations under article 4 (4) of the habitats directive*".[2] (para. 61).

"***On the second complaint in relation to infringement of 6 (1) of the habitats directive (paragraphs 62-89),*** *the Court held: "It follows from the foregoing considerations that, by not adopting, within the prescribed period, all the necessary measures to establish the appropriate conservation objectives and conservations measures with regard to the SCIs concerned, the Republic of Greece has failed to fulfill its obligations under articles (4) and 6 (1) respectively of the habitats directive*" (para. 89)

According to article 260 of the Treaty on the Functioning of the EU (TFEU) "*1. If the Court of Justice of the European Union finds that a Member State has failed to fulfil an obligation under the Treaties, the State shall be required to take the necessary measures to comply with the judgment of the Court.*

2. If the Commission considers that the Member State concerned has not taken the necessary measures to comply with the judgment of the Court, it may bring the case before the Court after giving that State the opportunity to submit its observations. It shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances. If the Court finds that the Member State concerned has not complied with its judgment it may impose a lump sum or penalty payment on it. This procedure shall be without prejudice to Article 259".

It is hereby submitted that despite the fact that reasonable and sufficient time has elapsed since the delivery of the judgment, **Greece has failed to take the necessary measures to comply with the**

[2] C-849/19, Judgment of the Court (Sixth Chamber) of 17 December 2020 (European Commission v Hellenic Republic), para. 52 (informal translation into English by the authors).

judgment of the CJEU in case C-849/19, and has thus failed to fulfil its obligations under article 260 (1) of the TFEU.

In particular, as analysed in the present document, Greece has failed to adopt the necessary measures for the establishment of appropriate conservation objectives **(Section A)** and appropriate conservation measures **(Section B)** in relation to the 239 SCIs included in Commission Decision 2006/613/EC, thus violating its obligations under articles 4 (4) and 6 (1) of Directive 92/43/EEC.

It is further submitted that taking into account the circumstances, **the period of two years since the delivery of the judgment is reasonable and sufficient for Greece to comply with the judgment (Section C)**. During this time, Greece's actions and inaction demonstrate its lack of resolve and determination to adopt all necessary measures to comply promptly with the judgment and its obligations under Directive 92/43/EEC. On the contrary, the legislation enacted since the delivery of the judgment is in many instances inconsistent with this directive and evidences Greece's failure to comply with the judgment.

Expressing our deep concern about the prolonged and unjustifiable non-compliance of Greece with the judgment of the CJEU, **we call upon the Commission to take all necessary measures, including legal action,** in order for Greece to proceed without further delay with the conclusion of all procedures necessary and the implementation of the appropriate actions for its full compliance with C-849/19.

SECTION A - INFRINGEMENT OF ARTICLE 4 (4) OF DIRECTIVE 92/43/EEC IN RELATION TO THE ESTABLISHMENT OF CONSERVATION OBJECTIVES IN SPECIAL AREAS OF CONSERVATION (SACS)

This section concerns the first complaint, as raised by the European Commission and upheld by the Court in C-849/19.

I. Identification of the measures necessary for Greece's compliance with the judgment

Obligations and requirements set out in Directive 92/43/EEC

Article 4 (4) of Directive 92/43/EEC (thereinafter: the habitats directive) provides: "*Once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed*".

The CJEU, interpreting articles 4 (4) and 6 (1) and (3) in the light of the 8th and 11th recital and the objective of the Directive, held that "*the establishment of conservation objectives is a mandatory and necessary step between the designation of SACs and the implementation of conservation measures*».[3] It also held that the timeframe set out in article 4 (4) for the designation of SACs and the establishment of priorities, namely 6 years after the adoption by the Commission of the list of sites selected as sites of Community importance (article 2 (2)), also applies for the establishment of conservation objectives given that these objectives are necessary for the determination of the aforementioned priorities and should therefore

[3] *Ibid*, para. 52.

precede this process.[4] The Court also found in C-849/19 that the objectives established by Greece in two national parks, namely "Schinia – Marathona" και "Koronia – Volvi", were not in line with the directive, as they did not relate to specific SACs and did not take into account the particular interests of the zones concerned.[5] According to the Judgment, objectives such as the "conservation of the Schinia wetland" and the "conservation of the ecosystems of the region" are too general and vague to be considered as "conservation objectives" within the meaning of the habitats directive.[6]

Furthermore, the European Commission, in its guidance document on article 6 of the habitats directive, states that "*the general objective of achieving FCS for all habitat types and species listed in Annexes I and II to the Habitats Directive needs to be translated into* ***site-level conservation objectives****. It is important to distinguish between conservation objectives of individual sites and the overall objective of achieving FCS. Site-level conservation objectives are a set of specified objectives to be met in a site in order to make sure that the site contributes in the best possible way to achieving FCS at the appropriate level (taking into account the natural range of the respective species or habitat types)*".[7] These site-level conservation objectives "*should be set for all species and habitat types of Community interest under the Habitats Directive and for bird species in Annex I of the Birds Directive or regularly occurring migratory bird species, which are significantly present on the site. However, it is not necessary to establish specific conservation objectives or conservation measures for species or habitat types whose presence on the site is non-significant according to the Natura 2000 SDF*".[8]

National legislation

Article 8 of law 3937/2011 provides that the Ministry of Environment and Energy shall establish (by ministerial decision and following the opinion of the Natura 2000 Committee), national conservation objectives for the habitats types and species of community importance (Appendices I and II of the habitats directive) found in Greece with the view to achieving favourable conservation status in their distribution areas. It further provides for the establishment (by virtue of a ministerial decision) of conservation objectives for each SAC or groups of SACs, with the view to achieving favourable conservation status of habitat types and species found in each area, as described in the Standard Data Form, based on specifically determined criteria.

II. Greece's actions and failure to comply with the judgment

Following the delivery of the Court's judgment, the Ministry of Environment and Energy decided and approved the inclusion of a new action in the EU-funded project LIFE IP 4 Natura concerning the development and legal adoption of conservation objectives for habitat types listed in Annex I and species listed Annex II of the habitats directive, for which sufficient knowledge and data were available (activity C.7). This action relied on the findings of a formerly-completed project, namely "Horizontal technical and scientific coordination of surveillance studies and assessment of conservation status of species and habitat types in Greece and cross-utilization of results" (2015), as well as on new, available and complementary scientific data.[9]

[4] *Ibid*, para. 53.
[5] *Ibid*, para. 58.
[6] *Ibid*, para. 59.
[7] Commission notice "Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC" C (2018) 7621 final (Brussels, 21.11.2018), p. 17.
[8] *Ibid*, p. 17-18. Similarly, Commission Note on setting conservation objectives for Natra 2000 sites; https://ec.europa.eu/environment/nature/natura2000/management/docs/commission_note/commission_note2_EN.pdf.
[9] https://edozoume.gr/en/actions/.

In April 2021, the Ministry of Environment and Energy, relying on the aforementioned deliverable of the LIFE IP 4 Natura project, and following a favourable opinion by the Natura 2000 Committee,[10] as required by law, issued a ministerial decision (by virtue of article 8 of law 3937/2011) for the establishment of national conservation objectives of certain natural habitat types and species of Annexes I and II of the habitats directive respectively with the view to achieving favourable conservation status.[11] These conservation objectives are set at national level and concern habitat types and species for which there was sufficient scientific data. The Natura 2000 Committee, the official scientific advisory body tasked with the effective implementation of the habitats directive,[12] noted that these objectives cover around 22% of habitat types and 40% of flora species, and stressed that "the establishment of conservation objectives, both at national and site level (SAC/SCIs and SPAs) for habitats and species of union interest must be carried out promptly and in a unified and integrated manner, given that the management plans for SACs of the European ecological network Natura 2000, drawn up pursuant to article 47 para. 3 of law 4685/2020, must be aligned with the conservation objectives".[13]

Furthermore, a draft ministerial decision has been developed within the framework of the LIFE IP 4 Natura project titled "Establishment of conservation objectives of habitat types of Annex I and species of Annex II of Directive 92/43/EEC in SACs and SCIs of the national ecological network Natura 2000». This draft was submitted to the Natura 2000 Committee on 14th July 2022 for its opinion (as required by law); the Committee gave a favourable opinion (with comments) in September 2022.[14] In its opinion, the Committee noted that "[t]he progress is significant, but at the same time partial. It should be supplemented upon completion of the new round of surveillance of protected species and habitat types under Directive 92/43/EEC, and other projects specifically targeted at conservation objectives, since in many sites, there was insufficient data concerning the habitat types' coverage and species population". No ministerial decision on this issue has been issued to date. What is more, the process for the commissioning and approval of the project «Surveillance and Evaluation of the conservation status of protected species and habitats in Greece" (and its subprojects), and its commencement date, have been delayed, and it is uncertain whether it can be completed by its scheduled date, namely June 2024.

It is clear from the aforementioned case-law of the CJEU and the Commission's guidance document that article 4 (4) of the habitats directive requires the establishment of "site-level" conservation objectives. Member states may choose to establish conservation objectives at national level, but this is not an obligation under this directive. The ministerial decision issued under article 8 of law 3937/11 concerns conservation objectives set at national level, and does not thus comply with the judgment and the habitats directive. No ministerial decision has been issued for site-specific conservation objectives for the SACs referred to in the judgment. Even if the - currently in draft - ministerial decision on site-specific conservation is issued, this will not amount to compliance with the judgment, given that this decision relates only to a small percentage of habitat types and species in the SACs concerned, and does not cover all habitats and species as required by the habitats directive.

[10] Natura 2000 Committee, Opinion on the draft ministerial decision "Establishment of national conservation objectives of natural habitats types and species of union interest (March 2021); https://ypen.gov.gr/wp-content/uploads/2021/03/20210301_OpinionEF2000_YA_National-Conservation-Objectives-2.pdf.

[11] Ministerial Decision ΥΠΕΝ/ΔΔΦΠΒ/30339/982/2021 (OGG 1375 B) Establishment of national conservation objectives of natural habitat types and species of union interest. And corrigendum (OGG 1915 B).

[12] See, inter alia, article 19 of law 3937/2011 and Joint Ministerial Decision 33318/3028/1998 (OGG 1289 B).

[13] See *supra* note 10 (informal translation into English by the authors).

[14] Natura 2000 Committee, Opinion of Natura 2000 Committee in relation to the ministerial decision on "Establishment of conservation objectives of natural habitat types of Annex I and species of Annex I of Directive 92/43/EEC in SACs and SCIs of the national ecological network Natura 2000"(September 2022); https://ypen.gov.gr/wp-content/uploads/2022/09/20220901_Opinion_EF2000_Local_Cons_Objectives.pdf

Therefore, by failing to establish conservation objectives for all SACs included in Commission Decision 2006/613/EC, Greece has failed to comply with the CJEU's judgment.

SECTION B: INFRINGEMENT OF ARTICLE 6 (1) OF DIRECTIVE 92/43/EEC IN RELATION TO THE ESTABLISHMENT OF NECESSARY CONSERVATION MEASURES IN SACS

This section concerns the second complaint, as raised by the European Commission and upheld by the Court in C-849/19.

I. Identification of the measures necessary for Greece's compliance with the judgment

Obligations and requirements set out in Directive 92/43/EEC

Article 6 (1) of the habitats directive provides: "[f]or special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites".

According to the CJEU's settled case-law, "the necessary conservation measures, within the meaning of Article 6(1) of the Habitats Directive, must be established and implemented within the framework of the SACs concerned. This follows, *inter alia*, from article 1 (l) of this directive, interpreted in the light of the eight recital thereto, according to which a SAC is a SCI in which conservation measures are 'applied", and that, in each designated area, the necessary measures should be "implemented" having regard to the established conservation objectives [judgment of 5 September 2019, Commission v Portugal (Designation and protection of SAC), C-290/18, not published, EU:C:2019:669, para 52 and case-law cited therein]".[15]

The Court has further held that "to ensure that this provision is not deprived of any useful effect, article 6 (1) of the habitats directive not only requires the establishment of conservation measures necessary to maintain a favourable conservation status of protected habitats and species within the site concerned, but also, and foremost, their effective implementation through comprehensive, clear and precise measures, (see, to this effect, judgments of May 2007, Commission v Austria, C-508/04 , EU:C:2007:274, point 73, and of 17 April 2018, Commission v Poland (Białowieża Forest), C-441/17, EU:C:2018:255, points 213 and 214]".[16]

In C-849/19, the CJEU assessed the appropriateness of the conservation measures invoked by Greece, and held that they were not in line with article 6 (1) of the habitats directive. The Court found that they were of a 'generic and guiding nature' and required further specification for their effective implementation.[17] It also found that they were not established in a systematic way and were not in line with the ecological requirements of every habitat type and species found in each SAC.[18] Moreover, they did not relate to specific SACs, did not specify the zone to which the measure applied,[19] and were not in line with the conservation objectives and the order of priorities for each SAC within the meaning of Article 6 (1) of the habitats directive.[20]

[15] C-849/19, *supra* note 2, para. 76 (informal translation into English by the authors).
[16] *Ibid*, para. 77
[17] *Ibid*, para. 82.
[18] *Ibid*, para. 86.
[19] *Ibid*, para. 84.
[20] *Ibid*, para. 85.

The European Commission, in its guidance document on article 6, indicated that "*[t]he conservation measures can take the form of 'appropriate statutory, administrative or contractual measures' and 'if need be', the form of 'appropriate management plans'. The choice is left to the Member States, in line with the principle of subsidiarity. The Directive sets out the results to be achieved and leaves it up to the Member States to decide how to do so in practice. Often, the different options referred to in Article 6(1) are used in combination for the management of Natura 2000 sites*".[21] It further notes that "*[t]he qualifier 'appropriate' has no other objective than to recall that whatever the type of measure chosen by the Member States, there is an obligation to ensure that they correspond to the ecological requirements of the target features of particular Natura 2000 sites and respect the general aim of the Directive defined in Article 2(1) and (2)*". Finally, the conservation measures for SACs must "*a) correspond to the ecological requirements of habitats in Annex I and species in Annex II present on the sites and b) fulfill the Directive's overall aim of maintaining or restoring at a favourable conservation status the natural habitats and the species of fauna and flora of Community interest*."[22]

National legislation

Directive 92/43/EEC was transposed into national law by joint ministerial decision 33318/1998 (OJ B 1289) as amended by joint ministerial decision 14849/2008 (OJ B 645). By virtue of article 5 para. 4.1 (a) of law 3937/2011 (which replaced article 19 of law 1650/1986), "[s]ites included in the SCIs catalogue in Annex I of Decision 2006/613/EC of the Commission (L 259) are designated by this law as SACs and are attached as an annex to this law (Annex)".

Articles 18 and 19 of law 1650/1986, as amended by law 3937/2011 and more recently by law 4685/2020, provide for the following four categories of protected areas (PA): (1) Biodiversity protection areas, (2) National Parks, (3) Wildlife Refuges and (4) Protected landscapes and protected natural formations. In relation to Natura 2000 sites, this provision prescribes that the sites included in the National List of the sites of the European ecological network Natura 2000 are designated, by virtue of this law, as biodiversity protection areas and are divided into SACs, SPAs and SCIs. It is further provided that a biodiversity protection area may be constituted by more than one Natura 2000 sites which are geographically close to each other, and that national parks may also include one or more Natura 2000 sites or Biodiversity Protection Areas, especially when they have similar ecosystem functions and common spatial, physiographic or/and abiotic attributes.

Article 19 para. 4 also recognises four protection zones which may be designated within Biodiversity Protection Areas and National Parks, namely absolute protection zone, nature protection zone, habitats and species conservation zone, and sustainable management of nature resources zone. This provision also describes the objectives and the key characteristics of these zones, especially in relation to the need to regulate human activities.

Furthermore, article 21 of Law 1650/1986 prescribes the regulatory instruments for the protection and conservation of biodiversity protection areas (including Natura 2000 sites): "for the protection and conservation of biodiversity protection areas and National Parks, management plans of paragraph 3 are drawn up and presidential decrees of paragraph 4 are issued, following the Special Environmental Studies of paragraph 2". The scope and the content of these instruments are further elaborated in this provision. The Special Environmental Studies (SES) constitute the scientific study for the documentation of the content of presidential decrees and management plans. It includes proposals on the designation of the area, the protection zones, the need for the establishment of buffer zones, ecological corridors, the regulation of activities and other appropriate measures and actions for the conservation of the protected habitats and species of each site. The presidential decree is issued after a proposal by the Ministry of

[21] Commission notice, *supra* note 7, p. 22.
[22] *Ibid.*

Environment and Energy and the opinion of Natura 2000 Committee relying on the SES, and includes provisions for the designation of biodiversity protection areas and national parks, their delineation and the determination of neighbouring areas in need of protection, as well as the determination of land uses and activities per zone and the establishment and delineation of ecological corridors. The management plans (issued by ministerial decision) include, *inter alia*, conservation objectives, management actions, interventions and measures, specific terms and restrictions for activities and projects, guidance and priorities for the implementation of various conservation actions including monitoring and evaluation.

The law also provides for the adoption of "temporary measures" in the form of a ministerial decision pending the adoption of the presidential decrees; this ministerial decision determines the terms and restrictions for activities which may have adverse impacts on these sites, as well as conservation actions for the improvement of the conservation status of protected habitats and species. This ministerial decision is valid for two years, but can be extended, on exceptional grounds, for three more. It should be noted, that initially, this provision allowed for the extension of the validity of this decision for one year; this was amended twice, in the past two years, to allow for the extension of these "temporary measures" to three additional years.[23]

II. Greece's actions and failure to comply with the judgment

Since the delivery of the judgment, Greece has not adopted presidential decrees and management plans, as provided for in article 21 of law 1650/1986, in relation to any of the SACs included in Commission Decision 2006/613/EC. It has therefore failed to comply with the CJEU's judgment and article 6 (1) of the habitats directive. Greece has issued certain (temporary) ministerial decisions for specific areas under article 21 para. 6 of law 1650/1986,[24] but, as analysed above and explicitly held by the CJEU in C-849/19, the adoption of such measures is not in line with the requirements set by the habitats directive, and cannot thus be deemed to contribute to Greece's compliance with the judgment.

Greece has also initiated certain processes and undertaken certain preparatory actions, but these actions, as will be analysed below, are inappropriate, inadequate and untimely to ensure compliance with the judgment and the obligations under article 6 (1) of the habitats directive.

(i) Failure to implement effectively and in a timely manner the Special Environmental Studies project

During the hearing of case C-849/19, Greece argued that its obligations will be fully fulfilled upon completion of the project "Development of Special Environmental Studies and Management Plans for Natura 2000 sites" by the end of 2021.[25]

[23] See article 117 of law 4819/2021 (OGG A 129) and article 11 of law 4964/2022 (OGG A 150).

[24] See, for example, joint ministerial decision ΥΠΕΝ/ΔΔΦΠΒ/79116/2511 (OGG D 617) "Establishment of terms and restrictions for the protection, conservation and management of nature, the terrestrial and marine areas of the Island Chrysi and approval of an Action Plan"; also, ministerial decisions concerning the island of Gyaros: ΥΠΕΝ/ΔΝΕΠ/67391/2552/16.07.2021 (OGG D 412) "Extension of the validity of ministerial decision ΥΠΕΝ/ΔΔΦΠΒ/58979/1531/21.06.2019 on 'Establishment of terms and restrictions for the nature protection, conservation and management of the terrestrial and marine area of Island Gyaros' (OGG D 389)" (OGG D 412); and more recently "Extension of validity and amendment of ministerial decision ΥΠΕΝ/ΔΔΦΠΒ/58979/1531/21.06.2019 on 'Establishment of terms and restrictions for the nature protection, conservation and management of the terrestrial and marine area of Island Gyaros' (OGG D 389)" (OGG D 586).

[25] C-849/19, *supra* note 2, para. 71.

In 2016, the Ministry of Environment initiated a process for carrying out Special Environmental Studies (SES) and drafting presidential decrees and management plans for all Natura 2000 sites in Greece.[26] Following a tender, two projects were commissioned:

(1)"Development of Special Environmental Studies and Management Plans for Natura 2000 sites": This includes 11 studies to be carried out by 11 research-contractors. Each study is divided in two groups of areas determined by administrative criteria. Each group of areas entails a number of neighbouring Natura 2000 sites (both SACs and SPAs). The SES, in line with article 21 of law 1650/1986, are required to develop scientifically-based and well-documented proposals for measures to be included in the presidential decree (zoning and determination and regulation of land uses) and the management plans. It should be noted that this project covers all Natura 2000 sites in Greece (including SACs and SPAs designated following the expansion of the Natura 2000 network in December 2017[27]).

(2)"Technical and scientific coordination of the drafting of specific environmental studies, presidential decrees and management projects for Natura 2000 network sites": A coordinator-contractor has been tasked with the technical and scientific coordination of project 1, and the drafting of presidential decrees and management plans.

These projects are co-financed by the EU through the European Structural and Investment Funds. According to the initial time frame, the project's duration was 30 months for the coordinator and 28 months for the researchers. Project 2 commenced on 17 January 2019 upon signature of the contract between the Ministry and the coordinator, and project 1 in May 2019 for the research-contractors, and were scheduled to be completed by June 2021 and April 2021 respectively. In December 2021, an extension of both projects was approved by the Ministry, and in January 2022, the projects were further amended and a new timeframe was approved. According to this new timeline, project 1 is to be completed by the end of December 2022 for the researchers and project 2 by the end of March 2023 for the coordinator.[28]

To date, only eight (out of 23) SES have been submitted to public consultation. Three SES were submitted to public consultation in December 2021-January 2022, but no further developments have been reported since then in relation to the integration of the consultation comments and the finalization and formal approval of these studies by the Ministry. Public consultations were held for four additional SES in October 2022, while the public consultation for one further SES is currently underway. It should be noted that these public consultations are only the first steps towards the formal completion of the SES and subsequently for the drafting and adoption of presidential decrees and management plans for Natura 2000 sites.

Given these repeated and extensive delays, it can be confidently stated that these projects will not be completed by the currently foreseen deadline at the end of March 2023. Furthermore, the timeframe for the completion of the overall process remains uncertain and unknown, as no further amendment of the projects and their completion date has been officially approved, nor has an official timeframe for the adoption of presidential decrees and management plans been announced by the Ministry of Environment. The reasons for these delays are immaterial as regards Greece's compliance with the Court's judgment and 6 (1) of the habitats directive. According to the CJEU's settled case-law "a Member State cannot rely on provisions, practices or circumstances in its own legal order to justify failure to implement a directive within the prescribed period (see, inter alia, Case C-276/98 Commission v Portugal [2001] ECR I-1699,

[26] Decision of the Minister of Environment, No 40593/1050/29.09.2017 "Approval of a) tender procedure, b) contract documents, and c) designation of supervising authority and steering body".
[27] Joint Ministerial Decision 50743/2017 (OGG 4432 B) "Amendment of the national list of the sites of the European ecological network Natura 2000".
[28] *Ibid.*

paragraph 20, and Case C-352/01 Commission v Spain [2002] ECR I-10263, paragraph 8)".[29] Regardless of any potential problems or challenges, Greece is obliged to take all necessary measures to ensure compliance with the Court's judgment.

On the contrary, lack of progress in the SES projects, which notably commenced before the delivery of the judgment in January 2019, and other actions (as analysed below) demonstrate Greece's lack of commitment and resolve to adopt the appropriate measures to comply with the judgment.

(ii) Law 4685/2020 and its incompatibility with Directive 92/43/EEC

Greece argued before the CJEU in the hearing of Case C-849/19 that it had recently enacted law 4685/2020 which included two chapters on the management of protected areas and protection zones.[30] This law was not taken into account by the CJEU as it was enacted after the expiration of the two-month deadline set by the Commission in its reasoned opinion.[31] However, certain provisions of this legislation are inconsistent and violate the habitats directive, and are incompatible with Greece's compliance with the Court's judgment.

We have already expressed our concerns regarding the incompatibility of this legislation with EU law, and in particular with the habitats directive, in our previous communication to the Commission.[32] In the framework of the present analysis, we focus on three key issues that demonstrate Greece's failure to adopt the necessary legal framework to ensure compliance with the Court's judgment and the habitats directive.

(a) Determination of land uses within Natura 2000 sites (article 44 of law 4685/2020)

Article 44 of law 4685/2020 amended the taxonomy of land uses as set out in presidential decree 59/2018. This decree provides for the classification of land uses, as part of spatial and urban planning into two categories: general and special land uses, and determines that each general category entails a set list of special land uses. Article 44 of law 4685/2020 added four general categories of land uses to article 1 of the decree, which correspond to the protection zones of article 19 of law 1650/1986 (zone of absolute protection, nature protection zone, habitats and species conservation zone, sustainable management of natural resources zone). Articles 14a-d of presidential decree 59/2018 set out a list of special land uses for each of these general categories/protection zones. According to article 19 para. 4 of law 1650/1986 and article 44 of law 4685/2020,[33] the PA presidential decrees, relying on the SES analysis and proposals, will determine the permitted land uses within each protection zone in Natura 2000 sites in line with the lists set out in articles 14a-14d.

These legislative changes have caused problems and delays in the implementation of the SES project, especially since article 44 requires the use of spatial and urban planning tools and related expertise, something that had not been foreseen when the project was designed and approved. While the use of spatial planning tools as part of the establishment of appropriate conservation measures is not necessarily problematic or undesirable, article 44 fails to provide an appropriate and adequate legal framework for the adoption of the necessary conservation measures as required by art. 6 (1) of the habitats directive. In

[29] See also C-201/03, Judgment of the Court (Fifth Chamber) of 30 March 2004 (European Commission v Kingdom of Sweden), para. 5; C-279/11, Judgment of the Court (Fourth Chamber) of 19 December 2012 (European Commission v Ireland), para. 71; C- 290/18, Judgment of the Court (Ninth Chamber) of 5 September 2019 (European Commission v Portuguese Republic), para. 57; C-849/19, *supra* note 2, para. 60.

[30] C-849/19, para. 72.

[31] *Ibid*. para. 87.

[32] https://wwfeu.awsassets.panda.org/downloads/ltr_oct_2020_commission.pdf

[33] See article 19 para. 4: "These special uses are chosen and may be specified *ad hoc* for each protected area, based on the special environment study of article 21 para. 2, by the presidential decree of article 21 para. 4" (informal translation into English by the authors).

particular, the following key problems and inconsistencies with this directive have been identified in relation to the SES project:

- **Incompatibility of special categories of land uses with the ecological needs of the protection zones.** Articles 14a-d of presidential decree 59/2018 provide for an extensive list of permitted activities within Natura 2000 sites, many of which are incompatible with the ecological needs and characteristics of the protection zones. For example, public transport and marine recreational infrastructure[34] may be allowed in the nature protection zone, numerous land uses and infrastructure (ranging from large tourist infrastructure, recreational facilities (i.e. restaurants and refectories/canteens) to all kinds of extractive activities including hydrocarbon) are allowed in the habitats and species conservation zone, and almost any type of land use can be designated within the sustainable management of natural resources zone. Article 19 of law 1650/1986 states that the presidential decrees will determine the land uses in each protection zone based on the analysis and proposals in the SES. However, neither the presidential decree nor law 1650/1986 provides for specific safeguards or criteria on how these special land uses are to be determined in each zone by the PA presidential decrees.[35] On the contrary, articles 14a-d imply that all these harmful activities are in principle allowed in the respective protection zones within Natura 2000 sites. Given that the aim of these protection zones and of the Natura 2000 network as a whole is to maintain or restore at a favourable conservation status significant and vulnerable habitat types and species, as listed in Annexes I and II respectively, the national legislation, by allowing for an extensive list of harmful and threatening activities within Natura 2000 sites without any legal safeguards on how they will be prohibited or allowed in each zone, is incompatible with article 3 and the objective of the Natura 2000 network, article 6 (1) in relation to the establishment of appropriate conservation measures, and with the objective of the habitats directive, namely to ensure biodiversity through the conservation of natural habitats and wild fauna and flora (article 2).
- **Determination of protection zones based on existing uses and activities and not on the ecological requirements of protected habitats and species as required by article 6 (1) of the habitats directive.** Given that the identification and delineation of the protection zones within a Natura 2000 site needs to be in line with presidential decree 59/2018 which determines the permitted land uses per zone, it is, in most instances, the existing (ie licensed and/or operating projects) or planned uses and activities (ie development programmes and plans), and the political decision to accommodate and promote them, that determine the categorization and limits of these zones, and not the conservation objectives or the ecological requirements of the protected habitats and species as required by article 6 (1) of the habitats directive. This has led in many instances to the fragmentation of certain areas into much smaller protection zones or the delineation of "enclave" zones of lesser protection (ie Habitats and Species Conservation Zone and Natural Resources Sustainable Management Zone) within zones of a higher protection level (ie Nature Protection Zone), leading to a fragmentary protection regime irrespective of the ecological needs and contrary to the obligation to adopt "comprehensive, clear and precise"[36] conservation measures.
- **Exclusion of certain areas within Natura 2000 sites from the scope of the PA presidential decrees:** Certain Natura 2000 sites in Greece include housing settlements within their limits. Despite the fact that the habitats directive does not provide for exceptions for areas within SACs, and law 1650/1986 does not exclude these settlements from the determination of

[34] It should be noted that the exact scope and the content of the special land uses are not clearly defined in the law, and are thus subject to varying interpretations.

[35] This is evident from the inconsistent and incongruous manner that this provision has been implemented in the SES in relation to the selection of land uses per protection zone, despite the existence of similar ecological needs.

[36] See *supra* note 16.

land uses in PA presidential decrees,[37] these areas have been excluded from the analysis and the proposals on land uses in the SES that have been, to date, published for consultation. By excluding these areas from the determination and regulation of land uses, the presidential decrees cannot regulate activities which take place inside these urban settlements despite the fact that they may affect the conservation status of protected habitats and species. This regulatory gap fails to ensure that all appropriate conservation measures are adopted as required by the habitats directive, and that these measures are in line with the ecological requirements of protected habitats and species.

- **Incoherent regulation of land uses within Natura 2000 sites:** Due to Greece's long-standing failure to comply with its obligations under article 6 (1) of the habitats directive, spatial planning instruments have already been adopted for the regulation of land uses within Natura 2000 sites (by virtue of spatial and urban planning legislation) without necessarily taking into account the requirements of this directive, namely the conservation objectives and the ecological requirements of protected habitats and species. Despite the fact that the to-date published SES refer to these instruments, they do not assess their compatibility with the ecological requirements and the conservation objectives of the site concerned. This results in an incoherent and uncertain regulatory framework composed of different regulatory layers, often incompatible and contradictory. In this context, the (statutory) conservation measures are not "comprehensive, clear and precise" as required by article 6 (1), and thus not "appropriate" within the meaning of the habitats directive as interpreted by the CJEU.

(b) The relationship between presidential decrees and management plans for Natura 2000 sites

Article 21 para. 4 of law 1650/1986, as amended by law 4685/2020, provides that the PA presidential decrees shall be adopted "taking into account the equivalent management plan". This implies that the management plans are to be issued prior to the adoption of the presidential decrees for each protected area. This is not in line with the habitats directive. As noted above, the conservation measures required under article 6 (1) of this directive may include statutory measures which "usually follow a pattern laid down in law and can set specific requirements in relation to activities that can be allowed, restricted or forbidden in the site".[38] According to article 21 of law 1650/1986, land uses and activities are to be determined by presidential decrees, while management plans entail, *inter alia* "the specification of the conditions and restrictions for the exercise of activities and the execution of projects which are necessary for the favourable conservation status of protected subject-matters, as well as, where necessary, the specific studies that need to be conducted for this specification". It should be noted that solely the adoption of management plans cannot be deemed to ensure compliance with article 6 (1) of the habitats directive given that these plans cannot determine and regulate land uses and thus respond effectively to threats and pressures from human activities. What is more, the adoption of management plans prior to the presidential decrees will lead to an incoherent and fragmentary regime, where management measures will have been adopted prior to the determination of land uses. In this context, the conservation measures will not be "comprehensive, clear and precise" as required by article 6 (1).

(c) Legal uncertainty concerning the regulation of existing activities within Natura 2000 sites

Article 47 para. 3 of law 4685/2020 introduced a new provision which states: "3. The presidential decrees of paragraph 4 of article 21 may provide that projects or activities that are legally licensed and operate according to the terms of their permit, continue to operate legally within protected areas, provided that their continuation does not jeopardise the achievement of the conservation objectives of the area

[37] On the contrary, article 14c of presidential decree 59/18 provides explicitly that certain of the listed special land uses, to be determined by the PA presidential decrees, should be allowed only in areas within town planning zones or within housing settlements.

[38] Commission notice, *supra* note 7, p. 22.

concerned. In order to establish whether this condition is met, the procedure of article 2 para. 9 of law 4014/2011[39] shall be followed in relation to projects or activities with environmental conditions. In relation to activities which are not classified as category A within the scope of article 1 of law 4014/2011, this determination shall be made, within one (1) year from the entry into force of the presidential decree, through a Special Ecological Assessment approved by the competent Directorate of the Region concerned and includes the elements determined in article 11 para. 8 of law 4014/2011".

According to this provision, the presidential decrees can provide for the continuation of existing activities within Natura 2000 sites pending a future and vaguely-determined assessment process which will evaluate whether these activities jeopardize the achievement of the conservation objectives of the site. For category A projects, this is to be effected through the process outlined in article 2 (9) of law 4014/11 on environmental licensing (which regulates an entirely different issue), while for non-category A projects, through a Special Ecological Assessment (i.e. the appropriate assessment required under article 6 (3) of the habitats directive). Neither provision prescribes in a clear manner the competent authorities and the process to determine the regulation of an existing activity; what is more, there is no provision relating to the possibility of discontinuation of this activity, should the assessment conclude that it is not compatible with the conservation objectives and ecological requirements of the site.

It should be noted that paragraphs 1 and 3 of article 6 are interlinked and complementary in terms of achieving the objective of the habitats directive. However, reference in this provision to "legally licensed activities" cannot be deemed to imply that this licensing is in line with article 6 para. 3 of the habitats directive. What is more, according to the CJEU's settled case-law, article 6 (1) conservation measures need to be concrete with no requirement for further measures for their implementation, and they need to be "comprehensive, clear and precise" to ensure their practical implementation.[40] Making the adoption of an important (statutory) measure, namely the regulation of potentially threatening activities, conditional upon a future and vaguely-determined process, is not in line with these requirements for the adoption of appropriate conservation measures.

(iii) Article 218 of law 4782/2021 leading to the fragmentation of conservation measures within Natura 2000 sites

Article 218 of law 4782/2021, enacted in March 2021 as part of a law proposed by the Ministry of Development and Investment, provides for the establishment of sub-areas within Natura 2000 sites for the deployment of "low-impact" development projects. In particular, this provision states:

"1. Until the completion and approval of the Special Environmental Studies of article 21 of law 1650/1986(A 160), protection sub-areas may be established by presidential decree in protected areas, according to articles 18, 19 and 21 of law 1650/1986, with the exception of absolute protection zones and areas, or established protection zones by virtue of special land use decrees, following a proposal by the Minister of Development and Investment and the Minister of Environment and Energy, in cases of low-impact development projects, ensuring that the integrity of the wider area is not prejudiced in terms of its ecological functions in relation to the conservation objectives of the area. The same presidential decree

[39] Article 2 para. 9 of law 4014/2011 provides: "If the regular and non-routine inspections of article 20 of this law demonstrate that there are serious problems of environmental degradation or impacts on the environment which had not been foreseen in the Environmental Impact Assessment study and the decision for the approval of environmental conditions, the competent environmental authority shall impose additional environmental conditions or shall amend the original conditions. The competent environmental authority may also request the carrying out of a special study or a new EIA to tackle these problems."

[40] See *supra* notes 16.

shall establish, in addition to other conditions and restrictions for the development of the sub-area, special rules for the exercise of activities and the implementation of technical projects". According to this provision, the proponent of the proposed project must submit a Special Environmental Study (in line with article 21 of law 1650/1986), a Strategic Impact Assessment study, and the opinion of the Central Council for spatial planning issues and disputes.

During the public consultation and the parliamentary process for the enactment of this provision, WWF Greece (and many other environmental NGOs) raised their concerns regarding its compatibility with the habitats directive and the CJEU's judgment in C-849/19.[41] These concerns were also communicated to the European Commission in a letter signed by 13 environmental and human rights NGOs.[42] The establishment of sub-areas within Natura 2000 sites, and the adoption of conservation measures therein, is bound to create a fragmented regime which does not rely on the ecological requirements of the whole site, but on the need to develop and deploy a specific project. Similar concerns were raised by the Natura 2000 Committee[43] and the Scientific Service of the Hellenic Parliament during the legislative process. The latter pointed out that «the preparation of a partial special environmental study, while the study for the entire area has not been carried out, creates the risk of piecemeal management of a certain area, the importance of which is assessed based on more parameters which exceed the geographical boundaries and relate to the wider unit in which it forms part from an ecological perspective".[44]

What is more, the SES project is thwarted, since a new "parallel" process is introduced for the establishment of conservation measures within Natura 2000 sites. In particular, the provision of para. 2 (a), namely that the SES carried out and submitted by the project's proponent "will be mandatorily taken into account" during the drafting of the SES of article 21 του ν. 1650/1986, predetermines the content of these studies, and leads to a fragmented approach to the protection of the area.

Finally, paragraph 3 of this provision which states that "if a plan that forms part of Special Town Planning is being carried out, this shall be integrated in presidential decrees provided for in the law", and therefore in the presidential decrees of article 21 para. 4 of law 1650/1986, is inconsistent with the habitats directive as it gives priority to urban spatial plans for the determination of land uses in Natura 2000 sites without any prior assessment of their compatibility with the ecological requirements and the conservation objectives of these sites.

1. SECTION C: ARTICLE 260 (1) TFEU AND REASONABLE AND SUFFICIENT TIME FOR COMPLIANCE WITH THE CJEU'S JUDGMENT

The CJEU has held that although article 260 TFEU "does not specify the period within which a judgment of the Court establishing that a Member State has failed to fulfil its obligations must be complied with, it follows from settled case-law that the importance of immediate and uniform application of Community law means that **the process of compliance must be initiated at once** and **completed as soon as possible** (see, inter alia, Case C-121/07 Commission v France [2008] ECR I-0000, paragraph 21 and the case-law cited)".[45] The Court has further noted that "[w]hat amounts to **reasonable or sufficient time depends on the circumstances of the case**, taking into account the **complexity and duration of**

[41] See https://wwfeu.awsassets.panda.org/downloads/pros_vouleftes_nomosxedio_ypourgeiou_anaptyxis_gia_dimosies_symvaseis2021.pdf; https://www.wwf.gr/?uNewsID=2299941; https://www.wwf.gr/ta_nea_mas/?uNewsID=2327966

[42] https://wwfeu.awsassets.panda.org/downloads/ngocomplaint_to_dgenv_art218_law4782_2021.pdf

[43] https://ypen.gov.gr/wp-content/uploads/2021/03/20210301_EF2000_Anakoinosi.pdf

[44] https://www.hellenicparliament.gr/UserFiles/7b24652e-78eb-4807-9d68-e9a5d4576eff/11591583_1.pdf.

[45] C-457/07, Judgment of the Court (Fourth Chamber) of 10 September 2009 (European Commission v Portuguese Republic), para. 38.

the operations needed to comply with the judgment, see eg Case C-278/01 Commission v Spain [2003] ECLI:EU:C:2003:635, para 30; and, mutatis mutandis, Case C-32/05 Commission v Luxembourg [2006] ECLI:EU:C:2006:749, paras 37–40".

Despite Greece's assurances during the hearing of Case C-849/19 that the SES project would lead to full compliance with its obligations by the end of 2021, two years have elapsed since the delivery of the judgment, during which time very limited progress has been made. The completion date for the SES project, which was launched four years ago and before the delivery of the judgment (in January 2019), has been amended twice, while not even its first phase (i.e. the public consultations for the SES), has been completed. It can be confidently stated that the revised completion date (namely March 2023) will not be adhered to. The Ministry of Environment has not approved a new timeframe for the project, nor has it announced a concrete schedule for Greece's compliance with the judgment. As analysed above, Greece's actions since the delivery of the Judgment (including the enactment of legislation), are inadequate and inappropriate to ensure full compliance with its obligations under the habitats directive. On the contrary, the national legislation and its implementation (as demonstrated by the SES project) are inconsistent with this directive and demonstrate Greece's lack of resolve and failure to comply with its obligations.

Furthermore, given that "the threatened habitats and species form part of the European Community's natural heritage and that the threats to them are often of a transboundary nature, so that the adoption of conservation measures is a common responsibility of all Member States",[46] Greece's long-standing failure to comply with its obligations seriously compromises the achievement of the habitat directive's objective.[47] Greece transposed this directive into national law with a four-year delay,[48] following a judgment of the CJEU declaring that Greece had failed to fulfil its obligations under article 23,[49] while 10 years have elapsed since the deadline set out in article 4 (4). Since the transposition of this directive, Greece has adopted conservation measures for a limited number of Natura 2000 sites, which were found by the CJEU to be incomplete and inappropriate.[50] What is more, the CJEU has, in the past, declared Greece to be in breach of its obligations under this directive in relation to specific Natura 2000 sites and protected species.[51] Greece's failure to establish conservation objectives and measures has implications for the conservation status of protected habitats and species. In the recent State of Nature report, the facts and figures concerning the conservation status of, and trends in, species and habitats in Greece were worrying.[52] Finally, taking into account the incorrect transposition of article 6 (3) of the habitats directive, as analysed by the European Commission in EU Pilot EUP(2021)9806, the lack of conservation objectives has serious

[46] C-6/04, Judgment of the Court (Second Chamber) of 20 October 2005 (European Commission v United Kingdom), para. 25; C-46/11, Judgment of the Court (Eighth Chamber) of 15 March 2012 (European Commission v Republic of Poland), para. 26, C-98/03, Judgment of the Court (Second Chamber) of 10 January 2006 (European Commission v Federal Republic of Germany), para. 59. C-849/19, supra note 2, para. 78.

[47] On the habitats directive's objective, see the CJEU's settled case-law " Article 6 of the Habitats Directive imposes upon the Member States a series of specific obligations and procedures designed, as is clear from Article 2(2) of that directive, to maintain, or as the case may be, restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of interest for the European Union, in order to attain that directive's more general objective, which is to ensure a high level of environmental protection as regards the sites protected pursuant to it (judgment of 17 April 2018, Commission v Poland (Białowieża Forest), C-441/17, EU:C:2018:255, paragraph 106 and the case-law cited). Also, C-461/17, Judgment of the Court (Second Chamber) of 7 November 2018 (Brian Holohan and Others v An Bord Pleanála), para. 30.

[48] Joint ministerial decision 33318/1998 (OJ B 1289).

[49] Judgment of the Court (Fifth Chamber) of 26 June 1997 in Case C-329/96 (Commission v Hellenic Republic).

[50] See *supra* 17-20.

[51] See C-504/14, Judgment of the Court (Fourth Chamber) of 10 November 2016; C-600/12, Judgment of the Court (Fifth Chamber) of 17 July 2014 (European Commission v Hellenic Republic); C-103/00, Judgment of the Court (Sixth Chamber) of 30 January 2002; C-517/11, Judgment of the Court (Fourth Chamber) of 7 February 2013 (European Commission v Hellenic Republic); C-518/04, Judgment of the Court (Fifth Chamber) of 16 March 2006 (European Commission v Hellenic Republic).

[52] EEA Report, No 10/2020, State of nature in the EU: Results from reporting under the nature directives 2013-2018.

consequences for the appropriate assessment of impacts of plans and projects on Natura sites and the permitting process.

Taking these circumstances into account, the period of two years since the delivery of the judgment is both reasonable and sufficient for Greece to comply with the CJEU's judgment. Greece has not undertaken the necessary and appropriate actions to comply promptly and "as soon as possible" with the judgment, and has thus failed to fulfil its obligations under article 260 (1) TFEU.

CONCLUSION

It is evident from the above analysis that Greece has not complied with the Court's Judgment in Case C-849/19 (Commission against Greece). In particular, it has not established conservation objectives for any of the 239 SACs as required by article 4 (4) of the habitats directive, nor has it established the necessary conservation measures for any of these sites as required by article 6 (1). The actions that Greece has undertaken during the two years since the delivery of the judgment are inadequate and inappropriate to ensure compliance with the habitats directive. The lengthy delays and problems in the relevant processes and projects, as analysed above, demonstrate Greece's lack of commitment and determination to proceed promptly and effectively with the required actions to comply with the judgment. What is more, recently-adopted national legislation on protected areas is in many instances incompatible with this directive and does not provide an appropriate legal framework for Greece's compliance with the judgment.

Greece's long-standing failure to implement articles 4 (4) and 6 (1) seriously compromises the achievement of the habitats directive and the conservation of protected habitats and species.

It will be to the benefit of legal certainty and respect by member states of environmental EU law that the Commission takes all necessary measures, including legal action, to ensure that Greece fulfils its obligations under C-849/19 and proceeds with the full and effective implementation of the habitats directive.