

JUDGMENT OF THE COURT (First Chamber)

29 July 2024 (*)

(Reference for a preliminary ruling – Conservation of natural habitats and of wild fauna and flora – Directive 92/43/EEC – Articles 2, 4, 11, 12, 14, 16 and 17 – System of strict protection for animal species – *Canis lupus* (wolf) – Cynegetic exploitation – Assessment of the conservation status of populations of the species concerned – Conservation status of that species ‘unfavourable-poor’ – Exploitation incompatible with the maintenance or restoration of the species at a favourable conservation status – Taking into account of all the most recent scientific data)

In Case C-436/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia de Castilla y León (High Court of Justice, Castile and Leon, Spain), made by decision of 30 June 2022, received at the Court on 1 July 2022, in the proceedings

Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL)

v

Administración de la Comunidad de Castilla y León,

THE COURT (First Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, T. von Danwitz, P.G. Xuereb, A. Kumin and I. Ziemele, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL), by M.J. Gil Ibáñez, abogada, and A.I. Fernández Marcos, procuradora,
- the Administración de la Comunidad de Castilla y León, by D. Vélez Berzosa, acting as letrada,
- the Spanish Government, initially by I. Herranz Elizalde, and subsequently by M. Morales Puerta, acting as Agents,
- the Finnish Government, by H. Leppo, acting as Agent,
- the European Commission, by C. Hermes and E. Sanfrutos Cano, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 January 2024,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(2) and Articles 4, 11, 12, 14, 16 and 17 of 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), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193) ('the Habitats Directive').
- 2 The request has been made in proceedings between the Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL) (Association for the Conservation and Study of the Iberian Wolf) and the Administración de la Comunidad de Castilla y León (Administration of the Autonomous Community of Castile and Leon, Spain) concerning an application made by ASCEL, seeking annulment of the decision of the Dirección General del Patrimonio Natural y Política Forestal de la Junta de Castilla y León (Directorate-General of Natural Heritage and Forestry Policy of the Government of Castile and Leon, Spain) of 9 October 2019 approving the Plan for the local exploitation of wolves in hunting grounds situated north of the River Douro in Castile and Leon for the 2019/2020, 2020/2021 and 2021/2022 seasons ('the decision of 9 October 2019'), and an order that the defendant in the main proceedings pay compensation for each specimen killed during those seasons.

Legal context

European Union law

- 3 The first recital of the Habitats Directive states:

'... the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the [European] Community, as stated in Article [191 TFEU]'.
- 4 The fifteenth recital of that directive states:

'... a general system of protection is required for certain species of flora and fauna to complement [Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1)]; whereas provision should be made for management measures for certain species, if their conservation status so warrants, including the prohibition of certain means of capture or killing, whilst providing for the possibility of derogations on certain conditions'.
- 5 Article 1(i) of the Habitats Directive provides:

'For the purpose of this Directive:

...

(i) *conservation status of a species* means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2

...'
- 6 Article 2 of the Habitats Directive provides:

‘1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.’

7 Article 4 of the Habitats Directive provides:

‘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. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction. ...

The list shall be transmitted to the [European] Commission, within three years of the notification of this Directive, together with information on each site. ...

...

4. 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.

...’

8 Under Article 11 of the Habitats Directive, ‘Member States shall undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2 with particular regard to priority natural habitat types and priority species’.

9 Article 12 of that directive provides:

‘1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

- (a) all forms of deliberate capture or killing of specimens of these species in the wild;
- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
- (c) deliberate destruction or taking of eggs from the wild;
- (d) deterioration or destruction of breeding sites or resting places.

...’

10 Article 14 of that same directive provides:

‘1. If, in the light of the surveillance provided for in Article 11, Member States deem it

necessary, they shall take measures to ensure that the taking in the wild of specimens of species of wild fauna and flora listed in Annex V as well as their exploitation is compatible with their being maintained at a favourable conservation status.

2. Where such measures are deemed necessary, they shall include continuation of the surveillance provided for in Article 11. Such measures may also include in particular:

- regulations regarding access to certain property,
- temporary or local prohibition of the taking of specimens in the wild and exploitation of certain populations,
- regulation of the periods and/or methods of taking specimens,
- application, when specimens are taken, of hunting and fishing rules which take account of the conservation of such populations,
- establishment of a system of licences for taking specimens or of quotas,
- regulation of the purchase, sale, offering for sale, keeping for sale or transport for sale of specimens,
- breeding in captivity of animal species as well as artificial propagation of plant species, under strictly controlled conditions, with a view to reducing the taking of specimens of the wild,
- assessment of the effect of the measures adopted.’

11 Article 16(1) of the Habitats Directive states:

‘Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15 (a) and (b):

- (a) in the interest of protecting wild fauna and flora and conserving natural habitats;
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
- (c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;
- (d) for the purpose of research and education, of repopulating and re-introducing these species and for the breedings operations necessary for these purposes, including the artificial propagation of plants;
- (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.’

12 Article 17(1) of that directive provides:

‘Every six years from the date of expiry of the period laid down in Article 23, Member States shall draw up a report on the implementation of the measures taken under this Directive. This report shall include in particular information concerning the conservation measures referred to in Article 6(1) as

well as evaluation of the impact of those measures on the conservation status of the natural habitat types of Annex I and the species in Annex II and the main results of the surveillance referred to in Article 11. The report, in accordance with the format established by the committee [set up pursuant to Article 20], shall be forwarded to the Commission and made accessible to the public.'

- 13 Annex II to the Habitats Directive, entitled 'Animal and plant species of Community interest whose conservation requires the designation of special areas of conservation', refers to the *Canis lupus*, making clear that of the Spanish populations only 'those south of the Duero' are concerned.
- 14 Annex IV to the Habitats Directive, entitled 'Animal and plant species of Community interest in need of strict protection', refers to *Canis lupus* 'except the ... Spanish populations north of the Duero'.
- 15 Annex V to that directive, entitled 'Animal and plant species of Community interest whose taking in the wild and exploitation may be subject to management measures' refers, in point (a) thereof, to *Canis lupus*, in particular 'Spanish populations north of the Duer[o]'.

Spanish law

- 16 Ley 4/1996 de Caza de Castilla y León (Law 4/1996 on hunting in Castile and Leon) of 12 July 1996 (BOE No 210 of 30 August 1996, p. 26650), as amended by Ley 9/2019 (Law 9/2019) of 28 March 2019 (BOE No 91 of 16 April 2019, p. 39643) ('Law 4/1996') designated, in Article 7 of, and Annex I, to that law, the wolf (*Canis lupus*) as a 'species of game that may be hunted' to the north of the Douro River. Law 4/1996 was repealed by Ley 4/2021 de Caza y de Gestión Sostenible de los Recursos Cinegéticos de Castilla y León (Law 4/2021 on hunting and the sustainable management of the hunting resources of Castile and Leon) of 1 July 2021 (BOE No 172 of 20 July 2021, p. 86581), which also designates the wolf as such, in Article 6 and Annex I.3. Point 4(f) of Annex II to Law 4/2021 sets as the period during which hunting of wolves is authorised as follows: from the fourth Sunday in September to the fourth Sunday in February of the following year. In point 2 of Annex IV to that law, the value of each wolf hunted is set at EUR 6 000.
- 17 Ley 42/2007 del Patrimonio Natural y de la Biodiversidad (Law 42/2007 on Natural Heritage and Biodiversity) of 13 December 2007 (BOE No 299 of 14 December 2007, p. 51275) provides, in Article 65(1) thereof, that hunting and freshwater fishing are permitted only in respect of the species determined by the Autonomous Communities, and that such a determination may not under any circumstances affect the species included in the list of specially protected species, or species whose hunting or fishing is prohibited by the European Union.
- 18 Real Decreto 139/2011 para el desarrollo del Listado de especies Silvestres en Régimen de Protección Especial y del Catálogo Español de especies Amenazadas (Royal Decree 139/2011 for the implementation of the List of Wild Species under Special Protection and the Spanish Inventory of Endangered Species) of 4 February 2011 (BOE No 46 of 23 February 2011, p. 20912) includes, in the annex thereto, the list of wild species which are subject to a special protection regime and are entered, where appropriate, in the Spanish register of endangered species. That annex was amended by Orden TED/980/2021, por la que se modifica el Anexo del Real Decreto 139/2011, de 4 de febrero, para el desarrollo del Listado de especies Silvestres en Régimen de Protección Especial y del Catálogo Español de especies Amenazadas (Ministerial order TED/980/2021 amending the annex to Royal Decree 139/2011, of 4 February 2011, for the implementation of the List of Wild Species under Special Protection and the Spanish Inventory of Endangered Species) of 20 September 2021 (BOE No 226 of 21 September 2021, p. 115283) in order to include all Spanish wolf populations on the list of wild species subject to a strict protection regime. However, that ministerial order allows measures for the taking and capture of specimens, which were adopted by the Autonomous Communities before its entry into force, to continue to apply, provided that those measures comply with certain conditions and limitations. In particular, it must be demonstrated, on the basis of the best available knowledge, that those measures do not have a negative impact on the

favourable conservation status of the species concerned.

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 19 By decision of 9 October 2019, the Directorate-General of Natural Heritage and Forestry Policy of Castile and Leon approved the Plan for the local exploitation of wolves in the hunting grounds situated north of the River Douro in Castile and Leon for the 2019/2020, 2020/2021 and 2021/2022 seasons.
- 20 That plan is based on a regional census of wolves dating back to the years 2012 and 2013, within the framework of a national census carried out between 2012 and 2014, as well as on annual monitoring reports, which involve less effort in terms of observation and surveillance than that expended in the preparation of a census. Using the data available and applying a number of factors, the plan estimates the number of wolves present north of the River Douro in Castile and Leon prior to hunting to be 1 051 specimens. The national census reported a total of 297 packs in Spain, of which 179 would fall under the Castile and Leon census, that is to say 60.3% of the total recorded at national level. The plan concludes that an annual mortality rate in excess of 35% would lead to a decline in the population of that species.
- 21 On 14 November 2019, ASCEL lodged an administrative appeal against the decision of 9 October 2019, which was dismissed by an order of 9 March 2020 of the Consejero de Fomento y Medio Ambiente (Regional Minister for Development and the Environment) of the Autonomous Community of Castile and Leon.
- 22 On 17 February 2020, ASCEL brought an action before the Chamber for Contentious Administrative Proceedings of the Tribunal Superior de Justicia de Castilla y León (High Court of Justice, Castile and Leon, Spain), which is the referring court. By that action, it seeks the annulment of both the order dismissing its administrative appeal lodged against the decision of 9 October 2019 and the decision of 9 October 2019 itself. Furthermore, given that the legal situation prior to the adoption of that decision cannot be restored, since the wolves concerned have been killed, ASCEL claims that the defendant in the main proceedings should be ordered to pay compensation for the damage caused to the wild fauna, equivalent to the economic value of each specimen killed during the 2019/2020, 2020/2021 and 2021/2022 seasons, that is to say, a sum of EUR 9 261 per wolf.
- 23 The referring court notes that the report sent by the Kingdom of Spain in 2019 to the Commission, pursuant to Article 17 of the Habitats Directive, for the period 2013-2018 ('the 2019 report') states that the wolf had an 'unfavourable-poor' conservation status in the Mediterranean, Atlantic and Alpine regions, the first two of those regions including the territory of Castile and Leon.
- 24 However, under Article 7 of, and Annex I to, Law 4/1996, the wolf was designated as a 'a species of game that may be hunted' north of the Douro River.
- 25 The referring court has doubts whether that designation is compatible with the Habitats Directive and also questions the scope, content and source of the scientific reports that may substantiate the decisions relating to the conservation status of the wolf and, consequently, the measures intended to ensure that the taking from the wild of specimens of the species of wild fauna and flora listed in Annex V to that directive and the exploitation of those species are compatible with the maintenance of those species at a favourable conservation status.
- 26 In those circumstances the Tribunal Superior de Justicia de Castilla y León (High Court of Justice of Castile and Leon) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'In view of the fact that any measure adopted by a Member State pursuant to the [Habitats]

Directive must, in accordance with Article 2(2) thereof, pursue the aim of maintaining or restoring, at favourable conservation status, animal species of Community interest, such as the wolf (*lupus canis*)

- (1) Do the provisions of Articles 2(2), 4, 11, 12, 14, 16 and 17 of [the Habitats Directive] preclude a regional Law [such as Law 4/1996, subsequently Law 4/2021], pursuant to which the wolf is declared to be a species of game which may be hunted, and the consequent authorisation of the local exploitation of wolves in hunting areas during the 2019/2020, 2020/2021 and 2021/2022 seasons, when the conservation status of the wolf is “unfavourable-poor” according to the [2019 report], as a result of which the State (the Member State, Article 4 [of the Habitats Directive]) included all Spanish wolf populations in the List of Wild Species under Special Protection and the Spanish Inventory of Endangered Species, thereby also affording strict protection to populations situated north of the Douro?
- (2) Is it compatible with that aim for different protection to be afforded to the wolf depending on whether it is found north or south of the Douro River, bearing in mind (i) that, scientifically, that distinction is currently considered to be inappropriate; (ii) that the assessment of the conservation status of the wolf in the three regions where it is found in Spain (Alpine, Atlantic and Mediterranean) in the period 2013-2018 was unfavourable; (iii) that the wolf is a strictly protected species in almost every Member State and, in particular, because of a shared region, in Portugal; and (iv) the case-law of the Court of Justice of the European Union on the natural range and the territorial scope to be taken into account in order to assess the wolf’s conservation status, it being more consistent with that directive, including with Article 2(3) thereof, that the wolf should be included, without differentiating between north and south of the Douro, in Annexes II and IV, such that the capture and killing of wolves would be possible only if there is no satisfactory alternative pursuant to and subject to the requirements laid down in Article 16?

If that distinction is considered to be justified,

- (3) Does the term “exploitation” in Article 14 of the [Habitats] Directive include the cynegetic exploitation, that is the hunting, of wolves, in view of the special importance that this species has (it is a priority species in the other territorial areas), bearing in mind that, up to now, the hunting of wolves has been permitted and its status in the period 2013-2018 was determined to be unfavourable?
- (4) Does Article 14 of the [Habitats] Directive preclude the declaration, by Law, that wolves north of the Douro are a species of game and may be hunted (Article 7 [of, and Annex I to, Law 4/1996] and Article 6 [of, and Annex I to, Law 4/2021]) and the approval of a plan for the local exploitation of wolves in hunting grounds situated north of the Douro River [in Castile and Leon] for the 2019/2020, 2020/2021 and 2021/2022 seasons, without any data being available on which to base an assessment of whether the surveillance provided for in Article 11 of the [Habitats] Directive was carried out, without any census since 2012-2013 and without sufficient, objective, scientific and up-to-date information on the status of the wolf being held in the file which was the basis for the local exploitation plan, when, during the period 2013-2018, in the three regions where wolves are found in Spain (Alpine, Atlantic and Mediterranean), the assessment of the wolf’s conservations status was unfavourable?
- (5) Pursuant to Articles 4, 11 and 17 of the [Habitats Directive], are the reports which must be taken into consideration in order to determine the conservation status of the wolf (current real population levels, current geographical distribution, reproductive rate, and so on) those which are drawn up by the Member State every six years or, if necessary, within a shorter period, by means of a scientific committee like that created by Royal Decree 139/2011, taking account of the fact that wolf populations come within the remit of different Autonomous Communities

and of the need to conduct an assessment of the measures concerning a local population “on a larger scale”, in accordance with the judgment of 10 October 2019, [*Luonnonsuojeluyhdistys Tapiola*,] C-674/17, [EU:C:2019:851]?

Procedure before the Court

- 27 The referring court requested the Court of Justice to determine the present reference for a preliminary ruling under the expedited procedure pursuant to Article 105 of the Rules of Procedure of the Court of Justice.
- 28 In support of that request, the referring court stated, first, that the conservation status of the wolf in Spain is unfavourable and, second, that the period for which the hunting concerned is authorised begins on the fourth Sunday of September 2022.
- 29 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure derogating from the provisions of those Rules.
- 30 It must be borne in mind that the application of the expedited procedure can be justified where there is a high risk of irremediable consequences for the environment pending the Court’s decision (judgment of 7 February 2023, *Confédération paysanne and Others (In vitro random mutagenesis)*, C-688/21, EU:C:2023:75, paragraph 27).
- 31 The President of the Court decided, on 14 July 2022, after hearing the Judge-Rapporteur and the Advocate General, that there was no need to grant the request referred to in paragraph 27 above.
- 32 Indeed, although the referring court points out that, as regards the 2022/2023 season, the period during which the hunting concerned was authorised was going to begin on the fourth Sunday of September 2022, it should be noted that the dispute in the main proceedings concerns only the approval of the local wolf exploitation plan in the hunting grounds situated north of the River Douro in Castile and Leon for the three seasons 2019/2020, 2020/2021 and 2021/2022.
- 33 In those circumstances, and in the absence of further information, it cannot be concluded that, in the case in the main proceedings, there is a high risk of irremediable consequences for the environment pending the Court’s decision, within the meaning of the case-law cited in paragraph 30 above.
- 34 The President of the Court has nonetheless decided that the present case is to be given priority, pursuant to Article 53(3) of the Rules of Procedure.

Admissibility of the request for a preliminary ruling

- 35 The Spanish Government and the Administration of the Autonomous Community of Castile and Leon submit that the request for a preliminary ruling is inadmissible on several grounds.
- 36 The Spanish Government argues that the request for a preliminary ruling is no longer relevant to the outcome of the dispute in the main proceedings, since, in its judgment No 99/2022 of 13 July 2022, the Tribunal Constitucional (Constitutional Court, Spain) declared the relevant provisions of Law 4/2021, and in particular point 4(f) of Annex II thereto, unconstitutional, on the ground, inter alia, that they infringe Ministerial Order TED/980/2021.

- 37 The Administration of the Autonomous Community of Castile and Leon submits, for its part, that the reference for a preliminary ruling is inadmissible for a number of reasons. First, in order to rule on the dispute in the main proceedings, it is not necessary to interpret a provision of EU law but rather to assess the evidence in the file. Second, the referring court has already ruled on an action brought by the same applicant against a similar plan and based on the same arguments as those relied on in the main proceedings. Moreover, in the present case, the latter has not raised any doubts as to the interpretation of EU law. Third, the dispute in the main proceedings is artificial.
- 38 In that regard, it should be borne in mind that, according to settled case-law, in the context of the cooperation between the Court of Justice and the national courts provided for in Article 267 TFEU, it is solely for the national court before which a dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court of Justice. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 21 December 2023, *Infraestruturas de Portugal and Futrifer Indústrias Ferroviárias*, C-66/22, EU:C:2023:1016 paragraph 33 and the case-law cited).
- 39 It follows that questions relating to EU law enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 7 April 2022, *Avio Lucos*, C-116/20, EU:C:2022:273, paragraph 38 and the case-law cited).
- 40 In the present case, it should be borne in mind that the case in the main proceedings concerns, in particular, the compatibility with EU law of the national legislation concerned designating the wolf as a species of game which may be hunted, as well as the question whether damage caused to the wolf population by hunting under the regional legislation in force prior to the decision of the Tribunal Constitucional (Constitutional Court) referred to in paragraph 36 above must give rise to compensation. As it is, that decision relates only to the period after 2021, whereas the case in the main proceedings concerns hunting seasons dating back to 2019. Consequently, the compatibility of the regional legislation at issue in the main proceedings with EU law retains an interest for the purposes of resolving the dispute in the main proceedings.
- 41 It is not, therefore, obvious that the interpretation sought by the referring court bears no relation to the actual facts of the main action or its purpose or that the problem is hypothetical, within the meaning of the case-law cited in paragraph 39 above. Furthermore, the Court has before it the factual and legal material necessary to give a useful answer to the questions submitted to it.
- 42 Accordingly, the grounds of inadmissibility put forward by the Spanish Government and the Administration of the Autonomous Community of Castile and Leon must be rejected.
- 43 In the light of all the foregoing, the request for a preliminary ruling is admissible.

Consideration of the questions referred

- 44 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether Articles 2, 4, 11, 12, 14, 16 and 17 of the Habitats Directive must be interpreted as precluding legislation of a Member State under which the wolf is designated as a species whose specimens may be hunted in a part of the territory of that Member State where it is not covered by the strict protection provided for in Article 12(1) of that directive, whereas its conservation status has been considered to be unfavourable throughout the territory of that Member State.

- 45 That court is uncertain, in particular, as to the interpretation of Article 14 of that directive and has doubts as to the compatibility with that article of the local wolf exploitation plan in the hunting grounds situated north of the River Douro in Castile and Leon, given that the conservation status of that species in the three regions which it occupied in Spain, namely the Alpine, Atlantic and Mediterranean regions, during the period 2013-2018, was found to be unfavourable.
- 46 As a preliminary point, it should be borne in mind that, in its first recital, the Habitats Directive states that the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the European Union.
- 47 At the outset, it should be recalled that, under Article 12 of the Habitats Directive, read in conjunction with Annex IV(a) thereto, the wolf is one of the species ‘of Community interest’ for which ‘strict protection’ must be ensured, within the meaning of that article.
- 48 That strict protection regime covers, in particular, wolf populations situated south of the Douro River, which are expressly included in Annex II to the Habitats Directive, as species of ‘Community interest whose conservation requires the designation of special areas of conservation’.
- 49 The Spanish wolf populations situated north of that river are, for their part, included in Annex V to the Habitats Directive, as an animal species of Community interest whose taking in the wild and exploitation may be subject to management measures and which therefore fall within the scope of Article 14 of that directive.
- 50 In that regard, it should be noted that the fact that an animal or plant species of Community interest is included in Annex V to the Habitats Directive does not mean that its conservation status must, in principle, be regarded as favourable. Indeed, apart from the fact that it is the Member States that communicate the status of those species in their territory to the Commission, it must be stated that that inclusion means only that, in the light of the surveillance obligation laid down in Article 11 of that directive and in order to secure its objective, that species ‘may’ be subject to management measures, unlike the species included in Annex IV(a) to that directive which benefit in any event from the system of strict protection provided for in Article 12 of that directive.
- 51 Such inclusion cannot be interpreted in a manner contrary to the objective pursued by the Habitats Directive which, as is apparent from Article 2(1) thereof, is to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States, with Article 2(2) expressly providing that measures taken pursuant to that directive must be designed to maintain or restore, at a favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.
- 52 As regards the management measures to which the species included in Annex V to the Habitats Directive, such as the wolf populations situated to the north of the River Douro, may be subject, it should be noted, in the first place, that, in accordance with Article 14(1) of that directive, ‘if, in the light of the surveillance provided for in Article 11, Member States deem it necessary, they shall take measures to ensure that the taking in the wild of specimens of species of wild fauna and flora listed in Annex V as well as their exploitation is compatible with their being maintained at a favourable conservation status’.
- 53 It is apparent from the very wording of that provision that Member States have some discretion in determining whether it is necessary to adopt measures pursuant to that provision, such as to limit the exploitation of species included in Annex V to the Habitats Directive.
- 54 In that regard, it should be noted, first, that, in accordance with Article 14(2) of that directive, those measures may regard access to certain property, the prohibition of the taking of specimens in the wild and exploitation of certain populations, or even the establishment of systems of quotas.

Therefore, although they include hunting rules, as is apparent from the fourth indent of that provision, it must be found that the measures adopted on the basis of that article are such as to restrict, and not to extend, the taking of the species concerned.

- 55 Second, as the Commission notes, the discretion referred to in paragraph 53 above is limited by the obligation to ensure that the taking in the wild of specimens of a species and their exploitation are compatible with that species' being maintained at a favourable conservation status.
- 56 Indeed, it should be recalled that any measure taken by a Member State on the basis of the Habitats Directive must have the objective, in accordance with Article 2(2) thereof, of maintaining at or restoring to favourable conservation status animal species of Community interest.
- 57 Furthermore, as is apparent from the fifteenth recital of the Habitats Directive, the EU legislature considered that a general system of protection is required for certain species of flora and fauna and that provision has to be made for management measures for certain species, 'if their conservation status so warrants', including the prohibition of certain means of capture or killing, whilst providing for the possibility of derogations on certain conditions. In that way, as is shown by the phrase 'if their conservation status so warrants', the adoption of such measures must be justified by the need to maintain or restore the species concerned at a favourable conservation status.
- 58 It follows, as the Advocate General observed, in essence, in point 71 of her Opinion, that Article 14(1) of the Habitats Directive must be interpreted as meaning that cynegetic exploitation may be restricted or prohibited if that is necessary to maintain the species concerned at, or restore it to, a favourable conservation status.
- 59 In the second place, it must be stated that, under Article 11 of the Habitats Directive, Member States are required to undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2 of that directive, with particular regard to priority natural habitat types and priority species. That surveillance is essential in order to ensure compliance with the conditions laid down in Article 14 of that directive and to determine the need to adopt measures ensuring that the exploitation of that species is compatible with the maintenance at a favourable conservation status, and constitutes in itself one of the measures necessary to ensure the conservation of that species. Consequently, a species cannot be the subject of cynegetic exploitation and hunted if effective surveillance of its conservation status is not ensured.
- 60 According to the definition in Article 1(i) of the Habitats Directive, a conservation status will be taken as favourable when, first, population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats. Second, the natural range of that species must be neither being reduced nor be likely to be reduced for the foreseeable future. Last, it is necessary that there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 56).
- 61 The concept of 'natural range', which is one of the criteria to be taken into consideration in determining whether the conservation status of a species is favourable, is, as regards protected animal species which like the wolf range over wide areas, broader than the geographical area that presents the physical or biological factors essential to their life and reproduction (judgment of 11 June 2020, *Alianța pentru combaterea abuzurilor*, C-88/19, EU:C:2020:458, paragraph 38).
- 62 Furthermore, since the effect on the conservation status of the species concerned of the taking from the wild and exploitation of that species must be assessed 'in the light of the surveillance provided for in Article 11' of the Habitats Directive, Member States must, when taking decisions authorising the hunting of that species, pursuant to Article 14(1) thereof, justify those decisions and provide the surveillance data on which the decisions are based.

- 63 Account must be taken not only of the data relating to the populations of the species concerned which are the subject of the exploitation measure in question, but also of the impact of that measure on the conservation status of that species on a wider scale, at the level of the biogeographical region or, to the extent possible, at cross-border level (see, to that effect, judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 61).
- 64 In that regard, it should be noted that Article 17 of the Habitats Directive requires Member States to draw up and forward to the Commission, every six years, a report on the implementation of that directive, with a view to attaining the objective of maintaining a ‘favourable conservation status’, as defined in Article 1 of that directive. That report must include the main results of the surveillance referred to in Article 11 of that directive. It must also comprise three parts, namely a part containing general information on the implementation of that directive, a part relating to the assessment of the conservation status of the various species and a part relating to habitats. The report must also cover all the habitats and species present in the territory of the Member State concerned.
- 65 It follows that the assessment of the conservation status of a species and of the appropriateness of adopting measures based on Article 14 of the Habitats Directive must be carried out taking into account not only the report drawn up pursuant to Article 17 of that directive, but also the most recent scientific data obtained through the surveillance provided for in Article 11 of that directive. Those assessments must be made not only at local level, but also at the level of the biogeographical region, and even at cross-border level.
- 66 In addition, that surveillance must be undertaken with particular care where the species is listed in Annex II and Annex IV(a) to that directive, in connection with certain regions, and in Annex V to that directive, in connection with neighbouring regions, and it is generally regarded therein as ‘a species of Community interest’.
- 67 However, in the present case, as is apparent from the information provided by the referring court – according to the 2019 report, which must be regarded as a reference document relevant for the purposes of determining the conservation status of the wolf in Spain during the period at issue in the main proceedings – the conservation status of wolf populations in Spain is ‘unfavourable-poor’ in the three biogeographical regions occupied by the wolf in that Member State, namely the Alpine, Atlantic and Mediterranean regions, including those situated to the north and south of the Douro River.
- 68 Furthermore, it is clear from that information that the Autonomous Community of Castile and Leon did not take account of that report when drawing up the exploitation plan for the 2019/2020, 2020/2021 and 2021/2022 seasons.
- 69 However, where an animal species has an unfavourable conservation status, as in the present case, according to the information provided by the referring court, the competent authorities must – as the Advocate General in essence observed in point 91 of her Opinion – take measures within the meaning of Article 14 of the Habitats Directive in order to improve the conservation status of the species concerned in such a way that, in future, its populations are sustainably maintained at a favourable status. The restriction or prohibition of hunting following the determination of the unfavourable conservation status of that species may then be regarded as being a measure necessary to restore its favourable conservation status.
- 70 As has been pointed out in paragraph 56 above, the adoption of measures based on that article is, in any event, permissible only if they contribute to the maintenance of the species concerned at, or its restoration to, a favourable conservation status. Thus, if the analyses carried out within the Member State concerned in respect of the species listed in Annex V to the Habitats Directive provide results such as to demonstrate the need for intervention at national level, that Member State may limit, and not extend, the activities referred to in the aforementioned article, in order to ensure that the taking from the wild of specimens of those species is compatible with the objectives of that directive.

- 71 As the Advocate General observed in point 99 of her Opinion, such a measure is necessary in particular where the conservation status of the species concerned is unfavourable primarily because of the loss of specimens. However, even if these losses are mainly due to other reasons, it may be necessary not to authorise hunting that would cause additional losses.
- 72 Indeed, in accordance with the precautionary principle enshrined in Article 191(2) TFEU, if, after examining the best scientific data available, there remains uncertainty as to whether the exploitation of a species of Community interest is compatible with the maintenance of that species at a favourable conservation status, the Member State concerned must refrain from authorising such exploitation (see, to that effect, judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 66).
- 73 Last, it should be noted that the precautionary principle means that where there is uncertainty as to the existence or extent of risks, protective measures may be taken without having to wait until the reality and seriousness of those risks become fully apparent (see, to that effect, judgment of 6 May 2021, *Bayer CropScience and Bayer v Commission*, C-499/18 P, EU:C:2021:367, paragraph 80).
- 74 It follows from the foregoing that measures for the protection of a species, such as the restriction or prohibition of hunting, may be considered necessary where, on the basis of the best scientific knowledge available, uncertainty remains as to the risks that exist for the maintenance of that species at a favourable conservation status.
- 75 Moreover, it should be noted that, as is apparent from the documents before the Court, the Kingdom of Spain adopted Ministerial Order TED/980/2021, which included the entire Spanish wolf population, including that of Castile and Leon north of the Douro River, in the national list of wild species subject to a strict protection regime.
- 76 It must be pointed out, in that regard, that although the Habitats Directive reproduces the distinction between wolf populations situated south and north of the River Douro, respectively, in accordance with Article 193 TFEU the protective measures adopted under Article 192 TFEU, which constitutes the legal basis of that directive, do not prevent any Member State from maintaining or introducing more stringent protective measures.
- 77 Furthermore, in the context of the strict protection afforded under Article 12 of the Habitats Directive, capture and killing may be permitted only by way of derogation, where there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, in accordance with the requirements of Article 16 of that directive. Moreover, the Court has clarified that a derogation based on Article 16(1) of the Habitats Directive must be applied appropriately in order to deal with precise requirements and specific situations (judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola*, C-674/17, EU:C:2019:851, paragraph 41 and the case-law cited).
- 78 In the light of all the foregoing considerations, the answer to the questions referred is that Article 14 of the Habitats Directive must be interpreted as precluding legislation of a Member State under which the wolf is designated as a species whose specimens may be hunted in a part of the territory of that Member State where it is not covered by the strict protection provided for in Article 12(1) of that directive, whereas the conservation status of that species in that Member State is classified as ‘unfavourable-poor’. It is appropriate to take into account, in that regard, the report drawn up every six years pursuant to Article 17 of that directive, all the most recent scientific data, including those obtained from the surveillance provided for in Article 11 of that directive, and the precautionary principle enshrined in Article 191(2) TFEU.

Costs

79 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 14 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 2013/17/EU of 13 May 2013,

must be interpreted as precluding legislation of a Member State under which the wolf is designated as a species whose specimens may be hunted in a part of the territory of that Member State where it is not covered by the strict protection provided for in Article 12(1) of that directive, whereas the conservation status of that species in that Member State is classified as ‘unfavourable-poor’. It is appropriate to take into account, in that regard, the report drawn up every six years pursuant to Article 17 of that directive, all the most recent scientific data, including those obtained from the surveillance provided for in Article 11 of that directive, and the precautionary principle enshrined in Article 191(2) TFEU.

[Signatures]

* Language of the case: Spanish.