

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 25 January 2024 ([1](#))

Case C-436/22

Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL)
v
Administración de la Comunidad Autónoma de Castilla y León

(Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla y León (High Court of Justice, Castile and Leon, Spain))

(Request for a preliminary ruling – Directive 92/43/EEC – Conservation of natural habitats and of wild fauna and flora – System of strict protection for the animal species listed in Annex IV(a) – Wolf (*Canis lupus*) – Geographic limits of strict protection – Taking from the wild and exploitation of specimens of the wild animal species listed in Annex V(a) – Regional plan for the exploitation of wolves in hunting grounds – Assessment of the conservation status of populations of the species concerned – Consequences of an unfavourable conservation status)

I. Introduction

1. The protection of wolves (*Canis lupus*) is currently the subject of controversial debate. Thus, the European Parliament has called for a review of their protection status ([2](#)) and the European Commission has asked for local data to be submitted for that purpose. ([3](#)) Within the framework of the Bern Convention ([4](#)) too, there is discussion as to whether wolves should be less protected. ([5](#))

2. However, the Habitats Directive ([6](#)) continues to afford comprehensive protection to the wolf. Member States are required not only to designate special areas of conservation for this species but also to protect individual species thereof throughout the territory of the European Union. The present request for a preliminary ruling concerns this second system of protection, the protection of species.

3. So far as species are concerned, the Habitats Directive provides for two levels of protection, that is to say, first, the strict protection of specific species under Article 12, which generally prohibits hunting in particular, and, secondly, reduced protection under Article 14, which states that hunting which is permitted in principle must be restricted where this is necessary to maintain the

species concerned at a favourable conservation status.

4. Both forms of species protection are applicable to the wolf. The decisive criterion is its location. Pursuant to the Habitats Directive, in Spain, wolves north of the Douro River are governed by Article 14, and those south of that river by Article 12. It is for this reason that the Autonomous Community of Castille and Leon, through which that river flows, allows wolf hunting in the north of that region.

5. The present request for a preliminary ruling arises from a dispute as to whether those regional rules on hunting are permissible. Since the conservation status of the wolf in Spain is unfavourable, the national court has doubts as to whether it is acceptable that the strict protection provided for in Article 12 of the Habitats Directive does not apply north of the Douro. However, if the geographic division applied by the two protection regimes established in that directive is to continue in existence, the Court is asked to clarify whether hunting must nonetheless be prohibited under Article 14 on account of the unfavourable conservation status.

6. These two questions have not previously been addressed by the Court. They are, however, of importance not only to Spain but also to Greece, Finland, Bulgaria, Latvia, Lithuania, Estonia, Poland and Slovakia, where the wolf also benefits only from the weaker protection provided for in Article 14 of the Habitats Directive either throughout national territory or in parts thereof.

II. Legal framework

A. *Bern Convention*

7. Under international law, the Bern Convention on the conservation of European wildlife and natural habitats is of particular importance. The European Community ratified that convention in 1982. (7) Although Spain had already signed it in 1979, that convention did not enter into force for Spain until 1986. (8)

8. Article 2 of the Bern Convention contains general objectives:

‘The Contracting Parties shall take requisite measures to maintain the population of wild flora and fauna at, or adapt it to, a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements and the needs of sub-species, varieties or forms at risk locally.’

9. Article 6 of the Bern Convention contains provisions on the protection of specific species:

‘Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the special protection of the wild fauna species specified in Appendix II. The following will in particular be prohibited for these species:

a. all forms of deliberate capture and keeping and deliberate killing;

...’

10. The wolf is listed as a specially protected fauna species in Annex II to the Bern Convention. However, Spain made a reservation and reported that the wolf would be protected as a species in Annex III, that is to say in accordance with Article 7. (9)

11. Article 7 of the Bern Convention also provides for protective measures:

‘1. Each Contracting Party shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III.

2. Any exploitation of wild fauna specified in Appendix III shall be regulated in order to keep the populations out of danger, taking into account the requirements of Article 2.

3. Measures to be taken shall include:

- (a) closed seasons and/or other procedures regulating the exploitation;
- (b) the temporary or local prohibition of exploitation, as appropriate, in order to restore satisfactory population levels;
- (c) ...'

12. Article 9 of the Bern Convention contains exceptions to the protective provisions contained in Articles 6 and 7 which are essentially the same as the derogations contained in Article 16(1) of the Habitats Directive.

B. Habitats Directive

13. The fifteenth recital of the Habitats Directive concerns the protection of species:

‘Whereas a general system of protection is required for certain species of flora and fauna to complement [the Birds Directive ([10](#))]; 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’[.]

14. Article 1(b), (f), (g) and (i) of the Habitats Directive defines various terms:

‘...

(g) “species of Community interest” means species which, within the territory referred to in Article 2, are:

- (i) endangered, except those species whose natural range is marginal in that territory and which are not endangered or vulnerable in the western palearctic region; or
- (ii) vulnerable, i.e. believed likely to move into the endangered category in the near future if the causal factors continue operating; or
- (iii) rare, i.e. with small populations that are not at present endangered or vulnerable, but are at risk. The species are located within restricted geographical areas or are thinly scattered over a more extensive range; or
- (iv) endemic and requiring particular attention by reason of the specific nature of their habitat and/or the potential impact of their exploitation on their habitat and/or the potential impact of their exploitation on their conservation status.

Such species are listed or may be listed in Annex II and/or Annex IV or V;

...

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;

The conservation status will be taken as “favourable” when:

- 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, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

...’

15. Article 2 of the Habitats Directive describes the aim it pursues:

‘(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’.

16. Article 4 of the Habitats Directive governs how the sites protected under that directive are selected and refers to the surveillance provided for in Article 11 for the purposes of the adaptation of those sites.

17. Article 11 of the Habitats Directive obliges Member States to undertake surveillance of species and natural habitats:

‘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.’

18. Article 12 of the Habitats Directive contains the basic obligations associated with the protection of species:

‘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.

2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.

...’

19. Article 14 of the Habitats Directive contains rules on taking certain animal species from the wild:

‘(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.’

20. Article 16(1) of the Habitats Directive contains derogations from Articles 12 and 14.

21. Article 17(1) of the Habitats Directive requires Member States and the Commission to report at regular intervals on the implementation of the measures taken under that directive and, in particular, on the conservation status of species:

‘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, shall be forwarded to the Commission and made accessible to the public.’

22. Annex II(a) of the Habitats Directive lists, inter alia, the wolf as a priority species for which special areas of conservation must be established. In Spain, however, Annex II(a) covers only wolf populations south of the Douro River. [\(11\)](#) The wolf is also listed in Annex IV(a) as a species which must be strictly protected in accordance with Article 12. This, however, does not include, inter alia, Spanish wolf populations north of the Douro. These populations are listed in Annex V(a) instead.

C. Spanish national law

23. Article 56 of Ley 42/2007, de 13 de diciembre, del Patrimonio Natural y de la Biodiversidad (Law 42/2007 of 13 December 2007 on Natural Heritage and Biodiversity; ‘Law 42/2007’), in the version in force at the material time, drew up a list of specially protected wild animals, which

contains the species, subspecies and populations that warrant particular attention and protection on account of their scientific, ecological or cultural value, their uniqueness, their rarity or the degree to which they are endangered, as well as those species, subspecies and populations which are designated as protected in the annexes to the directives and the international treaties ratified by Spain. In accordance with Article 65(1) of that Law, hunting and freshwater fishing are permitted only in respect of the species determined by the Autonomous Communities. That determination may not under any circumstances affect the species included in the list of specially protected wild animals.

24. In 2021, the Ministerio para la Transición Ecológica y el Reto Demográfico (Ministry of Ecological Transition and Demographic Challenge) adopted Orden (Order) TED/980/2021 of 20 September 2021 amending the annex to Real Decreto (Royal Decree) 139/2011 of 4 February 2011 developing the list of specially protected wild animals and the Spanish inventory of endangered species. That order included all Spanish wolf populations in the aforementioned list. That order contains a first additional provision on compatibility with the measures previously in force, paragraph 2 of which provides that the shooting and capture of specimens are allowed, subject to certain conditions, under a permit issued by the competent authority.

D. Legislation of the Autonomous Community of Castilla and Leon

25. Article 7 of Ley 4/1996, de 12 de julio, de Caza de Castilla y León (Law 4/1996 of 12 July 1996 on hunting in Castilla and Leon; ‘Law 4/1996’), which has since been repealed but was in force at the time when the hunting plan was approved, provided that huntable species were those defined as such in Annex I to that Law. Annex I lists, inter alia, wolves north of the Douro River.

26. The legislation currently in force is Ley 4/2021, de 1 de julio, de Caza y de Gestión Sostenible de los Recursos Cinegéticos de Castilla y León (Law 4/2021 of 1 July 2021 on hunting and the sustainable management of the hunting resources of Castilla and Leon, ‘Law 4/2021’), in accordance with Article 6 of which hunting is allowed only in respect of those species listed as huntable in Annex I. Annex I includes ‘Wolf (*Canis lupus*): north of the Douro River’ as a large game species. Law 4/2021 also contains provisions on the exclusion from Annex I of species benefiting under the basic national legislation from any protection such as to mean that the hunting thereof is prohibited, or on when the exclusion of a species is considered necessary in the interests of properly ensuring its conservation. Under that Law, the hunting even of species declared huntable may be temporarily excluded where this is necessary in order properly to ensure their conservation status. Article 38 of that Law provided (prior to its repeal by the Spanish Constitutional Court) that any form of wolf hunting required authorisation from the Autonomous Community ministry responsible for hunting, which is the highest competent authority in the territory of Castilla and Leon, and that a slain wolf carried a value of EUR 6 000.

III. Facts and request for a preliminary ruling

27. On 17 February 2020, the Asociación para la Conservación y Estudio del Lobo Ibérico (ASCEL, Association for the Conservation and Study of the Iberian Wolf) brought before the Tribunal Superior de Justicia de Castilla y León (High Court of Justice, Castilla and Leon, Spain) an administrative-law action against the Administración de la Comunidad Autónoma de Castilla y León (Administration of the Autonomous Community of Castilla and Leon, Spain). ASCEL seeks the 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 Castilla and Leon], Spain) of 9 October 2019 approving the Plan for the local exploitation of wolves in hunting grounds situated north of the Douro River in Castilla and Leon for the 2019/2020, 2020/2021 and 2021/2022 hunting seasons (‘the hunting plan’). It also claims damages for the harm caused to those wild fauna during each of the aforementioned hunting seasons.

28. According to the reasons given for that action, the aforementioned hunting plan is based on a regional census of wolves dating back to 2012 and 2013, a national census carried out between 2012 and 2014, and 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 Douro River in Castille and Leon prior to hunting to be 1 051 specimens. The hunting plan divides the territory of Castille and Leon north of the Douro River where wolves are present into 28 districts where wolves are present. It calculates the density of wolves in each of those districts, classifies them according to their – high, low or average – density and assigns them a level of exploitation by hunting in the form of a percentage based on that density. The plan concludes that an annual mortality rate in excess of 35% would lead to a decline in the population of that species.

29. The Tribunal Superior notes that, in recent years, it has heard a number of actions against various provisions of delegated legislation allowing wolf hunting. In the corresponding judgments, it annulled those provisions on the ground that no scientific studies showing that the conditions under which that species can be declared to be huntable without any compromise to its conservation status in its range were met had been presented in the administrative proceedings. However, those judgments were appealed to the Tribunal Supremo (Supreme Court, Spain), which upheld the appeals so brought. The Tribunal Supremo decided that there was no need to submit a prior request for a specific – ad hoc – territorial and material review of compliance with the requirements relating to population level, geographic distribution and reproduction rate every hunting season, in each area of competence and each territory and in respect of each species deemed to be huntable.

30. The Tribunal Superior therefore refers the following questions to the Court:

‘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:

- (1) Do the provisions of Articles 2(2), 4, 11, 12, 14, 16 and 17 of the Habitats Directive preclude a regional Law (Ley 4/1996 de Caza de Castilla y León (Law 4/1996 on Hunting in Castille and Leon) of 12 July 1996 and, subsequently, 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 Castille and Leon) of 1 July 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 report covering the six-year period 2013-2018 which Spain sent to the European Commission in 2019, as a result of which the State (the Member State, Article 4 HD) 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 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 and Annex I of Law 4 of 12 July 1996 on Hunting in Castille and Leon and Article 6 and Annex I of Law 4 of 1 July 2001 on Hunting and the Sustainable Management of the Hunting Resources of Castille and Leon) and the approval of a plan for the local exploitation of wolves in hunting grounds situated north of the Douro River 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 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 Real Decreto (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]?

31. Written observations have been submitted by ASCEL, the Autonomous Community of Castille and Leon, the Kingdom of Spain, the Republic of Finland and the European Commission. In accordance with Article 76(2) of the Rules of Procedure, the Court dispensed with a hearing on the ground that it considered itself to have sufficient information to give a ruling.

IV. Legal assessment

32. The Habitats Directive attaches great importance to the protection of wolves and therefore requires that special areas of conservation be designated for that species (Art. 4), and that strict rules of protection be applied outside those areas too (Art. 12). [\(12\)](#) However, certain regions of the European Union, including the whole of Spain north of the Douro River, are excluded from both protective regimes. It was for this reason that the Autonomous Community of Castille and Leon adopted in respect of its territory north of the Douro the hunting plans which are contested in the main proceedings.

33. These proceedings raise, first, the question as to whether the division of the strict protection regimes established in the Habitats Directive along the Douro River may continue in existence in the light of the conservation status of the species in question in both areas (Question 2 and, in part, Question 1 (see section B)), and, secondly, if that geographic division is recognised, the question of the extent to which the provisions of Article 14 of the Habitats Directive concerning the taking of wolves from the wild restrict hunting (remainder of Question 1 and Questions 3 to 5 (see section C)). First of all, however, we must look at the objections to the admissibility of the request for a preliminary ruling.

A. *Objections to admissibility*

34. In principle, it is solely for the national court before which the 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. Consequently, where the questions submitted concern the interpretation of a rule of EU law, the Court is in principle bound to give a ruling. Such questions enjoy a presumption of relevance. The Court may therefore refuse to rule on a question referred for a preliminary ruling by a national court 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. [\(13\)](#)

35. Spain submits that the request for a preliminary ruling is no longer relevant to the judgment to be given because the Spanish Constitutional Court has declared the rules of the Autonomous Community of Castille and Leon at issue in the main proceedings to be unconstitutional on the ground that they infringe national legislation. At the same time, the Autonomous Community contends that it has informed those entitled to hunt wolves that they cannot exercise their right to hunt.

36. The Autonomous Community of Castille and Leon also submits, however, that it has contested the national legislation precluding the application of the regional rules at issue. It is therefore reasonable to assume that the regional rules might be reinstated following a decision on that challenge, if the action in question were to be successful.

37. In addition, the main proceedings also concern the question whether the adverse impact which hunting had on the wolf population during the application of the regional rules prior to the decision of the Spanish Constitutional Court must be compensated. Since that decision relates only to the period from 2021, whereas the main proceedings are concerned with hunting seasons since 2019, the compatibility of the regional rules with EU law continues to be of interest.

38. Consequently, the request for a preliminary ruling is at least not manifestly irrelevant to the judgment to be given in the main proceedings.

39. The further objection raised by the Autonomous Community of Castille and Leon, that the request for a preliminary ruling raises only questions concerning the assessment of evidence, is unconvincing. Although it is true that the Court of Justice would not have jurisdiction to assess evidence in the context of a request for a preliminary ruling, this request for a preliminary ruling is nonetheless clearly intended to clarify questions of EU law concerning whether the division of the strict protection regime for wolves along the Douro is valid and how Article 14 of the Habitats Directive is to be interpreted.

40. The Autonomous Community of Castille and Leon is, however, right to take issue with the fact that part of the first question concerns the relationship between the Spanish national legislation on the protection of wolves and the regional rules on wolf hunting. That relationship is a question of

Spanish domestic law which the Court of Justice cannot answer. That part of the first question is therefore inadmissible.

41. Otherwise, however, the objections to admissibility raised by Spain and the Autonomous Community of Castille and Leon must be dismissed.

B. Geographic application of the strict protection regimes

42. By the second and first questions, in so far as they relate to Article 12 of the Habitats Directive, the Tribunal Supremo asks whether, in the light of the conservation status of the wolf in Spain, it is compatible with that directive's objective of maintaining protected species at a favourable conservation status or restoring them to this status for wolves in Spain to benefit from the strict protection of Article 12 if they are located south of the Douro but only from the weaker protection of Article 14 if they are located north of the Douro.

43. The respective geographic spheres of application of Articles 12 and 14 of the Habitats Directive are readily apparent from the wording of those two provisions read in conjunction with Annexes IV and V. Even if the aforementioned rule were to run counter to the overarching objective of the Directive, that inconsistency would not be capable of changing the clear geographic division applied by the two protection regimes. (14)

44. Furthermore, it is the conservation status of the species listed in Annex V that is to be taken decisively into account in the application of Article 14, as I shall go on to demonstrate below. The assumption of an inconsistency with the objective of the Directive is, therefore, already doubtful.

45. The geographic division applied by the two protection regimes established in the Directive could be called into question, however, if it ran counter to higher-ranking law. Although there is nothing to indicate any inconsistency with the Treaties or the Charter, consideration might nonetheless be given to whether that division is compatible with the obligations under the Bern Convention. As an international agreement concluded by the European Union, that convention has primacy over provisions of secondary EU law. (15)

46. It is true that, when ratifying the Bern Convention, Spain reserved the right to protect the wolf, throughout its territory, not under Article 6 of that Convention, that is to say Article 12 of the Habitats Directive, but only under Article 7 of that Convention, that is to say Article 14 of the Habitats Directive. In restricting protection to part of its territory, Spain does not therefore infringe its international-law obligations under that Convention.

47. The European Union, however, has not made any reservations to that Convention. Consequently, it might now have an obligation under international law to ensure that the wolf benefits throughout its territory, including, therefore, north of the Douro in Spain, from the strict protection provided for in Article 6 of the Convention. The geographic restriction of the application of Article 12 of the Habitats Directive would be incompatible with that obligation.

48. What is more, as part of EU law, that Convention is binding on the Member States, (16) including Spain, therefore. Whether Spain's reservation under international law extends to the binding effect under EU law too, is in any event unclear.

49. However, I propose that the Court leave this question open, since the request for a preliminary ruling does not specifically raise it and the parties to the proceedings have not commented on it.

50. Finally, this question referred for a preliminary ruling could also be understood as asking whether, in the light of the information on the conservation status of the wolf in Spain, the European Union should have changed its inclusion in Annex IV of the Habitats Directive. If understood in this

way, however, the question would not be relevant to the judgment to be given, since the obligations to act incumbent upon the European Union are to be separated from those incumbent upon the Member States. Even if the *European Union* were obliged to extend the protection afforded to the wolf under Article 12 of the Habitats Directive to the Spanish regions north of the Douro, it would still not follow from that obligation that *Spain* or the Autonomous Community of Castille and Leon has an obligation here and now to anticipate that action by the European Union by applying Article 12 to those regions.

51. The request for a preliminary ruling does not therefore raise any doubts as to whether, in Spain, only wolves (*Canis lupus*) located south of the Douro River must be protected in accordance with Article 12 of the Habitats Directive, whereas those located north of the river are covered by Article 14 of that directive.

C. Rules on the taking and exploitation of wolves

52. The other questions concern whether Article 14 of the Habitats Directive preclude the authorisation of wolf hunting where the Member State classifies that species as unfavourable.

53. In this regard, it falls to be clarified first of all whether wolf hunting is to be regarded as exploitation within the meaning of Article 14 of the Habitats Directive (section 1), and, next, what obligations follow from Article 14 of the Habitats Directive if the conservation status of that species is unfavourable (section 2).

1. Hunting as exploitation

54. The third question seeks to ascertain, first, whether the term ‘exploitation’ in Article 14 of the Habitats Directive includes cynegetic exploitation, that is to say the hunting of wolves.

55. Article 14(1) of the Habitats Directives requires Member States, under certain conditions, to ensure that the *taking* from the wild of species of wolf present on Spanish sites north of the Douro and their *exploitation* are compatible with their being maintained at a favourable conservation status.

56. In this context, ‘taking’ certainly refers, inter alia, to hunting, [\(17\)](#) since, in accordance with the fourth indent of Article 14(2) of the Habitats Directive, the application of hunting rules in cases where specimens are taken is one of the protective measures that may be taken to maintain a favourable conservation status. Such rules necessarily refer to hunting.

57. However, the term ‘exploitation’ too may include hunting, since recital 14 of the Birds Directive expressly refers to the exploitation of birds by hunting. Accordingly, the Court has consistently held that the hunting of birds may constitute judicious use within the meaning of Article 9(1)(c) of the Birds Directive. [\(18\)](#) I see no reason why pursuant to the Habitats Directive the position should be any different in the case of wolves.

58. Consequently, hunting may take the form of taking and exploiting specimens of wolves within the meaning of Article 14(1) of the Habitats Directive.

2. Obligations under Article 14 of the Habitats Directive

59. It must therefore be examined whether, in the event that the conservation status of the wolf is unfavourable, Article 14(1) of the Habitats Directive precludes the hunting of that species.

60. That provision states that, if, in the light of the surveillance provided for in Article 11, Member States deem it necessary, they are to take measures to ensure that the taking in the wild of specimens of species of wild fauna and flora listed in Annex V – that is to say, in particular, wolves

on Spanish sites north of the Douro – as well as their exploitation is compatible with their being maintained at a favourable conservation status.

61. In this regard, it is necessary to consider, first, whether the authorisation of hunting is conditional upon specific proof (see section (a)) and, next, how the assessment necessary in this context is to be carried out (section (b)).

(a) *Need for proof*

62. ASCEL takes the view that, in accordance with Article 14(1) of the Habitats Directive, the hunting of a species of fauna listed in Annex V may be approved only if it is scientifically proved to be compatible with maintaining that species at a favourable conservation status. The Commission makes the same case. In its submission, the precautionary principle makes it mandatory, in cases where there is scientific uncertainty as to the compatibility of exploiting species listed in Annex V with their conservation status, to take measures to ensure a favourable conservation status.

63. The precautionary principle is one of the foundations of the high level of protection pursued by EU policy on the environment, in accordance with the first subparagraph of Article 191(2) TFEU. It must therefore be taken into account in particular in the interpretation of the Habitats Directive. [\(19\)](#)

64. It is on this basis that the Court has held that, pursuant to Article 6(3) of the Habitats Directive, plans and projects capable of adversely affecting a Natura 2000 Site may be authorised only if there is no reasonable scientific doubt that they will not adversely affect the site as such. [\(20\)](#) The precautionary principle further mandates that a derogation from the protection of species provided for in Article 16 may not be granted if, after an examination of the best scientific data available, uncertainty remains as to whether or not populations of a species threatened with extinction can be maintained at or restored to a favourable conservation status notwithstanding that derogation. [\(21\)](#)

65. That case-law cannot, however, be transposed without restriction to Article 14 of the Habitats Directive.

66. Article 6(3) of the Habitats Directive makes the plans and projects to which it applies subject to authorisation. If the conditions for authorisation are not met, such plans and projects may not be implemented. Furthermore, Article 16 is a derogatory provision the application of which is, by definition, dependent on proof of compliance with the conditions – which are to be interpreted restrictively [\(22\)](#) – laid down there. [\(23\)](#)

67. Article 14 of the Habitats Directive, on the other hand, provides for a restriction, under certain conditions, of the taking and exploitation of specimens of the species listed in Annex V. It follows by converse inference that that provision does not preclude the taking and exploitation of specimens if those conditions are not met. The EU legislature clearly assumed that the conservation status of the species listed in Annex V is favourable and not in principle adversely affected by the taking and exploitation of specimens. Indeed, so long as that assumption is correct, the taking and exploitation of such species is compatible with the Directive's objective, as set out in Article 2(1) and (2) thereof, of conserving wild species and, in particular, maintaining or restoring species of Community interest at or to a favourable conservation status.

68. Neither, however, does Article 14 of the Habitats Directive establish a right to take and exploit specimens of the species listed in Annex V. On the contrary, Member States may impose restrictions or even complete bans notwithstanding a favourable conservation status. This would be permissible as a more stringent protective measure within the meaning of Article 193 TFEU.

69. Conversely, Article 14 of the Habitats Directive regulates what must happen in the case

where the assumption that the taking and exploitation of specimens is harmless, is rebutted. In that event, Member States are to take measures to ensure that those activities are compatible with the maintenance of a favourable conservation status. As the Court has already held, Member States are not free to decide whether or not to take those measures, but are subject to an obligation which must also be reflected in the transposition of Article 14. (24)

70. Consequently, Article 14 of the Habitats Directive requires Member States to restrict the taking and exploitation of specimens of the species listed in Annex V where the assumption that the unrestricted exercise of the activity concerned is compatible with the maintenance of a favourable conservation status has been rebutted.

(b) Assessment of the measures necessary

71. As the Commission rightly submits, Article 14(1) of the Habitats Directive allows Member States a margin of discretion in the assessment of whether the aforementioned assumption has been rebutted and, in particular, whether the conservation status of a species indicates that hunting must be restricted. However, that margin of discretion is limited by the objective of maintaining a favourable conservation status. (25)

72. In order to determine the precise scope of that obligation, we must look, first, at the surveillance obligation laid down in Article 11 of the Habitats Directive, next, at the best available scientific knowledge test that must be applied in that connection and the reporting obligation laid down in Article 17, and, finally, at the consequences of a finding that a conservation status is unfavourable.

– *Article 11 of the Habitats Directive*

73. It is not up to the Member States to decide whether or not to investigate and determine conservation status when applying Article 14 of the Habitats Directive. On the contrary, that provision requires them to take measures if they deem it necessary to do so *in the light of the surveillance provided for in Article 11*. Article 11 in turn provides that Member States must undertake surveillance of the conservation status of the natural habitats and species referred to in Article 2, with particular regard to priority habitat types and priority species.

74. However, that surveillance obligation is not confined to priority species and habitat types. Rather, since the aim of the Habitats Directive, as defined in Article 2(1) thereof, is 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, Member States must in principle monitor *all* natural habitats and *all* species of wild fauna and flora in their European territory. That surveillance must be geared towards realising the objectives pursued by the Directive, that is to say, ensuring bio-diversity through the conservation of all species and habitats. (26)

75. Although, according to its wording and objective, that obligation applies without restriction, Member States do enjoy some discretion in this regard, at least in relation to the way in which the surveillance is undertaken. So long as the conservation status of a species does not give rise to any concerns, it will be sufficient in the case of many species to keep the status of their habitats under general observation and, from the information so obtained, to form assumptions as to the conservation status of the species to be expected there. However, there is no need for the Court to comment on this in detail in the present proceedings.

76. In the case of species which are individually protected by the Habitats Directive, however, specific surveillance measures are required. This is true in particular of the wolf in the Spanish regions north of the Douro. It is true that, unlike in most EU territories, the wolf is not a priority species in those regions and does not therefore warrant *particular* regard within the meaning of the

second half of the sentence comprising Article 11. Nonetheless, in accordance with Article 1(g), the species listed in Annex V are also of Community interest. In particular, the application of Article 14 is directly dependent on surveillance of the species listed in Annex V. It would therefore be incompatible [with that article] not to undertake careful surveillance of those species.

77. What is more, populations or subpopulations of protected species are not to be considered in isolation but – as ASCEL rightly contends – only in the overall context of other populations or subpopulations. (27) It is thus reasonable to assume that some degree of exchange takes place between the Spanish sites north of the Douro and those south of that river and in Portugal, inasmuch as individual wolves cross the river or the border. Problems in the north are therefore liable as a rule to affect the south and Portugal too, where the wolf is a priority species under Annex II to the Habitats Directive.

78. Surveillance of the conservation status of an animal species listed in Annex V, as required by Article 11 of the Habitats Directive, must therefore be undertaken with particular care, especially if – like the wolf – that species is listed in Annexes II and IV in connection with some neighbouring regions and is even classified as a priority there.

– *The report under Article 17 of the Habitats Directive as the embodiment of the best available scientific knowledge*

79. Like other assessments in the field of nature conservation, this surveillance too, and the conclusions to be drawn from it in the application of Article 14, must be based on the best available scientific knowledge. (28)

80. This also follows from the principle of good administration and the aforementioned precautionary principle.

81. The Member States must observe the principle of good administration in the application of EU law as a general principle of EU law. (29) That principle requires an administrative authority, inter alia, to conduct a diligent and impartial examination of all the relevant matters so that it can be sure, when adopting its decision, that it has at its disposal the most complete and reliable information possible. (30)

82. Furthermore, measures based on the precautionary principle – that is to say, in particular, the application of provisions of EU environmental law – generally require a comprehensive assessment of the risks concerned based on the most reliable scientific data available and the most recent results of international research. (31)

83. The Commission cites a scientific paper (32) as an example of recent scientific knowledge which must be taken into account in the surveillance of conservation status.

84. However, Questions 4 and 5 are not directly concerned with the results of surveillance under Article 11 of the Habitats Directive, but cast doubt even on whether such surveillance has taken place to a sufficient extent at all for the wolf. The Tribunal Superior relies instead on the report which Spain submitted to the Commission under Article 17 in 2019. According to that article, such a report must contain, inter alia, the main results of the surveillance referred to in Article 11. In that report, Spain stated that the conservation status of the wolf in Spain in the period 2013 to 2018 was unfavourable.

85. If there really is no comparable scientific knowledge on the conservation status of the species in question other than that report, then it is imperative that at least the result recorded there be taken into consideration in the application of Article 14 of the Habitats Directive.

86. Any deviation from the above would be possible only on the basis of conflicting scientific

knowledge which is more scientifically compelling than the report. Such knowledge may come in particular from more recent studies, although these must be at least as scientifically sound as the knowledge on which the report is based.

87. Conversely, Member States cannot without further scientific evidence object to such a report on the ground that it is outdated. Since it falls to them to discharge the surveillance obligation laid down in Article 11 of the Habitats Directive, they themselves must have at their disposal up-to-date scientific knowledge on which they can rely if necessary. They may not derive any advantage from the absence of sufficient studies. Furthermore, the six-year reporting period laid down in Article 17 indicates that such a report is capable of providing the basis for the adoption of measures until such time as the next report is drawn up.

88. It therefore remains to be noted that the assessment to be carried out under Article 14 of the Habitats Directive must be based on the report submitted under Article 17, unless that report is rebutted by more scientifically compelling knowledge.

– *Consequences of an unfavourable conservation status*

89. In practice, where there are concerns regarding whether a species listed in Annex V of the Habitats Directive is being maintained at a favourable conservation status, Member States must examine whether measures in connection with the taking and exploitation of specimens, that is to say in connection with, inter alia, hunting, are necessary.

90. Where, as in the present case, the Member State has actually informed the Commission that the conservation status of a species listed in Annex V of the Habitats Directive is unfavourable, its discretion to make the aforementioned assessment is inevitably restricted. For, in that event, the measures taken hitherto have clearly not been enough to ensure that the population of that species is kept at a favourable conservation status.

91. *Whether* the competent authorities take measures is therefore no longer at their discretion in the case where the conservation status is unfavourable. On the contrary, in that event, they *must* take additional measures within the meaning of Article 14 of the Habitats Directive in order to improve the conservation status of the species in question in such a way that, in future, the population concerned is sustainably maintained at a favourable status.

92. *What* additional measures the competent authorities must take, however, and, in particular, whether they must prohibit hunting, is thus not yet clear. This is apparent not least from the list of examples of possible measures in Article 14(2) of the Habitats Directive. According to this, only continuation of the surveillance provided for in Article 11 is compulsory, whereas the Member State or the competent authorities ‘may’ take the other measures referred to but are – as a rule – *not* under a duty to do so.

93. Since the measures provided for in Article 14(2) of the Habitats Directive are necessary only as long as there are doubts about the maintenance of a favourable conservation status, that provision does not mention a complete and lasting ban on hunting as a possible measure. It does, however, mention the possibility of imposing a limited temporary or local prohibition of the taking of specimens from the wild and the exploitation of certain populations (second indent), that is to say for as long as the prohibition is necessary. Mention is also made of hunting rules which take account of the need to conserve the population concerned (fourth indent) and a system of licences for taking specimens or of quotas (fifth indent).

94. However, the discretion available under that provision with respect to the measures that may be taken is also limited by the objective of maintaining a favourable conservation status in cases where a conservation status is unfavourable.

95. In the German version of the Habitats Directive, this follows very clearly from the wording of Article 14(1) thereof. This states that Member States are to take the measures *necessary* to ensure that the taking and exploitation of specimens is compatible with their being maintained at a favourable conservation status.

96. It is true that, in other language versions, such as the English, French or Spanish versions, there is no direct characterisation of the measures to be taken as being ‘necessary’. In those versions, Member States are required only to take measures to ensure that the taking and exploitation of species is compatible with their being maintained at a favourable conservation status. However, the need for such measures is implicit in that instruction. Furthermore, the need for such measures is, indirectly, referred to expressly too, since, in all language versions, measures are to be taken where Member States deem this necessary.

97. Whether the finding that the conservation status of a species is unfavourable justifies the need to restrict or prohibit hunting depends on the reasons for that finding.

98. According to 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. Secondly, the natural range of the species must be neither being reduced nor be likely to be reduced for the foreseeable future. And finally, it is necessary that there is now and will probably be in the future too a sufficiently large habitat to maintain its populations on a long-term basis. (33)

99. The need to restrict hunting presents itself in particular where the conservation status of a species is unfavourable primarily on account of the loss of specimens. Even if such losses are mainly attributable to other causes (such as, in the case of wolves, road traffic, disease or poaching, for example), it may be necessary to prevent further losses through hunting.

100. If, however, the problems experienced by the species have to do primarily with its habitat, which can be assumed to be true in the case of the hamster (*Cricetus cricetus*) in France, for example, (34) it might be that hunting or restricting it has only a very limited impact on the conservation status.

101. It is also important to bear in mind that a finding in relation to the conservation status of a species in the biogeographic regions of a Member State permits only limited conclusions to be drawn with respect to its conservation status in specific territories. Indeed, it is conceivable that the conservation status of that species be so good in certain territories that hunting is still possible there even in the light of the links between those territories and others where its conservation status is unfavourable. The opposite may also be true, however, where populations with an unfavourable conservation status are dependent on the migration of specimens from sites with a particularly good conservation status. That assessment must be made in the first place by the competent authorities of the Member States in the light of the best available scientific knowledge and on the basis of appropriate surveillance of the conservation status of the species concerned in accordance with Article 11 of the Habitats Directive.

102. Finally, the decision as to which measures are necessary must also take into account the precautionary principle. That principle means that, where there is uncertainty as to the existence or extent of risks, including risks to the environment, protective measures may be taken without having to wait until the reality and seriousness of those risks become fully apparent. (35) Consequently, protective measures may also be taken in the case where, on the basis of the best scientific knowledge available, there is uncertainty as to what the risks are to the maintenance of a favourable conservation status.

103. In summary, it may be concluded that, even after a finding as to the unfavourable conservation status of a species listed in Annex V of the Habitats Directive, the hunting of that species must be

prohibited only if, in the light of the best available scientific knowledge, including appropriate surveillance of the conservation status of that species in accordance with Article 11, and in the light of the precautionary principle, that prohibition is necessary to restore the species concerned to a favourable conservation status.

D. Concluding remark

104. Finally, it must be recalled that the protection of wolves on Natura 2000 Sites may also be relevant to the authorisation of hunting. The fact that Spain has designated a number of sites immediately south of the Douro as ones on which the wolf is protected, (36) and that species occupies very extensive territories, (37) might raise the further question as to whether hunting plans for sites north of the Douro require an impact assessment as provided for in Article 6(3) of the Habitats Directive. (38) After all, it is not inconceivable that wolves living in those conservation areas will cross the river and be killed there. Whether the wolf populations in those conservation areas come into sufficient contact with those north of the river may also be important from the point of view of the genetic diversity of the former populations. However, that question does not form the subject of these proceedings.

V. Conclusion

105. I therefore propose that the Court's answer to the request for a preliminary ruling should be as follows:

- (1) The request for a preliminary ruling does not therefore raise any doubts as to whether, in Spain, only wolves (*Canis lupus*) located south of the Douro River must be protected in accordance with Article 12 of Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by 2013/17/EU of 13 May 2013, whereas those located north of the river are covered by Article 14 of that directive.
- (2) Hunting may be a form of taking and exploiting wolf specimens within the meaning of Article 14(1) of Directive 92/43.
- (3) Articles 11, 14 and 17 of Directive 92/43 are to be interpreted as meaning that:
 - Member States must restrict the taking and exploitation of specimens of the species listed in Annex V, in accordance with Article 14, where the assumption that the unrestricted exercise of the activity concerned is compatible with maintaining a favourable conservation status is rebutted;
 - surveillance of the conservation status of a species listed in Annex V, as required by Article 11, must be undertaken with particular care, especially if – like the wolf – that species is listed in Annexes II and IV in connection with some neighbouring regions and is even classified as a priority there;
 - the assessment to be carried out under Article 14 must be based on the report submitted under Article 17, unless that report is rebutted by more scientifically compelling knowledge; and
 - even after a finding as to the unfavourable conservation status of a species listed in Annex V of the Habitats Directive, the hunting of that species must be prohibited only if, in the light of the best available scientific knowledge, including appropriate surveillance of the conservation status of that species in accordance with Article 11, and

in the light of the precautionary principle, that prohibition is necessary to restore the species concerned to a favourable conservation status.

¹ Original language: German.

² Resolution of 24 November 2022 on the protection of livestock farming and large carnivores in Europe (2022/2952(RSP)).

³ Press release ip_23_4330 of 4 September 2023.

⁴ Convention on the conservation of European wildlife and natural habitats, concluded in Bern on 19 September 1979 (OJ 1982 L 38, p. 3); ratified on behalf of the Community by Council Decision 82/72/EEC of 3 December 1981 (OJ 1982 L 38, p. 1).

⁵ See, for example, the report on the 42nd Standing Committee meeting from 28 November to 2 December 2022, T-PVS(2022)31, item 5.2, as well as recently the Commission's press release of 20 December 2023 'Commission proposes to change international status of wolves from "strictly protected" to "protected" based on new data on increased populations and impacts', ip-23-6752.

⁶ 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).

⁷ Council Decision 82/72/EEC of 3 December 1981 (OJ 1982 L 38, p. 1).

⁸ <https://www.coe.int/en/web/conventions/cets-number/-abridged-title-known?module=signatures-by-treaty&treaty-num=104>.

⁹ <https://www.coe.int/en/web/conventions/cets-number/-abridged-title-known?module=declarations-by-treaty&numSte=104&codeNature=2&codePays=SPA>. See also Salvatori and Linnell, Report on the conservation status and threats for wolf (*Canis lupus*) in Europe for the 25th meeting of the Standing Committee for the Convention (T-PVS/Inf [2005] 16, p. 6), Michel Prieur, Report on the implementation of the Bern Convention in Spain for the 26th meeting of the Standing Committee for the Convention (T-PVS/Inf [2006] 7, p. 3).

¹⁰ The version in force at the time of the case in the main proceedings was Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7), as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013 L 158, p. 193).

¹¹ The Douro River flows through the Autonomous Community of Castille and Leon for 572 km before passing through Portugal and entering the sea at Porto.

¹² See in particular in this regard judgment of 11 June 2020, *Alianța pentru combaterea abuzurilor* (C-88/19, EU:C:2020:458).

[13](#) Judgment of 6 October 2021, *Sumal* (C-882/19, EU:C:2021:800, paragraphs 27 and 28, and the case-law cited there).

[14](#) See to this effect judgments of 8 December 2005, *ECB v Germany* (C-220/03, EU:C:2005:748, paragraph 31), and of 14 July 2022, *Parliament v Council* (Seat of the European Labour Authority) (C-743/19, EU:C:2022:569, paragraph 58).

[15](#) See to this effect judgments of 3 June 2008, *Intertanko and Others* (C-308/06, EU:C:2008:312, paragraph 42), and of 11 July 2018, *Bosphorus Queen Shipping* (C-15/17, EU:C:2018:557, paragraph 44).

[16](#) See judgment of 15 July 2004, *Pêcheurs de l'étang de Berre* (C-213/03, EU:C:2004:464, paragraph 39).

[17](#) See, inter alia, judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola* (C-674/17, EU:C:2019:851, paragraph 32), concerning hunting as a form of 'taking' for the purposes of Article 16 of the Habitats Directive.

[18](#) Judgments of 7 March 1996, *Associazione Italiana per il WWF and Others* (C-118/94, EU:C:1996:86, paragraph 21); of 16 October 2003, *Ligue pour la protection des oiseaux and Others* (C-182/02, EU:C:2003:558, paragraph 10); and of 23 April 2020, *Commission v Finland* (Spring hunting of male common eiders) (C-217/19, EU:C:2020:291, paragraph 65).

[19](#) Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 44), and 13 December 2007, *Commission v Ireland* (C-418/04, EU:C:2007:780, paragraph 254); as well as, to this effect, judgments of 8 November 2016, *Lesoochránárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 66), and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 118).

[20](#) Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 59), and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 117).

[21](#) Judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola* (C-674/17, EU:C:2019:851, paragraph 66).

[22](#) Judgments of 20 October 2005, *Commission v United Kingdom* (C-6/04, EU:C:2005:626, paragraph 111), and of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola* (C-674/17, EU:C:2019:851, paragraph 30).

[23](#) Judgments of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola* (C-674/17, EU:C:2019:851, paragraph 51), and of 23 April 2020, *Commission v Finland* (Spring hunting of male common elders) (C-217/19, EU:C:2020:291, paragraph 66).

[24](#) Judgment of 13 February 2003, *Commission v Luxembourg* (C-75/01, EU:C:2003:95, paragraphs 80 and 81).

[25](#) Opinion of Advocate General Tizzano in *Commission v Luxembourg* (C-75/01, EU:C:2002:58, point 79). See in relation to similar limits on margins of discretion judgments of 24 October 1996, *Kraaijeveld and Others* (C-72/95, EU:C:1996:404, paragraph 56); of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 66); of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 46); of 26 May 2011, *Stichting Natuur en Milieu and Others* (C-165/09 to C-167/09, EU:C:2011:348, paragraphs 100 to 103); of 5 September 2012, *Rahman and Others* (C-83/11, EU:C:2012:519, paragraph 25); of 8 November 2016, *Lesoochránárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 44); and of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others* (C-197/18, EU:C:2019:824, paragraph 31).

[26](#) See, inter alia, my Opinion in *Cascina Tre Pini* (C-301/12, EU:C:2013:420, point 59).

[27](#) See to this effect judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola* (C-674/17, EU:C:2019:851, paragraphs 58, 59 and 61).

[28](#) See to this effect judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 54); of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola* (C-674/17, EU:C:2019:851, paragraph 51); and of 23 April 2020, *Commission v Finland (Spring hunting of male common eiders)* (C-217/19, EU:C:2020:291, paragraph 70).

[29](#) Judgments of 8 May 2014, *N.* (C-604/12, EU:C:2014:302, paragraphs 49 and 50); of 14 May 2020, *Agrobet CZ* (C-446/18, EU:C:2020:369, paragraph 43); and of 22 September 2022, *Országos Idegenrendészeti Főigazgatóság and Others* (C-159/21, EU:C:2022:708, paragraph 35).

[30](#) Judgments of 14 May 2020, *Agrobet CZ* (C-446/18, EU:C:2020:369, paragraph 44), and of 21 October 2021, *CHEP Equipment Pooling* (C-396/20, EU:C:2021:867, paragraph 48).

[31](#) See to this effect judgments of 28 January 2010, *Commission v France* (C-333/08, EU:C:2010:44, paragraph 92); of 1 October 2019, *Blaise and Others* (C-616/17, EU:C:2019:800, paragraph 46, see also paragraphs 93 and 94); and of 9 November 2023, *Global Silicones Council and Others v Commission* (C-558/21 P, EU:C:2023:839, paragraph 66).

[32](#) Prieto, A. et al., ‘Field work effort to evaluate biological parameters of interest for decision-making on the wolf (*Canis lupus*)’, *Hystrix, the Italian Journal of Mammalogy*, Volume 33 (1), 2022, 65–72.

[33](#) Judgment of 10 October 2019, *Luonnonsuojeluyhdistys Tapiola* (C-674/17, EU:C:2019:851, paragraph 56).

[34](#) See my Opinion in *Commission v France* (C-383/09, EU:C:2011:23).

[35](#) Judgments of 6 May 2021, *Bayer CropScience and Bayer v Commission* (C-499/18 P, EU:C:2021:367, paragraph 80).

[36](#) According to the Natura 2000 Viewer as at 18 January 2024, these included: Riberas del Río Douro y afluentes (ES4170083); Hoces del Río Riaza (ES4160104); Altos de Barahona (ES4170148); El Carrascal (ES4180130); Riberas de Castronuño (ES4180017); Cañones del Douro (ES4190102); and Arribes del Douro (ES4150096).

[37](#) Boitani, *Action Plan for the conservation of the wolves (Canis lupus) in Europe*, (Council of Europe, T-PVS [2000] 23, p. 16).

[38](#) See judgment of 26 April 2017, *Commission v Germany* (C-142/16, EU:C:2017:301, paragraphs 29 and 30).