Fourteen Years for a Mere Designation

Enforcement Shortcomings of Fundamental EU Conservation Laws

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On 5 March 2026, in its C-613/24 judgment, the Court of Justice of the EU (CJEU) fined Portugal for €10 million for its failure to comply with a 2019 judgment (C-290/18) on the Habitats Directive. In addition, the Court imposed a daily penalty payment of €41,250 until the judgment is fully complied with. This figure corresponds to the 55 sites in question and will be reduced as Portugal makes progress on the implementation of the ruling. This ruling is in many ways arguably a straightforward enforcement case. However, it demonstrates, once again, that enforcement action – even for basic or preliminary implementation – simply takes too long. In addition, it highlights the need for follow-up action under Article 260 of the Treaty on the Functioning of the EU (TFEU) to ensure that judgments are actually implemented. Both points highlight fundamental rule-of-law issues.

Overview of the ruling

The C-613/24 case concerned the designation and management of protected sites under the Habitats Directive (HD). The Directive itself is from 1992 and sets out a four-stage process for the designation of Special Areas of Conservation (SACs), as summarised in para 37 of the judgment. The key stage is the adoption of a formal (agreed) list of sites by the Commission, which Member States must then designate as soon as possible, and within six years at the latest. For Portugal, the relevant decisions were from 2004 and 2006, meaning that the last deadline for designation was 2010 and 2012 respectively. Following various enforcement steps launched by the Commission in 2013, in 2019 the CJEU found Portugal in breach of Article 4(4) of the HD for failing to designate 61 sites. In addition, Portugal was found in breach of Article 6(1) of the HD for its failure to take adequate conservation measures as the measures it had adopted were generic and not specific to the ecological requirements of each habitat type and species that the sites should have been designated for.

Portugal failed to implement the judgment, and the Commission brought follow-up proceedings under Article 260(2) of the TFEU, referring the case to the CJEU in February 2024. In its March 2026 judgment, the CJEU found that the breach of Article 4(4) and Article 6(1) of the HD still persists at the February 2022 reference date (2 months after the formal notice, para 46 and 62), and consequently, that Portugal has breached its obligation under Article 260(1) of the TFEU to implement the Court's earlier ruling (para 63).

The Court then considered the appropriate lump sum and penalty payment. The Commission argued (at the time of the referral, in February 2024) that safeguarding biodiversity was one of the main priorities for the EU (para 67), that Article 4(4) and 6(1) of the HD establish the framework of the conservation and protection of Natura 2000 sites (para 68), and that the infringement was therefore significant, according it a seriousness of 10 on a scale of 1-20 (para 66). Considering also the length of the non-implementation, the Commission proposed a lump sum payment of 8.2 million EUR and a daily penalty payment of 45.5k EUR (para 75-76). Portugal sought to argue that the HD was simply difficult to implement and that the effects of non-implementation had not been demonstrated (para 78, 80).

The Court found that the preservation and restoration of biodiversity constitute an essential objective of general interest (para 98), and that Article 4(4) and 6(1) of the HD are fundamental provisions of the HD, the breach of which undermines these objectives (para 99). The infringement must therefore be

regarded as particularly serious (para 99), and the rich biodiversity of Portugal means that the stakes for the EU's common heritage are particularly high (para 100). The Court further considered that the breach period constituted a considerable period of time (persisting since 2010/2012, with judgment form September 2019) (para 105) and it took Portugal's ability to pay into account (para 106-109) to conclude on a 10 million lump sum (para 110) and a penalty payment of €750 per site, totalling €41,250 for the 55 sites in question on the day of the ruling (para 121).

Enforcement delays

As the guardian of the Treaties, it is the Commission's role to ensure that EU law is complied with – a key element of the rule of law. The Commission is therefore equipped with various enforcement tools, including the ability to take Member States to the CJEU. This step sits at the end of several informal and formal exchanges between the Commission and the Member State in question – criticised for their opaqueness. In the field of environmental law, the Commission has long been criticised for being slow and often unambitious with its enforcement action, allowing political considerations to seep into the process. A lack of political will, reflected in insufficient resources, appears to continue to hinder the adequate enforcement of key EU environmental laws.

This case illustrates that even a relatively straightforward instance of non-designation can take more than a decade without achieving full compliance on the ground (yet). Following the expiry of the 2012 deadline, a first request for information was made in April 2013 (C-290/18, para 18), followed by a letter of formal notice two years later in 2015 and a reasoned opinion in May 2016. The initial referral to the CJEU under Article 258 TFEU occurred in January 2018, with a ruling issued in September 2019. The follow-up initially appeared quicker, with a request for information in October 2019 (para 16). However, a formal notice was only issued in December 2021, followed by a referral to the CJEU under Article 260 TFEU in February 2024. With a ruling in March 2026, this totals 14 years of non-designation of protected sites.

Follow-up to CJEU rulings

Even where enforcement action is taken and a Member State is brought before the CJEU and found to be in breach of environmental law, this does not necessarily result in actual change on the ground. A 2020 review of 11 CJEU rulings on the Birds and Habitats Directives found that implementation was only partially successful, with Article 260 of the TFEU proceedings often necessary but not always forthcoming to achieve change on the ground. Overall, Commission follow-up was found to be inconsistent and frequently very slow.

While there are indications that Portugal has finally started to designate the protected sites in question, this nonetheless appears extremely slow. This also suggests that earlier Article 260 proceedings could have sped up the implementation. However, there remains no systematic follow-up of CJEU rulings that includes clear timelines for initiating Article 260 TFEU proceedings.

Outlook

The judgment recognises the fundamental role of designation of protected sites and corresponding conservation measures for the Natura 2000 network and biodiversity in the EU. Yet, this obvious point should not have taken 14 years and a 10 EUR million fine.

A silver lining of the long enforcement journey may be that this ruling provides a timely reminder of the importance of proper designation and adequate measures as Member States prepare their National Restoration Plans under the EU Nature Restoration Law (NRL). While not containing a site designation process like under the Habitats Directive, Member States must set out restoration measures and identify restoration sites by September 2026. These obligations similarly constitute the foundation for the NRL's architecture. With clear timebound restoration targets, corresponding to the urgent need to coherently address the climate and biodiversity crisis, there is no time for such decade-long enforcement procedures. Instead, implementation action should be stepped up, with swift enforcement by the Commission where

needed, particularly given the overlap with existing obligations under the Habitats Directive. However, the current political context of slashing fundamental environmental legislation through various deregulation rounds does not spark optimism for the stricter enforcement action by the Commission. Instead, it suggests civil society actors may need to take even more of a role in fighting back and protecting what is left.

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