

# NATURA 2000 TOOLKIT



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*Map of Ukraine with depiction of selected species of national and pan-European conservation importance. Design was created within the framework of the ConNaturLIFE Ukraine project.*

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# Biodiversity and Nature Conservation in the European Union

European Union has developed, in the course of several decades, some legislative and technical tools aimed at biodiversity conservation. The main non-legislative tool is the Biodiversity strategy for 2030, a technical document adopted in 2020, serving as a framework for actions and policies at the EU level ensuring protection, conservation, and restoration of habitats and species and highlighting some other issues such as ecosystem services. It interconnects existing legislative tools with the newly proposed ones as well as with non-legislative actions and activities.

There are several groups of legislative tools, some of them being in force for long, some others being relatively recent. Great importance has traditionally been paid to meeting the requirements of the worldwide CITES Convention (Convention on International Trade in Endangered Species of Wild Fauna and Flora); while following the CITES rules, EU has developed its own, even stricter policy on trade with endangered species (Regulation (EC) 338/97 as well as a set of subsequent so-called EU wildlife trade regulations), as well as some other interlinked policies preventing e.g. use of leghold traps (Council Regulation 3254/91) and regulating trade in seal products (regulations (EC) 1007/2009 and (EU) 2015/1775). The damage to protected species and natural habitats, water and to soil within the EU has been addressed by the Environmental Liability Directive (2004/35/EC). Since 1999, establishment and operational regime of zoological gardens across the EU has been regulated by the ZOO Directive 1999/22/EC. One of serious threats to native biodiversity within the EU represent invasive alien species; after many years of negotiations, Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species (IAS) was adopted, followed by irregularly amended lists of such species starting with the Commission Implementing Regulation (EU) 2016/1141. Most recently, the Regulation (EU) 2024/1991 on nature restoration, colloquially called “Nature restoration law”, was adopted, showing a new way of EU biodiversity policy from mostly preventive and reactive protection measures towards a proactive approach based on restoration of habitats and landscapes.

Although all these pieces of EU law are important and binding for all EU MS, there are still two pieces of EU law considered the “basic” nature conservation legislation – not only because they have been the oldest pieces of EU

environment law but because of their practical impact on legislation and policies of all Member States. They are the so-called Birds Directive (2009/147/EC) – in its original version adopted as early as in 1979 – and the Habitats Directive (92/43/EEC). Understanding of their principles and requirements is important not only for specialised authorities and their staff but also for wider public, including nature lovers, scientists, land holders, municipalities, as well as various businesses. National spatial planning policies need to be adapted to meeting (or, as a minimum, to not breaching) the requirements of these two directives (in English called “Nature Directives” which emphasizes the fact that they deal with “living nature” all over the territories of EU MS); their correct implementation may have a highly positive effect on selected habitats and species but, in some cases, also negative impact on particular policies, persons, or interest groups. Therefore, it pays off to learn the aims, construction and settled ways of implementation of these two directives in more detail.

For any candidate country it might also be useful to point out some errors which had crept into the text of the directives during their long and difficult negotiation among 9 to 12 Member States, as well as some concepts and ideas that have later been proven unsuitable in practice. Such errors and mistakes do not diminish the significance or positive contribution of the directives to biodiversity and people, but it is good to be aware of them so that candidate countries can avoid them during transposition and subsequent implementation.

## How it all started

Today, almost all countries in the world have some sort of nature conservation established at the national level, albeit in developing countries quite often just on paper. For all European countries this holds true even more. However, it was not the case in the middle of the 20<sup>th</sup> century, when post-war Europe started to recover.

In 1947, Europe was politically split into two ideologically irreconcilable blocks with very different development. While the Eastern bloc held together due to repressive approach of Soviet Union which suppressed any major national movements and policies aimed at independent, efficient solution of daily problems, Western countries adopted a very different approach – to support individual



countries on their individual path to better future by assisting them through development and implementation of joint policies, democratically agreed on by all those involved.



In the forefront there was a support for economic development, as it was believed that only rich, economically prosperous nations may build societies without any need for further territorial expansions and wars. Thus, in 1952, six western countries (Belgium, France, West Germany, Italy, Luxembourg, and the Netherlands) founded the European Coal and Steel Community, and in 1957, the same countries agreed to establish the European Economic Community to promote economic integration among them. It aimed to create a common market with free movement of goods, services, capital, and labor.

The EEC grew up in terms of its membership, and it eventually evolved into the European Community (EC) and was later incorporated into the European Union (EU). Since 2004, after the decay of the Soviet political block in early 1990s, it has been enlarging also by numerous countries from the East, and the enlargement process is still planned to continue, provided the countries interested in joining the EU to meet the requirements governing the EU policies, legislation, and practical arrangements.

## A brief history of the EU Nature Directives

Today, the EU environmental policy seems to us, citizens from the Central, South-Eastern and Eastern Europe, as something self-evident. The EU Nature Directives seem to be an ordinary and logical part of the numerous EU law on environmental protection. At the same time, we do not know anything about the history of these directives: all major events and actions in that regard happened before the fall of the Eastern Bloc in late 1980s or immediately after it; all newcomers to the EU have to simply adopt, transpose and implement this EU law, often without a knowledge of the context under which it had

been developed. Therefore, it might be useful to remind the key steps of the rather difficult path to the Birds and Habitats Directives of the today's EU.

At its foundation in 1957, the European Economic Community (EEC) had no environmental policy mandate at all. By late 1960s, a loose network (European Parliament, NGOs, some companies keen on level playing field, etc.) emerged, advocating creation of such EU policy.

Late 1960s and early 1970s was a period of rapid growth in environmental interest and awareness. Iconic publications such as *Silent Spring* (1962), *Tragedy of the Commons* (1968), *The Population Bomb* (1968), and *The Limits to Growth* (1972) emerged, making millions of Europeans to start thinking on environment and their responsibility for its protection. Huge environmental disasters (e.g. SS Torrey Canyon oil disaster (1967) or oil platform blowout off Santa Barbara (1969)) attracted attention of mass media, and the public began to demand measures to prevent similar events from happening again. As a response, international organizations Friends of the Earth (with 73 members spread across the world; since 1969) and Greenpeace (1971) were established, too.

In December 1968, the UN General Assembly, prompted by Swedish government, decided to hold UN Conference on the Human Environment in 1972. In 1969, US President Nixon's government defined environment as distinct policy area for the first time (*via* National Environmental Policy Act 1969), and established powerful Environment Protection Agency (EPA). Europe was not far behind: Germany established its environmental programme, France and the UK founded first environment ministries. European Commission formed Environmental Working Group in 1971.

Sicco Mansholt (†1995), Commissioner for Agriculture (1958–72), an architect of the Common Agricultural Policy (CAP), deeply affected by *The Limits to Growth*, wrote to EC President Malfatti in 1972 calling for immediate U-turn in economic policy: to abandon economic growth maximization; to introduce 'clean and recycling' economy and centralised planning; GNP (gross national product) to be replaced by "gross national happiness". However, these ideas were strongly rejected by the EU Economic and Financial Affairs Commissioner as well as the Commissioner for Industrial Affairs. Mansholt did not give up, and following several country meetings, Environment and Consumer Protection Service (EPCS) was created in 1973. It played a catalytic role in development of the EU environment policy. In July 1973, the Environment Council adopted the First Environmental Action, followed by seven successive documents guiding the EU environmental policy until now (the 8<sup>th</sup> EAP was adopted in 2022).

Among environmental issues, bird protection had played an important role since late 19<sup>th</sup> century when the first dedicated associations had been established in Europe (Royal Society for the Protection of Birds, UK, in 1889, Bund für Vogelschutz, Germany, in 1899). There has always been an increasing controversy between the bird lovers and hunters, but in late 1960s, hunting of migratory birds became a major issue in Europe. Existing international conventions (Convention for the Protection of Birds Useful to Agriculture, 1902; Convention for the Protection of Birds (Paris Convention), 1950) did not provide sufficient results. The Council of Europe adopted resolutions in 1967 and 1973, respectively, on the need for bird habitat protection and control of hunting and pesticides; but they were not enforceable. In March 1968, German MEP Hans Richart raised a question on the potential for an EU instrument on bird conservation. However, the EC doubted its legal competence on this. Therefore, nothing appeared in the first communication from the Commission in 1971. However, the First Environmental Action Programme, just two years later, included bird conservation as a priority action. The Commission at first recommended Member States to accede to the Ramsar Convention (1971) and to the Paris Convention (1950) but in December 1976, it proposed the Birds Directive, citing wishes of European Parliament and more than 50,000 letters received from public. It created a drafting group, within which was John Temple Lang († 2022), an Irish lawyer and ornithologist, then with Commission's Legal Service.



John Temple Lang

Temple Lang recommended the commissioning of a new study by Stanley Cramp († 1987), a British ornithologist, which focused not only on hunting but also on habitat

protection and wetlands. Soon after, intervention of hunting coalitions arrived, especially from France with very powerful hunting lobbying; opposition to the adoption of the directive was very strong. – As an unplanned side-effect, Birds Directive proposal acted as catalyst for future restructuring of BirdLife International<sup>1</sup>, and strengthened European Environmental Bureau (EEB)<sup>2</sup>.

At the beginning, the draft directive had focused mostly on hunting; later the Commission added **Articles 3 and 4** on habitat conservation. The idea behind was to extend the criteria for identifying areas of international importance to all migratory bird species, and then in parallel to produce a comprehensive list of every place in Europe that met those criteria and stipulate a legal obligation to protect them all. This had also led to (now global) lists of Important Bird Areas (IBA)<sup>3</sup>, and laid the foundation for Natura 2000.

Draft directive was proposed in December 1976 and fell to be negotiated over British, Belgian, Danish, German and French Presidencies of the EU. The focus of attention during negotiations was the hunting control rather than habitat conservation. Denmark and Germany raised fundamental competence issues which succeeded to settle by the Council and Commission legal services. In December 1978, the Directive was finally agreed under the German Presidency and formally adopted in 1979.

Just as the EU was celebrating the adoption of the Birds Directive, the Council of Europe's Bern Convention (going beyond birds to cover other species groups and habitats) would be signed. However, it took almost a decade before Commission and EU took next major leap in nature conservation. It is true that already in 1980 when reviewing the 1<sup>st</sup> EAP and the 2<sup>nd</sup> EAP, Commission expressed a well-developed picture and plan of how a future Habitats Directive might look, as well as a clear awareness of the financing arrangements that would need to be progressed in tandem. However, it was constrained

<sup>1</sup> BirdLife International began in 1922 as the International Council for Bird Preservation (ICBP) and evolved into its modern form in 1993. It is the world's oldest international conservation organization, founded on the principle that coordinated action is the most effective way to protect the world's birds. It underwent several name changes: the International Committee for Bird Preservation in 1928, and then the International Council for Bird Preservation (ICBP) in 1960. In 1993, ICBP was officially relaunched as BirdLife International, shifting to a new model of having a single, strong partner organization in as many countries as possible.

<sup>2</sup> Established in 1974, EEB is the largest federation of environmental citizens' organizations in Europe. Based in Brussels, it advocates for environmental protection by influencing EU policymakers and representing the interests of its member organizations, which in turn represent millions of citizens across Europe.

<sup>3</sup> The first IBA list of BirdLife International appeared in 1981. For today's situation, see <https://datazone.birdlife.org/about-our-science/ibas>.

by the reluctance of certain Member States. This had a serious ongoing impact on the use of EU funding: Commission consistently sought to apply funds to groups other than birds but the Council consistently rejected this, even as late as 1987.

In 1985, CORINE biotopes project had been commenced within the DG Environment, which was fundamental to what happened with the future Habitats Directive. In January 1988, MEP Stanley Johnson (father of the future British Prime Minister) asked Pierre Devillers (Belgian co-author of CORINE classification) and John Temple Lang to produce the draft of the new directive. They did it over a weekend based on the Birds Directive, with bits from Bern Convention added on the next Monday in Johnson's office – in particular species protection measures. The draft was presented to Claus Stuffmann, EC Nature Unit head (formerly in charge of drafting the Birds and EIA Directives), who proposed to apply EIA Directive provisions to require assessment of projects and programmes which might impact Natura 2000 sites. Subsequently, the species and habitat types lists were advised by UK Nature Conservancy Council and IUCN Conservation Monitoring Centre (species) and Belgium Institut Royal des Sciences Naturelles de Belgique (habitats). At the end, a long lists of species was produced for the draft compared to the much shorter list of habitat types. The Nature Unit produced the first official draft in February 1988; the original idea to name the network "OIKOS" was changed to "Natura 2000 network".

Politically, the timing was not right for the new directive. During that period, adversarial between Commission and Member States was increasing. Commission took many legal actions against Member States in regard to the implementation of the Birds Directive, and this appears to have impacted on Member States' approach during the Habitats Directive negotiations. Several Member States were strongly against the directive; Denmark and the UK attempted to kill it through strengthening habitat protection parts of the Bern Convention.

It is therefore not much surprising that negotiation of the Habitats Directive took more than four years and seven Presidencies. It provided an opportunity for Member States to address what they saw as pernicky enforcement of the Birds Directive. A major controversy burst over Natura 2000 site protection. During the negotiations, in 1991, the European Court of Justice handed down decision in the *Leybucht Dykes* case C-57/89<sup>4</sup> under the Birds Directive. In direct response

to this ECJ ruling, Member States crafted the final text of derogation to allow even some damaging projects to go ahead in or near Natura 2000 sites (**Article 6(4)** of the directive).

Finally, a political agreement was reached in December 1991. It almost fell at final hurdle owing to dispute over financing for nature conservation – principally between Spain and Germany, which was resolved at the last minute. Then, the Directive was formally adopted in May 1992, two weeks before the UN Conference on Environment and Development (UNCED) in Rio de Janeiro, also known as the Earth Summit, where it was presented as the major contribution of the re-unified Europe to the worldwide movement on biodiversity conservation.

## Why directives and not e.g. regulations?

European Union has two main levels of its joint legislation: so-called primary legislation and secondary legislation<sup>5</sup>.

The primary legislation is represented by the treaties – basic documents enabling functioning of the EU. The European Union is based on the rule of law. This means that every action taken by the EU is founded on treaties that have been approved voluntarily and democratically by all EU member countries. For example, if a policy area is not cited in a treaty, the European Commission cannot propose any law in that area.

A treaty is a binding agreement between EU member countries. It sets out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its member countries. Treaties are amended to make the EU more efficient and transparent, to prepare for new member countries and to introduce new areas of cooperation. Seven such treaties have been adopted since 1957, the most recent being the Treaty of Lisboa (2007).

In order to be functional, the EU, as well as its predecessors EC and EEC, agree on the secondary legislation which is represented by several types of legal acts. The highest in the hierarchy are regulations: once adopted, they immediately apply to all Member States and automatically constitute a part of their national legislation. Thus, they do not need any transposition as they have a direct effect in all countries. They are adopted to address policy areas where an absolutely uniform approach by all Member States is required, without any exceptions, derogations or national specificities.

<sup>4</sup> *The Leybucht Dykes case (Case C-57/89 Commission v Germany, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61989CJ0057>)* was a 1991 judgment by the ECJ concerning the strict protections of Special Protection Areas (SPAs). It established that while Member States can reduce the size of an SPA under very exceptional circumstances, such a reduction cannot be justified by solely economic interests.

<sup>5</sup> Detailed information on EL law can be found at [https://europe-an-union.europa.eu/institutions-law-budget/law\\_en](https://europe-an-union.europa.eu/institutions-law-budget/law_en)



The subsequent type of secondary legislation are directives. These are legal acts which are a bit less specific as they are only binding for EU MS as to the goals and obligations to be achieved, but without prescribing the manner of doing so. They are not binding to any natural or legal persons, and the very basic obligation of any Member State is to transpose those goals and obligations into the national law.

Each country chooses its own way of transposition as to the form of national legislation (the only prerequisite is that the national provisions must be compulsory for everybody), authorities in charge of implementation and enforcement, and funding of all actions required. Each directive contains a final provision specifying the date by when it has to be transposed into the national law; countries seeking the EU membership must transpose the directive by the date of their expected accession, without any transitional period.

Another type of secondary legislation are decisions (acts of technical character) not requiring transposition which specify some technical requirements set by regulations or directives (e.g. various lists, forms, etc. to be applied uniformly by all EU MS). In addition, there are also non-binding instruments such as recommendations and opinions.

All these acts are published in the Official Journal of the European Union, and the date of publication is automatically a date of entering into force of the act unless it does not set later date.

The main pieces of EU nature conservation law, the EU Nature Directives – Birds and Habitats – have a form of directives, i.e., they are not directly applicable within the Member States. The reason for choosing the form of a directive and not a regulation was simple: each country has very different natural conditions, uneven representation of habitats and species, and different historical and legislative approaches to nature conservation. It was impossible to develop a unified approach, including administrative structure, for all EU MS. The directives provide particular states with sufficient flexibility in developing their national arrangement enabling to make the basic nature protection and conservation requirements functional and enforceable.

## Proper transposition and the role of the Court of Justice of the EU

Transposition is not an easy issue however it may look simple. Namely, it does not mean just an approach when all provisions of the directives are copied in the appropriate national pieces of legislation. What is needed is *functional transposition*, when those provisions need to

be introduced into the national law in a manner enabling their full functionality, including e.g. realistic terms for their implementation. It is also necessary to thoroughly consider the administrative system aimed at implementation and enforcement, including establishment of new authorities whenever the existing structure is inappropriate or insufficient – together with securing sufficient staffing and funding.

Some of the obligations of the directives need to be implemented at the central level, while some other require as-close-to-the-ground approach. Last but not least, no directive is to be implemented alone, in isolation: most policies require harmonization with many others, already existing ones, and even the administrative system has to enable cooperation and information flows among various authorities.

All this is a task of functional transposition which is everything but just merely legislative exercise – it requires a concerted interplay of lawyers and practitioners with experience in the field embraced by the directive in question. Thus, in case of Nature Directives, it is necessary to involve also experts with practical experience in nature conservation as well as those skilled in administration, not only narrowly specialised lawyers.

The text of the directives – and Nature Directives are everything but exception – is sometimes too brief, lacking specifications needed for functional transposition. Also proper meaning of some terms used is not always clear, even to native speakers. To avoid misunderstandings stemming from this kind of problems and assisting EU MS also in proper practical implementation, EU has developed a great tool – so-called case law. Namely, the EU has its supreme judicial authority, Court of Justice of the EU (CJEU) seated in Luxembourg, which is the only EU body entitled to interpret the EU law.

Supreme national courts of EU MS have a right to go to the CJEU in case of doubt on interpretation of particular provisions of the EU law; also the European Commission has the right, in case it is convinced that some Member State breach the EU law, to ask the CJEU for its decision, and the Court – after holding judicial procedure which is public – issues and publishes rulings which further develop and interpret particular directives' provisions. Since then, such rulings (called "settled case law") are binding for all EU MS, their legislators and national courts, and they often serve as detailed and unambiguous "instructions" how to transpose the directives into national law and how to implement particular provisions in practice.



Sign in front of the CJEU complex, Luxembourg.  
Photo: Luxofluxe, Wikimedia

In regard to the Nature Directives – extremely complex pieces of EU law – there are already several dozens of CJEU rulings assisting EU MS in their practical implementation, as well as candidate countries during the transposition of directives' provisions into national law. All such rulings (similarly as all pieces of EU law), together with accompanying documents from the court proceedings, are publicly available in all 23 official EU languages.

In some cases, there might be more CJEU rulings referring to individual provisions which are extremely important but too succinct in the proper directive: for example, just the paragraph 3 of **Art. 6** of the Habitats Directive dealing with assessment of plans and projects likely to affect Natura 2000 sites – a very complex issue requiring correct and highly functional transposition – has been additionally interpreted by about 25 specific CJEU rulings.



# EU Nature Directives Step by Step

## Correct names and right order of both directives

The first of the two Nature Directives, the Birds Directive, was adopted in 1979 under the full name “Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds”. In 2009 it was slightly amended—changes were made to Annex II part B due to the accession of new Member States, and some of the annexes were re-numbered and some new ones added; the core text remained without any change.

The full title of this current version is “Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version) (Birds Directive)”. Due to this amendment, it looks like if the Birds Directive is much younger than the Habitats Directive, which is not the case – the Birds Directive has been the very first nature conservation legal act of the European Economic Community, the predecessor of today’s EU.

The Habitats Directive, adopted 13 years later shortly before the Earth Summit in Rio de Janeiro, Brasil, bears its full name “Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora”.

Both directives have been subject to several small changes as the EU expanded: new biogeographical regions as well as country-specific lists of huntable and tradeable birds were added, and some of the annexes were amended by new species and habitat types proposed by newcomers to the EU. However, no principal changes to the texts have been made.

## Basic structure of both Nature Directives

Since its beginning in the 19<sup>th</sup> century, nature conservation has traditionally been based on two approaches: ex-situ and in-situ.

The ex-situ approach is aimed at specific objects – usually plant and animal species – which are kept, reproduced and maintained in artificial conditions (typically in botanical or zoological gardens, seed banks or gene banks) with several aims. The most important of them is the idea of returning such species back into the wild once the conditions in their place of origin, temporarily worsened to such extent that their survival in nature would be impossible, have substantially improved.

In some cases, strengthening of weakened natural populations by release of ex-situ grown or bred individuals may be an efficient manner of their rescue or improvement. Artificially bred animals kept as pets such as terrarium animals or exotic birds may prevent taking new individuals of such species from the wild, thus preventing depletion of their natural populations. Last but not least, exhibiting of plants and animals in zoological gardens enables the wide public to get familiar with them without the need to visit their countries of origin, and supports ecological education.

The in-situ approach means protection (passive approach) and conservation (active approach) of natural assets at places of their origin, in “real” nature. Traditionally, it has been divided into two directions: protection and conservation of selected geographically delimited sites, often called “protected areas”, and protection and conservation of plant and animal species “horizontally” across the entire territories of countries regardless of particular protected areas.

The Birds and Habitats Directives have been organized exactly in this way: each of them has two basic pillars, site protection/conservation and species protection. In addition, both directives address also some other aspects, such as protection of valuable habitats outside protected areas, monitoring and reporting, scientific research, as well as some organizational matters. Especially in regard to the site protection, approaches of both directives differ, while the species protection rules are very similar. Let’s have a look on what they require in detail.





# The Birds Directive

## Preamble and its purpose

Many people never read introduction to books, and similarly many conservationists skip over the preambles of the directives as they think the latter contain just political phrases without factual meaning. However, this is not the case: in preamble, one can find justification of the need for adoption of the directive, its basic principles, and reference to other legislative and policy documents governing the field dealt with by the directive. Especially for the candidate countries that have not witnessed the procedure of drafting and negotiating the proper directives it might be useful to learn common grounds leading the EU MS to the decision on adopting the particular directive.

It is also a good opportunity for such countries to compare the requirements of the directive with their current policy and legislation, identify differences, and make a realistic plan (including financial one) on what to do in order to achieve full compliance with these new requirements.

Thus, also the preamble of the Birds Directive lists the reasons why EU 9 decided, back in 1979, to adopt this piece of EU law. That time, large number of species of wild birds were declining in numbers that represented a serious threat to the conservation of nature; most bird species are migratory, constitute a common heritage, and their effective protection is typically a trans-frontier environmental problem.

It requires measures addressing the various factors which may affect birds, in particular the destruction and pollution of their habitats, capturing and killing by man and the trade. The preservation, maintenance or restoration of habitats is essential to the conservation of all species of birds, and habitats of certain species should be the subject of special conservation measures. In order to reduce harmful commercial interests, it was necessary to impose a general ban on marketing, and to restrict all derogations.

At the same time, because of the status of certain species across the whole EU, the species may be hunted, if certain limits are established and respected. A precondition for this is that various means, devices or methods of capture or killing and hunting, as well as certain forms of transport, must be banned.

Last but not least, the conservation of birds presents problems which call for scientific research; such research

would also make it possible to assess the effectiveness of the measures taken. The directive encompasses all these reasons.



*The white-tailed eagle (Haliaeetus albicilla) is not a skilled hunter due to its size, preferring to feed on carrion from fish and other vertebrates. Photo: Jiří Neudert, NCA CR*

## Scope of the Birds Directive and general requirements for bird protection

**Article 1** stipulates that the directive relates to all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies<sup>6</sup>. This is a novelty – in no other class of animals or plants are all their members protected regardless if they are rare or common. The directive covers the protection, management and control of birds species and lays down rules for their exploitation. All its provisions apply to birds, their eggs, nests and habitats.

<sup>6</sup> There are thirteen Overseas Countries and Territories (OCTs) that are associated with the European Union – in the Atlantic, Antarctic, Arctic, Caribbean, Indian and Pacific regions. All are islands, and one of them has no permanent population. To them, the EU Treaties as well as other EU legislation do not apply.

All Member States must take the measures enabling to maintain the population of bird species at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking into account economic and recreational requirements, or to adapt the population of these species to that level (**Art. 2**).

How to understand this paragraph? The main resistance against the directive during its preparation was arriving from hunters and businesses. Therefore, it was impossible to push through a strict protection of birds without taking account of interests of these lobbies. Under “recreation”, one has to imagine just the hunting and trading of hunted birds, which had been a long tradition in many countries. Certain bird species sometimes also caused damage to crops or property, and it was clear that there needs to be tools how to regulate their populations. The provision of **Art. 2** represented a compromise between conservation, hunting, and economical requirements, further detailed in other articles and annexes of this directive.

## Habitat and site protection pillar

The first brief part of the directive, **Articles 3 and 4**, deals with the site protection of birds. Everyone knows about the obligation to establish SPAs, special protection areas for birds, and this obligation overshadows the other requirements of this part of the directive. Namely, they start not directly with SPAs but with protection and conservation of biotopes (often called also habitats) of birds.

First of all, Member States should ensure sufficient diversity of bird habitats through creation of protected areas and new biotopes, maintenance and management of biotopes inside and outside the protected zones, and re-establishment of destroyed biotopes. This provision is very general as it relates to biotopes of all bird species regardless if they are rare or quite common; it also lacks any instructions on how to approach these obligations; because of that, it has been difficult to implement it in practice.

A few CJEU rulings exist, emphasizing the proactive character of this obligation—Member States must act to prevent habitat (biotope) degradation before bird populations decline, and protect existing habitats of particular species<sup>7</sup>.

Only then **Article 4** arrives which is considered the most important provision of the directive. It stipulates the

obligation to “classify the most suitable territories in number and size as special protection areas for the conservation” (abbreviated as SPAs) of selected species of birds, listed in Annex I.

Currently, Annex I contains 193 such bird species, both sedentary and migratory, which meet at least one of the conditions mentioned in **Art. 4**(1): to be in danger of extinction; vulnerable to specific changes in their habitat; considered rare because of small populations or restricted local distribution; and other species requiring particular attention for reasons of the specific nature of their habitat.

The next paragraph widens the obligation also to “regularly occurring migratory species not listed in Annex I” with focus on their breeding, moulting and wintering areas and staging posts along their migration routes.

The directive does not provide any instruction on how to identify and select SPAs. It only vaguely stipulates “trends and variations in population levels shall be taken into account as a background for evaluations” of areas suitable as SPAs. Therefore, it was not much surprising that although the SPAs should have been designated already in 1981 when the directive should have been fully implemented, just a few SPAs had been proposed in some of the then EU MS while in some others, no SPAs existed even two decades later.

## The “Dutch case” triggering SPA identification and designation

One of the countries refusing to designate sufficient number of SPAs was The Netherlands. Its government argued that it had classified as SPAs a sufficient number of suitable territories for conservation of the species referred to in Annex I, taking into account the balance between the interests of conservation of protected species and economic and recreational interests, and that the government had also introduced other instruments for the protection of birds.

In 1989 the European Commission, however, claimed that the number of SPAs classified by The Netherlands was insufficient, referring to the publication “Important Bird Areas in Europe” (“IBA 89<sup>8</sup>”) freshly issued by a non-governmental organization International Council for Bird Preservation (later renamed as “BirdLife International”) which listed some other bird sites for The Netherlands not classified by its government.

<sup>7</sup> For example, Case C-355/90, *Commission v Spain* (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:61990CJ0355>); Case C-117/00, *Commission v Ireland*. (<https://curia.europa.eu/juris/liste.jsf?language=en&num=c-117/00>)

<sup>8</sup> [https://www.researchgate.net/publication/267209174\\_Important\\_Bird\\_Areas\\_in\\_Europe](https://www.researchgate.net/publication/267209174_Important_Bird_Areas_in_Europe)

Therefore, the Commission started the infringement procedure, asking for additional SPAs to be designated. The Dutch government disagreed, and the Commission brought the case to the Court of Justice of the EU. It was the first court proceeding against any EU MS concerning SPAs.

In May 1998, the CJEU announced its judgment in this case termed C-3/96. It declared that contrary to the contention of the Netherlands, **Article 4(1)** of the Directive requires Member States to classify as SPAs the most suitable territories in number and size for the conservation of the species mentioned in Annex I, an obligation which it is not possible to avoid by adopting other special conservation methods. SPAs must be classified for all Annex I species occurring in the country.

Consequently, Member States are obliged to classify as SPAs all the sites which, applying ornithological criteria, appear to be the most suitable for conservation of the species in question. The Dutch Government confirmed that when identifying the SPAs, it used the same criteria as in IBA 89. However, while IBA 89 identified 70 IBA sites for the Netherlands, only 23 SPAs partly overlapping with 33 IBAs had been classified.

IBA 89 has proved to be the only document containing scientific evidence making it possible to assess whether the defendant State Kingdom of the Netherlands has fulfilled its obligation to classify as SPAs the most suitable territories in number and area for conservation of the protected species. The situation would be different if the country provided better criteria showing that there was no need to follow IBA 89 proposals, but it has never happened.

Therefore, IBA 89, although not legally binding, could, by reason of its acknowledged scientific value, be used by the Court as a basis of reference for assessing the extent to which the Kingdom of the Netherlands has complied with its obligation to classify SPAs.

Since it was clear that the country had classified territories as SPAs whose number and total area were clearly smaller than the number and total area of the territories suitable according to IBA 89 for classification as SPAs, the requirements of **Article 4(1)** of the Directive could not be regarded as satisfied. Therefore, the Court concluded that the Kingdom of the Netherlands failed to fulfil its obligations under the Birds Directive.

This ruling proved to be groundbreaking for two reasons: firstly, it confirmed that the obligation to designate SPAs cannot be replaced by other measures; and secondly, the lists of Important Bird Areas proposed by the IBA 89 study should serve as a basic guideline when identifying

SPAs, unless there are newer or better scientific criteria available.

On the other hand, the ruling does not say – as it is often misinterpreted – that the number and size of SPAs has to correspond to the number and size of IBAs. IBA list must always be taken as a background document in any candidate country during the preparation of its SPA proposal, but the final number, size and shape of SPAs may differ from IBAs if there is a scientific justification for such deviations.

Immediately after this ruling, the Commission started to push “old” EU MS to bring its SPA proposals into line with this judgment, and it instructed all newcomers candidate countries that their national SPA proposals had to comply with these rules.

As the IBA lists, often updated in particular countries since 1989, still remain the best scientific evidence on most suitable bird areas, it is strictly recommended to respect the ruling by countries preparing for the EU accession even today. It is even more important for countries which have only the Emerald network at their territories, as criteria for identification of Emerald sites for birds differ substantially from those for SPAs.

## Protection and conservation regime of SPAs

The original text of the Birds Directive did not provide detailed rules for site protection and management. In 1992, the EU Habitats Directive brought the idea of coherent European ecological network called Natura 2000, stipulating that all SPAs classified by Member States become part of that network. That directive also repealed paragraph 4 of Article of the Birds Directive saying that it is replaced by its **Article 6** (2), (3) and (4). However, these paragraphs of **Art. 6** of the Habitats Directive do not refer to (proactive) site management, only to ban to deteriorate sites and to obligation to undertake appropriate assessment of plans and projects likely to affect them.

It was only in September 2024 when the CJEU in its extensive ruling in Case C-66/23 (*Elliniki Ornithologiki Etaireia vs Greece*<sup>9</sup>) explained that by analogy, for special protection areas, although this is not stated in either of the Nature Directives, the same obligations apply as for the special areas of conservation (SACs) designated

<sup>9</sup> <https://curia.europa.eu/juris/document/document.jsf?text=&docid=290009&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10419742>



pursuant to the Habitats Directive – to set site-specific conservation objectives and conservation measures enabling to achieve such objectives.

The same ruling also clarified another important issue which has been overlooked since the adoption of the Birds Directive in 1979: such conservation objectives and measures should address not only those bird species for which the individual SPAs have been classified, but all bird species occurring at the territory of SPAs. This stems from the interpretation of **Article 3** and may have serious consequences for EU MS, as in some SPAs this would require to redefine and amend conservation objectives and measures.



*Great Egrets (Ardea alba) rely on local wetlands as key habitats. Their protection within Natura 2000 provides a safe environment for resting and migration of this sensitive species. Photo: Jiří Neudert, NCA CR*

## Species protection of birds

The second main pillar of the Birds Directive has introduced an obligation “to establish a general system of protection for all species of birds” (**Art. 5**). This was quite revolutionary, as it had never happened before that the whole class of animal kingdom were declared protected. And the requirements were quite strict: Member States were asked to prohibit, in particular, deliberate killing or capture by any method; deliberate destruction of, or damage to, bird nests and eggs or removal of their nests; taking their eggs from the wild and keeping them even if empty; deliberate disturbance of birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this

Directive; and keeping birds of species whose hunting and capture is prohibited.

As we will see further, these prohibitions are not absolute: they can be waived through the instrument of derogations described in **Article 9**. Nevertheless, introduction of these protection rules was very important, as before 1979, birds had been viewed often as pests (e.g. raptors) or as objects of hunting rather than important components of ecosystems deserving protection.

## Regulation of trading in and hunting of birds

The following two provisions regulate trading in birds and hunting of birds. Today, their order seems a bit illogical: it is probably only hunted birds – mostly dead – that are traded; but in 1970s the situation in Western Europe was different, and in some countries, long tradition of trading in living birds (mostly passerines but also certain raptor species for falconry) had been persisting without any regulation.

Therefore, **Article 6** introduced bans additional to those listed in **Art. 5**: ban of the sale, transport for sale, keeping for sale and the offering for sale of live or dead birds and of any readily recognisable parts or derivatives of such birds. At the same time there was an agreement that this ban does not apply to selected species listed in Annex III, provided that the birds have been legally killed or captured or otherwise legally acquired.

Annex III has two parts. Its part A lists species for which the trading ban does not apply across the entire EU. In part B, there are country-specific lists of such birds. This article describes a complex procedure on how the Member States need to apply for such country-specific species lists and what ecological conditions must be met to be granted for putting individual species on this list.

For any candidate country after 1979 it has been required that if a country wants to get some other species than those in part A on their country-specific list, it must negotiate with the Commission on such amendments before the accession, providing all necessary data on population levels, geographical distribution or reproductive rate of the species proving that permitting to trade in such species cannot cause their extinction in that country. Should these negotiations be successful, Annex III part B of the directive is subsequently amended after the accession of such country to the EU.

In regards of the transposition of Annex III into national law, species listed in part A have to be included into

national law before accession; no other species may be allowed to be added unless the negotiations with the Commission result in an agreement on involvement of additional species into part B.

The following **Article 7** sets down another important derogation from the general protection of birds: hunting of selected species. It refers to Annex II of the directive saying that species listed there may be hunted under national legislation; Member States should ensure that the hunting of these species does not jeopardise conservation efforts in their distribution area. The construction of Annex II is identical with that of Annex III: its part A lists species huntable anywhere in the EU while part B is country-specific, listing species which may be hunted only in the countries indicated.

Although this is not explicitly prescribed in the directive, for inclusion of any species into part B it is necessary to get a prior consent of the Commission. Candidate countries for the EU membership are allowed to negotiate such additional bird species before the accession.

For the transposition of Annex II into national law the same rule applies as described for Annex III. This means that if, for example, national law allows the hunting of additional species, or even entire groups of species without specifying them individually, such a law must be cancelled. It must then be replaced by a list that corresponds to Part A of Annex II. Only after accession the national law may be amended to include country-specific species from Part B, and this is possible only if negotiations with the Commission are successfully concluded.

In respect of the hunting, capture or killing of birds under this Directive, **Article 8** stipulates that Member States must prohibit all means, arrangements or methods listed in Annex IV(a), and it is banned to exercise any hunting from vehicles or other forms of transport and under the conditions mentioned in Annex IV(b).

## Species protection derogations

The general system of bird protection established by **Article 5** is very strict, and in many cases it would not only prevent implementation of important projects but it could also hinder certain conservation measures needed for effective bird protection. Therefore, the directive has established an institute of derogations, described in its **Art. 9**.

It should be emphasized that derogations are not “exceptions”, as it is sometimes improperly interpreted. “Exception” means there is a rule which is to be

breached, thus jeopardizing legal certainty in that rule. “Derogation”, however, means a different procedure which is necessary for meeting the objectives of the general rule; it does not breach such rule but it is complementary to it.

Thus, these are the reasons for which derogations from species protection provisions can be granted: interests of public health and safety, interests of air safety, prevention of serious damage to crops, livestock, forests, fisheries and water; protection of flora and fauna; purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes; and permitting, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

Each individual derogation must specify: the species which are subject to the derogations; the means, arrangements or methods authorised for capture or killing; the conditions of risk and the circumstances of time and place under which such derogations may be granted; the authority empowered to declare that the required conditions exist and to decide what means, arrangements or methods may be used, within what limits and by whom; and the controls which will be carried out.

Every year, Member States are obliged to report on derogations to the Commission which may take appropriate steps when derogations would lead to breaching the directive.

Provisions of this article require precise, literal transposition into national law; any attempt to create alternative “national” wording could make the law incompatible with the directive’s requirements and lead to infringement proceedings.

## Derogations and hunting – different approach between the West and the East

Although hunting in birds and other game species has been practiced in all Europe, interpretation of this term differs between West and East. In Western Europe, hunting means recreational activity consisting of killing animals for amusement, meat, or trophies. In many eastern countries, understanding of this term is much wider, as it includes the game management, too.

The Birds Directive is based on the Western concept of hunting. Therefore, hunting in birds is only acceptable when meeting requirements of **Articles 7 and 8**, in

connection with **Art. 6**. Birds not listed in Annex III and Annex II can never be hunted or traded under any circumstance; **Article 9** derogations must never be granted for hunting purposes. On the other hand, should there be a need to regulate populations of certain birds for reasons listed in **Article 9**, such derogations may be granted – but in such a case the justification can never be just hunting, i.e., killing of birds as recreational activity. These specifics must also be taken into account when seeking ways of transposing the requirements of the Directive into national legislation in a functional manner.

## Research, reporting, prevention of harmful introductions

Birds are very inhomogeneous, complex group of animals, and even today we do not have enough scientific data and information needed for their effective conservation. Almost fifty years ago when the directive was drafted, the gaps in knowledge were much bigger. This was a reason why the directive contains a special **Article 10** requiring Member States to encourage research and any work required as a basis for the protection, management and use of the population of all bird species. In its Annex V, it listed subjects in need of particular attention.

Provisions of **Art. 10** and Annex V are very difficult to transpose: national research and science policies usually stem from specific legislation, but it can hardly be specifically devoted to bird research. Solution might be bilateral negotiations with the Commission which may specify particular requirements.

The subsequent **Article 11** requires that Member States ensure that any introduction of a species of birds that does not occur naturally in Europe do not endanger the local flora and fauna. This provision was considered important back in 1979 in light of several uncontrolled introductions of animal species with very negative effects on local biodiversity. Today, almost 50 years later, danger of such deliberate introductions is well known, and there is no risk of deliberate introduction of any bird species in any EU MS. However, complying with this provision does not prevent the rapid spread of several invasive species, caused partly by climate change and partly by escapes or deliberate releases from captive breeding.

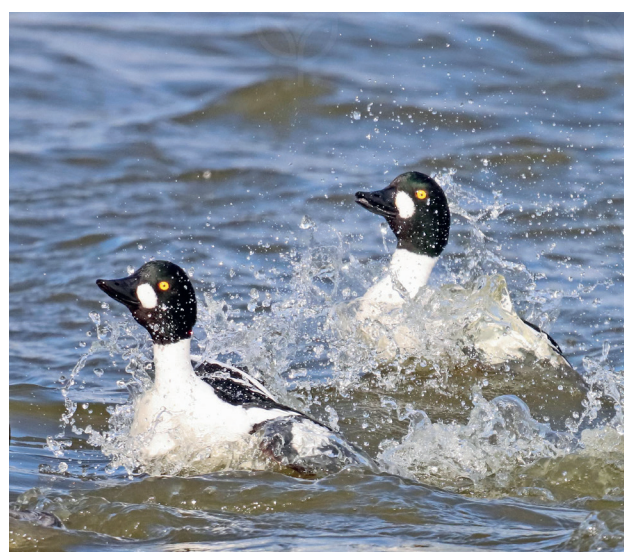
## Reporting – and monitoring

In its **Article 12**, the directive reads that “Member States shall forward to the Commission every three

years a report on the implementation of national provisions taken under this Directive”. The directive does not specify the form or content of these reports. However, together with the EU Member States, the Commission has developed a mandatory reporting format. In addition, it was agreed with the Member States to align the reporting period with that of the Habitats Directive. As a result, instead of every three years, reports on both birds and habitats are now due every six years. Their formats are largely harmonized, while still taking into account the specific requirements for birds, habitats, and non-bird species.

After gathering all national reports, the Commission is obliged to compile and publicize so-called composite report including information from all EU MS.

In order to be able to elaborate and submit national reports, a large volume of data in specific format has to be gathered by each EU MS during those six-year-long periods. Contrary to the Habitats Directive which explicitly prescribes surveillance of the status of habitat types and species covered by it (often called “monitoring” which is, however, a confusing term as in many countries it is used for different activities), the Birds Directive does not contain such obligation at all. However, it is clear that without a process of gathering specific data on birds and their populations, any reporting would be impossible. Therefore, EU MS usually organize surveillance of conservation status of habitats and non-birds species together with surveillance of birds.



*Common Goldeneyes (Bucephala clangula) depend on calm water bodies and suitable nesting sites (trees with hollows). Protecting these areas within Natura 2000 supports their stable populations. Photo: Jiří Neudert, NCA CR*



## Additional provisions

The Birds Directive contains several additional and final provisions. Thus, **Article 13** stipulates that implementation of this directive must not lead to deterioration in the present situation as regards the conservation of the birds species. **Article 14** enables the EU MS to introduce stricter protective measures than those provided for under this Directive. Annexes I and V may be amended based on results of technical and scientific progress if needed (**Art. 15**), and the Commission will be assisted by the Committee for Adaptation to Technical and Scientific Progress, colloquially called “Ornis Committee”, composed of representatives of all EU MS (**Art. 16**). The last four final provisions deal with some formal and legislative aspects and clarify that this directive “is addressed to Member States”.



*The Common Kingfisher (Alcedo atthis) nests in burrows dug into steep riverbanks. Protecting clean waterways and maintaining natural riverbank habitats within Natura 2000 is essential for the successful breeding of this sensitive species. Protected Landscape Area Žďárské vrchy. Photo: Petr Mückstein, NCA CR*

## Annexes

The original directive from 1979 had only 5 annexes. Its updated, current version has seven of them:

**ANNEX I:** List of bird species for which EU MS have to establish SPAs

**ANNEX II:** Part A: List of species which may be hunted in entire EU; Part B: Lists of additional species allowed to be hunted in particular EU MS

**ANNEX III:** Part A: List of species exempted from prohibition of sale, transport for sale, keeping for sale and the offering for sale of live or dead individuals and of any readily recognisable parts or derivatives of such birds in entire EU; Part B: Lists of additional species exempted from those prohibition in particular EU MS

**ANNEX IV:** List of prohibited means and devices used for killing and catching of birds and prohibited modes of transport used for hunting

**ANNEX V:** Kinds of research in birds to be supported by EU MS

**ANNEX VI:** Part A: Repealed Directive with list of its successive amendments; Part B: List of time limits for transposition into national law

**ANNEX VII:** Correlation table



## 1979–1992: Period Between the Birds and Habitats Directives

About six weeks before the adoption of the Birds Directive, in September 1979, the Council of Europe, an international human right organization with 20 member countries across the Western Europe, adopted the Convention on the Conservation of European Wildlife and Natural Habitats, in short called “Bern Convention”. When reading the text of this Convention and comparing it with the text of the Birds Directive, many similarities can be found in particular provisions on species protection, protection of habitats of species, and prohibited means of catching and killing – it is apparent that the authors of both pieces of law collaborated to certain extent. At that time, the European Communities decided to focus only on the protection and conservation of birds—and, in doing so, included all bird species living in the European territories of the Member States. The Council of Europe, however, was more ambitious: the Bern Convention covers selected species from both the plant and animal kingdoms, listed in its appendices. On the other hand, the Bern Convention did not cover all European birds but only a relatively small number of selected bird species. The convention focused only on species – setting different requirements for strictly protected and other protected species – and their habitats; in one of its provisions, a need of “conservation of endangered natural habitats” is mentioned, but without any specification or any list.

In the years to come, both pieces of law – a soft-law Bern Convention of the Council of Europe and the Birds Directive of the European Economic Communities – existed in parallel. Not much progress had been achieved by any of them in practice: the Birds Directive was too narrow and there was a lot of uncertainty in regard to identification of the Special Protection Areas; while the Bern Convention, as many other pieces of international law, was not enforceable, depending only on a good will of its member states – and they were not much keen on restricting their economic and social development in exchange for better conditions for their wild flora and fauna.

However, awareness of the importance of healthy ecosystems for human well-being—and of the role that wild animals and plants play in maintaining them—was steadily growing. This created a need for real action across the European Communities. It soon became clear that only a really binding legal tool may have a potential to effectively protect, and proactively conserve, the wild flora and fauna – the goal neither fulfilled by the Birds Directive by its too narrow scope or by the Bern Convention because of its non-enforceable character and lack on any funding of particular actions.

Therefore, an idea to complement the Birds Directive by a new piece of EU law providing protection also to species other than birds appeared, and the European Commission started to work on the concept of the new directive. Its text largely built upon the text of the Bern Convention, but a big step forward was made by putting emphasis on protection and conservation of natural habitats – phenomena not recognized by conservation biology before.

For political reasons, it was decided not to cancel the existing Birds Directive and replace it with a new directive covering the entire plant and animal kingdoms (as in the Bern Convention). Instead, the new directive focused on major taxonomic groups of plants and animals but left birds out entirely. Birds were only “connected” to the newly established Natura 2000 network through two specific provisions that linked it with the Special Protection Areas.

This is why we still have two directives treating specifically the Natura 2000 network but also the species protection in slightly different ways, which has caused a lot of practical problems for the Member States.

Let us see what has been the structure and the main provisions of the new piece of the EU law, the Habitats Directive.



## The Habitats Directive

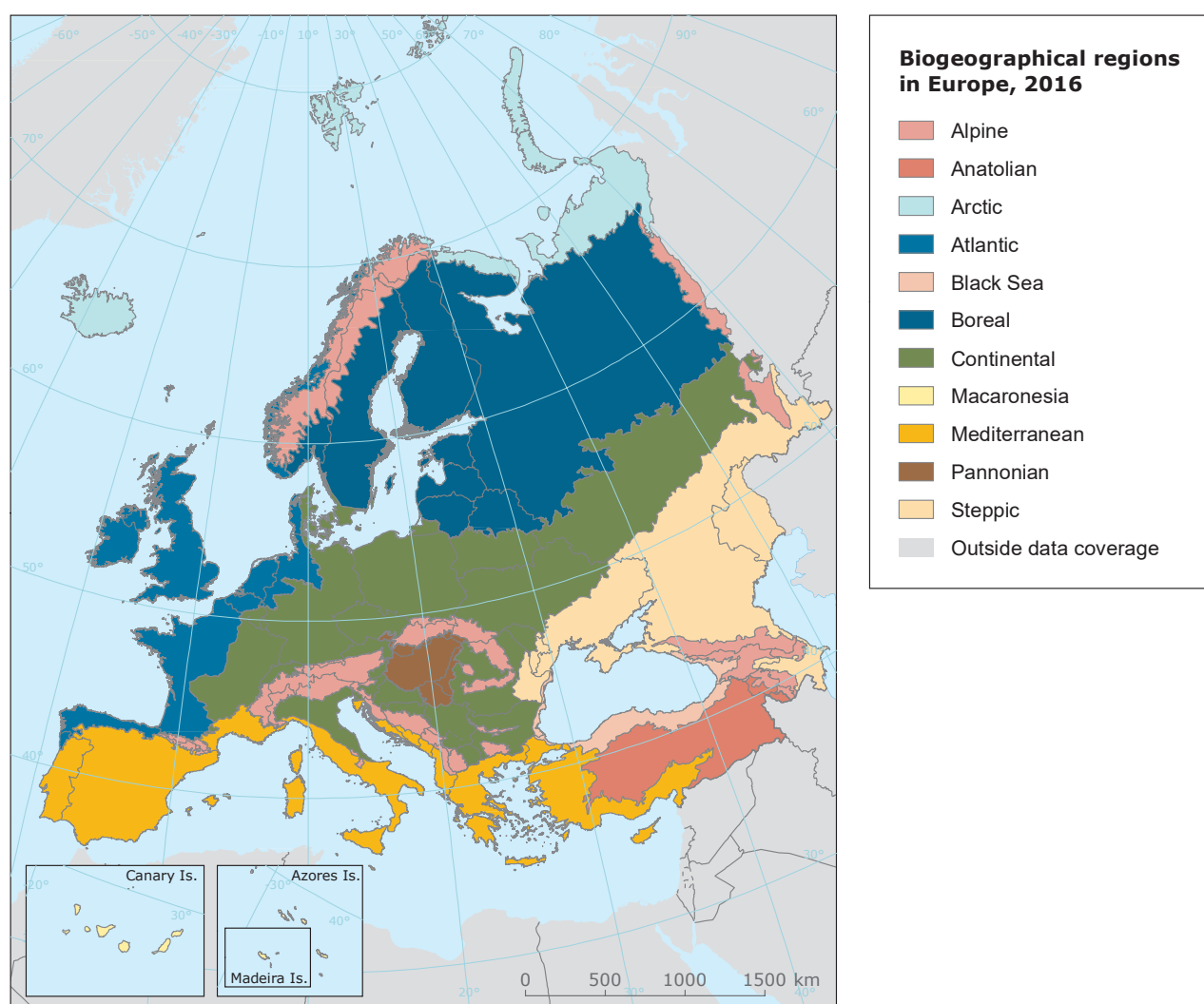
Directive was adopted on the 21<sup>st</sup> May 1992 by at that time 12 Member States. Until 2025, it has been amended seven times, mostly in regard to changes in relation to accession of new Member States. These amendments widened the range of biogeographical areas and habitat types and species newly added into annexes I, II and IV. The most recent amendment done by the Directive (EU) 2025/1237 deleted the wolf from the list of strictly protected species in Annex IV(a).

### Preamble

The preamble to this directive summarizes, in fact, its entire content in a very concise manner. Two issues are

worth mentioning, which may have an impact on proper transposition into national legislation by candidate countries. Firstly, there is a language issue: while in its 9<sup>th</sup> recital the directive speaks about “certain types of natural habitat” in the meaning of “natural habitat types” listed in its Annex I, in the other parts of preamble, as well as in some articles, it uses just abbreviated form of “natural habitats”. This is, however, incorrect, as “habitats” are geographical areas while “habitat types” are groups of habitats “distinguished by geographic, abiotic and biotic features” (according to the definition in [Art. 3](#)).

It is important to differentiate between these two terms, as most of obligations set by the directive relates to *habitat types*, not to individual habitats. Secondly, in its



*The current official map of biogeographical regions of Europe and part of Asia – state 2016*



12<sup>th</sup> recital, the preamble says that necessary measures must be implemented within the protected sites “having regard to the conservation objectives pursued” while the term “conservation objectives” is missing from the relevant **Article 6(1)**, which has caused a lot of misunderstandings during implementation of that provision – apparently this omission was caused by a mistake.

## Definitions of terms

The Birds Directive did not contain any definitions of terms, and it is obvious from its text that it has mixed up various terms with different meaning, putting not much attention to their unequivocal use. Maybe this was a lesson, which served as one of the reasons why the authors of the proposal of the new Habitats Directive decided to include a self-standing **Article 1** clarifying the terminology. Another reason was the fact that several new, never used before terms were introduced, requiring accurate definitions in order to be implementable. Although the outcome of this meritorious idea was not always satisfactory (as it will be explained later e.g. in case of the definition of natural habitat), most of the important terms are understandable for anyone. Let us have a look into the most important ones.

The first of these terms is **conservation**. While the Birds Directive mixed up the terms “protection”, “preservation” and “conservation” so that it was not clear what was the rationale behind those particular terms, the Habitats Directive finally explained that “conservation” – contrary to “protection” and only rarely used term “preservation” – means “a series of measures required to maintain or restore the natural habitats and the populations of species of wild fauna and flora at a favourable status” – in other words, it is a proactive approach requiring concrete, focused and tailored actions.

Thus, it is insufficient to just take administrative or statutory measures, such as e.g. designation of protected sites or adoption of lists of protected species – which is embraced by the term “protection” – but it is necessary to take measures in the field, last but not least, requiring spending of financial means which should, primarily, be secured from the national budget.

The second term, the definition of **natural habitats**, is a less successful one. It reads that such habitats are “terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural”. There are two kinds of problems linked to this definition. Firstly, under the term “habitat” most people, including scientists, understand just the first part of this definition – areas distinguished by distinct

geographic and abiotic features. The addition of the biotic component to this definition has completely changed the original understanding of the term “habitat,” which can be difficult to explain to representatives of other sectors, especially agriculture and forestry.

Secondly, although it is explained that “natural” in fact also means “semi-natural”, in reality the prevailing majority of habitat types listed in Annex I is rather “non-natural”, i.e., man-made and requiring recurring management without which they would soon disappear; such habitats often have high ecological value and are worth protecting, but both public and experts from other fields are confused by declaring them “natural habitats”, which undermines the credibility of the directive (as most people never read the definitions of terms and rely on their common sense).

Then, the term natural habitat types is introduced without one important definition or explanation – namely that these “natural habitat types” are created by natural habitats of the same properties. Instead, three main characteristics of such natural habitat types are provided:

- they might be in danger of disappearance in their natural range; or
- have a small natural range following their regression or by reason of their intrinsically restricted area; or
- present outstanding examples of typical characteristics of one or more of the nine following biogeographical regions: Alpine, Atlantic, Black Sea, Boreal, Continental, Macaronesian, Mediterranean, Pannonian and Steppic.

Such habitat types are, or may be, listed in Annex I. For all of them there is an obligation to designate Natura 2000 sites by Member States within their territories.

Although it cannot be found in the Directive, delimitation of biogeographical regions and their boundaries are depicted on a map developed by the Bern Convention; it has been agreed by the European Commission and the Bern Convention that this map would be identical for both Natura 2000 and Emerald networks.

When preparing for the EU accession, one of the very first tasks of any candidate country is to clearly define the regions and their boundaries on their territory in maps of a scale sufficient to proposing Natura 2000 sites. If for some reasons there is a need for adaptation of the boundaries at the national level, e.g. in order to make them compliant with existing administrative borders of regions or municipalities, negotiations with and prior agreement of the Commission are necessary.

Two issues are to be pointed out in this regard. Firstly, the third optional characteristic is very important as it goes

beyond “standard” conservation approaches: in order to be included in the list of Annex I, some habitat types do not need to be endangered, but they can “only” represent outstanding examples of typical characteristics of one or more biogeographical regions. This inconspicuous provision embodies a kind of preliminary principle: it is not necessary to wait until particular habitat type becomes endangered due to human activities, but it is admissible to protect and conserve it – through the protection and management of Natura 2000 sites – while it is still in good condition.

Secondly, this definition introduced the very important novelty of this directive: its obligations do not apply to particular Member States within their national boundaries separately, but to the territories of the so-called biogeographical regions taking no account of such artificial, politically determined boundaries. Biogeographical regions represent distinct large areas across Europe, determined mostly by climate, orography and prevailing vegetation. In principle, all conservation measures directed towards habitat types and selected species should be identical in all countries within particular biogeographical regions – in other words, different EU countries should apply measures for conservation of habitats and species corresponding to natural characteristics within the given biogeographical region, not according to different national policies driven by politics.

This concept of biogeographical regions is of utmost importance – all steps and measures taken in particular country have to respect this approach; it means that if the country lies within more than one biogeographical regions, the number of such approaches must be equal to their number. This has to be reflected when creating so-called reference lists of habitat types, of species, in preparation of national proposal of Natura 2000 sites, and in surveillance of conservation status of habitat types and species and reporting to the Commission.

In addition, the directive recognizes also **priority natural habitat types** – natural habitat types in danger of disappearance, for the conservation of which the EU has particular responsibility; they are indicated by an asterisk (\*) in Annex I. For these habitat types, specific rules apply when preparing the proposal of Natura 2000 sites – much higher proportion of their national occurrence must be included into the network compared to the other habitat types. Similar concept applies to priority species listed in Annex II.

**Habitat of a species** means an environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle. This definition is clear and scientifically correct; however, because the

word “habitat” is used in different ways for habitat types and for species, it is important to always use the full version of the term when referring to species — both in the directive’s transposition and in national methodological guidelines. The directive deals also with species protection and conservation; it adopted an approach similar to the Bern Convention, listing only a selection of animal and plant species, which should bear the name **species of Community interest**. These species fall into three different categories and are grouped into three annexes: species for which there is an obligation to designate Natura 2000 sites (Annex II); species requiring strict protection (Annex IV); and species which may require special measures if their population levels may be endangered by unsustainable exploitation. Such species fall into one of the following categories: endangered; vulnerable; rare; or endemic and requiring particular attention.

These are the typical categories from international red lists, which also exist at the European level. Similarly, as with habitat types, the new category **priority species** has been introduced for some endangered species, defined in the same way as for the priority habitat types; priority species only appear in Annex II, as the stricter rules for them apply when designating Natura 2000 sites.

For both natural habitat types and species of Community importance, a new key term was introduced — **conservation status** — a concept that had not been previously used in nature conservation. It is very important as according to **Art. 2**, all 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”. Thus, what does this term mean? Its definitions are similar to habitat types and species, and both contain the same mistake: one missing word without which the definitions do not make sense – “*result*”. The definition of conservation status of a habitat type also lacks the wording “*habitat type*”, without which it also lacks any sense. Thus, amended definitions should read as follows:

- conservation status of a natural habitat means the *result of sum* of the influences acting on a natural habitat *type* and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species;
- conservation status of a species means the *result of sum* of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations.

It follows from these definitions that “conservation status” is an artificially set of indicators showing the quality and quantity of occurrence of a given habitat type or

species within the EU and its particular Member States. It has nothing to do with the status of habitat types and species in individual protected areas such as Natura 2000 or nationally protected sites, as it should describe the overall situation at the entire territory of a given country. Thus, the mandatory system for monitoring conservation status established under **Article 11** should not rely on protected sites. Instead, an independent network of sampling sites — specific to each habitat type and species — must be designed to cover both good, moderate, and poor occurrences across the entire country.

For both habitat types and species, the directive defines conditions under which the conservation status is to be considered “*favourable*” – thus meeting the goal of the directive.

For a natural habitat type, it is in favourable conservation status when its natural range and areas it covers within that range are stable or increasing, the specific structure and functions that are necessary for its long-term maintenance exist and are likely to continue to exist for the foreseeable future, and the conservation status of its typical species is favourable.

For a species, this means that its population dynamics data indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, its natural range 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.

Particularly, the definitions of favourable conservation status require precise transposition into national law.

At the same time, it is essential to raise awareness — especially among conservationists and experts — that the term “conservation status” is not a scientific but a policy term. It can only be applied at the biogeographical level within a country, never at the site level.

This limitation follows not only from the clear wording of the Directive but also from scientific reasoning: the term “*favourable*” reflects a human policy assessment, not an ecological or biological condition. Plant and animal populations at a given site may experience favourable or unfavourable *conditions* for survival, but they do not have a favourable or any “*status*”. Their situation can only be described in terms of abundance, quality, and prospects for long-term maintenance under the site’s specific conditions.

Last but not least, there are two definitions in regard to Natura 2000 sites which need to be identified and designated at the national territory. The first one is site

of *Community importance (SCI)*, and the other *special area of conservation (SAC)*. Their definitions are relatively complex, but they can be simplified as follows. Based on criteria set in **Art. 4** of the directive, Member States are obliged to propose sites for all Annex I habitat types and Annex II species present at their territory, and to submit their list – called national list of proposed sites of Community importance – to the Commission; candidate states are obliged to submit their national lists prior to the accession.

Following the assessment and approval process, some of these sites (usually all or even more than originally proposed) are approved by the Commission and all EU MS; such sites bear the name “sites of Community importance”. Those sites must then be designated at national level within a period of maximum 6 years as special areas of conservation. Thus, these terms usually refer to the same territory but at different periods of time.

The good news is that these names do not need to be transposed into national law – Member States have a freedom of choice for their national name for these sites. They can even bear the same name before and after accession; only the moment of their national designation must be anchored in the national law as a milestone, as the start of implementation of some provisions of the directive is linked to the date of that designation.

## General objective of the directive and its measures

**Article 2** provides the *objective* of the directive: 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. This is a very general, but at the same time very ambitious objective: although this directive was a big step forward in the development of the EU environmental policy, it was obvious that this directive focused only on selected pool of habitat types and species, not addressing the main threats coming from agriculture and forestry. The aim was to use those selected habitats and species as a tool for conservation of biodiversity as a whole.

The same article provides for specification of all the measures taken pursuant to this Directive: they shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest. At the same time, such measures shall take account of economic, social and cultural requirements and regional and local characteristics.



This latter provision is often misunderstood. It applies to all *measures* taken pursuant to the directive – but not to the other obligations set by it. For example, identification and selection of sites of Community importance according to **Art. 4** – in other words, identification of future Natura 2000 sites – is a procedure but not a measure; this is why this site identification and selection must not take account of any other requirements than scientific ones, which has been repeatedly confirmed by the case law of the CJEU.

## Conservation of natural habitats and habitats of species

This is the name of the site protection pillar of the directive which includes **Articles 3–10**. The rules for establishing the Natura 2000 that is defined as “coherent European ecological network” are their main content. This definition of Natura 2000 is a bit problematic, as it reflects the situation in early 1990s when conservation biology focused on the theory of ecological networks that were assumed to become important conservation tool.

Today, it is clear that this theory was not supported by scientific evidence, and living organisms — especially in heavily modified European landscapes — do not behave in accordance with it. Even in 1992, when the Directive was adopted, it was already apparent that the definition of Natura 2000 was inconsistent with the theory of ecological networks, whose fundamental principle is connectivity. By its very nature, the Natura 2000 network cannot consist of interconnected sites, as such connections would often lack ecological sense: the network includes habitat types and species that do not require connectivity, and in some cases, linking sites could even endanger certain habitats or species by facilitating the spread of invasive or dominant species capable of altering or destroying those for which the sites were designated.

Moreover, the Directive states that the Natura 2000 network shall also include the Special Protection Areas designated by Member States under the Birds Directive. There is, therefore, little ecological justification for deliberately linking sites established for bird protection with those designated for other animal species, plants, or habitat types.

However, the fact that the definition of Natura 2000 in the directive is not much successful does not affect the fact that the Natura 2000 network is the widest network of protected areas worldwide, and that in most EU MS it has made a crucial contribution to their nature conservation.

**Article 3** is completed by a provision saying “where they consider it necessary, Member States shall endeavour

to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in **Article 10**”. This is another piece of evidence that Natura 2000 in fact is not an “ecological network” – as ecological network should intrinsically, by its definition, include such landscape features. In this very case, this provision obliges to identify or create such landscape features just for those animals and plants which may benefit from interconnectivity of sites – which is a wise, scientifically sound approach. Unfortunately, almost no attention has been put on implementation of this provision, which could significantly improve conditions for many species especially in cultural, heavily modified landscapes.

**Article 4** describes the entire process of establishing the sites of Community importance, their appraisal by the Commission, as well as the obligations of Member States during the transition of SCIs into special areas of conservation. It should be read together with Annex III which specifies particular steps of this process.

While for all current EU Member States this Article is now only of historical relevance, it remains of crucial importance for any candidate country. The wording of its paragraphs 2 and 3 may give the impression that they are addressed to the European Commission, as they describe the evaluation procedure that follows the submission of a national list of proposed Sites of community importance to the Commission.

In reality, however, it should be viewed in a very different way: it contains selection criteria according to which the Commission assesses the national list – which means that national list should contain sites matching with these criteria. The Commission together with Member States developed additional, more detailed criteria for the sufficiency of the national list of pSCIs, but the criteria of **Article 4**(2) and Annex III remain a basic guideline for designing the national proposals.

**Article 4** in its paragraph 2 contains a provision describing procedure when the Member State proposes high number of sites hosting priority habitat types and priority species. According to it, such Member States are entitled to negotiate with the Commission on “softening” the site selection criteria. As far as it is known, this provision has never been used in practice as until today, any Member State has ever proposed sites exceeding this limit.

**Article 4**(4) describes the process of transition of SCIs into “special areas of conservation”. It has already been mentioned that it contains one important obligation – to “designate” the SACs at the national level. There are no

rules for such designation but it is important that this step must not be omitted – as from the date of such designation, the management provisions of **Article 6(1)** apply.

Last but not least, **Art. 4(5)** stipulates that as soon as a site is placed on the national list of SCIs approved by the Commission, it shall be subject to **Article 6(2), (3) and (4)**. In other words, since that moment it is prohibited to adversely affect the SCIs, and any plan or project likely to adversely affect the sites has to be subject to the Appropriate Assessment – special assessment procedure which will be described later.

In regard to transposition, it is necessary to incorporate into national law the key procedural steps for establishing Natura 2000 network but not the technical rules for this procedure. It was already mentioned that even the names of the sites used in the directive in particular stages of the procedure do not need to be transposed – candidate countries have a freedom of choice of their own names corresponding to national customs.

**Article 5** was intended to solve situations when the Member States would not propose, as a SCI, a valuable site which should have been included into the national list according to **Art. 4**. It is not known whether this provision has ever been applied towards those 12 EU MS which adopted the directive; however, at the end of 1990s the Commission together with EU MS and the European Environment Agency developed the comprehensive procedure of assessing the sufficiency of national lists of proposed SCIs which in fact makes such situation impossible to happen: based on scientific and expert data on habitat types and species available for any candidate country, no valuable site can escape the attention of the independent experts, national conservation NGOs, and the Commission. As it is impossible to approve accession of any candidate country without it having presented sufficient national list of SCIs, situation envisaged in **Art. 5** cannot happen in practice.

After all the sites have been proposed, assessed, approved and designated as SAC in line with **Art. 4**, they must be properly managed and adequately protected. All this is described in **Article 6**, which can be considered the most important provision in regard to Natura 2000. It has three distinct parts serving different purposes.

**Art. 6(1)** deals with conservation management of SACs, i.e., sites of Community importance after their designation as special areas of conservation pursuant to **Art. 4(4)**. It reads that Member States shall establish the necessary conservation measures involving, where appropriate, specific management plans designed for the sites or integrated into other development plans, and suitable

statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites. This provision is crucial for the management of Natura 2000 sites; thus, let us have a look at it in more detail. First of all, when the directive was drafted, part of this sentence disappeared, probably by mistake. Namely, conservation measures can only be developed if there are *site conservation objectives* set in advance: these are measures the purpose of which is to implement those conservation objectives, i.e., particular goals set for individual habitat types and species for which the site is designated. Without conservation objectives being set, no measures can either be made up or implemented. However, the obligation to set conservation objectives is missing in **Art. 6**.



*Lessing feather grass grassland. “Verkhiv’ya baly Kanzerivska (Kaidačka)” Local Landscape Reserve, Zaporizhzhia Right Bank. An example of the Natura 2000 habitat 6190 Rupicolous pannonic grasslands (Stipo-Festucetalia pallentis). Photo: Viktor Petrochenko, Wikipedia (Wikimedia Commons), CC BY-SA 4.0*

Finally, after several decades of confusion, the CJEU ruled in 2024 (Case C-66/23<sup>10</sup>) that conservation objectives really have to be set for each SAC prior to setting of conservation measures. Only now, paragraph 1 of **Article 6** makes sense: once SCI is designated as SAC, from that date there should be in place i) site conservation objectives, and ii) appropriate conservation measures necessary to the achievement of those objectives.

However, the directive admits that both conservation objectives and measures do not need to be part of the piece of legislation by which the site is designated: they may be part of specific management plans, or other development plans, or even be part of a self-standing document; the

<sup>10</sup> <https://curia.europa.eu/juris/document/document.jsf?text=&docid=290009&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=10419742>

only binding requirement is that the document, setting the objectives and measures, must be public and binding, at least for authorities that are in charge of site management. In majority of EU MS, the form of site management plans has been chosen as a time-proven conservation tool; however, they do not necessarily have to be called “management plans”<sup>11</sup>.



*The Great Capricorn Beetle (Cerambyx cerdo) is an endangered species associated with old broadleaved trees. Its occurrence depends on the availability of suitable habitats with sufficient dead and senescent wood; it benefits from conservation within Natura 2000 sites. Photo: Katerina Lavrinenko (lavrinenkokaterina), iNaturalist, CC BY-NC 4.0*

It is important to note that the CJEU has several times confirmed that although **Art. 6(1)** includes just an obligation to set conservation measures, it must also be automatically understood as an obligation of their implementation in practice, i.e., undertaking practical conservation management. Without such interpretation, this provision would be solely declaratory, without any positive impact on habitat types and species of EU interest. Therefore, immediately after setting objectives and measures, the latter must be implemented on a permanent, often even daily basis by site managers designated by competent authorities.

In countries preparing themselves for the EU accession there are sometimes doubts about the difference between “conservation measures” and “appropriate statutory, administrative or contractual measures” required by the same provision. The clarification is simple. Conservation

measures are those needed for achieving site conservation objectives – i.e., measures needed for the conservation management of the site in the field. The other three types of measures relate to the designation of the sites for particular habitat types and species and making the sites and their management regime legally binding.

It has been mentioned, that conservation objectives and measures must be a part of either legislative document (= statutory measure) by which the site is designated and which lists all habitat types and species for which it was designated; or part of management plans or other plans which must also be generally binding (=administrative measures). In some countries, the designation of SAC may be replaced by special contract between the nature conservation authority and the owner of that site (=contractual measure).

Thus, each Member State has a freedom to choose the most appropriate ways how to designate all SACs, on how to make the information on them public, and how to set site conservation objectives and measures. All this must be in place and in force at the day of SAC designation.

The second paragraph of **Art. 6** has a preventive character. It states that Member States shall take appropriate steps to avoid, within the SAC, the deterioration of natural habitats and the habitats of species, as well as disturbance of the species for which the areas have been designated, whenever such disturbance could significantly affect the objectives of this Directive.

This provision is commonly interpreted as a ban to worsen the current state of habitats and species within the SAC. It has to be read together with **Art. 6(1)**: as there is an obligation to set and implement concrete conservation measures for each SAC ensuring achievement of conservation objectives, it should never happen that habitats and species inside that SAC are deteriorated – as this would be a breach of **Art. 6(2)** which is not admissible.

Therefore, **Art. 6(2)** enforces the obligation of 6(1) to properly implement conservation measures: a Member State cannot exempt itself from this obligation by referring, for example, to natural succession which might “naturally” deteriorate some habitats: it is exactly the obligation of implementing appropriate conservation measures pursuant to **Art. 6(1)** which should ensure that proper conservation management would prevent such “natural” events, thus meeting the requirements of **Art. 6(2)**.

The only exceptional situations when **Art. 6(2)** is not applicable are cases of force majeure such as natural disasters affecting sites which cannot be predicted (e.g. wind and snow forest calamity, earthquakes, landslides,

<sup>11</sup> For example, in the Czech Republic such Natura 2000 site management plans are called „summaries of recommended measures“ and despite this name, they are binding for nature conservation authorities.



floods, or gradual effects of climate change which cannot be fought against).

The last two paragraphs of **Art. 6** deal with the obligation of so-called appropriate assessment of plans and projects likely to affect Natura 2000 sites. Given the fact that this is one of the most important and most effective (if properly implemented) nature conservation tools worldwide, extraordinary attention has been paid to correct interpretation and implementation of these provisions: several dozens of CJEU rulings specify particular details of the procedure, and European Commission has published several guidance documents<sup>12</sup> assisting Member States in implementation of the appropriate assessment in line with the directive. Therefore, we will abstain from detailed description of these provisions, referring to these EC guidelines and relevant case law.

**Article 7** states that obligations arising under **Article 6**(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of **Article 4** (4) of the Birds Directive. In other words, special protection areas for birds are subject to the ban of deterioration of their current state, and any plan or project likely to affect SPAs must undergo the appropriate assessment procedure.

**Article 8** deals with possible co-financing of the management of some Natura 2000 sites from the EU funds. It stipulates the obligation of Member States to draft so-called Priority Action Frameworks, documents estimating the costs of management of Natura 2000, for multiannual programming periods.

Based on such PAFs, various financial tools of the EU can be allocated to particular states. The first round of PAFs for the period 2014–2020 did not meet the expectations; therefore, the Commission changed the rules for the structure and methodology of PAFs for the current period 2021–27, and the estimates provided by Member States have been used for co-financing of some management and other measures.

**Article 9** envisages a situation when a SAC loses its conservation value, for example because of extinction of some habitats or species due to climate change, and sets the rules for so-called declassification, i.e., cancellation of protection of such an area. It is to be reminded that only natural development is acceptable as a valid reason for such declassification – not omissions caused e.g. by improper or no conservation management.

<sup>12</sup> <https://op.europa.eu/en/publication-detail/-/publication/11e4ee91-2a8a-11e9-8d04-01aa75ed71a1>

**Article 10**, already mentioned in relation to **Art. 3**, encourages the Member States to manage the features of the landscape outside the Natura 2000 sites which are of major importance for wild fauna and flora, especially those with linear and continuous structure and are essential for the migration, dispersal and genetic exchange of wild species.

## Surveillance of conservation status

At the very end of the section dealing with site conservation there is also a “transitional” **Article 11** which applies both to habitat types and species justifying designation of Natura 2000 sites and to species of plants and animals requiring strict protection across the entire state territories. It stipulates that 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”.

This single sentence conceals a challenging obligation to establish a robust system for the surveillance (incorrectly referred to as monitoring) of all habitat types listed in Annex I and of all species listed in Annexes II and IV, and where appropriate, also of Annex V, throughout the territory of the Member State, separately for each of the biogeographical regions.

National surveillance system must be designed in a way to provide the data necessary to fulfill the reporting obligation under **Article 17**. It is a demanding and costly task, requiring comparable attention and human and financial resources as establishing the Natura 2000 network.

For candidate countries having the Emerald network on their territory it is important to know that the surveillance of conservation status is independent of Natura 2000 sites or any other protected areas (see the explanation of the meaning of “conservation status” in **Art. 1**); therefore, a fully different methodology than that required by the Bern Convention is to be developed.

## Protection of species

This second pillar of the directive comprises of **Articles 12–16**, and its design, principles and content are very similar to the species protection pillar of the Birds Directive. Attentive readers may also find a number of similarities— including identical wording — with the original text of the Bern Convention, which served as inspiration for this part of the directive.

In **Articles 12 and 13**, the directive introduces the obligation of a strict protection regime of selected animal and plant species listed in Annex IV part (a) and (b), respectively. In regard to such animal species, the following is prohibited: all forms of deliberate capture or killing of specimens of these species in the wild; deliberate disturbance, particularly during the period of breeding, rearing, hibernation and migration; deliberate destruction or taking of eggs from the wild; deterioration or destruction of breeding sites or resting places.

In addition, the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild is prohibited. These bans apply to all life stages of those species. Last but not least, Member States are obliged to establish a system to monitor the incidental capture and killing of these species; in the light of the information gathered, they shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.

While all the bans and prohibitions are clear, this latter provision is difficult to interpret. Highly likely, it can be related to roadkills and bycatches of protected animals; however, it is unclear how such monitoring system should be designed, as incidental captures/kills cannot be, by their very nature, monitored by any other than the “offenders”, as no one is aware of them. No information is available on meeting this obligation by the current Member States.

For plants, following bans need to be introduced by national law: to the deliberate picking, collecting, cutting, uprooting or destruction of protected plants in the wild; and the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild. Similarly, like with animals, these prohibitions shall apply to all stages of the plants’ biological cycle.

**Article 14** deals with both animal and plant species which do not require strict protection but which, due to their factual or possible utilization by humans, may require introduction of certain protective measures in situations when such utilization may threaten their survival. Such species are listed in Annex V part (a) and (b), respectively; the trigger for application of restrictive measures should be the data obtained through **Art. 11** surveillance – therefore even these species are subject to obligation to monitor their conservation status within the entire territory of each Member State.

The most recent example of a controversial species falling under the provision of **Art. 14** is the grey wolf, *Canis lupus*. Between 1992 and 2025, this species was strictly protected in most EU MS, with derogations negotiated by several countries for their entire territories or their parts; in those countries, such populations of this species were listed in Annex V and fell under the provision of **Art. 14**. In June 2025, on request of the European Commission due to overpopulation of wolves in Europe causing economic damage, the grey wolf was declassified from strictly protected species by the Bern Convention and following that, it was deleted from the Habitats Directive Annex IV and moved into Annex V for all current EU MS<sup>13</sup>. Now, those EU MS at which territory wolves occur have the only obligation – to ensure that any exploitation of wolves is compatible with them being maintained at a favourable conservation status.

This Article lists various eligible measures that may be applied to those species if circumstances arise that threaten their survival. It is not known whether, and how frequently, Member States have implemented these measures in practice or for which species. Information on the application of **Article 14** is included in national reports submitted under **Article 17**, but it has never been reflected in the composite report published by the Commission for the entire EU territory.

**Article 15** stipulates that in respect of the capture or killing of animal species listed in Annex V (a) and in cases where, in accordance with **Article 16**, derogations are applied to the taking, capture or killing of animal species listed in Annex IV (a), Member States shall prohibit the use of all indiscriminate means capable of causing local disappearance of, or serious disturbance to populations of such species, and in particular use of the means of capture and killing listed in Annex VI (a), as well as any form of capture and killing from the modes of transport referred to in Annex VI (b).

The following **Article 16** deals with derogations from the strict protection regime, conditions under which they can be granted, and reasons, which are eligible for granting derogations. The concept of derogations is very similar to that of **Art. 9** of the Birds Directive; nevertheless, tiny differences exist which need to be reflected during transposition into national law.

Thus, **Article 16** provides that 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 sta-

<sup>13</sup> Directive (EU) 2025/123, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202501237](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202501237)

tus within their natural range, Member States may derogate from the provisions of **Articles 12, 13, 14 and 15**(a) and (b). Such derogations may be granted in the interest of protecting wild fauna and flora and conserving natural habitats; to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property; 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; for the purpose of research and education, of repopulating and reintroducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants; and 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.



*Austrian Dragonhead (Dracocephalum austriacum) grows in dry grasslands, rocky slopes, and open steppe habitats in Southern, Central and Eastern Europe. Its main threats are habitat loss due to agricultural intensification, overgrowing by shrubs resulting from the abandonment of traditional grazing, and the fragmentation of remaining populations. Photo: Halyna Oliiar (iNaturalist), CC BY-SA 4.0*

This list of circumstances under which it is possible to grant derogation reflects the situation in EU 12 at the end of the negotiation process back in 1991. Some of the listed reasons had already been well-known that time – for example, a need to prevent serious damage in agriculture caused by some wild species; some others had been added due to the pressure of economic lobbies which viewed the species protection provisions as an endangerment of social and economic development and required to seek for balance between pro-

tection and development. Important is that all prohibitions listed in **Art. 12–15** refer only to those human activities resulting in deliberate killing, deterioration, disturbance or destruction. Thus, the activities with most serious impacts on protected plants and animals, often large-scale – e.g. the infrastructure, building and mining projects – do not require any derogation, as their impacts on protected species are not “deliberate”. As the directive does not prevent EU MS to take stricter measures<sup>14</sup>, at least one EU MS (the Czech Republic) decided to apply the provisions of **Art. 12 and 13** on all human activities, not differentiating between “deliberate” and “unintentional”. As a result, granting derogations pursuant to **Art. 16** is obligatory for any intervention likely to affect protected species, and the derogation procedures are the most efficient nature protection tool in that country. There are hundreds of derogations issued each year (and reported to the EC – see further) under strictly controlled conditions, and in some cases, granting derogations is rejected (usually due to lack of other overriding public interest) which results in cancellation of the respective projects (without the derogation decision, any project proponent cannot get the construction permit).

Member States are obliged to biannually submit reports on derogations granted; a special internet reporting tool called HABIDES has been developed by the Commission which includes all the items required by this Article to be filled in by the Member States. The list of these requirements in **Art. 16**(3) can serve as a guide on what to require from applicants for a derogation at national level, thus being useful for the transposition into national law.

## Other technical and organizational provisions

The species protection pillar is followed by several provisions of a very different nature.

The first of them called “Information”, **Article 17**, introduces one of very important obligations – reporting by Member States in 6-year-intervals on the implementation of the measures taken under this Directive<sup>15</sup>. Emphasis of the reporting is put on reports on conservation status of all habitat types and species embraced by the directive based on the results of **Art. 11** surveillance.

<sup>14</sup> Contrary to the Birds Directive, there is no such explicit provision within the Directive; however, this possibility follows from the **Art. 114** of the Consolidated version of the Treaty on the Functioning of the European Union ([https://eur-lex.europa.eu/eli/treaty/tfeu\\_2008/art\\_114/oj](https://eur-lex.europa.eu/eli/treaty/tfeu_2008/art_114/oj))

<sup>15</sup> The last reporting period ran between years 2019 and 2024, submission of national reports was due in 2025.



The reporting format (developed almost 20 years ago in cooperation with the European Environment Agency and the Member States and regularly updated ahead of each upcoming reporting round<sup>16</sup>) contains also other fields dealing e.g. with implementation of Natura 2000 network. This reporting format has another benefit for the Member States: while **Art. 11** does not provide any specification on how the habitat and species conservation status should be surveilled (monitored), the **Art. 17** reporting format presents detailed instructions – thus, when building their **Art. 11** surveillance system, candidate countries should use the reporting format as a “template” for its design.<sup>17</sup>

When acceding the EU, new Member States are usually given a “relief” in a form that their first national report is considered “trial” – they are obliged to report on measures taken in order to make the requirements of Nature Directives functional, but they do not need to provide conservation status reports based on robust surveillance system. This provides them an opportunity to build such system, which is an obligation comparable to establishment of Natura 2000 network as to the time, capacity and funding needs.

National reports need to be forwarded to the Commission and made public.

The Commission then prepares the so-called composite report, summarizing the main findings of the Member States’ national reports; together with the results of reporting on the Birds Directive, the findings for the entire EU are published in the publication “State of nature in the EU”<sup>18</sup>.

The last paragraph of **Art. 17** provides an option (not an obligation) to mark “areas designated under this Directive by means of Community notices”. This mark is nothing else than the famous Natura 2000 logo, which was first published in 1997 in the Commission Decision 97/266/EC concerning a site information format for proposed Natura 2000 sites<sup>19</sup>, and then officially codified (with detailed description of eligible ways of its use) in the Commission Decision

2021/C 229/03 regarding the licencing of the Natura 2000 logo<sup>20</sup>.



*Official logo of the Natura 2000 network*

There has been no evidence if, and how many EU MS, have used this logo for marking their Natura 2000 sites.

**Article 18** asks the Member States to “encourage the necessary research and scientific work having regard to the objectives set out in **Article 2** and the obligation referred to in **Article 11**”. In other words, the article encourages biodiversity research and research related to the surveillance of conservation status, with particular attention to Natura 2000 sites and the landscape features contributing to the ecological coherence of the Natura 2000 network. These provisions are impossible to transpose into the national law, as national research legislation, programmes and policies usually do not focus on such narrow fields. However, no evidence exists that the Commission has ever raised this issue when checking the transposition of the directive into national laws.

**Article 19** sets the procedure of amending the Annexes I, II, III, V and VI. It says that such amendments are possible if it is necessary due to technical and scientific progress; this happens usually upon the accession of new Member States which have a right to propose new habitat types and species from their territory. The procedure involved is described: proposals are to be made by the Commission, and adopted by the Council of the EU, acting unanimously. It is not clear, however, why this list also includes Annex III – a list of criteria for identification, selection and proposing Natura 2000 sites.

<sup>16</sup> Available, together with explanatory notes and other relevant information, at the **Art. 17** reference portal: [https://cdr.eionet.europa.eu/help/habitats\\_art17](https://cdr.eionet.europa.eu/help/habitats_art17)

<sup>17</sup> Similar reporting format has been developed for meeting the reporting obligation pursuant to **Art. 12** of the Birds Directive, available at [https://cdr.eionet.europa.eu/help/birds\\_art12](https://cdr.eionet.europa.eu/help/birds_art12)

<sup>18</sup> Its latest edition for the period 2013-18 is available at <https://www.eea.europa.eu/en/analysis/publications/state-of-nature-in-the-eu-2020>

<sup>19</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31997D0266>

<sup>20</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021D0615\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021D0615(01))



*Velykyi Luh (Ukraine). After the destruction of the Kakhovka water reservoir by the Russian army in 2023, natural regeneration of forests and wetlands began in the Dnipro River valley. This process led to the formation of extensive natural habitats, including the priority Annex I habitat 91E0\* – Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*. Photo: Mykhailo Mulencko, CC BY-SA 4.0*

**Articles 20 and 21** establish the committee – called Habitats Committee – the task of which is to assist the Commission in discussing the policies needed for implementation of this directive; this committee has to have its official rules of procedure.

In its supplementary provision of **Art. 22**, the directive provides rules for reintroductions of Annex IV species; regulates deliberate introductions of non-native species into wild; and promotes education and general information on the need to protect species of wild fauna and flora and to conserve their habitats and natural habitats in general.

Finally, **Art. 23** sets the deadline for 1992 EU Member States to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within two years of its notification, and to inform the Commission thereof. This provision has only a historical value: all countries acceding the EU after 1992 have been obliged to meet these requirements at the day of their accession.

## Annexes

The directive has six annexes:

**ANNEX I:** Natural habitat types of Community interest whose conservation requires the designation of special areas of conservation

**ANNEX II:** Animal and plant species of Community interest whose conservation requires the designation of special areas of conservation; Part (a) Animals; Part (b) Plants

**ANNEX III:** Criteria for selecting sites eligible for identification as sites of Community importance and designation of special areas of conservation

**ANNEX IV:** Animal and plant species of Community interest in need of strict protection; Part (a) Animals; Part (b) Plants

**ANNEX V:** Animal and plant species of Community interest whose taking in the wild and exploitation may be subject to management measures; Part (a) Animals; Part (b) Plants

**ANNEX VI:** Prohibited methods and means of capture and killing and modes of transport



## How Natura 2000 Network Is Made

Indisputably the most demanding obligation of both Nature Directives – in terms of time and human and financial capacity – is establishment of the Natura 2000 network<sup>21</sup>. As previously noted, all Natura 2000 requirements are established by the EU directives, and it is up to each country on its path to EU membership to determine how to implement them.

Yet, despite the apparent room for manoeuvre, both Nature Directives impose a wide range of precisely formulated obligations, objectives, and measures for each Member State. The case law of the Court of Justice of the European Union has provided binding interpretations that clarify many of the less explicit provisions of the directives. In addition, the European Commission, in cooperation with the EU Member States, has developed internal guidance documents and procedures that must also be followed.

Therefore, it may be useful to briefly review the main steps in the process of establishing Natura 2000, particularly for readers from countries that are Parties to the Bern Convention and have been developing the Emerald network – a system based on similar principles but different from Natura 2000 in many important details.

### Step one – country reference lists

Both directives include annexes valid across the EU that list bird species (Annex I BD), habitat types (Annex I HD) and selected non-bird species (Annex II HD) for which Natura 2000 sites have to be identified, designated and actively managed at the territory of each EU MS where they occur. The very first step is to identify which of these species and habitat types really regularly occur in a given country. Lists of such species and habitat types are called reference lists.

As the Birds Directive does not recognize any biogeographical division of Europe, there is just a single bird reference list for each country. In addition to the Annex I species, it should be amended also by other regularly occurring migratory birds not listed in that annex; special protection areas (SPAs) have to be identified for all of them.

<sup>21</sup> *There is only one more obligation left which is comparable with the demanding character of the Natura 2000 network establishment in this respect: development and implementation of the system of surveillance of conservation status, colloquially called “monitoring”, pursuant to Art. 11 of the Habitats Directive (together with surveillance of all bird species pursuant to the Birds Directive).*

In habitat types and non-bird species, the task is more complex. There should be separate reference lists for each biogeographical region which extends onto the territory of a country. For example, territory of Ukraine lies within three biogeographical regions – therefore, there should be 9 separate reference lists according to the Habitats Directive (3 for habitat types, 3 for animal and 3 for plant species).

It is often challenging, due to lack of data, to decide if a particular habitat type or species inhabits just one or more biogeographical regions – but this has to be unambiguously resolved, otherwise it would be impossible later to conclude on the sufficiency of proposed Natura 2000 sites in particular biogeographical regions. In case of doubts, additional expert or scientific research is needed to clarify such issues, as well as bilateral negotiations with the Commissions or its expert bodies.

### Step two – sites for birds

The “Dutch case” from 1998 has already demonstrated the key role of IBAs – Important Bird Areas for the process of proposing special protection areas according to the Birds Directive. Even after almost 30 years, nothing has changed in this respect: the Commission requires that the SPA proposal builds on the IBA lists for each particular country, or, more precisely, on official BirdLife criteria elaborated for IBA identification and amended by their level “C” which is obligatory for the EU Member States<sup>22</sup>.

Should the national IBA list be incomplete, candidate countries are demanded to undertake similar approach and to identify additional future SPAs based on these criteria. It is also recommended that national authorities contact BirdLife well in advance and consult the national IBA/SPA proposal before the official negotiations with the Commission.

It is important to know that this approach to identification of protected sites for birds is fully different from the approach of the Bern Convention within the Emerald network establishment; ornithological data gathered during Emerald preparation may help in some considerations on the design and size of future SPA but they can never replace the procedure required by the EU.

Meeting these requirements as well as the sufficiency of proposed SPAs is subject to scrutiny by the Commission

<sup>22</sup> <https://datazone.birdlife.org/about-our-science/ibas>



before the accession – according to the established procedure, the complete national SPA proposal should be approved by the supreme national authority by the day of accession. The latter also requires to have appropriate legislation in place – contrary to the Bern Convention, SPA must be designated by national authorities, not just approved by the Commission.

It is recommended that SPA remain a separate category of protected areas (not merged with future SCIs) as the requirements for their protection and conservation are often different than those for the other kinds of protected areas; on the other hand, for administrative and practical reasons, it is of advantage if the boundaries of SPAs are unified with the boundaries of other protected areas they overlap.

### Step three – data on habitat types and non-bird species

Before starting with identification of proposed sites of Community importance (pSCI), one step of extraordinary importance is unavoidable. Contrary to the methodology of the Emerald network, pSCI identification does not start from sites – this is only the next step. For Natura 2000, the process should be the following.

The institution or authority designated for Natura 2000 preparation has, firstly, to gather all possible scientific and expert data on each species and each habitat type on the territory of particular biogeographical region. Such desktop search – which is usually quite limited due to lack of published data – needs to be complemented by extensive field mapping and research across the entire country, not just in several pre-selected areas known for their excellent biodiversity (such as e.g. national nature parks or so). The aim is to collect the most complete data possible in order to make a justified estimation of the overall range, population and/or area of each habitat type and species from the reference list – separately for each biogeographical region to get picture on its distribution, geographical variation, quality and pressures and threats for each species/habitat type.

### Step four – how much habitats and species to be included into the national list of pSCIs

After that, expert rules should be developed at the national level setting a “quota” for each species/habitat type which should be included into the future Natura 2000, separately

for each biogeographical region. The “quota” should reflect the rarity, ecological importance and current level of endangerment of each species/habitat type: the rarer and more endangered is such feature, the more of its total population of area should be put into Natura 2000 network – as only then this network may fulfil its objective, i.e., to protect and conserve it in a long-term in the whole country.

Due to the division of the country territory among biogeographical regions, the quotas for the same species of habitat types may differ in each of them: for example, some mountain species which are quite common in Carpathians (core part of their range) may not require high representation in Natura 2000 sites in that biogeographical region, while the same species, only rarely descending into the lowlands around the mountains (edge of the range) with just a few occurrences, may require 100 % coverage by Natura 2000 sites. Similarly, stenoendemic species usually require almost complete coverage by Natura 2000 sites, while some generalist species or habitat types, still very common and not much under pressure, do not need to be extensively covered by protected sites.



*The Dusky Large Blue (Phengaris nausithous) is an endangered species associated with wet meadows containing Great Burnet. Its populations depend on the maintenance of traditional low-intensity management of these habitats. Photo: Oleksandra Ghryb (olexandr\_ghryb) iNaturalist CC BY-NC 4.0*

In 1997, the Commission, together with the then Member States, adopted a non-binding document entitled “CRITERIA FOR ASSESSING NATIONAL LISTS OF pSCI AT BIOGEOGRAPHICAL LEVEL”<sup>23</sup> which clarifies the ap-

<sup>23</sup> [https://www.eionet.europa.eu/etcs/etc-be/activities/hab\\_97\\_2\\_criter\\_en.pdf](https://www.eionet.europa.eu/etcs/etc-be/activities/hab_97_2_criter_en.pdf)

proach used both by European Environment Agency and the Commission when assessing the sufficiency of national lists of pSCIs. Despite its name, this document (later shortened and articulated in similar terms by the Eionet web page<sup>24</sup>) is also suitable for setting these quotas – or, in other words, on taking decisions which proportion of each habitat type and species within the particular biogeographical region to include into the pSCI proposal.

It set the general “20/60 rule” for non-priority species and habitat types: should particular habitat type/species be included into the pSCI proposal by less than 20 %, it will be almost always considered “insufficient”, and the country will be invited to amend it; on the contrary, if the representation is over 60 %, it should as a rule be considered “sufficient” (of course, exceptions in both directions may occur – depending on scientific data).

The interval in between represents a “grey zone” – each habitat type or species with its representation within this interval has to be individually scrutinized at the biogeographical seminar, and the less of it is proposed by the country for Natura 2000, the better must be its argumentation based on field data showing that for its protection and conservation, such a relatively low proportion would be sufficient in a long-term. However, it is to be emphasised that there are also several factors other than a mere percentage of the habitat type or species in the pSCI proposal to be taken into account – such as geographical and genetic variability, and so on (see the document for details).

For priority habitat types and species, much stricter rules apply, and in the case of extremely unique or rare habitats or species, up to 100 % of their occurrence may be required to be covered by Natura 2000.

## Step five – proposing of sites and their defence at biogeographical seminars

Using the quotas developed and taking into account the above-mentioned document as well as **Article 4** and Annex III of the Habitats Directive, national list of pSCIs (divided according to biogeographical regions) can be compiled, and Standard Data Form for each proposed site filled in. Today, as most habitat and species data is stored in form of GIS-linked databases, it is relatively easy to make site proposals: for each habitat type and each species, a separate GIS layer visualizing its occurrences

across individual biogeographical regions can be made; then, the best occurrences based on quotas set for it during the previous step can be filtered out; and finally, an overlap of all such layers will deliver the sites with the best occurrences of all habitat types and species.

Subsequently, the technical and administrative works should follow – a real site proposals with boundaries have to be drawn, respecting, whenever possible, administrative division of the country and, if appropriate, also the existing national protected areas. The resulting proposal of pSCIs should be negotiated with other governmental sectors, landowners and other stakeholders according to national legislation, and only then submitted to the Commission.

Ideally, all these steps should be accomplished prior to the country’s accession to the EU. In justified cases in the past, however, Commission agreed with the new Member State that the deadline for the submission of the national list of pSCI be postponed – but never more than a few months. It should also be emphasized that such national lists have to be officially adopted at the national level in a form enabling the implementation of all requirements of the **Art. 6(2), (3) and (4)** immediately upon the approval of the pSCI list by the Commission and the other Member States.

Before such approval by the EC and EU MS, national lists are subject to the scrutiny of their sufficiency at the biogeographical seminars. Such seminars were in the past organized separately for individual biogeographical regions, but it is not excluded that just a single seminar will be organized in the future – in any case, both reference lists and the national pSCI lists will be assessed separately for each biogeographical region.

The course of such seminars is similar to those organized within the scope of the Emerald network, perhaps with much deeper emphasis on habitats and species data from the entire territory of the country (see the step three above). However, the consequences of those seminars are different: if insufficiencies of representation within the proposed SCIs of particular habitat types and species are revealed, the new Member State is imposed a deadline by when it is obliged to amend the national list; breaching of such deadline may lead to restrictions in providing subsidies and benefits from the official EU sources in fields other than just environment, for example, from agricultural or cohesion funds in orders of dozens or hundreds of millions of euro.

Any conclusion on “insufficiency” may have serious time and capacity consequences for the concerned country:

<sup>24</sup> [https://www.eionet.europa.eu/etcs/etc-be/activities/further\\_adapted\\_criteria.pdf](https://www.eionet.europa.eu/etcs/etc-be/activities/further_adapted_criteria.pdf)

except for the assessment mark “insufficient minor” (after which it is sufficient to amend particular habitat types or species into already proposed sites if they occur over there), any other level of insufficiency may require additional field work (requiring another vegetation season), new site proposal, and a new round of negotiations with sectors and landowners at the national level – which all requires a lot of time and money.

Finally, after meeting all the requirements and conclusions of the biogeographical seminars and proposing new, additional pSCIs, bilateral negotiations with the Commission follow, aimed at resolving the last pending issues; then, the official approval procedure of the pSCI national lists follows, completed by the publication of the lists of new SCIs in the Official Journal of European Communities.

Since the date of such publication, the maximum six-year-long period starts during which the new Member States have to implement all SCIs the requirements of **Art. 6(1)** of the Habitats Directive, and the formal step of designation of these SCIs as special areas of conservation must take place, too – since the day of such designation, those provisions of **Art. 6(1)** apply, and this is also the day when the Natura 2000 network officially starts to exist at the territory of such Member State<sup>25</sup>.

If we read the provisions of **Art. 4** and Annex III of the Habitats Directive, we see that the authors of the draft directive had very optimistic view of the approach of how the Member States at that time would approach their obligation to propose pSCIs. The idea was that each EU MS proposes a large pool of candidate sites divided into

two groups – those containing priority habitat types or priority species, and the others. According to the directive, the first group should automatically become pSCI, while the latter should have been subject to scientific discussion, resulting in selection of the best sites – i.e., the original national proposals should have been much more extensive than the final selection.

In all 28 EU countries which went through this procedure – both 12 “old” states being EU members at the date of the directive came into force, and all countries acceding the EU later – the real situation was opposite. None of them proposed sufficient number and quality of pSCIs; thus, the expected task of biogeographical seminars – to make a selection of best sites from that large pool of proposals – was completely reverted into identifying insufficiencies of national proposals of sites for particular habitat types and species. Not a single EU MS or candidate country proposed “sufficient” national list of pSCIs; thus, in reality, some EU MS were forced to amend their lists repeatedly, even three times, before the EU expert bodies were able to make a conclusion that their national lists finally reached the expected level of sufficiency.

However, this experience should never serve as an “instruction” on how to try to circumvent the obligations set by the Directive: all EU MS had major problems when amending their national lists – time losses led to suspension of some EU funds, additional expert capacities and financing was needed, and the attitude of landowners with whom the new site proposals were discussed was often very hostile. Therefore, it is recommendable to prepare the national lists of pSCIs as complete as possible, based on all available expert and scientific information, “on the first try”.

<sup>25</sup> According to the wording of **Art. 3(1)** which is everything but well-done, Natura 2000 is a “network of special areas of conservation” (together with SPAs according to the last sentence of the same article); therefore, this name can only be used after the SCIs are designated as SACs, i.e., usually several years after the accession to the EU – even if everyone is used to use the name “Natura 2000” even during the preparatory stages before the accession.





## When Scientific Principles Must Give Way to Political Principles

Since the fourth EU enlargement in 1995 (Austria, Finland and Sweden), the first one after the adoption of the Habitats Directive, scientists and experts collaborating on preparation for implementation of the Habitats Directive have been faced with a major problem concerning the updating of the annexes to the Directive, as mentioned in **Article 19**. Namely, according to the settled rules, every newcomer has a right to propose new habitat types and species not yet listed in Annexes I, II, IV and also Annex V. Candidate countries are usually very keen to make such proposals, as with the enlargement of the EU towards the East and South-East, many new, unique, and/or ecologically important habitat types and species “enter the EU”, enriching its biodiversity and EU natural heritage. However, until now, all such candidate countries had been given a cold shower: only a minor part of their proposals for amendments had been accepted by the EU – despite the preciousness of such rejected proposals, often underpinned by excellent scientific as well as conservation evidence. What was the reason?

The leading principle of both Nature Directives is that habitat types and species listed in any of their annexes are binding for all Member States. Should a listed habitat type or a species occur at their territory, they are obliged to establish Natura 2000 sites for them, and in regard to Habitats Directive Annex IV and V, to take all measures in regard to protection of those species at their entire territory. They have to adopt the national legislation which makes the provisions of the directives binding, including national lists of habitat types and species; this often involves lengthy and complicated procedures at the parliamentary, governmental, and inter-sectoral levels. Any proposal of a newcomer candidate country for amendment of a habitat type or species not yet listed in the annexes but present at their territory would require:

- to amend national legislation of all EU MS in which such habitat types or species occur,
- to amend their Natura 2000 proposal by new sites respecting the rules set in the directives,
- to apply species protection rules to those newly added species.

Accepting this approach would mean that both Natura 2000 network and species protection system in current EU MS would be just temporary, valid only between two EU enlargement rounds, requiring extensive changes and

amendments after each new enlargement. It is more than logical that no one current Member State could adhere to such approach. Therefore, any proposal made by a newcomer candidate country for amendment of any annexes of the directives is only acceptable for the current EU if such habitat type or species does not occur at their territory. It is clear that this principle is everything but scientifically-based; however, nature conservation is not a branch of science but a policy which has to take into account real political, social and economic circumstances, not just scientific recommendations.

For these reasons, it is strongly recommended to any candidate country to design their proposal for any amendment to the annexes of both directives in line with these rules. No one can prevent them to propose any new habitat type or species, but for those already occurring at the current EU territory it will always be just wasting of resources and time.

For very similar reasons, there is another principle which has made experts in candidate countries repeatedly unhappy: each newcomer candidate country has an obligation to apply all protective provisions stemming from the directives to all habitat types and species listed in the current annexes – regardless if such habitat types and species are really rare or endangered, or very common on their territory. When the Habitats Directive was compiled back at the beginning of 1990s, many habitat types and species proposed to be listed in its annexes were at the edge of their range – thus, they were often rare not because being endangered but for simple biological reasons (populations at the edge of their range are naturally weak, less numerous, and prone to extinction). Similarly, some species were considered rare because of lack of systematic scientific research. With the EU enlargement to the Central and Southeastern Europe, core parts of the range of many such habitat types and species got into the EU – and it turned out that they were – sometimes – quite common; the same had been proven in some species through focused scientific research even in some “old” EU MS. However, for the same political reasons as mentioned above, there was no “way back”: it was politically not acceptable that some Member States asked for exceptions for those habitat types or species common on their territories but still rare or endangered at the territories of other countries. To accept such requirements would require

to substantially amend the annexes to the directives (which would require unanimous vote in both European Parliament and the Council) and, subsequently, to change national legislation. In this way, the unified EU approach to both Natura 2000 and species protection would fall apart. Therefore, even if the EU MS, as well as the Commission, are aware of the fact that the level of endangerment of particular habitat types and species across the EU is highly uneven, it is not possible to make any exemptions – and the newcomer candidate countries need to accept all habitat types and species listed in the current annexes of the directives.

