

# NATURA 2000

*Will Noah's Ark sink?*

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# Major crisis

- The ecosystems sink to the lowest common denominator, losing their cultural and natural specificity.
- For animal and plant species this results in a fragmentation and isolation of their habitats, constituting one of the most serious threats to their long-term survival.

# considered to be under threat

- 42% of mammal species (out of a total of 250),
- 15% of bird species (total 520),
- 30% of amphibian species (total 75),
- 45% of reptile species (total 120),
- 41% of freshwater fish species (total 190),
- 12% of butterfly species (total 575)
- 21% of plant species (total 12,500)

# CDB in situ conservation measures

- - network of protected areas
- - maintenance of viable populations of species in natural surroundings
- - restoration of degraded ecosystems and recovery of threatened species,
- - prevention of the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species
- - conservation of biological diversity and the sustainable use of its components;
- - maintenance of knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity



## Directive (79/409/EEC) 2009/147/EU on the conservation of wild birds

- distinguishes between:
- the protection of the habitats of bird species (Articles 3 & 4); in particular through the designation of 'special protection areas'
  - the protection of bird species as such by the regulation of their capture and their trade (Articles 5-9).

## Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

- the protection of the habitats (Articles 3-10); in particular through the designation of 'special conservation areas'
- the protection of animal (other than birds) and plant species by the regulation of their capture and their trade (Articles 12-16).

## Directive 2009/147/EU

- 'special protection areas' (SPAs)
- intended to protect wild bird habitats

## Directive 92/43/EEC

- 'special conservation areas' (CSAs)
- intended to protect particular non-bird habitats of Union interest

# NATURA 2000

- Constitution of a '*coherent ecological network*' (Natura 2000): '*sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II*' as well as the special protection areas (SPA)
- Pan-European Biological and Landscape Diversity Strategy: an-European ecological Network



# Classification of SPAs for the preservation of bird habitats

- SPAs must encompass ‘the most suitable territories in number and size’ for the conservation of the **species listed in Annex I** in order to ‘ensure their survival and reproduction in their area of distribution’. Annex I: 181 taxons.
- In addition, similar measures must be taken to protect the habitats of **migratory species**

# SPA DESIGNATION -CRITERIA

Classification of SPAs is subject to **ornithological criteria**:

- the presence of birds listed in Annex I
- the designation of an habitat as a wetland area
- States' margin of appreciation is therefore limited both in terms of the number and surface area
- Economic and recreational requirements cannot influence the choice and delimitation of the SPA

# **Form and content of the classification decision of SPAs**

- appropriate publicity
- maps delimiting SPAs 'must be invested with unquestionable binding force
- regulatory framework specifying the protection regime

# WHAT IS AN HABITAT?

Within each ecosystem, there are **habitats** which may also vary in size.

An habitat is the place where a **population** lives. A population is a group of living organisms of the same kind living in the same place at the same time.

# Definition of an Habitat

- **CDB** “*the place or type of site where an organism or a population naturally occurs*”
- **CMS** “*any area in the range of a migratory species which contains suitable living conditions for that species*”
- Art 1(b) **NATURA 2000 Directive** “*terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural*”

# CSA DESIGNATION -CRITERIA

- **Annex I:** 200 types of land, aquatic, marine or coastal natural habitat (grasslands, peat-bogs, sandbanks, alpine rivers or permanent glaciers)
- **Annex II:** 230 animal species (mammals, reptiles, amphibians, fish and various invertebrates) and almost 500 plant species

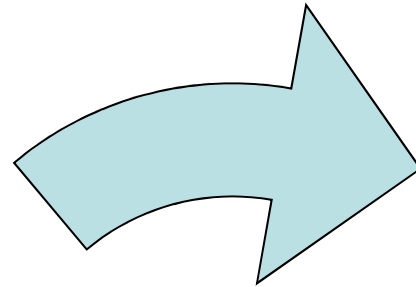


# CSA CLASSIFICATION PROCEDURE

- 1st stage: national list
- 2nd stage: Community list of the national sites selected
- 3rd stage: Member States classify the sites selected to form part of the Natura 2000 network

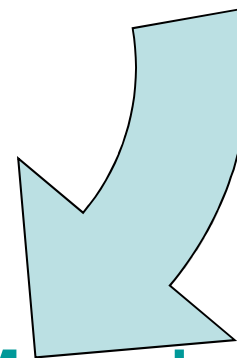
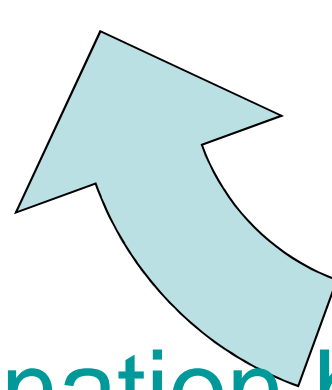
Member States cannot invoke 'economic, social and cultural requirements and regional and local characteristics' to oppose the classification of a site of Community importance





National list

Eu habitat list



Designation by the Member State

# Article 6(1) of the Habitats Directive

For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

# Form and content of the classification decision

Designation requires the adoption of

- ‘a statutory,
- administrative
- and/or contractual act’

# CONSERVATION REGIME FOR SPA AND CSA

- Maintain or re-establish natural habitats and the habitats of species of wild flora fauna and flora of Community interest in a 'favourable conservation status' (Article 2).
- 'Conservation': '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' (Article 1(a)).

The conservation status will be taken as "**favorable**" when:

- - population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- - the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- - there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

# Special conservation measures

- **positive** (plans for spreading, grazing incentives, subsidies, delayed pruning, hedgerow maintenance)
- **negative** (prohibitions of soil contour modifications, deforestation, picking or harvesting wild species).
- ‘appropriate **management plans** specifically designed for the sites or integrated into other development plans’

# Article 6(2)

- 2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

# SPECIFIC PREVENTION REGIME

**Article 6(2)** take 'appropriate steps to avoid:

- the **deterioration** of natural habitats and the habitats of species
- the **disturbance** of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive'



In accordance with the principle of prevention (Article 174(2) TFEU), the adoption of a preventative regime including prohibitions, *e.g.*, on building or the modification of the contours of soil or vegetation, binds Member States.

References to ‘avoid’ and ‘could be significant’ reinforce the anticipative nature of this regime. Indeed, it is more sensible to pre-empt potential rather than repair actual damage.

# ***Nature of the activities covered by the general prevention regime***

- Any type of activity, whether past, present or future
- obligation to avoid the ‘deterioration of natural habitats and the habitats of species’, irrespective of the nature of the impairment ;
- obligation to avoid ‘disturbances of species’, where such disturbances are significant

Article 6(2) of the Directive may have to cover particular activities carried out outside the site.

This may require national authorities to fix boundaries broader than the actual site within which particular activities must be regulated, *i.e.*, the spreading of manure or the maintenance of landscape features supporting nature walkways.

# Article 6 of the Habitats Directive

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

# DEROGATIONS FROM THE GENERAL PREVENTION REGIME

AIA applicable to ‘any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects’.

Put it in other words, the AIA procedure applies to either plans or projects that:

- have no relationship with the management of the site; and
- create a risk of a significant effect on the site.

# DEROGATIONS FROM THE GENERAL PREVENTION REGIME

- the concept of ‘plan’ and “project” must be interpreted broadly
- the ‘significant’ nature of the impact of the plan or project must be interpreted objectively
- identify, according to the precautionary principle, even those damages which are still uncertain
- identify the cumulative effects and highlight the alternative solutions
- Article 6(3) has direct effect

# Assessment thresholds

- In Case C-256/98 *Commission v France* the ECJ held that the French regime providing that an AIA could be waived because of the low cost of the project or its purpose was inconsistent with the Directive.
- In Case C-98/03 *Commission v Germany* the ECJ held that the restriction of AIA to projects subject to notification or authorisation procedures were inconsistent with Article 6 requirements. As a result, Germany had to amend the BNatSchG: every activity affecting a protected area must now be regarded as a project.

Background against which the appropriate assessment must be carried out

- The authority is called upon to assess the significant impact of the plan or project in terms of:
- ‘its implications for the site in view of the sites SCOs’; and
- the site’s integrity, as defined in the SCOs.



# Content of the assessment

- The intensity of the impacts according to the nature, location (current use of the land, relative abundance of the natural resources) and size of the proposed plan or project;
- The vulnerability of the habitats or species under protection (regenerative capacity, absorption capacity); and
- The level of existing threats.

# Content of the assessment

- The specific, and not abstract, effects of the plan or project on every habitat and species for which the site was classified;
- The indirect effects of the project, impacts which are not the direct result of the project, but the result of complex pathways;
- The interrelated effects, the interactions between the impacts stemming from other projects within or outside the area;
- The cumulative effects of the project with other proposed or existing projects must also be taken into consideration.
- The short and long-term impacts of the plan or the project.
- The reversible and irreversible impacts of the plan or the project.
- An appropriate compensation package

# Timing of the assessment

Of importance is to carry out the Appropriate Impact Assessment (AIA) as earlier as possible, and in particular at the planning level, in order to assess the full range of alternatives; in case the AIA is conducted too late, it is somewhat difficult for the experts to assess the full range of alternatives.

# Quality of the conductors of the assessment

Given that the AIA must be a genuine scientific analysis, the conductor of the AIA must be as independent as possible from the vested interests. In particular, the conductor should seek advice from nature conservation bodies as well as specialised NGOs dealing with nature protection.

# ***Waddenzee case (7th September 2004)***

- The national authorities could authorize the plan or the project only on the condition that they were convinced that it will not adversely affect the integrity of the site concerned.
- Accordingly, ‘where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation’.

**If there is **uncertainty** over the subsequent manifestation of risks, the term ‘ascertain’ would require, in line with the **precautionary principle**, the competent authority to refrain from issuing the authorisation.**

*Derogation mechanism following negative findings in  
the assessment*

Projects can only be implemented

(a) where there are no alternative measures,

(b) and where their completion is justified by specific interests.

Where a challenged project is accepted, authorities must :

(a) mitigate its impact,

(b) implement compensatory measures.

# *Absence of alternative solutions*

broad interpretation to the obligation to seek out the least damaging alternative for the conservation of the site



# *Balance of interests*

- For non-priority habitats and species

‘imperative reasons of overriding public interest, including those of a social or economic nature’

- For priority habitats or species

‘the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest’

Whenever the Natura 2000 site harbours priority habitats or species, the national authority must seek the opinion from the EC Commission.

It should be noted that pursuant the treaties, the EU Commission is the watchdog of the correct implementation of Article 6 mechanism. One cannot expect that citizens deprived of proper scientific expertise, financial resources, and facing a number of judicial hurdles (access to justice for instance) to become the watchdog of such a complex system.

# *Compensatory measures*

intended to counteract the negative effects of the project and guarantee compensation exactly equivalent to the negative effects on the relevant habitat or species





































# ECONOMIC INSTRUMENTS

## *Cross-Compliance*

- From 1st January 2005, CAP Cross Compliance conditions mean that a farmer receiving direct payments will be required to respect a number of European laws (known as the Statutory Management Requirements) as well as maintaining the land in Good Agricultural and Environmental Condition (GAEC).
- compliance with a range of 18 European regulatory requirements covering the environment, food safety, animal and plant health and animal welfare.





















