



Designation of Sites of Community Importance (SCIs) and Special Protection Areas (SPAs)

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Outline

- Intro on Biodiversity policy - Birds/Habitats Directives
- Overview of Article 6
- The Appropriate Assessment process for new projects/plans
- Relationship between AA/EIA/SEA
- Experience/lessons learned
- Conclusions



7th Environment Action Program “Living well, within the limits of our planet”

- **2020** timeframe, **2050** vision, **9** priority objectives
- Commitment by EU and its **Member States**

THEMATIC OBJECTIVES:

- **Protect, conserve and enhance the EU's natural capital**
Fully implement the EU Biodiversity Strategy
- **Green & competitive growth – low-carbon, resource-efficient economy**
- **Health & environment, human well-being**

LOCAL, REGIONAL, GLOBAL DIMENSION:

- Urban environment
- International

ENABLING FRAMEWORK:

- **Implementation**
- Information, knowledge base
- Investment
- Integration, coherence



The 7th Environmental Action Programme “Living well, within the limits of our planet” constitutes the current overall EU environmental policy framework.

The key thematic objectives are: 1. Protection, conservation and enhancement of the EU’s natural capital, 2. Promoting a green and competitive growth based on low-carbon, resource efficient economy 3. Strengthening health, environment and human well-being.

Along with these objectives, there are some other priorities in terms of the so-called “enabling framework” as well as in local, regional or global context.



EU biodiversity strategy to 2020 « Our life insurance, our natural capital »

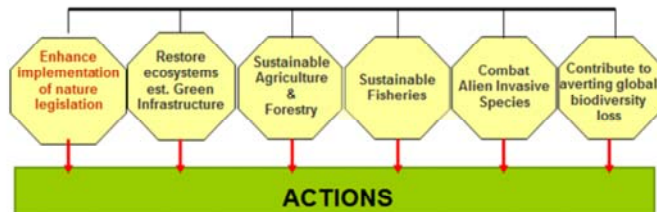
A 2050 VISION

European Union biodiversity and the ecosystem services it provides – its natural capital – are protected, valued and appropriately restored...

A 2020 HEADLINE TARGET

Halt the loss of biodiversity and ecosystem services in the EU and **restore** them insofar as feasible, and step up the EU's contribution to averting global biodiversity loss

6 TARGETS



The European biodiversity policy is enshrined in the EU Biodiversity strategy to 2020 “Our life insurance, our natural capital” adopted in 2011 and having short and long term objectives and 6 main targets (thematic areas).

The first of these targets is the “enhancement of the implementation nature legislation”, meaning the Birds and the Habitats Directives.



EU Biodiversity Strategy to 2020 Target 1 - Nature conservation

To halt the deterioration in the status of all species and habitats covered by EU nature legislation and achieve a significant and measurable improvement in their status by 2020

- Complete the **establishment** of the **Natura 2000** network and ensure **good management**
- Increase stakeholder **awareness** and **involvement** and **improve enforcement**
- Improve and streamline **monitoring** and reporting
- Ensure adequate **financing** of Natura 2000 sites

Regarding the 1st target, in particular, there are some more concrete objectives:

- completion of the Natura 2000 network and ensuring its good management
- better information and involvement of the stakeholders and better enforcement
- improved knowledge base
- sufficient financing for Natura 2000 sites



Biodiversity – our Natural Capital

- Preserving biodiversity for future generations
- Wide range of *important benefits to society and the economy* via the flow of **ecosystem services**.
 - ✓ **Healthy freshwater ecosystems** provide clean water and help remove pollutants from the surrounding countryside.
 - ✓ **Intact wetlands** act as natural buffers against floods, soaking up excess rainwater.
 - ✓ **Peat bogs** help fix and store CO₂, the number one cause of climate change, whilst **forests** improve air and soil quality.
 - ✓ **Healthy ecosystems** conserve natural pollinators, preserve landscape and amenity values, as well as support tourism and recreation.
 - ✓ **Opportunities for economic activities** based on these valuable natural assets.
 - ✓ **Increase the resilience of ecosystems** to resist and adapt to natural disasters and disturbances (e.g. climate change).

Talking about Biodiversity and Nature Law it should not be disregarded the significance of the ecosystems services related to the preservation of Biodiversity, which are essential for our well-being, society and economy.

There is a variety of socio-economic benefits including inter alia health, clean water, coast defense, climate change, eco-tourism activities,



Objectives and Scope of the Birds Directive (2009/147/EC– ex. 79/409)

- ❖ **Protects all species of naturally occurring birds in the wild state in the EU.**
- ❖ **Overall objective is to maintain the populations of all wild bird species in the EU at a level which corresponds to their ecological, scientific and cultural requirements, or to adapt the population of these species to that level.**



Birds Directive constitutes one of the oldest pieces of EU Environmental legislation having as an overarching objective the conservation of wild birds and covering all bird categories.

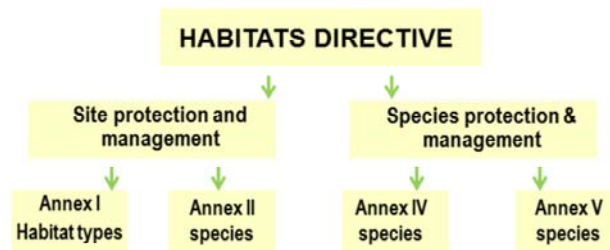
The Directive has a two-pillar structure as depicted on the scheme; the first pillar addresses the protection of species *per se* (i.e. prohibiting the illegal killing or the illegal taking of eggs etc).

The second pillar safeguards migratory species and birds listed in Annex I of the Directive through site protection.



Objectives and scope of the Habitats Directive (92/43/EEC)

- ❖ To contribute towards ensuring biodiversity through conservation of natural habitats and species in EU
- ❖ To ensure that these species and habitat types are maintained at, or restored to, a '**favourable conservation status**'.
- ❖ Focus on 1000+ threatened plants & animals & c.230 habitats



A similar structure can be found in the Habitats Directive as well, which protects Wild Fauna and Flora and Natural Habitats.

The aim of this Directive is to contribute towards ensuring biodiversity with overarching aim to achieve a “favourable conservation status” for the species and the habitat types listed in its Annexes.

Again, there is here a two-pillar structure:

1st pillar: Species protection and Management provisions, which cover species listed in the Annex IV (strictly protected species) as well as those species listed in Annex V.

2nd pillar: Site Protection and Management provisions covering the Habitat types listed in Annex I and the species listed in Annex II.

The key innovative mechanism was the establishment of the European Ecological Network Natura 2000.



Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive)

Article 2

1. The aim of this Directive shall be 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 to which the Treaty applies.
2. Measures taken pursuant to this Directive shall be designed to **maintain or restore, at favourable conservation status**, natural habitats and species of wild fauna and flora of Community interest.
3. Measures taken pursuant to this Directive shall **take account of economic, social and cultural requirements and regional and local characteristics**.

Legal provision / overall target of the Habitats Directive



Article 3

1. A **coherent European ecological network** of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a **favourable conservation status** in their natural range. The Natura 2000 network shall include the special protection areas classified by the Member States pursuant to Directive 79/409/EEC.

2. Each Member State shall contribute to the creation of Natura 2000 **in proportion to the representation** within its territory of the natural habitat types and the habitats of species referred to in paragraph 1. To that effect each Member State shall designate, in accordance with Article 4, sites as special areas of conservation taking account of the objectives set out in paragraph 1.

3. 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.

Legal basis for the establishment of a coherent European Ecological Network.
Key aim: Contribution to the Favourable Conservation Status.



Article 4

1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, **each Member State shall propose a list of sites** indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. (...)

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the nine biogeographical regions and of the whole of the territory referred to in Article 2 (1), the Commission shall establish, in agreement with each Member State, a **draft list of sites of Community importance drawn from the Member States' lists** identifying those which host one or more priority natural habitat types or priority species. The list of sites selected as sites of Community importance, identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.

Detailed provision on how the Member States will fulfill their duties in proposing sites, which then will be adopted at EU level [3-stage procedure]

Selection of Special Areas of Conservation (SACs) under Habitats Directive - 1

1. Assessment at national level

The Member States make comprehensive assessments of each of Annex I habitat types and Annex II species present in their territory on the basis of standard selection criteria specified in Annex III.1 of the Directive:

- ❑ **representativity and ecological quality of each habitat type**
- ❑ **area of the site covered by the habitat type for every site**
- ❑ **size and density as well degree of isolation of each species on site in relation to its natural range**
- ❑ **quality of the site for the species concerned**
- ❑ **global assessment of the importance of their sites for each species and habitat types.**

Ecological information reported in Standard Data Form for each site

- **National lists of proposed Sites of Community Importance (SCIs)**



1st stage of the designation process

The Member States should identify at national level those sites which according to their available data and information would qualify for becoming SAC at EU level.

For that purpose, the Directive sets out a number of ecological criteria, which have to be considered by Member States when they identify those suitable areas.

These criteria are presented in the bullets on this slide.

All these information (scientific surveys, literature, data) should be reported in the so called Standard Data Form (identity card) for each and every site which is proposed by Member States and submitted to Commission.

Selection of Special Areas of Conservation (SACs) under Habitats Directive - 2

2. *Assessment of national lists of SCIs at Community level*
 - ❑ *Criteria for assessment (Annex III.2 of Habitats Directive): rarity, geographic distribution and overall vulnerability of the species and habitat types concerned.*
 - ❑ *Biogeographical seminars convened by the Commission, scientific support by the European Environment Agency (EEA/BD), participation of experts from Member States, relevant stakeholders, environmental NGOs*
 - ❑ *Establish if sufficient high-quality sites have been proposed by each Member State to ensure the favourable conservation status of each habitat type and species throughout their range in the EU.*
 - *On basis of proposed national lists the Commission, in agreement with the Member States, adopts lists of Sites of Community Importance.*
3. *Designation of SCIs as SACs*
 - **Designation by the Member States as soon as possible and within six years from adoption of Community lists of SCIs.**
 - **Establish conservation priorities and determine management/restoration measures for the sites to ensure their favourable conservation status.**



2nd Stage of the designation process

Assessment of the national lists of the SCIs at EU level.

Criteria of this assessment are enumerated in the second part of the Annex III of the Habitats Directive including relative value of the site at national level, geographical situation, total area of the site, global ecological value.

The mechanism for this EU level assessment is through biogeographical seminars, which constitutes a collective work in order to ensure coherent approach and exchange of scientific opinions across EU countries having the same biogeographical characteristics.

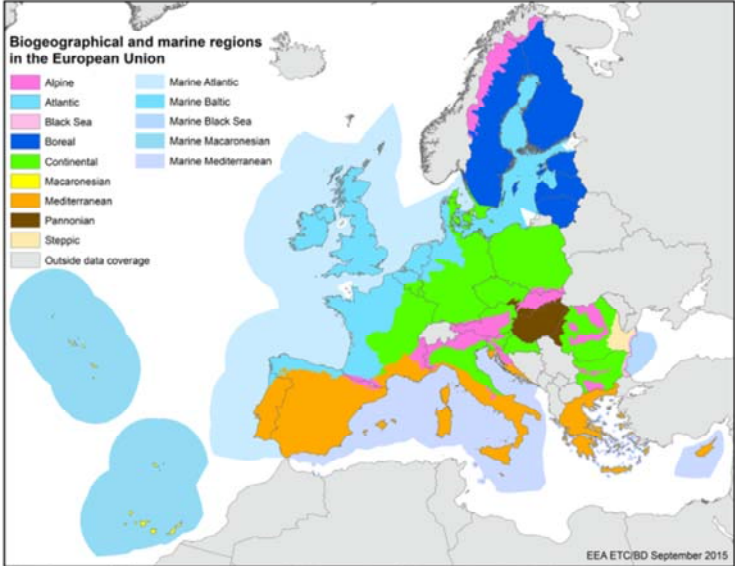
Conclusion: Adoption of the EU lists of the SCIs.

3rd Stage

Back to the Member State level.

Member State should designate the adopted from the Commission SCIs as SACs.

Working at level of Biogeographical Regions – EU28



The aforementioned biogeographical seminars are based on the biogeographical regions as shown on the present map.



Directive 2009/147/EC on the conservation of wild birds (Birds Directive) [Council Directive 79/409/EEC]

Article 2

*Member States shall take the requisite measures to maintain the population of the species referred to in Article 1 at a **level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements**, or to adapt the population of these species to that level.*

Legal provision



Article 4

1. The species mentioned in Annex I shall be the subject of **special conservation measures** concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

- (a) species in danger of extinction;
- (b) species vulnerable to specific changes in their habitat;
- (c) species considered rare because of small populations or restricted local distribution;
- (d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States **shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species** in the geographical sea and land area where this Directive applies.

The process of designating sites under the Birds Directive is much simpler. The duty of Member States is to identify and classify the most suitable territories of the conservation of the wild birds listed in Annex I of the Directive as well as for the regulatory occurring migratory species not listed in the Annex I.



2. Member States shall take **similar measures for regularly occurring migratory species not listed in Annex I**, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

3. Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.

Legal provision (cont.)

Selection of Special Protection Areas under Birds Directive

- *Member States responsible for selecting and designating Special Protection Areas (SPAs) for Annex I birds and migratory species*
- *Identification and delimitation of SPAs entirely based on ornithological criteria (such as '1% of the population of listed vulnerable species' or 'wetlands of international importance for migratory waterfowl').
Relevance of Important Bird Areas*
- *Margin of discretion but ensure that all the 'most suitable territories', both in number and surface area, are designated.*
- *On the basis of information provided by the Member States the Commission determines if the designated sites are sufficient to form a coherent network for the protection of the vulnerable and migratory species.*

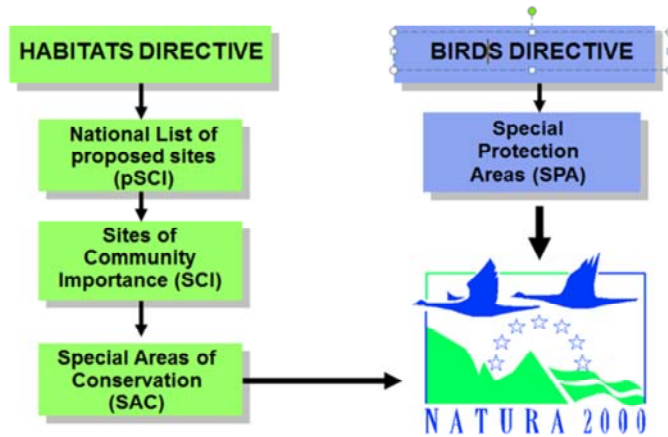


The classification of SPAs has to be done on the basis of ornithological or relevant criteria.

The Commission has a role to play here by assessing to what extent the classified areas by the Member States are indeed sufficient for the overall coherent network.



Natura 2000 – based on two EU Directives



Overview of the designation processes according to Birds and Habitats Directives resulting to Natura 2000.



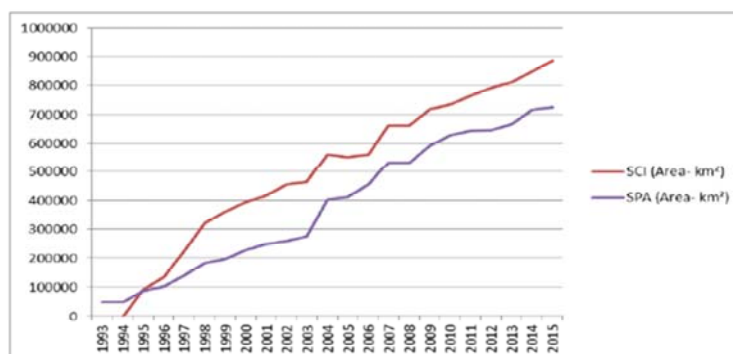
MAIN ISSUES

- Delays in identifying/designating SCIs and SPAs
- Insufficient areas proposed for designation
- Knowledge gaps
- Criteria other than scientific ones

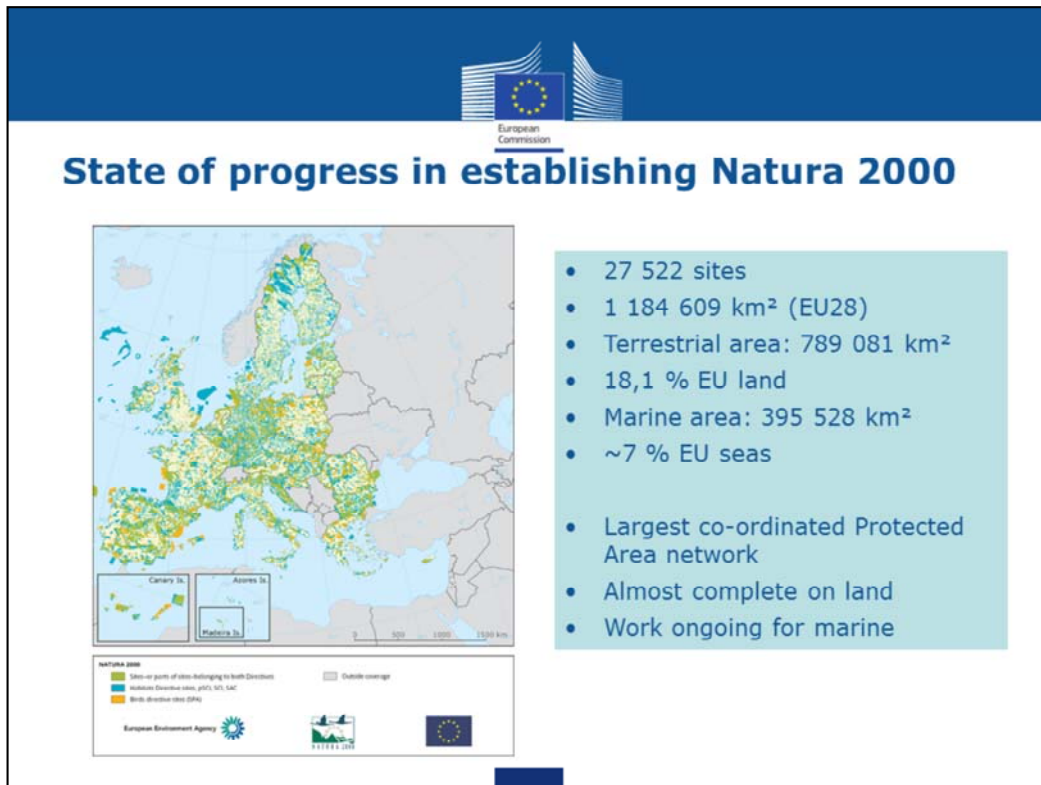
Main Challenges/Issues/Problems

- How to identify these areas? How to implement the criteria?
- Many infringement procedures have been initiated by the Commission.
- Reasons: knowledge gap, lack of political interest, various conflicts.

Cumulative surface area of the Natura 2000 network from 1993 to 2015



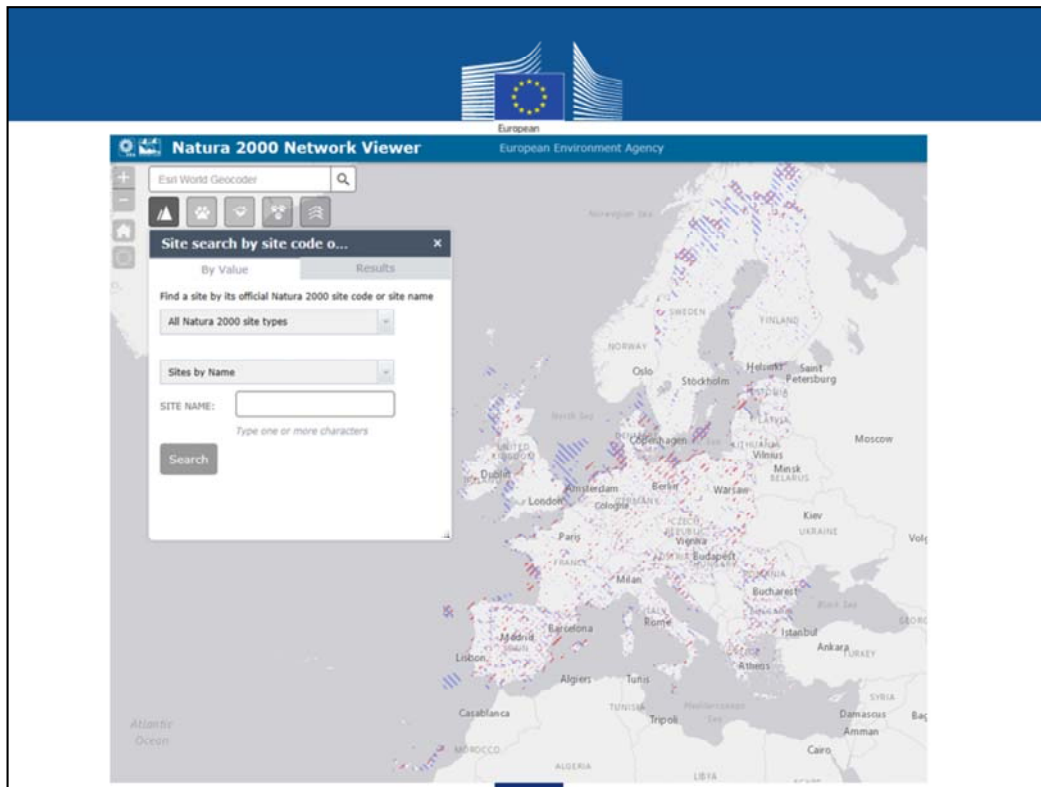
In response to delays in establishing Natura 2000 (Activity A1) a series of cases were brought to the Court of Justice of the EU (CJEU) under both Directives 50, 51 for failures to classify the most suitable territories as SPAs and to propose complete lists of SCIs. Following these proceedings, the number of Natura 2000 sites increased substantially from the late 1990s (Figure 4). This was also probably due to the incentive for compliant Member States to benefit from funding under the Cohesion Policy funds, which has existed from the early period of application of the Habitats Directive



Based on information officially provided by Member States the Commission and the European Environment Agency have developed a 'Natura 2000 barometer' that summarises progress on the establishment of Natura 2000 in each Member State. Updates of this barometer are published in the Commission's Natura 2000 newsletter⁵². The latest barometer, summarising the situation until January 2016, shows that Natura 2000⁵³ is comprised of 27,312 sites, covering 1,147,956 km². The terrestrial component covers 787,606 km² (more than 18% of the EU's land surface) and the –still expanding- marine component 360,350 km² (estimated at about 6% of the EU marine surface). This represents the largest co-ordinated supranational network of nature conservation areas in the world.

The Natura 2000 barometer also shows that there are large differences between Member States in the proportion of their terrestrial environment included in Natura 2000, ranging from 38% of Slovenia's land area designated and 35% of Bulgaria down to 8% in Denmark and the United Kingdom. This is in part due to the amount of natural and semi-natural habitat that each country hosts. For example a much higher proportion of habitat types and species protected under the Directives are to be found in the Mediterranean, Continental, and Alpine Regions than the Atlantic Region (Figure 5). Furthermore, some countries have been historically subject to higher levels of intensive land use and fragmentation resulting in a smaller natural resource for protection under the Directives. Natural and semi-natural habitats and

species such as large carnivores are generally much more plentiful and extensive distributed in the Central and Eastern European Member States that joined the EU from 2004 onwards than in the some older Member States.



It also results from different approaches Member States have taken in delineation of boundaries of sites selected for designation. Several Member States have proposed broadly delineated large Natura 2000 sites embracing a more holistic approach that includes areas of non-qualifying habitat. Others have delineated their sites more exactly, limiting them more to the area of qualifying habitat. As smaller sites are more likely to be vulnerable to outside pressures the duty of protection of these sites and avoiding deterioration and significant disturbance places a greater responsibility on these Member States to address outside pressures, which may justify the use of buffer zones. Larger sites also allow for more flexible management systems involving systems of zonation in relation to the sensitivity of protected features and their location within the sites, providing greater opportunities for sustainable economic activities, such as tourism, within protected areas.



ECJ case law on SCI designation

*Although it follows from the rules governing the procedure for identifying sites eligible for designation as SACs, set out in Article 4(1), that Member States have a **margin of discretion** when making their site proposals, the fact none the less remains, as the Commission has noted, that they must do so **in compliance with the criteria laid down by the Directive**.*

(C-67/99, Commission v. Ireland; C-71/99, Commission v. Germany; C-220/99, Commission v. France)

There is a number of court rulings and infringement case which elucidate how this designation should take place and what kind of criteria should be taken into consideration during this process.

Starting with some older cases, the Court ruled that Member States have a margin of discretion for proposing sites but this must be in line with the criteria laid down by the Directive.



ECJ case law on SCI designation

*It follows from Annex III (Stage 1) that the **relevant criteria** are the degree of representativity of the natural habitat type on the site, the area of the site covered by the natural habitat type and its degree of conservation, the size and density of the population of the species present on the site, their degree of isolation, the degree of conservation of their habitats and, finally, the comparative value of the sites.*

*Although it follows from the rules governing the procedure for identifying sites eligible for designation as SACs, set out in Article 4(1), that **Member States have a margin of discretion** when making their site proposals, the fact none the less remains, as the Commission has noted, that they must do so in **compliance with the criteria laid down by the Directive**.*

*In order to produce a draft list of sites of Community importance, capable of leading to the creation of a coherent European ecological network of SACs, the Commission must have available an **exhaustive list of the sites which, at national level, have an ecological interest** which is relevant from the point of view of the Directive's objective of conserving natural habitats and wild fauna and flora. To that end, that list is drawn up on the basis of the criteria laid down in Annex III (Stage 1).*

Only in that way, moreover, is it possible to realise the objective, set out in the first subparagraph of Article 3(1), of maintaining or restoring the natural habitat types and the species' habitats concerned at a favourable conservation status in their natural range, which may lie across one or more frontiers inside the Community.

(C-71/99, Commission v. Germany; C-220/99, Commission v. France)

Those rulings refer to stress the relevance of the criteria of the Annex III of the Habitats Directive.

In particular, the Court stated that the Member States should send to the Commission an exhaustive list of sites which, at national level have an ecological interest according to those criteria



ECJ case law on SCI designation

*A Member State **may not** take account of **economic, social and cultural requirements or regional and local characteristics**, as mentioned in Article 2(3), **when selecting** and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance.*

The first subparagraph of Article 3(1) provides for the setting up of a coherent European ecological network of SACs to be known as Natura 2000, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, to enable them to be maintained or, where appropriate, restored at a favourable conservation status in their natural range. Article 4 sets out the procedure for classifying natural sites as SACs, divided into several stages with corresponding legal effects, which is intended in particular to enable the Natura 2000 network to be realised, as provided for by Article 3(2).

The favourable conservation status of a natural habitat or a species must be assessed in relation to the entire European territory of the Member States to which the Treaty applies.** Having regard to the fact that, **when a Member State draws up the national list of sites, it is not in a position to have precise detailed knowledge of the situation of habitats in the other Member States, it cannot of its own accord, whether because of economic, social or cultural requirements or because of regional or local characteristics, delete sites which at national level have an ecological interest relevant from the point of view of the objective of conservation without jeopardising the realisation of that objective at Community level.

(C-371/98, United Kingdom – “First Corporate Shiping”; C-67/99, Commission v. Ireland)

Landmark Ruling against UK, in which the Court stated that if the Member States could take account of economic, social and cultural requirements and regional and local characteristics when selecting and defining the boundaries of the sites to be included in the list which, pursuant to Article 4(1), they must draw up and transmit to the Commission, the Commission could not be sure of having available an exhaustive list of sites eligible as SACs, with the risk that the objective of bringing them together into a coherent European ecological network might not be achieved.

This is a very important element, which clarifies that the selection of the sites has to be done based entirely on ecological criteria, whereas concerning the management of the site socio-economic considerations will be taken into account as well.

Another important aspect of this ruling is that the favourable conservation status of a natural habitat or a species must be assessed in relation to the entire European territory of the Member States.



ECJ case law on SCI designation

*The first subparagraph of Article 4(2) of Council Directive 92/43/EEC must be interpreted as **not allowing a Member State to refuse to agree on grounds other than environmental protection to the inclusion of one or more sites** in the draft list of sites of Community importance drawn up by the European Commission.*

(C-226/08 Stadt Papenburg)

The Directive does not allow a Member State to refuse to agree on grounds other than environmental protection to the inclusion of one or more sites.

Again it is explicitly stated that the key criterion for designation is ecological and scientific.



ECJ case law on SCI designation

*Where the results of the surveillance undertaken by the Member States pursuant to Article 11 of the directive give rise to the conclusion that those criteria can irretrievably no longer be met, the Member States must of necessity, under Article 4(1) of the directive, **make a proposal for the adaptation** of the list of SCIs seeking to make that list meet those criteria once again.*

*Thus, when a site on the list of SCIs is definitively **no longer capable of contributing to the achievement of the objectives** of the Habitats Directive and, accordingly, it is no longer warranted for the site to remain subject to the provisions of that directive, the Member State concerned is **required to propose to the Commission that the site be declassified**. If that State were to refrain from proposing its declassification, it could continue to use resources in vain to manage that site which would prove to be of no use to the conservation of natural habitats and species. In addition, keeping sites in the Natura 2000 network which no longer definitively contribute to the achievement of those objectives does not meet the quality requirements of that network.*

***A mere allegation of environmental degradation of an SCI, made by the owner of land included in that site, cannot suffice of itself to bring about such an adaptation of the list of SCIs.** It is essential that that degradation should make the site irretrievably unsuitable to ensure the conservation of natural habitats and of the wild fauna and flora or the setting up of the Natura 2000 network, so that that site can definitively no longer contribute to the achievement of the objectives of the directive set out in Articles 2 and 3 thereof.*

(C-301/12 Cascina Tre Pini)

De-classification: another aspect of the topic.

There is provision in the Habitats Directive explaining under which conditions a site can be declassified.

Indicatively, mis-management, which leads to the degradation of the site, constitutes an unacceptable reason for declassification.

Valid reason can be, for example, a scientific mistake or a natural development (i.e. due to climate change).



In that regard, it must be borne in mind that Article 6(2) of the Habitats Directive, to which Article 4(5) thereof refers, requires the Member States to protect the SCIs by adopting measures to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated. **The failure of a Member State to fulfil that obligation of protecting a particular site does not necessarily justify the declassification of that site** (see, by analogy, Case C-418/04 *Commission v Ireland* EU:C:2007:780, paragraphs 83 to 86). On the contrary, it is for that State to take the measures necessary to safeguard that site.

Member States are **required** to propose to the Commission the declassification of a site on the list of SCIs, where those authorities have received a request from the owner of land included in that site, alleging an environmental degradation of the site, provided that that request is based on the fact that, **despite compliance with the provisions of Article 6(2) to (4) of that directive, that site can definitively no longer contribute to the conservation of natural habitats and of the wild fauna and flora or the setting up of the Natura 2000 network.**

(C-301/12 Cascina Tre Pini)

(details of the ruling)



ECJ case law on SCI designation

The declassification of a site on the list of SCIs must be carried out following the same procedure as that for entry in that list. This procedure must also apply to the reduction of the size of an SCI. Accordingly, a proposal must first be made by the Member State concerned pursuant to Article 4(1) of the Habitats Directive, on which the Commission then takes a decision pursuant to Article 4(2).

As the inclusion of an area in the list **gives rise to the presumption** that it is relevant **in its entirety** from the point of view of the directive's objective of conserving natural habitats and wild fauna and flora, a proposal by a Member State to remove certain sites from the list or to reduce their size **requires proof** that the areas in question do *not* have a relevant ecological interest at national level. In addition, the Commission may accept and implement the proposal **only** if it concludes that those areas are also not necessary from the perspective of the entire European Union.

In the case of a proposal to reduce the size of a site so as to exclude such areas the Member State must **refute the presumption** of the need for restoration measures.

The Commission may, under Article 4 of the Habitats Directive, on a proposal from the competent Member State, reduce the size of an SCI if the areas concerned form part of the SCI solely in respect of future measures for the restoration of habitat types and/or species and the Member State provides information which permits the Commission to establish that measures in those areas are not necessary for guaranteeing a favourable conservation status for the habitat types and/or species concerned.

(Case C-281/16, Request for a preliminary ruling from the Council of State, Netherlands)

For sites which are not in good situation, it is essential –before declassification- to examine the need for restoration measures.



ECJ case law on SPA designation

*Article 4(1) requires Member States, if species mentioned in Annex I occur on their territory, to classify as special protection areas the most suitable territories in number and size for their conservation, an obligation which **is not possible to avoid by adopting other special conservation measures.***

(C-3/96, Commission v. Netherlands)

Landmark ruling against the Netherlands.

The Netherlands claimed that they do not need to designate SPAs because they already implement other general conservation mechanisms for protecting Birds.

The Court stated that these measures do not justify exception from adopting SPAs under article 4 (1).



ECJ case law on SPA designation

*The Member States' **margin of discretion** in choosing the most suitable territories does not concern the appropriateness of classifying as special protection areas the territories which appear the most suitable according to **ornithological criteria**, but only the **application of those criteria** for identifying the most suitable territories for conservation of the species in question. Consequently, where it appears that a Member State has classified as special protection areas sites, the number and total area of which are manifestly less than the number and total area of the sites considered to be the most suitable, it will be possible to find that that Member State has failed to fulfil its obligation under Article 4(1).*

*For assessing the extent to which the Member State has complied with that obligation, the Court may use as a basis of reference **the Inventory of Important Bird Areas in the European Community (IBA)** which draws up an inventory of areas of great importance for the conservation of wild birds in the Community.*

(C-3/96, Commission v. Netherlands)

Another aspect of this case is that the designation of an SPA should be based on ornithological criteria.

Therefore, the Inventory of Important Bird Areas in the European Community (IBA) is recognized as a valid ornithological reference for classifying such areas.



ECJ case law on SPA designation

IBA, although not legally binding on the Member States concerned, **contains scientific evidence** making it possible to assess whether a Member State has complied with its obligation to classify as special protection areas the most suitable territories in number and size for conservation of the protected species. It follows from the general scheme of Article 4 that, where a given area **fulfils the criteria** for classification as a special protection area, it must be made the subject of special conservation measures capable of ensuring, in particular, the survival and reproduction of the bird species mentioned in Annex I to that Directive.

(C-374/98, Commission v. France - "Basses Corbières")

In this case, the Court re-iterated the importance of the ornithological criteria.



ECJ case law on SPA designation

It is the ornithological criteria laid down in paragraphs (1) and (2) of Article 4, which are to guide the Member States in designating and defining the boundaries of SPAs.

Member States are not authorised to take account of the economic requirements mentioned in Article 2 when choosing and defining the boundaries of a Special Protection Area or even to take account of economic requirements constituting a general interest superior to that represented by the ecological objective of that Directive.

Member States may not take account of economic requirements in so far as they amount to imperative reasons of overriding public interest of the kind referred to in Article 6(4) of the Habitats Directive, as inserted in the Birds Directive. Although the latter provision widened the range of grounds on which it may be justified to encroach upon Special Protection Areas already designated as such, by expressly including therein reasons of a social or economic nature, it nevertheless did not make any change regarding the initial stage of classification referred to in Article 4(1) and (2) of the Birds Directive, and therefore **the classification of sites as Special Protection Areas must in all circumstances be carried out in accordance with the criteria accepted by those provisions.**

(C-44/95, United Kingdom - "Lappel Bank")

This ruling highlighted that "Member States are not authorized to take account of the economic requirements mentioned in the Article 2 when choosing and defining the boundaries of a SPA"



ECJ case law on SPA designation

A Member State **may not reduce** the surface area of an SPA or alter its boundaries **unless the areas excluded from the SPA are no longer the most suitable territories** for the conservation of species of wild birds within the meaning of Article 4(1) of the Directive.

(C-191/05, Commission v. Portugal)

The provisions of Directives must be implemented with unquestionable binding force, and the specificity, precision and clarity necessary to satisfy the requirements of legal certainty. The principle of legal certainty requires appropriate publicity for the national measures adopted pursuant to Community rules in such a way as to enable the persons concerned by such measures to ascertain the scope of their rights and obligations in the particular area governed by Community law. With regard to **maps demarcating SPAs, they must be invested with unquestionable binding force.**

(C-415/01, Commission v. Belgium)

Taking about potential declassification of SPAs, the Court in the present case against Portugal stated that such a declassification is possible, if those areas are no longer the most suitable territories again based on scientific criteria.



ECJ case law on SPA designation

*As regards identification of the protected species and habitats in each SPA, just as the delimitation of an SPA must be invested with unquestionable binding force, the **identification of the species which have warranted classification of that SPA must satisfy the same requirement.***

(C-535/07 Commission v Austria)

*Classification as an SPA **cannot be the result of an isolated study of the ornithological value of each of the areas in question but must be carried out in the light of the natural boundaries of the territory in question, and, secondly, that the ornithological criteria which alone form the foundation of the classification must have a scientific basis.***

(C-141/14 Commission v Bulgaria)

In a more recent case against Bulgaria the Court highlighted the need to take into consideration the broader picture when the Member States classify SPAs. As such, classification as an SPA cannot be the result of an isolated study of the ornithological value of each of the areas in question but must be carried out in the light of the natural boundaries of the territory in question.



ECJ case law on SPA designation

Cases of bad application of Art.4(1), (2) of the Birds Directive :

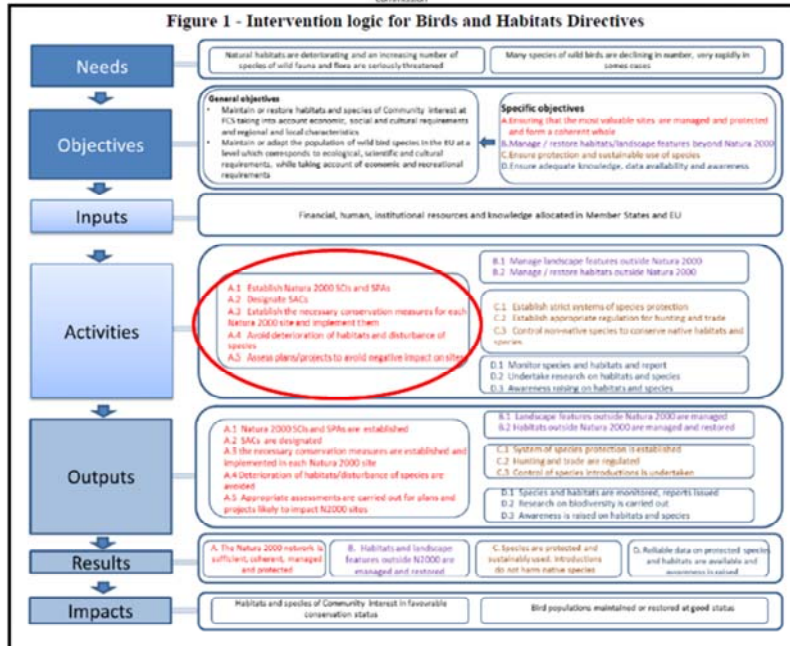
- C-235/04 Commission v Spain: The Court finds that the Kingdom of Spain failed to classify as special protection areas for birds territories of adequate size in several Autonomous Communities and to provide protection for all the species of birds listed in Annex I and the migratory species not covered by that annex.
- C-334/04 Commission v Greece: The Court finds that the Hellenic Republic has failed to classify as special protection areas territories of sufficient number and size
- C- 418/04 Commission v Ireland: The Court finds that Ireland has failed to classify all the most suitable territories in number and size for several species mentioned in Annex I to that directive as well as for several regularly occurring migratory species not mentioned in Annex I
- C-535/07 Commission v Austria: The Court finds that Austria did not designate one site and insufficiently designated one site as SPA. Austria did not ensure adequate protection regime to 6 SPAs due to complete lack of protection measures.

These cases were brought by the Commission before the Court for insufficient classification of SPAs after a big number of years.

The Court condemned the Member States, which after that speeded up the necessary processes at national level.



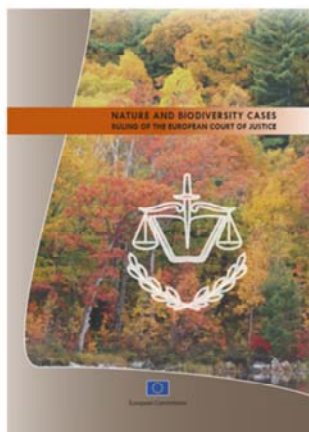
Figure 1 - Intervention logic for Birds and Habitats Directives



This diagram gives the overall architecture of the Birds and Habitats Directives.



Publication on "Nature and biodiversity cases – rulings of the Court of Justice of the EU"



http://ec.europa.eu/environment/nature/info/pubs/docs/others/ecj_rulings_en.pdf

(until 2006 – to be updated)



The image shows a screenshot of the European Commission's Environment website. At the top, there is a blue header with the European Union flag and the word "ENVIRONMENT". Below this, a navigation menu includes "Home", "About us", "Policies", "Funding", "Legal compliance", and "News & outreach". The main content area features a sidebar with a menu for "Nature and biodiversity" and a main heading "Natura 2000 sites designation". Underneath, a sub-heading "In a nutshell" is followed by a short paragraph: "Natura 2000 is a network of sites selected to ensure the long-term survival of Europe's most valuable and threatened species and habitats. How a site is chosen depends on what it aims to protect."

http://ec.europa.eu/environment/nature/index_en.htm

THANK YOU FOR YOUR ATTENTION!