



# **EC NATURE ENVIRONMENTAL LAW**

***Directive 2009/147/EC on the conservation of wild birds  
(repealing Directive 79/409/EEC)***

And

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



## WORKSHOP ON EC NATURE ENVIRONMENTAL LAW



## KEY FEATURES OF THE BIRDS DIRECTIVE

I



## Article 1: *Scope of Application*

- “all species of naturally occurring birds in the wild state”
  - birds, eggs, nests and habitats
  - does not apply to specimens born and bred in captivity



## Article 4: **Special conservation measures (I)**

- species listed in **Annex I** + regularly occurring migratory species
  - legal protection regime providing sufficient protection of habitats to ensure the survival and reproduction of species
  
- classify most suitable territories as special protection areas (SPAs), inform the Commission
  - objective, ornithological designation criteria; limited discretion (e.g. *C-355/90*)



## Article 4: Special conservation measures (II)

- Article 7 of the Habitats Directive provides 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 Directive 79/409/EEC in respect of areas classified (..)”.
- Legal implications of the designation as SPA - Article 6 of the Habitats Directive:
  - 6(2) avoid deterioration of habitats and significant disturbance of species
  - 6(3) assessment of plans/projects and 6(4) relating to compensation measures
- Obligations outside SPAs not replaced (art. 4(4) last sentence):
  - outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.



## Article 5: *General protection*

- Prohibitions regarding species/specimen against:
  - deliberate killing, capture, detention
  - deliberate destruction, damaging, collection of nests and eggs
  - deliberate significant disturbance, particularly during breeding and rearing season
- Exceptions under Art. 7 and 9



## Article 6: Marketing

- Additional prohibitions against sale and related activities of live or dead birds or parts/derivates
- Exceptions:
  - trade in Annex III/1 species permitted
  - Member States may further authorize trade in Annex III/2 species after consulting the Commission
  - providing the birds have been legally killed, captured or acquired
- harmonisation of trade in game birds sets limits to the Member States right to adopt more stringent national protection (C-169/89)



## Other Provisions

- Article 7: Hunting species in Annex II may be hunted under national legislation
  - Annex II/1: in all Member States
  - Annex II/2: only in indicated Member States
  
- Hunting must be prohibited during rearing season and various stages of reproduction; migratory species: period of reproduction and during return to rearing grounds
  
- Article 8: Hunting methods large-scale or non-selective or capable of causing the local disappearance of a species
  - in particular methods listed in Annex IV(a)
  - any hunting from modes of transport listed in Annex IV(b)



## Article 9: Derogation

- from Articles 5-7
- when there is no other satisfactory solution, derogation may be granted based on
  - an exhaustive list of protected interests
  - purposes of research, teaching, re-population, re-introduction
  - or for permitting, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers
    - reference to criterion developed by the ORNIS committee (e.g. C-79/03; C-344/03; C-60/05)
- precise formal conditions must be met



## **WORKSHOP ON EC NATURE ENVIRONMENTAL LAW**



## **KEY FEATURES OF DIRECTIVE 92/43**

### **II**




## STRUCTURE

- 24 Articles.
- 16 definitions.
- 6 Annexes.
  - Annex I. Natural habitats
  - Annex II. Species of fauna and flora
  - Annex III. Criteria for selecting sites
  - Annex IV. Priority species (fauna and flora)
  - Annex V. Species allowed to be taken
  - Annex VI. Prohibited hunting methods and modes of transport



# PROTECTED AREAS UNDER THE HABITATS DIRECTIVE

AREAS SUBJECT  
TO THE  
HABITATS  
DIRECTIVE



pSCIs  
SCIs  
SCAs  
Special Protection Areas  
(SPAs, Directive 79/409)



# STAGES OF THE DESIGNATION PROCEDURE

- **First stage:** Member States must designate national sites according to the criteria set out in the Directive. (proposed sites of Community importance - pSICs):
  - Annex I (habitats)
  - Annex II (species)
  - Annex III (criteria for selecting sites)
  
- **Second stage:** Official designation of lists by the European Commission (sites of Community importance).
  
- **Third stage:** Designation of SCAs by the Member States; 6 years from the definitive list adopted by the Commission



# Objectives

- To contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna.
- To maintain or restore, *at favourable conservation status*, natural habitats and species of wild fauna and flora of Community interest.



## Favourable conservation status (habitats)

- its natural range and areas it covers within that range are stable or increasing, and
- the specific structure and functions which 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.



# Protection of Habitats

- Article 6(1). General measures.
  - 1) Only applicable to SCAs.
  - (2) Compulsory: statutory, administrative and/or contractual agreements.
  - (3) Option: they may be contained in plans specifically approved for the SCA or included in other more general plans.
- Article 6(2) Duty to avoid deterioration and alterations.
- Article 6(3) and (4). Duty to carry out an EAA of any plans or projects affecting Natura 2000 sites.

## ARTICLE 6(2)

### OBLIGATION TO AVOID DETERIORATION

Applicable to SCIs, SCAs  
and SPAs

Of (**any**) natural habitats and the  
habitats of (**any**) species **in** SCAs  
and SCAs

The European Commission equates  
deterioration to physical degradation.



## ARTICLE 6(2)

### **AVOID DISTURBANCE**

Any of the species for which SCAs and SPAs have been designated, insofar as such disturbance could be significant in relation to the objectives of the Directive

According to the Commission, disturbance would not refer to physical deterioration but to the species.  
It would also be limited in time.



## Duty to carry out an appropriate assessment: Article 6(3) (I)

- Applicable to:
  - SCIs (once the Commission approves the official list of sites).
  - SCAs
  - SPAs (already designated or once they are designated, Article 7).



## Duty to carry out an appropriate assessment: Article 6(3) (II)

- (1) **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.



Duty to carry out an appropriate assessment:  
Article 6(3) (III)

(2) Directive 92/43 goes beyond the mandate of Directives 85/337 (projects) and 2001/42 (plans):

- Any plan or project.



Duty to carry out an appropriate assessment:  
Article 6(3) (IV)

- (3) ‘Appropriate assessment’ is not defined.
- There is no need to cover all the aspects required by those Directives 85/337 or 2001/42 but basically the effects on habitats, species and conservation objectives.
  - Assessment must be based on best available scientific knowledge.



## Duty to carry out an appropriate assessment: Article 6(3) (V)

- The competent national authorities must be certain that a plan or project will not have adverse effects on the integrity of the site concerned.
  - If doubts remain as to the absence of such effects, the competent authority will have **to refuse authorisation**.



## Duty to carry out an appropriate assessment: Article 6(3) (VI)

- Exceptions
- (5) However, exceptions may be invoked to authorise the execution of the plan or project despite its negative effects:
  - (5.1) imperative reasons of overriding public interest, **including** those of a social or economic nature.
  - (5.2) Where the site concerned hosts a priority natural habitat type and/or a priority species:
    - human health or public safety,
    - beneficial consequences of primary importance for the environment, or
    - further to an opinion from the Commission, **'other'** imperative reasons of overriding public interest.




## SPECIES PROTECTION

Priority species (Annex IV)  
(Articles 12 (fauna) and  
13 (flora))



Strict  
protection

Species subject to  
regulation  
(Article 15 Annex V)



Taking these  
species is  
permitted under  
conditions



## Article 12 – Priority species (Annex IV)

- Article 12(1) - *The following prohibitions apply to annex IV species*
- (a) all forms of deliberate capture or killing of specimens of these species in the wild;
- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
- (c) deliberate destruction or taking of eggs from the wild;
- (d) deterioration or destruction of breeding sites or resting places.
- *Apply to all stages of life of the animals (Article 12 (3)).*



## Article 12 - Priority species (Annex IV)

- Article 12(2) General prohibition on trade of species:
  - The sale, transport for sale, keeping for sale and the offering for sale.
    - Article 2(i) of Regulation 338/97 (CITES):
    - ‘offering for sale’ shall mean offering for sale and any action that may reasonably be construed as such, including advertising or causing to be advertised for sale and invitation to treat;
    - (p) ‘sale’ shall mean any form of sale.



## Article 15 - Annex V Species

- Capture or killing of these species permitted subject to conditions:
- general prohibition on the use of all indiscriminate means capable of
  - causing local disappearance of species, or
  - serious disturbance to, populations of such species.In particular:
  - (1) **means of capture** and killing of Annex VI (a);
  - (2) **modes of transport** referred to in Annex VI (b).



# Exceptions

## Article 16

- Derogations from prohibitions set out in Articles 12, 13, 14 and 15 are allowed provided
  - (1) there is no 'satisfactory alternative' +:
    - in the interest of protecting wild fauna and flora
    - 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 research and education, for repopulating and reintroducing these species and for the breedings operations necessary including the artificial propagation of plants;
    - 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.
  - (2) Derogation is not detrimental to the maintenance of the populations of the species concerned at a 'favourable conservation status' in their natural range.