

NATURE PROTECTION (NATURA 2000) IN THE BIRDS DIRECTIVE AND THE HABITATS DIRECTIVE

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1. Special Protection Areas (SPA's) of the Birds Directive
2. Special Conservation Areas (SAC's) of the Habitats Directive
3. Species Protection in the Habitats Directive
4. Derogation Procedure in the Habitats Directive, art. 6.3-6.4

1. Introduction

- bird protection earlier than protection of other animals
- public pressure against hunting of migratory birds → Birds Directive (1979)
- Bern Convention → Habitats Directive (1992)
- Habitats Directive : more political caution

2. General principles

- Birds Directive: migratory birds are common heritage
 - → common concern
- Habitats Directive: endangered habitats and species are natural heritage
 - → common concern for “priority” habitats and species
 - → no application of “polluter pays principle” (co-financement)

3. Scope and aims

- biodiversity conservation
- “wild” species
- favorable conservation status of species (Birds Directive: also taken into account economic and recreative aspects) and habitats
- conservation of sites + species protection

4. Special Protection Areas (SPA's) of the Birds Directive

- for vulnerable birds (Annex I) and migratory birds
- decision of Member States (1981)
- "*most suitable*" territories in number and size (art. 4.1-4.2. Birds Directive)
- only scientific criteria + no omission of even parts because of economic or recreative reasons (CvJ Marismas de Santoña, CvJ Lappel Bank)
- direct applicability: no designation of “*suitable*” SPA → “*factual*” SPA (conservation regime applies) (CvJ Marismas de Santoña)
- use of IBA 89 except with scientific contra-evidence (CvJ Com vs Netherlands)
 - conservation regime
 - positive obligations: management (art. 4.1.-4.2. Birds Directive and 6.2. Habitats Directive → no deterioration of the quality of the habitats and no significant disturbance)

- negative obligations: derogation procedure for negative plans and projects (art. 6.3-6.4 Habitats Directive)

5. Special Conservation Areas (SAC's) of the Habitats Directive

- for (endangered) habitats (Annex I) and species (Annex II)
- designation procedure: Member States (1995) – decision Commission - Member States (2004)
- according to criteria (Annex III) - only scientific criteria (CvJ)
- SPA's + SAC's = Natura 2000

- application of protection aspects of conservation regime since decision of Commission (art. 6.2.-6.3.-6.4. Habitats Directive)
- application of total conservation regime since designation
 - conservation regime
 - positive obligations: management (art. 6.1.-6.2. Habitats Directive)
 - negative obligations: derogation procedure for negative plans and projects (art. 6.3-6.4 Habitats Directive)

6. Species Protection in the Habitats Directive

- for species (Annex IV)
- directly applicable prohibition to harm breeding sites or resting places (animal species) (art. 12 Habitats Directive)
- directly applicable to plants → no destruction, uprooting, etc. (plant species) (art. 13 Habitats Directive)
- negative obligation: derogation procedure (art. 16 Habitats Directive)

