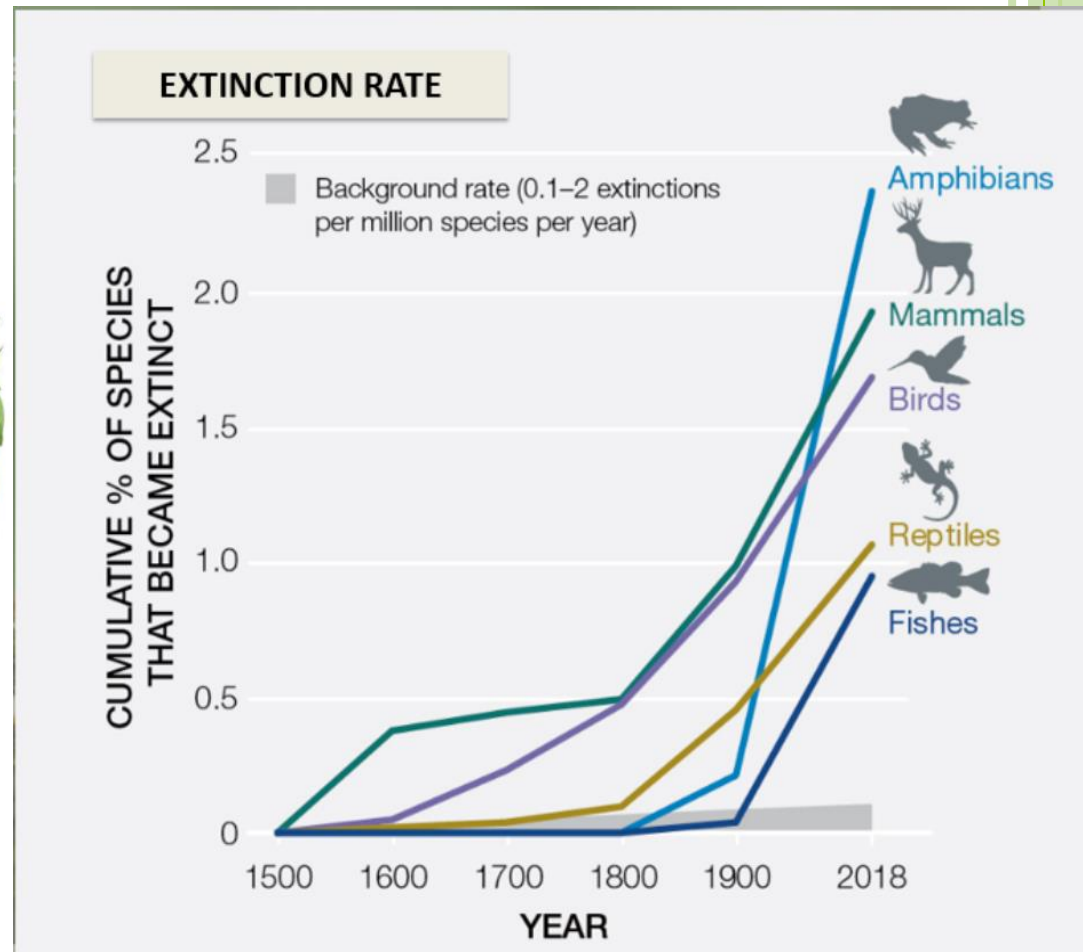
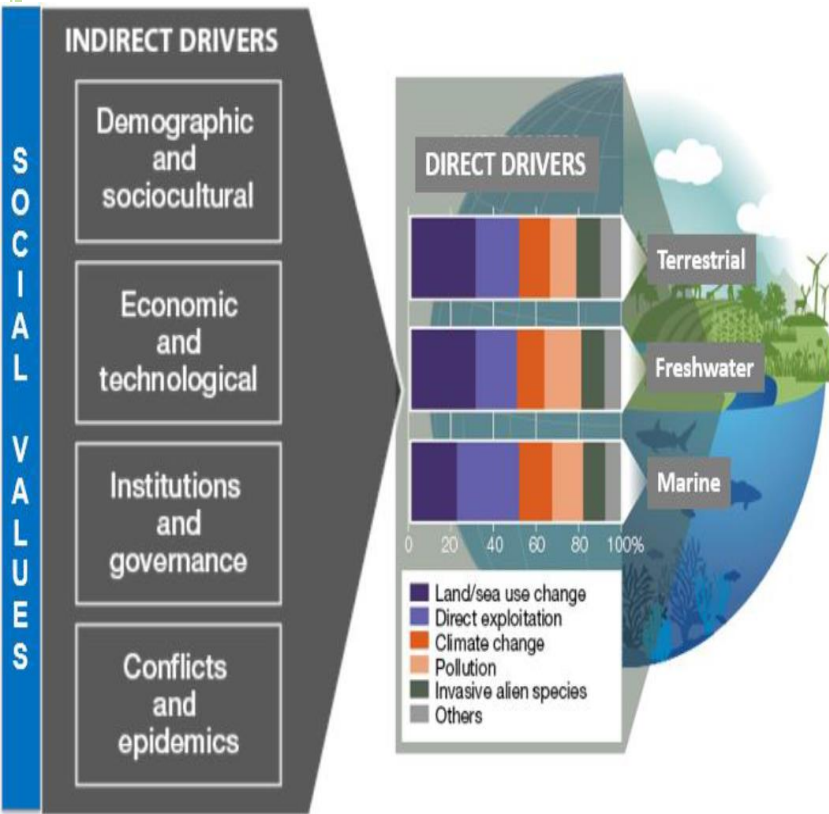




LEGISLATION ON NATURE PROTECTION

Ilona Jančářová

The global biodiversity crisis




INTERNATIONAL BACKGROUND

- Convention on the Conservation of European Wildlife and Natural Habitats - ***Berne 1979***
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat - ***Ramsar 1971***
- Convention on Migratory Species of Wild Animals - ***Bonn 1979***
- Convention on Biological Diversity - ***Rio de Janeiro 1992***
new global convention on biodiversity – COP meeting in Kunming October 2021 virtual/ April-May 2022
- Convention for the Protection of the World Cultural And Natural Heritage - ***Paris 1972***
- Convention on the International Trade in Endangered Species of Wild Flora and Fauna - ***Washington, D.C. 1973***
- Agreement on the International Dolphin Conservation Programme, ***Washington, D.C. 1998***



EU LEGISLATION

- Directive 79/409  Directive 2009/147/EC on the conservation of wild birds (**Wild Birds Directive**) as amended
- Directive 92/43/EEC on the conservation of natural habitats of wild fauna and flora (**Habitats Directive**), as amended
- Regulation 1143/2014 on **invasive alien species**
- Regulation 338/97 on **the protection of species of wild fauna and flora by regulating trade therein**



EUROPEAN GREEN DEAL

**CLIMATE PACT
AND CLIMATE
LAW**



INVESTING IN
SMARTER, MORE
SUSTAINABLE
TRANSPORT

PROMOTING
CLEAN
ENERGY



STRIVING
FOR GREENER
INDUSTRY

**PROTECTING
NATURE**



European Green Deal



**ELIMINATING
POLLUTION**

FROM FARM
TO FORK



LEADING THE
GREEN CHANGE
GLOBALLY



MAKING
HOMES ENERGY
EFFICIENT



FINANCING
GREEN
PROJECTS



ENSURING
A JUST
TRANSITION
FOR ALL



EU NATURE PROTECTION - OUTLINE

1. NATURA 2000

1. Wild birds directive

1. protection of all species of birds including Annex I species
2. protection of habitats for all species
3. habitat protection for Annex I species (SPAs)

2. Habitats directive

1. strict protection of wild animal and plant species (Annex IV)
2. favourable conservation status for Annex V species
3. special areas of conservation (SACs)
 1. protection/conservation of European habitat types (Annex I)
 2. protection of Annex II species habitats

2. EU biodiversity strategy

3. Invasive alien species regulation

4. Regulation of trade in endangered species (CITES)



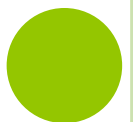
WILD BIRDS DIRECTIVE

The scope of the directive:

- Protection
- Management
- Exploitation
- Control




- birds, their eggs, nests and **habitats**
- all stages of bird's life



WILD BIRDS DIRECTIVE

- Relates to all species of naturally occurring birds in their wild state in the European territory of MS



- It applies to birds, their nests and habitats
 - Only those species occurring on the territory of a MS or species occur elsewhere?
- 
- **Case 247/85; C -149/94**
 - *By including in national legislation only those species occurring on their own territory, MS would fail to provide the protection required by the Directive. MS not only have the responsibility to protect species occurring on their own territory, but their responsibility extends to the whole territory of the EU.*




WILD BIRDS DIRECTIVE

Aim:

- To maintain the population of **all species in the EU** at a level which corresponds in particular to ecological, scientific and cultural requirements, while **taking account of economic and recreational requirements.**



- to preserve, maintain or re- establish a sufficient diversity and area of habitats for all the species of birds
 - to ensure survival and reproduction of Annex I species
-  **special conservation measures**



WILD BIRDS DIRECTIVE

Regulation is focused on:

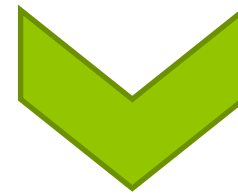
- **Habitat protection**

- **Protection of species**

- Prohibition of killing and other disturbances
- Limitation of hunting
- Trading in bird species



○ all species of birds



- Annex I species
- migratory species



WILD BIRDS DIRECTIVE

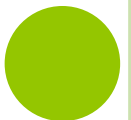
HABITAT PROTECTION

Habitat protection for all species:

- creation of protected areas;
- management in accordance with the ecological needs of habitats inside and outside the protected zones;
- re-establishment of destroyed biotopes;
- creation of biotopes.

Habitat protection for Annex I species:


- Establishment of **special protection areas (SPAs)**
- Avoid pollution or deterioration of habitats or any disturbances affecting the Annex I birds.



WILD BIRDS DIRECTIVE

HABITAT PROTECTION

Designation of Special Protection Areas:

- **Birds Directive:** Designation of most suitable territories in number and size as SPAs for birds of Annex I and regularly occurring migratory birds
 - **European Court of Justice:**
 - Only ecological criteria can be used for designation
 - C-355/90 Comm v. Spain (Marismas de Santona)
 - All most suitable areas according to scientific standard work „Important Bird Areas“ **must be designated**
 - C-3/96 Comm. v. Netherlands
 - Declassification of SPAs: MS are not free to derogate at will from these obligations
 - C-57/89Comm. v. Germany (Leybucht case)
- 

WILD BIRDS DIRECTIVE

- PROTECTION OF SPECIES

1. General obligation on prohibition of killing and other disturbances for all species of birds (Art. 5):

- deliberate killing or capture by any method;
- deliberate destruction of, or damage to, their nests and eggs or removal of their nests;
- taking their eggs in the wild and keeping these eggs even if empty;
- deliberate disturbance of these birds particularly during the period of breeding and rearing, keeping birds of species the hunting and capture of which is prohibited.



WILD BIRDS DIRECTIVE

PROTECTION OF SPECIES

2. General obligation applicable to all species (Art. 6.1)



- 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 **is to be prohibited**

- **Derogation** from the general prohibition in respect of species referred to in the Annexes (**Art. 6, 7**) (for example hunting and/or sale of legally acquired species)
- **Derogation** from the general prohibitions based on reasons set in **Art. 9** (the interests of public health and safety, prevention of serious damage to crops, livestock, forests, fisheries and water, etc.)



WILD BIRDS DIRECTIVE

PROTECTION OF SPECIES

- **Directive:**

- **Derogation** from the general prohibitions based on reasons set in **Art. 9** (the interests of public health and safety, prevention of serious damage to crops, livestock, forests, fisheries and water, etc.)
- **Derogation** from the general prohibition in respect of species referred to in the Annexes (**Art. 6, 7**) (for example hunting and sale of species)

- **Case 247/85 - Comm. v. v Kingdom of Belgium :**

- *Article 9 of the directive authorizes the member states to derogate from the general prohibitions and from the provisions concerning marketing and hunting. However, this possibility is subject to three conditions :*

- 1. first, the member state must restrict the derogation to cases in which there is no other satisfactory solution;*
- 2. secondly, the derogation must be based on at least one of the reasons listed exhaustively in article 9 (1) (a), (b) and (c);*
- 3. thirdly, the derogation must comply with the precise formal conditions set out in article 9(2), which are intended to limit derogations to what is strictly necessary and to enable the commission to supervise them .*



STURNUS VULGARIS

NATIONAL LAW EXAMPLE - Derogation to prevent serious damage to crop



KINGFISHER

NATIONAL LAW EXAMPLE - Derogation from the reason of the interest of public safety



HABITATS DIRECTIVE

Aim:

- To promote maintenance of biodiversity, **taking account of economic, social, cultural and regional requirements**
- To ensure conservation of a wide range of rare, **threatened or endemic species** (450 species of animals; 500 species of plants)
- To ensure conservation of **their habitats and of rare and characteristic types of habitats**



HABITATS DIRECTIVE

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

ANNEX III

CRITERIA FOR SELECTING SITES ELIGIBLE FOR IDENTIFICATION AS SITES OF COMMUNITY IMPORTANCE AND DESIGNATION AS SPECIAL AREAS OF CONSERVATION

ANNEX IV:

ANIMAL AND PLANT SPECIES OF COMMUNITY INTEREST IN NEED OF STRICT PROTECTION

ANNEX V

ANIMAL AND PLANT SPECIES OF COMMUNITY INTEREST WHOSE TAKING IN THE WILD AND EXPLOITATION MAY BE SUBJECT TO MANAGEMENT MEASURES

ANNEX VI

PROHIBITED METHODS AND MEANS OF CAPTURE AND KILLING AND MODES OF TRANSPORT



HABITATS DIRECTIVE

- Habitat protection –
 - types of habitat (Annex I)
 - priority habitats (Annex I*)
 - species habitats (Annex II)
 - priority species (Annex II*)
- Species protection
 - strict protection of Annex IV species
 - protection of animal species (Art. 12)
 - protection of plant species (Art. 13)



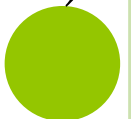
SITE (HABITAT) PROTECTION

Special protection of

- Conservation areas – types of habitat of Community interest (Annex I), Priority habitats (Annex I*)
 - Wild animal species
 - Wild plant species
 - Priority species (Annex II*)
- } whose habitats require protection (Annex II)



- designation of **special areas of conservation** (SACs)
- establishment of European ecological network
NATURA 2000 (SACs + SPAs)



HABITATS DIRECTIVE

SITE PROTECTION

o Designation of SACs:

1. MS propose a list indicating which natural habitat types and which species occur in their territory that are eligible for protection as SCI
2. Priority and non-priority habitats and species
3. Proposed SCIs must be accepted by the Commission
4. List of sites of Community importance (SCI)
5. Designation of the SCI as a special area of conservation (SAC) by the MS
6. **Establishment of necessary conservation measures for SACs by the MS**
7. Management plans



HABITATS DIRECTIVE

Declassification of Special Areas of Conservation:

o European Court of Justice:

o *"(30)[...] the 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., "(31) Thus, not all degradation of a site on the list of SCIs justifies its declassification.,,*

o C-301/12 "Cascina Tre Pini Ss v. Ministry of the Environment and the Sea ...

HABITATS DIRECTIVE - ART. 6

- 1. 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.
- 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.
- 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.

HABITATS DIRECTIVE

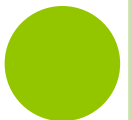
- SITE PROTECTION

Assessment requirements:

- 2- stage assessment of any plan or project likely to have significant effect on the site
- General public opinion



- Prohibition of activities that could endanger wildlife in the habitat
- Italian ban on the construction of large wind turbines in a conservation area and a 200 metre buffer zone (C- 2/10)



HABITATS DIRECTIVE

SITE PROTECTION:

- **Prohibition of activities that could endanger wildlife in the habitat** (basic rule)

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



- 1st stage assessment (likely to have/no significant effect)
- EIA (2nd stage - in depth assessment)
- Opinion of the general public
- No significant adverse effect on the site
- Permit






HABITATS DIRECTIVE

SITE PROTECTION

- **Derogations** from the requirement of Art. 6(2),6(3) :
- (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)



- Imperative reasons of **overriding public interest**, including those of social or economic nature
compensatory measures(Art. 6(4))
- **Priority habitat or species**  **only human health and public safety or project beneficial for environment**  

Screening

Is the plan or project (PP) directly connected with, or necessary to, the management of the site for nature conservation purposes?

No Yes

Is the PP likely to have significant effects on the site?

Yes No

Appropriate Assessment

Assess implications in view of the site's conservation objectives

Assess cumulative and in-combination effects with other plans and/or projects

Can it be concluded that the PP will not adversely affect the integrity of the site?

Yes

Authorisation may be granted

Redesign the plan / project

Yes

Can the negative impacts be removed e.g. through mitigation measures?

No

Authorisation must not be granted

Derogation: Article 6.4

Are there alternative solutions?

Yes

No

Does the site host a priority habitat or species?

No

Yes

Are there imperative reasons of overriding public interest?

No

Authorisation must not be granted

Yes

Authorisation may be granted provided that adequate compensation measures are taken. The Commission is informed

Yes

Are there human health or safety considerations or important environmental benefits?

No

Authorisation may be granted for other imperative reasons of overriding public interest, following a Commission Opinion. Adequate compensation measures have to be

HABITATS DIRECTIVE

- SPECIES PROTECTION

- **Protection of animal species** (Art. 12)
- **Protection of plant species** (Art. 13)
 - ➔ strict protection of Annex IV species



Prohibition of:

- destruction or disturbance of their population
- keeping
- trading in

species of animals and plants listed in Annex IV

Derogation (Art. 16)



C-411/19 WWF ITALIA ONLUS AND OTHERS. ART. 6(3) OF THE HABITATS DIRECTIVE

- A road construction project with significant impacts on a protected area is approved for reasons of cost, although there is an alternative that would allow the impacts to be avoided.
- Art. 6(4) requires an impact assessment according to Art. 6(3), so that a reference of the permit to later assessments is not permissible.
- Mitigation measures must be assessed and determined with the permit.
- The project developer may be required to carry out a study of the impacts; the assessment, i.e. the appreciation of the impacts, is the responsibility of the authority (paras. 66 and 67).

C-411/19 WWF ITALIA ONLUS AND OTHERS. ART. 6(3) OF THE HABITATS DIRECTIVE

- Art. 6(4) allows authorisation if the impairments are really unavoidable. **Cost reasons alone** cannot justify this (paras. 40 & 41).
- Compensatory measures under Art. 6(4) must be established after the impact assessment according to the Art. 6(3), if the authorisation of the project falls within Art. 6(4) (para. 63). [Hence, at the latest with the authorisation?]



C-473/19 & C 474/19 SKYDDA SKOGEN

A Swedish court has to decide on permits for forest management (= clear cutting). Various bird species and the moor frog (*rana arvalis*), listed in Annex IV of the Habitats Directive, occur in the area. The question is whether the measures are to be regarded as intentional impairment of protected species according to Art. 12 of the Habitats Directive and Art. 5 of the Birds Directive (and therefore require justification).



HABITATS DIRECTIVE

ARTICLE 12 :

1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting:

- (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.
- 2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.
- 3. The prohibition referred to in paragraph 1 (a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.



C-473/19 & C 474/19 SKYDDA SKOGEN

- • Art. 5 (Birds Directive) and 12 (1) a -c (Habitats Directive): **Intention**
- • Intention to harm?
- • Caretta case (C-103/00): Use of mopeds and pedal boats at the protected beach site is intentional interference of the sea turtle
- • Otter snares case (C-221/04, para. 71): the actor must have accepted the possibility of harm:
 - that the perpetrator of the act ... has accepted the possibility of such capture or killing



C-88/19 -ALIANȚA PENTRU COMBATEREA ABUZURILOR - SPECIES PROTECTION

A wolf (canis lupus) started visiting a village in Romania and made friends with the dogs. An NGO caught it to take it to an enclosure. Now they are being prosecuted for violating Art. 12 (1)(a) of the Habitats Directive.

"... strict protection system for ... animal species in their natural ranges ...; this prohibits:
(a) **all intentional forms of capture** ... of specimens of those species taken from the wild

- Not "natural habitat", no protected area necessary
- Geographical area where the species resides in the course its natural behaviour
- from nature = naturally (= wild) living



EUROPEAN GREEN DEAL

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EU BIODIVERSITY STRATEGY - PROTECT AND RESTORE THE NATURE

Protect 30% of EU land and sea:

- Based on Natura 2000 and nationally designated areas
- EU wide target, take into account specific situation in MS
- Integrate ecological corridors to build coherent network


Strictly protect a third of these areas

- Covering areas of very high biodiversity value & important for mitigation and adaptation to climate change, including all primary and old growth forest



EU BIODIVERSITY STRATEGY - PROTECT AND RESTORE THE NATURE

EU Restoration Plan with 2030 commitments:

- Legally binding targets to be proposed in 2021
 - No deterioration of any protected habitats and species by 2030: favourable status or positive trend for at least 30%
 - Agroecology: Organic farming $\geq 25\%$
 - Biodiverse landscape features $\geq 10\%$
 - 50% reduction of use and risk of pesticides
 - Reduction of pollution from fertilisers by 50% and by $\geq 20\%$ their use
 - Plant 3 billion additional trees respecting ecological principles
 - Reverse decline in pollinators
- 

EU BIODIVERSITY STRATEGY - PROTECT AND RESTORE THE NATURE

EU Restoration Plan with 2030 commitments:

- Remediate contaminated soil sites
- Restore $\geq 25,000$ km free flowing rivers
- New Urban Greening Platform: the Green City Accord
- Halve the number of 'red list' species threatened by Invasive Alien Species
- Reduction of damage to seabed, elimination/reduction of bycatch



EU BIODIVERSITY STRATEGY - PROTECT AND RESTORE THE NATURE

TURN AT LEAST **30%** OF EU'S LAND AND **30%** OF SEAS INTO EFFECTIVELY MANAGED AND COHERENT PROTECTED AREAS

RESTORE **DEGRADED ECOSYSTEMS** AND STOP ANY FURTHER DAMAGE TO NATURE

RESTORE AT LEAST **25 000 KM** OF THE EU'S RIVERS TO BE FREE-FLOWING

REDUCE THE USE AND RISK OF PESTICIDES BY AT LEAST **50%**

TACKLE **BYCATCH** AND SEABED DAMAGE

REVERSE THE DECLINE OF **POLLINATORS**

ESTABLISH BIODIVERSITY-RICH LANDSCAPE FEATURES ON AT LEAST **10%** OF FARMLAND

MANAGE **25%** OF AGRICULTURAL LAND UNDER ORGANIC FARMING, AND PROMOTE THE UPTAKE OF AGRO-ECOLOGICAL PRACTICES

PLANT OVER **3 BILLION** DIVERSE, BIODIVERSITY RICH TREES.

SOURCES OF LITERATURE

- An Cliquet: Nature and Species Protection, ERA summer course, June 2020
- Christoph Sobotta: Recent ECJ case law on biodiversity, ERA Conference on European Environmental Law, March 2021
- Karolina D’Cunha: The EU Biodiversity Strategy for 2030, Bringing nature back into our lives - state of play, ERA Conference on European Environmental Law, March 2021



INVASIVE ALIEN SPECIES REGULATION



- Invasive alien species are animals and plants that are introduced accidentally or deliberately into a natural environment where they are not normally found, with serious negative consequences for their new environment.

3 types of intervention:

- prevention
- early detection
- rapid eradication and management



EU LEGISLATION

- Regulation **1143/2014** on the prevention and management of the introduction and spread of invasive alien species as amended by
 - Regulation (EU) 2016/2031 of the European Parliament of the Council of 26 October 2016 on protective measures against pests of plants
- List of Invasive Alien Species of Union concern (implementing regulation (EU) **2016/1141**) as amended  **37 species**
- The first update of the list entered into force on **2.8.2017**  **49 species**, now more than 80





Eriocheir sinensis (Chinese mitten crab)



Myocastor coypus (Coypu)



Nyctereutes procyonoides (Raccoon dog)





Procyon lotor (Raccoon)



Pseudorasbora parva (Stone moroko)



Trachemys scripta (Red-eared, yellow-bellied and Cumberland sliders)



Sciurus niger (Fox squirrel)



CURRENT DRAFT FOR INCLUSION ON THE LIST



Ailanthus altissima)



CURRENT DRAFT FOR INCLUSION ON THE LIST



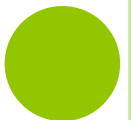
Ameiurus nebulosus



Mustela vison, Neovison vison

WHERE TO FIND?

- List of invasive alien species of **Union concern** based on criteria laid down in Art. 4 of the Directive
- National list of invasive alien species of **Member State concern**, pursuant to Article 12(1)
- Invasive alien species **of regional concern**



WHAT A MAN HAVE TO DO WITH INVASIVE ALIEN SPECIES?

Intentional introduction or spread - preventive restrictions
(Art. 7):

- do not bring in into the territory of the EU
- do not keep it
- do not breed it
- do not transport it within the EU
intentionally
- do not place it on the market
- do not use it or exchange it
- do not permit it to reproduce or cultivate
- do not release it into the environment

**direct
application**

Prevention of **unintentional** introduction or spread → EU MS

WHAT A MAN HAVE TO DO WITH INVASIVE ALIEN SPECIES?

No direct duties for individuals regarding to:

- Detection, surveillance
- Emergency measures
- Eradiction
- Restoration of damaged ecosystems

EU MS are in charge!

