

EU Nature Protection

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Module 1: EU Nature Protection - Overview

Introduction

In the European Union, the protection of species and habitats rests on two legislative pillars: the first is a Directive adopted in 1979 for the protection of wild birds and their habitats; the second is also a Directive, adopted in 1992 for the protection of a wide variety of wild species and habitats.

Even if the first one is called the "Birds Directive" and the second the "Habitats Directive", both – often jointly called "Nature Directives" – simultaneously protect species and habitats, and the underlying principles are quite similar.

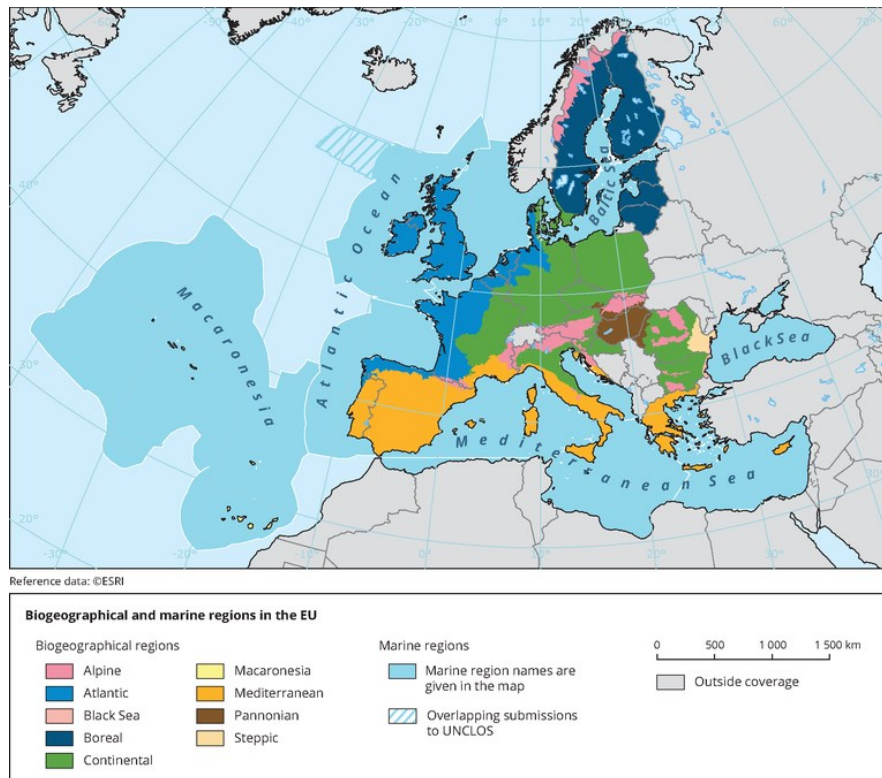
The Birds Directive recognises that wild birds, of which many species are in decline, are mainly migratory and constitute a common heritage of the Member States - and that effective bird protection is typically a trans-frontier environmental problem. This requires maintenance or restoration of a sufficient diversity and area of habitats, making certain species subject to special conservation measures, regulating hunting and preventing commercial interests from exerting harmful pressure on exploitation levels.

Similarly, the Habitats Directive recognises that many natural habitats and wild species are seriously threatened, that they form part of the EU's natural heritage and that threats to them are frequently of a transboundary nature. This requires their maintenance and restoration through both site protection as well as through a general system of protection for certain species of flora and fauna, complementary to the Birds Directive, and allowing management measures for certain species, if their conservation status so warrants.

Briefly, the Habitats Directive consists generally of two sets of rules:

- section on the designation of Special Areas of Conservation (SACs);
- section on species protection,

whereas the Birds Directive has a similar structure, except here designated areas are called Special Protection Areas (SPAs). All designated SPAs and SACs form a coherent ecological network throughout Europe, called Natura 2000. The main goal of Natura 2000 is to link different areas throughout Europe in order to combat habitat fragmentation, which is regarded as a major cause of the extinction of species. The Natura 2000 network is the largest network of protected areas in the world, covering nine transnational biogeographic regions.



Biogeographical and marine regions in the EU https://www.eea.europa.eu/data-and-maps/figures/biogeographical-and-marine-regions-in/biogeographical-and-marine-regions-in/119742_Map3.1-Map-STATE-Biogeographical-and_v5.eps.75dpi.png/download

The numbers associated with European nature protection are impressive. The Natura 2000 network protects over 460 different wild bird species, over 1000 other wild species (encompassing mammals, reptiles, amphibians, fish, invertebrates, and plants) and over 230 habitat types. Natura 2000 not only applies to the Birds and Habitats Directives, but also to the marine environment. Further, it fulfils one of the Communities' obligations under the United Nation Convention on Biological Diversity. These Directives have certainly been a catalyst for increased funding for nature, improved stakeholder awareness and engagement, as well as strengthened knowledge and sharing of experience. However, this has not taken place on sufficient scale.

Legal Regulation

As explained before, nature protection at European level is structured mainly around two Directives dating back to the 70's and the 90's but which have been amended and updated several times, while keeping the structure and goals intact.

Currently it is the Birds Directive ([2009/147/EC](#)) and the Habitats Directive ([92/43/EEC](#)). The rationale for the protection of species and habitats at supranational level can be found in the preamble of the birds Directive which states that *"The species of wild birds naturally occurring in the European territory of the Member States are mainly migratory species. Such species constitute a common heritage and effective bird protection is typically a trans-frontier environment problem entailing common responsibilities"* (§ 4) and that *"Conservation is aimed at the long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe"* (§ 7). This means that the effectivity of the protection system requires first, a high level of protection, and second, a strong harmonisation.

Harmonisation is attained through an exhaustive and precise transposition of the Directives followed by a diligent and pro-active enactment of the national implementing legislation. Considering that the

European Directives establish a real obligation of results rather than a mere obligation of means, the importance of judicial control becomes paramount.

Harmonisation is also facilitated by a number of Commission communications, guidance documents, interpretation manuals and other soft law documents to support the accurate interpretation and correct implementation of the Directives. Taking into account the technical nature of the protection regime, which requires the knowledge of scientific concepts from natural sciences and the understanding of ecological processes from biology, geology, hydrology, climatology, etc. the existence of such documents is critical.

Finally, harmonisation is supported by the Court of Justice through abundant case law touching upon a wide variety of aspects of EU nature conservation law. The European Court of Justice decisions were issued mainly in response to requests by national judges applying EU law in pending cases but also in infringement procedures filed by the European Commission. The utility of the case law for every national court or tribunal is huge considering that

- a) the difficulties faced during transposition, implementation, management or enforcement of the European legal framework are resembling;
- b) the species and habitats are associated with biogeographic regions which span across the territories of different Member States;
- c) the human activities representing a threat to species and habitats are comparable;
- d) the values and interests invoked to justify the authorisation to carry out impactful activities are very similar.

Module 2: The Birds Directive

Scope of the Directive

The Birds Directive was adopted by the Member States in 1979 as a response to increasing concern about the decline in Europe's wild bird populations resulting from pollution, loss of habitats as well as unsustainable use. Its aim is to create a comprehensive scheme of protection for all wild bird species, their eggs, nests and habitats, naturally occurring in the European Union (Article 1). This indicates that the Birds Directive does not apply to specimens of birds born and reared in captivity.

The most serious threats to the conservation of wild birds are loss of habitat and degradation, (Preamble). The directive therefore places great emphasis on the protection of habitats for endangered as well as migratory species (Preamble and Art. 4). The species involved are listed in Annex I of the Birds Directive.

The directive protects the sites and species. Site protection is ensured by the Member States, who must designate and protect the sites for endangered and migrating birds. Species protection, however, protects all European birds from intentional killing, capture and significant disturbance and therefore the Member State's responsibility even extends to species living outside their territory. Furthermore, the Birds Directive promotes research to underpin the protection, management and use of all species of birds covered by the Directive (Annex V). The protective scope of the Directive is therefore particularly comprehensive. It grants protection:

- a) not just to the mature wild birds, but also to the bird during the whole lifecycle, including eggs;
- b) not just to the birds listed in the annexes, but also to all bird species naturally occurring in the wild state in the European territory;
- c) not just to the animal, but also to its nests and habitats.

The final goal of the Directive is to maintain the population of wild birds at a level which corresponds to ecological, scientific and cultural requirements, while taking account of economic and recreational

requirements. This implies the adoption of different measures, some aiming at the protection of birds and others of their habitats.

Regarding the birds, Member States shall prohibit:

- a) deliberate killing, capturing by any method or keeping;
- b) deliberate destruction, damage, removal of eggs or nests in the wild, as well as taking or keeping the eggs (even if empty);
- c) deliberate disturbance of the birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;

In what concerns the habitats, Member States must preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of birds, in accordance with their ecological needs, including primarily the following measures:

- a) Preserve: create protected areas – the States must designate special protection areas for the birds;
- b) Maintain: upkeep and manage habitats – the States must administer all the habitats inside and outside the protected areas;
- c) Re-establish: restore destroyed biotopes and create new ones – the States must recreate previously existing habitats in the same areas where they existed or elsewhere.

Upholding such an ambitious regime, in face of the multiple pressures to use the bird areas for other purposes, would be difficult to operationalise, which is why the establishment of a list of priority bird species is so important.

These birds are included in annex I of the Directive. More than 200 subspecies divided into 19 bird species are mentioned by their Latin names (*gaviiformes*, *podicipediformes*, *procellariiformes*, *pelecaniformes*, *ciconiiformes*, *phoenicopteriformes*, *anseriformes*, *falconiformes*, *galliformes*, *gruiformes*, *charadriiformes*, *pterocliformes*, *columbiformes*, *strigiformes*, *caprimulgiformes*, *apodiformes*, *coraciiformes*, *piciformes*, *passeriformes*).

Scope of the Directive

The birds' habitats shall be the subject of special conservation measures in order to ensure their survival and reproduction in their area of distribution.

Besides the Annex I birds, the States shall grant priority protection to the habitats of every wild bird species regularly and naturally occurring in Europe (full list available <https://circabc.europa.eu/ui/group/3f466d71-92a7-49eb-9c63-6cb0fadf29dc/library/f3bdeb3b-55c0-47a1-8482-e9a91b126b69/details>) that:

- a) is in danger of extinction;
- b) is vulnerable to specific changes in their habitat;
- c) is considered rare because of small populations or restricted local distribution;
- d) requires particular attention for reasons of the specific nature of their habitat;
- e) is migratory and occurs regularly in Europe, either in the sea or in land.



The priority protection consists in the classification of their habitats as special protection areas also known as SPAs. In the selection of areas to designate as SPA, the biological functions performed by the species must be considered. Spaces used as breeding, moulting and wintering areas or staging posts along their migration routes must be included in the SPAs network. However, considering the nature of these species as common heritage of the peoples of Europe, the designation of special protection areas cannot depend exclusively on the margin of appreciation of the Member State.

Special protection areas for the birds. <https://www.eea.europa.eu/data-and-maps/figures/natura-2000-birds-and-habitat-Directives-4/eu27-birds-Directive>

According to the European Court of Justice, the margin of appreciation of the Member States when designating SPAs is very reduced. Therefore, the national courts have the power to verify whether the right number of the most suitable territories in land areas, maritime areas and wetlands was designated, with the right size.

Consequently, the insufficient network of SPAs (area too small or number too low) can be submitted to judicial control because there are scientific data gathering sufficient consensus to be used as a comparative tool.

This is the case of the Important Bird Areas (IBA) list (<https://datazone.birdlife.org/info/ibaseur>) and respective maps (<https://datazone.birdlife.org/site/mapsearch>).

This scientific data, available per country or region, was produced by ornithological organisations whose scientific expertise is widely recognised, in cooperation with Bird Life International.

The scientific data provides georeferenced information on the bird species raising conservation concern and their habitats.



Bird Life International. Important bird areas viewer <https://datazone.birdlife.org/site/mapsearch>

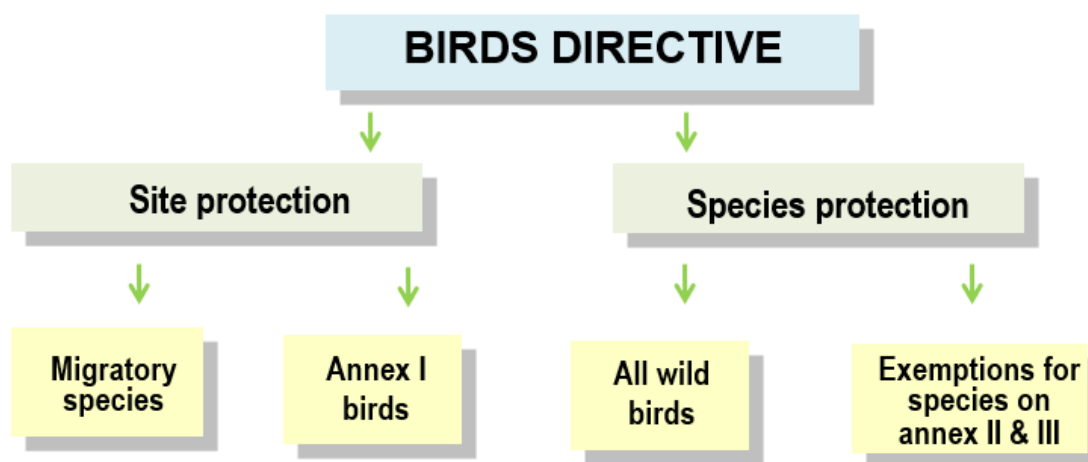
However, designating the appropriate special protection areas is not sufficient. Inside the special protection areas, Member States shall take appropriate steps to avoid:

- a) pollution

- b) deterioration of habitats
- c) significant disturbances affecting the birds

Considering that the contour of the SPAs is only virtual and the areas have no boundaries, it is likely that birds occur outside the protection areas as well. This is why outside the SPAs, Member States shall also strive to avoid pollution or deterioration of habitats.

From the moment when the SPAs are integrated in the Natura 2000 network, the protection duties applicable are those established in the habitats Directive, where pollution is even less tolerated.



Sustainable Hunting and Derogations

Under limited circumstances, Member States are allowed to adopt a legislative framework to permit hunting.

To start, annex II establishes the bird species which may be hunted whenever the population level, geographical distribution and reproductive rate throughout the Community indicates that the hunting of these species does not jeopardise conservation efforts in their distribution area.

In any case, even the huntable species cannot be hunted during the rearing season or during the various stages of reproduction.

Additionally, Member States shall ensure that hunting, including falconry, complies with the principles of wise use and ecologically balanced control of the species of birds and does not pose a threat to the strictly protected birds.

Furthermore, Member States shall prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds or capable of causing the local disappearance of a species, such as snares, limes, hooks, live birds which are blind or mutilated used as decoys, tape recorders, electrocuting devices, artificial light sources, mirrors, devices for illuminating targets, sighting devices for night shooting comprising an electronic image magnifier or image converter, explosives, nets, traps, poisoned or anaesthetic bait, semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition.

Moreover, Member States shall prohibit the use of certain modes of transport such as aircraft, motor vehicles, boats driven at a speed exceeding 5 kilometres per hour (or 18 kilometres per hour on the open sea, for safety reasons).

Derogations

In exceptional cases, Member States are allowed to derogate from the protection duties where there is no other satisfactory solution, for the following reasons:

- a) **imperative reasons of public interest**, such as in the interests of public health, safety and air safety;
- b) predominantly **economic reasons**, such as to prevent serious damage to crops, livestock, forests, fisheries and water, or to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers;
- c) **ecological reasons**, such as for the protection of flora and fauna, for the breeding necessary for the mentioned purposes, for the purpose of re-population, re-introduction;
- d) **scientific reasons**, for the purposes of research and teaching.

The derogations can only be used as a last resort, must be limited in time and scope, must be subject to strict control, and shall be notified to the European Commission.

The derogations are one of the several cases where the case law is particularly useful to clarify the interpretation of each exception allowed.

For purposes of transparency and accountability a [database of authorised derogations](https://www.eea.europa.eu/data-and-maps/dashboards/derogations-and-exceptions-table) is available for consultation (<https://www.eea.europa.eu/data-and-maps/dashboards/derogations-and-exceptions-table>)

Recent Case Law

- [C-900/19 \(*One Voice a Ligue pour la protection des oiseaux*\)](#): traditional method of the bird trapping is not sufficient to demonstrate that it cannot be replaced by another satisfactory solution;
- [C-473/19 and C-474/19 \(*Föreningen Skydda Skogen*\)](#): requirements of Art. 5 of the Birds Directive and Art. 12 of the Habitats Directive also apply to species for which favourable conservation status has been achieved;
- [C-217/19 \(*Commission v Finland*\)](#): Improper granting of exemptions from bird protection;
- [C-161/19 \(*Commission v Austria*\)](#): Improper granting of exemptions from bird protection.

Further Reading

- The publication of a European Commission [Guide to sustainable Hunting under the Birds Directive](#), which provides clear guidance for Member States and stakeholders on the legal and technical implementation of the Birds Directive's provisions on hunting;
- The [Guide to sustainable Hunting under the Birds Directive](#), in particular, provides for a sound analysis of Articles 7 and 9 of the Birds Directive, which raise significant issues.

Module 3: The Habitats Directive

Goals of the Directive

The main goal of the habitats Directive is to preserve or enhance the conservation status of habitats — natural and species — considering that the sum of the influences acting on a natural habitat and its typical species, may affect its long-term natural distribution, structure, and functions.

The conservation status of a natural habitat is 'favourable' when:

- a) its natural range and areas covered are stable or increasing, and
- b) 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
- c) the conservation status of its typical species is favourable.

On the other hand, the conservation status of a species is the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations. The conservation status will be taken as 'favourable' when:

- a) 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
- b) the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future,
and
- c) there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis.

One of the biggest contributions to the conservation status of species and habitats is the protection of ecological corridors. Without taking up too much space, corridors transform a collection of isolated places into a true network that virtually allows the species occurring in the area to circulate between disconnected and sometimes distant points, benefiting from exponentially greater areas of dispersion. The maintenance or restoration of ecological corridors is, therefore, an essential goal of the Natura 2000 network.

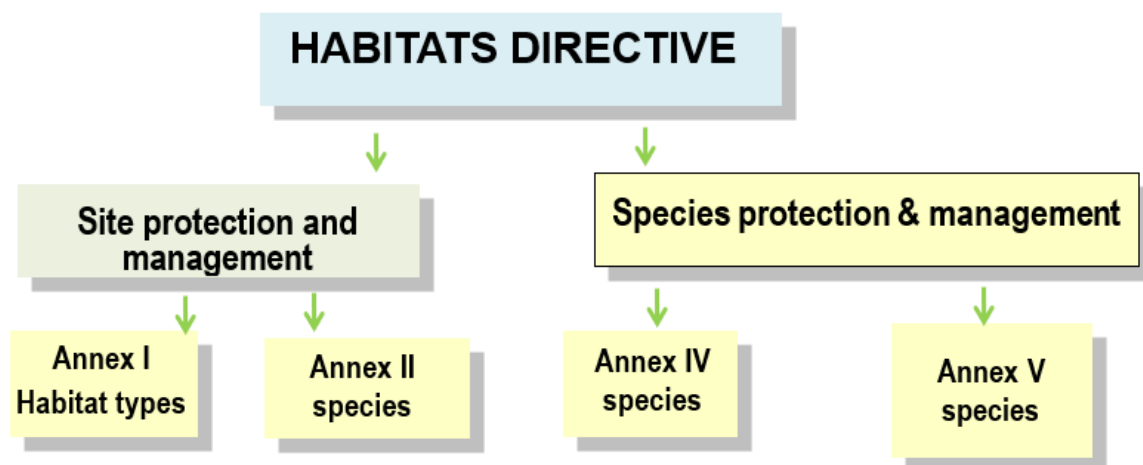
Scope of the Directive

The habitats Directive was adopted with intention of filling three regulatory gaps.

The first was an implementation gap. The European Community had to implement the Bern Convention, contributing to the Emerald Network with conservation areas in the territory of the Community. The Natura 2000 network was born.

The second was a coverage gap. The European Community had, until then, only protected one particular species - birds - but an effective protection of European biodiversity and European natural environment required a broader scope of protection. The range of protected species expands to coverage, included in the habitats Directive.

The third was a representativity gap. The protection of habitats had until then been merely instrumental. Only the habitats that served as a refuge to some birds deserved legal protection. With the new Directive, natural habitats that are representative of a variety of European ecosystems benefit from direct protection, regardless of the species occurring thereon.



Scope of species protection

The range of species protected by the European Directive is broader than the wild birds Directive. It includes animals (vertebrates and invertebrates) and plants (higher and lower plants). When some conditions are fulfilled, these species shall be declared species of Community interest.

The Community interest of a species is the consequence of being:

- endangered, except those species whose natural range is marginal in that territory and which are not endangered or vulnerable in the western palearctic region, or
- vulnerable, i.e. believed likely to move into the endangered category in the near future if the causal factors continue operating, or
- rare, i.e. with small populations that are not at present endangered or vulnerable, but are at risk. The species are located within restricted geographical areas or are thinly scattered over a more extensive range, or
- endemic and requiring particular attention by reason of the specific nature of their habitat and/or the potential impact of their exploitation on their habitat and/or the potential impact of their exploitation on their conservation status.

The tables below display the animals and plants of Community interest, in correspondence with annex II of the Directive. This summary table presents only the phyla, class and order condensing the extensive 15-page list in the official journal. Some animals or plant species have an asterisk (*) before the name, indicating the priority of the species.

ANIMALS	
VERTEBRATES MAMALS	VERTEBRATES REPTILES
INSECTIVORA	CHELONIA
CHIROPTERA	SAURIA
RODENTIA	OPHIDIA
CARNIVORA	
ARTIODACTYLA	VERTEBRATES AMPHIBIANS
CETACEA	CAUDATA
	ANURA
VERTEBRATES FISH	
PETROMYZONIFORMES	INVERTEBRATES
ACIPENSERIFORMES	ARTHROPODS

CLUPEIFORMES	CRUSTACEA
SALMONIFORMES	INSECTA
CYPRINIFORMES	ARACHNIDA
SILURIFORMES	MOLLUSCS
ATHERINIFORMES	GASTROPODA
PERCIFORMES	BIVALVIA
SCORPAENIFORMES	

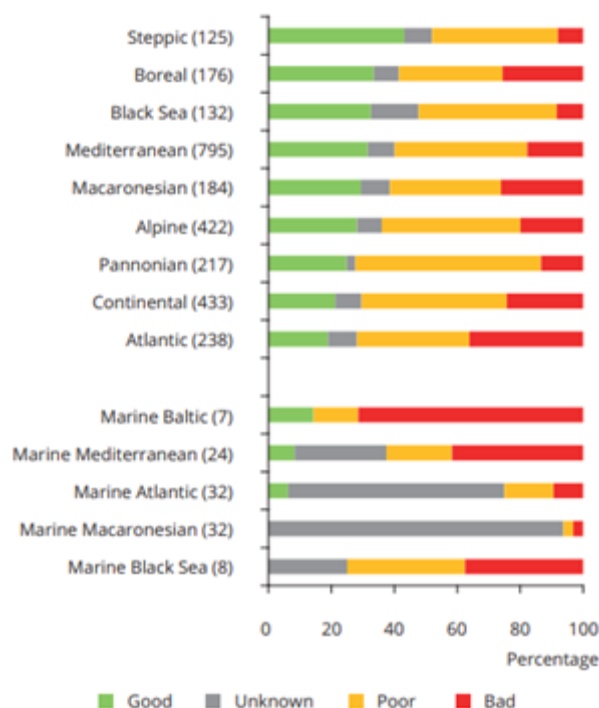
PINACEAE	JUNCACEAE	SOLANACEAE
ANGIOSPERMAE	LABIATAE	THYMELAEACEAE
ALISMATACEAE	LEGUMINOSAE	ULMACEAE
AMARYLLIDACEAE	LENTIBULARIACEAE	UMBELLIFERAE
ASCLEPIADACEAE	LILIACEAE	VALERIANACEAE
BORAGINACEAE	LINACEAE	VIOLACEAE
CAMPANULACEAE	LYTHRACEAE	SPECIES (Macaronesia)
CARYOPHYLLACEAE	MALVACEAE	CAPRIFOLIACEAE
CHENOPODIACEAE	NAJADACEAE	CELASTRACEAE
CISTACEAE	OLEACEAE	CRASSULACEAE
COMPOSITAE	ORCHIDACEAE	DIPSACACEAE
CONVOLVULACEAE	OROBANCHACEAE	LORANTHACEAE
CRUCIFERAE	PAEONIACEAE	MYRICACEAE
CYPERACEAE	PALMAE	PITTOSPORACEAE
DIOSCOREACEAE	PAPAVERACEAE	RHAMNACEAE
DROSERACEAE	PLANTAGINACEAE	LOWER PLANTS
ELATINACEAE	PLUMBAGINACEAE	BRYOPHYTA

PLANTS		
PTERIDOPHYTA	ERICACEAE	POLYGONACEAE
ASPLENIACEAE	EUPHORBIACEAE	PRIMULACEAE
BLECHNACEAE	GENTIANACEAE	RANUNCULACEAE
DICKSONIACEAE	GERANIACEAE	RESEDACEAE
DRYOPTERIDACEAE	GLOBULARIACEAE	ROSACEAE
HYMENOPHYLLACEAE	GRAMINEAE	RUBIACEAE
ISOETACEAE	GROSSULARIACEAE	SALICACEAE
MARSILEACEAE	HIPPURIDACEAE	SANTALACEAE
OPHIOGLOSSACEAE	HYPERICACEAE	SAXIFRAGACEAE
GYMNOSPERMAE	IRIDACEAE	SCROPHULARIACEAE

Priority species are those whose natural range is, in a large proportion, situated in Europe, thus entailing particular responsibility of the Union for its conservation.

The priority nature of a species brings along the application of a more stringent legal regime. The same is true for the habitats.

The conservation status of species at EU level varies across the biogeographic and maritime regions, but the level of unknown status of species in the maritime areas is generally higher.



Conservation status of species for each biogeographic and maritime region (in: State of nature in the EU. Results from reporting under the nature Directives 2013-2018 <https://op.europa.eu/en/publication-detail/-/publication/9a5a26d4-173f-11eb-b57e-01aa75ed71a1/language-en>)

Scope of habitats protection

Besides species protection, for the first time 9 types of natural habitats, depicting ecosystems representative of different biogeographic regions, receive autonomous legal oversight.

There is a difference between habitats of a species and natural habitats. A habitat of a species is an environment defined by specific abiotic and biotic factors, in which the species lives at any stage of its biological cycle. Quite differently, a natural habitat is a terrestrial or aquatic area distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural.

Quite understandably, natural habitats are the core of the habitats Directive. Natural habitats of Community interest are those which, alternatively:

- a) are in danger of disappearance in their natural range, or
- b) have a small natural range following their regression or by reason of their intrinsically restricted area, or
- c) present outstanding examples of typical characteristics of one or more of the nine biogeographical regions existing in the European Union: Alpine, Atlantic, Black Sea, Boreal, Continental, Macaronesian, Mediterranean, Pannonian and Steppic.

The table below presents the natural and species habitats which can be considered sites of community interest and can require the designation of special areas of conservation.

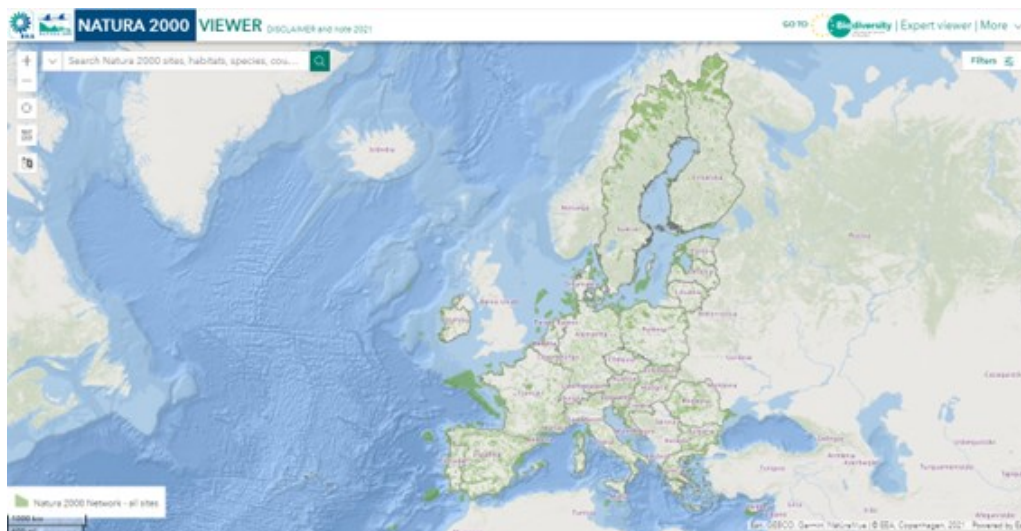
1.COASTAL AND HALOPHYTIC HABITATS	3.FRESHWATER HABITATS	6.NATURAL AND SEMI-NATURAL GRASSLAND FORMATIONS	8.ROCKY HABITATS AND CAVES
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12.Sea cliffs and shingle or stony beaches	31.Standing water	61.Natural grasslands	81.Scree
13.Atlantic and continental salt marshes and salt meadows	32.Running water — sections of water courses with natural or semi-natural dynamics	62.Semi-natural dry grasslands and scrubland facies	82.Rocky slopes with chasmophytic vegetation
14.Mediterranean and thermo-Atlantic salt marshes and salt meadows	4.TEMPERATE HEATH AND SCRUB	63.Sclerophyllous grazed forests (dehesas)	83.Other rocky habitats
15.Salt and gypsum inland steppes	5.SCLEROPHYLLOUS SCRUB	64.Semi-natural tall-herb humid meadows	9.FORESTS
16.Boreal Baltic archipelago, coastal and landupheaval areas	51.Sub-Mediterranean and temperate scrub	65.Mesophile grasslands	90.Forests of Boreal Europe
2.COASTAL SAND DUNES AND INLAND DUNES	52.Mediterranean arborescent matorral	7.RAISED BOGS AND MIRES AND FENS	91.Forests of Temperate Europe
21.Sea dunes of the Atlantic, North Sea and Baltic coasts	53.Thermo-Mediterranean and pre-steppe brush	71.Sphagnum acid bogs	92.Mediterranean deciduous forests
22.Sea dunes of the Mediterranean coast	54.Phygana	72.Calcareous fens	93.Mediterranean sclerophyllous forests
23.Inland dunes, old and decalcified		73.Boreal mires	94.Temperate mountainous coniferous forests
Just as for the species, some habitats are marked with an asterisk (*) indicating priority habitat types.			95.Mediterranean and Macaronesian mountainous coniferous forests

A natural habitat is considered priority when it is in danger of disappearance and a large proportion of its natural range falls within the European territory.

Natura 2000 covers a wide range of habitats in land and sea.

The habitats and the species that can be consulted in high resolution in the Natura 2000 viewer.



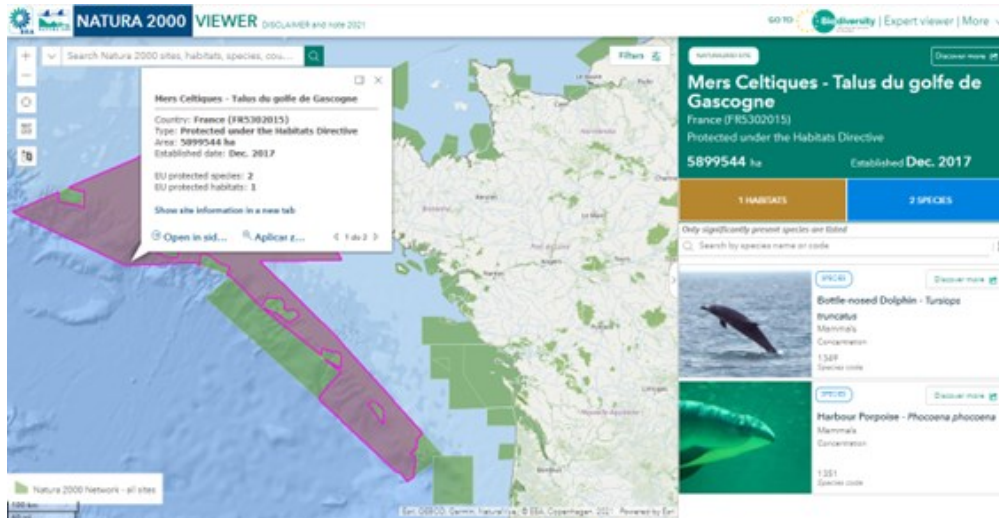
Natura 2000 viewer <https://natura2000.eea.europa.eu/>

The Natura 2000 viewer is an interactive mapping tool developed by the European Environment Agency that can be used in normal mode or in expert mode to consult the distribution of:

- Natura 2000 sites by habitat type and by name, and

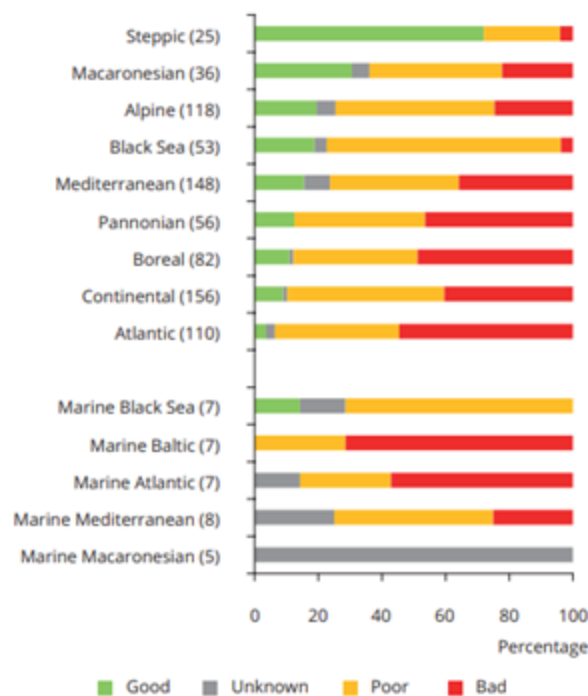
- Natura 2000 species, including bird and other species, by name and by code.

The viewer covers both land and sea areas showing the respective species present in each site.



Example of a sea area and respective species <https://natura2000.eea.europa.eu/>

At EU level, the conservation status of habitats varies greatly among biogeographic and maritime regions.



Conservation status of habitats for each biogeographic and maritime region (in: State of nature in the EU. Results from reporting under the nature Directives 2013-2018 <https://op.europa.eu/en/publication-detail/-/publication/9a5a26d4-173f-11eb-b57e-01aa75ed71a1/language-en>)

Protection of Species

Animals or plants classified as species of Community interest require a strict protection in all stages of life in their natural range.

Regarding animals of Community interest, Member States shall prohibit:

- a) all forms of deliberate capture or killing of specimens of these species in the wild;
- b) deliberate disturbance, 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.
- e) keeping, transport and sale or exchange of specimens taken from the wild.

Member States shall establish a system to monitor the incidental capture and killing of species and take further conservation measures as required to prevent it from having a significant negative impact on the species concerned.

Regarding plants of Community interest, Member States shall establish a system of strict protection, in all stages of their biological cycle, prohibiting:

- a) the deliberate picking, collecting, cutting, uprooting or destruction in their natural range in the wild;
- b) the keeping, transport and sale or exchange of specimens of such species taken in the wild.

For other animal and plant species not raising so many concerns, Member States may allow, if necessary, taking specimens from the wild and exploitation of specimens, provided that surveillance activities carried out reveal that the species maintenance at a favourable conservation status is ensured.

The table below displays the animals and plants, in correspondence with annex V of the Directive.

ANIMALS		PLANTS	
VERTEBRATES	VERTEBRATES	ALGAE	ANGIOSPERMAE
MAMMALS	AMPHIBIANS	Rhodophyta	Amaryllidaceae
Rodentia	Anura	Corallinaceae	Compositae
Carnivora	<i>INVERTEBRATES</i>	LICHENES	Cruciferae
Duplicidentata	COELENTERATA	Cladoniaceae	Gentianaceae
Artiodactyla	Cnidaria	BRYOPHYTA	Iridaceae
FISH	MOLLUSCA	Musci	Labiatae
Petromyzoniformes	Gastropoda stylommatophora	Leucobryaceae	Leguminosae
Acipenseriformes	Bivalvia unionoida	Sphagnaceae	Liliaceae
Clupeiformes	ANNELIDA	PTERIDOPHYTA	Plumbaginaceae
Salmoniformes	Hirudinoidea arhynchobdellae		Rosaceae
Cypriniformes	ARTHROPODA		Scrophulariaceae
Siluriformes	Crustacea decapoda		
Perciformes	Insecta lepidoptera		

Regulations on taking specimens from the wild and exploitation of specimens of the above-mentioned species, may include:

- a) establishment of a system of licences for taking specimens or of quotas,
- b) regulations regarding access to certain property,
- c) temporary or local prohibition of taking and exploitation of certain populations,
- d) regulation of the periods and/or methods of taking specimens,

- e) application, when specimens are taken, of hunting and fishing rules which take account of the conservation of such populations,
- f) regulation of the purchase or sale of specimens,
- g) breeding in captivity and artificial propagation, under strictly controlled conditions, with a view to reducing the taking of specimens in the wild,
- h) assessment of the effect of the measures adopted.

In any case, Member States shall prohibit the use of all indiscriminate and non-selective means, capable of causing local disappearance of, or serious disturbance to, populations of such species.

In particular the following methods and means of capture and killing and modes of transport are prohibited:

NON SELECTIVE MEANS			MODES OF TRANSPORT
FISH	MAMMALS		Aircraft
Poison	Artificial light sources	Tape recorders	Moving motor vehicles
Explosives	Explosives	Crossbows	Gassing or smoking out
Mirrors and other dazzling devices	Devices for illuminating targets	Poisons and poisoned or anaesthetic bait	Blind or mutilated animals used as live decoys
Electrical and electronic devices capable of killing or stunning	Sighting devices for night shooting comprising an electronic image magnifier or image converter	Nets which are non-selective according to their principle or their conditions of use	Semi-automatic or automatic weapons with a magazine capable of holding more than two rounds of ammunition
Traps which are non-selective according to their principle or their conditions of use			

Protection of Habitats

Regarding habitats, the formal recognition of the importance of certain sites brings with it the duty to develop an appropriate legal framework. The statutory, administrative or contractual measures adopted for the protection of Natura 2000 can take into account economic, social and cultural requirements, as well as regional and local characteristics, but must respond to the ecological requirements of species and habitats.

Therefore, after the designation of a habitat as site of Community importance, and even more so, as a special area of conservation, the Member States shall adopt all the measures necessary to maintain or restore species and habitats in a favourable conservation status, particularly avoiding:

- a) the deterioration of habitats;
- b) the disturbance of the species for which the areas have been designated.

These obligations apply both to the SPAs, for the wild birds, and to the SACs, for other species.

Deteriorating or disturbing activities have a different legal response. Activities that degrade the conservation status must be prevented, or if they are already occurring must be unconditionally stopped immediately. Conversely, disturbing activities shall only be prevented insofar as they significantly jeopardise the maintenance or the restoring of a favourable conservation status of species or habitats.

The evaluation of whether a human activity, carried out inside a site or near it, causes deterioration or disturbance can only be determined after an appropriate assessment procedure. The assessment can take the form of:

- a) an environmental impact assessment (EIA for projects, established in the [Directive 2011/92](#) on the assessment of the effects of certain public and private projects on the environment, or

- b) a strategic environmental assessment (SEA for plans or programmes, regulated by the [Directive 2001/42](#) on the assessment of the effects of certain plans and programmes on the environment), or at least,
- c) an appropriate assessment (if appropriate, including public participation) of all the implications of the project or plan, demonstrating that either individually or in combination with other plans or projects, it will not adversely affect the integrity of the site concerned.

Derogations

In exceptional circumstances, derogations to the protection regime of habitats and species can be permitted.

This is one of the most challenging tasks concerning the application of the Directive. Interpreting highly sensitive concepts and balancing the valuable species and habitats that comprise Natura 2000 network on one side, with undertakings of high social interest on the other, can be a fracturing exercise.

Highly relevant ecological and non-ecological interests compete for space and resources in the same territory. The list of human activities likely to have an impact in Natura 2000 species and habitats is extensive: food production, water supply, housing, transport infrastructures, waste management, tourism, sports and increasingly, renewable energy production.

Under the strain of energy transition, circular economy and climate change, the requests for derogations from Natura 2000 interdictions and obligations are multiplying and putting decision-makers under pressure. However, the decisions to reverse the legal safeguards granted by the Natura 2000 framework, based on a case-by-case analysis, must be very well-founded and aligned with the admissible justifications provided for in the Directive.

In this context, the diversified case law of the European Court of Justice is a valuable aid for decision-makers who wish to make the most sustainable and future-proof decisions.

Moreover, the *do no significant harm* principle (enshrined in the [Regulation 2020/852 of 18 June 2020](#) <https://eur-lex.europa.eu/eli/reg/2020/852/oj> on the establishment of a framework to facilitate and establish a taxonomy of sustainable investment) emerges as a new argument for consideration.

Regarding **derogations to habitat protection**, the deliberative procedure relating to a derogation starts with an environmental assessment (EIA or SEA if applicable, or other appropriate assessment). In spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project can nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, provided that the Member State takes all the compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. The Member States shall always 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.

The steps for allowing a derogation can be summarised as follows:

- ✓ Assess the implications of the plan or project.
- ✓ Ascertain that there are no alternative solutions.
- ✓ Indicate the imperative reasons of overriding public interest applicable to the case.
- ✓ Study and propose compensatory measures contributing for the coherence of Natura 2000.
- ✓ Notify the European Commission and possibly ask for an opinion.
- ✓ Implement compensatory measures.
- ✓ Implement the plan or project.

The interests behind a derogation can be summarised:



Regarding the protection of species, derogations are also possible provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

The relevant interests, in the case of species, are more precise and yet broader and more flexible.

Like for the habitats, 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 can be invoked.

Unlike the habitats derogations, in the case of species, other overriding public interests can be asserted:

- ✓ the prevention of serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property
- ✓ the interest of protecting wild fauna and flora and conserving natural habitats
- ✓ the interest of re-populating and re-introducing species (including the breeding operations and artificial propagation of plants necessary for these purposes)

Other non-imperative reasons can also be invoked:

- ✓ for research and education
- ✓ to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of species that are not of Community interest.

Recent Case Law

There have been delays in selection of sites to be designated as SCIs and SPAs in all Member States, which has caused delays in the adoption of SCIs by the Commission, according to the procedure laid down in Article 4(2) of the Habitats Directive. This has had a cascade effect also in terms of timing of designation of SACs, according to Article 4(4) as well and to the establishment of the necessary conservation measures according to Article 6(1) of the Habitat Directive. Moreover, the incorrect selection of sites has led to several legal disputes, even before the CJEU. For example, in [Case C-141/14 Commission v Bulgaria](#), the CJEU confirmed, *inter alia*, that Bulgaria had failed to classify as SPAs the most suitable territories of various bird species by failing to include all the territories of the important bird areas in the special protection area covering the Kaliakra region.

There have been also many complaints addressed to the Commission in relation to alleged poor implementation of some provisions of the Nature Directives, notably in relation to the protection and procedural safeguards applying to Natura 2000 sites under Article 6(2) and 6(3) of the Habitats Directive and to hunting activities under Article 7 of the Birds Directive . Some of those complaints have led to the opening of bad application infringement procedures, in addition to those launched by

the Commission acting on its own initiative. More details are given in the following sections, in relation to each of the specific objectives of the Directives.

In [Case C-441/17 *Commission v Poland \(Białowieża Forest\)*](#), the CJEU held that **by their very nature**, the active forest management operations at issue, in that they involve the implementation of measures, such as the removal and felling of trees, in protected habitats within the Puszcza Białowieska Natura 2000 site, are liable, given also their extent and intensity, to undermine the conservation objectives of that site. It follows that there was a likelihood of the active forest management operations having a significant effect on the integrity of the Natura 2000 site. And as a consequence, it was required to carry out an assessment of the implications of those operations for that site, by virtue of the first sentence of Article 6(3). However, the impact assessment had a number of substantial lacunae and could not sufficiently support the authorisation of the operations.

In Case [C-88/19 *Alianța pentru combaterea abuzurilor*](#), the CJEU confirmed that the system of strict protection laid down in respect of the species listed in point (a) of Annex IV to that directive, such as the wolf, also applies to specimens that **leave their natural habitat and stray into human settlements**. In so far as concerns protected animal species which, like the wolf, occupy vast stretches of territory, the concept of ‘natural range’ is greater than the geographical space that contains the essential physical or biological elements for their life and reproductions, and therefore corresponds to the geographical space in which the animal species concerned is present or to which it extends in the course of its natural behaviour.

Furthermore, the protective regime applies to resting and breeding sites even if the animals no longer claim them, but may return there. In [Case C-477/19 *Magistrat der Stadt Wien*](#), the CJEU held that the term ‘resting places’ referred to in that provision **also includes resting places which are no longer occupied** by one of the protected animal species listed in Annex IV(a), such as the *Cricetus cricetus* (European hamster), where there is a sufficiently high probability that that species will return to such places, which is a matter for the referring court to determine. Therefore, the national court must clarify whether there is a likelihood of the rodents returning.

In [Case C-674/17 *Luonnonsuojeluyhdistys Tapiola*](#), the CJEU held that the objective of a derogation based on Article 16(1)(e) - *taking or keeping of certain specimens in limited numbers* - cannot, in principle, be confused with the objectives of the derogations based on Article 16(1)(a) to (d), with the result that the former provision can only serve as a basis for the grant of a derogation in cases where the latter provisions are not relevant. Taking or keeping of certain specimens in limited numbers therefore cannot be allowed in the interests specified Article 16(1)(a) to (d) in case these interests are not serious enough. The condition that derogations under Article 16(1)(e) must be implemented under strictly supervised conditions means, in particular, that those conditions and the manner in which compliance with them is ensured can guarantee that the specimens of the species concerned are taken or kept on a selective basis and in limited numbers. Thus, for each derogation based on that provision, the competent national authority must ensure that the conditions laid down therein **are satisfied before that derogation is granted and monitor its subsequent impact**. The national legislation must ensure that the lawfulness of the decisions granting derogation permits under that provision and the manner in which those decisions are implemented, including as regards compliance with the accompanying conditions relating to, in particular, places, dates, numbers and types of specimens targeted, are subject to effective control in a timely manner.

Other recent cases concerning habitats protection:

- [C-434/22 \(*Latvijas valsts meži*\)](#): Assessment of maintenance of fire infrastructure in the protected area according to the Habitats Directive if changes the physical condition of the site

- [C-238/20 \(Sătini-S\)](#): Member States may compensate owners of land affected by conservation measures, but there is no obligation under EU law to provide such compensation
- [C-254/19 \(Friends of the Irish Environment\)](#): Extension of a permit for the construction of a liquefied natural gas regasification terminal in principle requires an assessment if the original permit has lapsed and ceased to produce legal effects after the expiry of the period it set for the works that have not started
- [C-116/22 \(Commission v Germany\)](#): Germany has not declared 88 sites as Special Areas of Conservation and has not established conservation measures for 737 sites within the prescribed timeframe
- [C-432/21 \(Commission v Poland\)](#): Polish law allowing forest management in accordance with the requirements of good practice without complying with the protective provisions of the Habitats Directive and the Birds Directive constitutes an unlawful exception; violation of the Aarhus Convention by not allowing the review of management plans by ENGOs
- [C-661/20 \(Commission v Slovakia\)](#): Failure to assess the effects of forest maintenance and logging on Natura 2000 sites, and to protect the capercaillie
- [C-559/19 \(Commission v Spain\)](#): Spain failed to take measures to prevent the disturbance of protected locations caused by the abstraction of groundwater
- [C-849/19 \(Commission v Greece\)](#): Failed to set appropriate conservation objectives and adopt appropriate conservation measures for 239 sites that should have been designated as protected under the 2006 Commission Decision
- [C-411/19 \(WWF Italia Onlus\)](#): Impossibility of ex post assessment of impacts on the Natura 2000 site
- [C-297/19 \(Naturschutzbund Deutschland – Landesverband Schleswig Holstein\)](#): Interpretation of the concept of site management and the liability of legal persons for environmental damage

Other recent cases concerning species protection:

- [C-166/22 \(Hellfire Massy Residents Association\)](#): Participation in the proceedings to grant exception under Art. 16 of the Habitats Directive (not necessary)
- [C-357/20 \[Magistrat der Stadt Wien \(Grand hamster – I\)\]](#): Interpretation of breeding sites, concepts of ‘deterioration’ and ‘destruction’
- [C-477/19 \(Magistrat der Stadt Wien\)](#): Interpretation of resting places and breeding sites, areas which have been abandoned (by hamster)
- [C-88/19 \(Alianța pentru combaterea abuzurilor\)](#): Conservation of wolves in human settlements
- [C-601/22 \(Umweltverband WWF Österreich and Others v Amt der Tiroler Landesregierung\)](#): Wolf Conservation status; strict protection

Further Reading

- The Commission has set up a number of general interpretative and methodological guidance documents on specific provisions of Article 6 in order to provide a better understanding and correct application of the Article.
http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm#art6.

Module 4: Nature Restoration, Deforestation, Marine Ecosystems

Introduction

The restoration of habitats and species is clearly established as one of the main obligations according to the birds and habitats Directives. Measures taken pursuant to the habitats Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

Nature Restoration

The Regulation on nature restoration ([2024/1991](#)) widely called the Nature Restoration Law was adopted in 2024. It is the first continent-wide, comprehensive law of its kind. It is a key element of the EU Biodiversity Strategy, which sets binding targets to restore degraded ecosystems, in particular those with the most potential to capture and store carbon and to prevent and reduce the impact of natural disasters.

Europe's nature is in alarming decline, with more than 80% of habitats in poor condition. Restoring wetlands, rivers, forests, grasslands, marine ecosystems, and the species they host will help increase biodiversity, secure the things nature does for free, like cleaning our water and air, pollinating crops, and protecting us from floods, limit global warming to 1.5°C, build up Europe's resilience and strategic autonomy, preventing natural disasters and reducing risks to food security.

EU countries are expected to submit **National Restoration Plans** to the Commission within two years of the Regulation coming into force (so by mid 2026), showing how they will deliver on the targets. They will also be required to monitor and report on their progress. The European Environment Agency will draw up regular technical reports on progress towards the targets. The Commission, in turn, will report to the European Parliament and to the Council on the implementation of the Nature Restoration Law.

The regulation contains the following specific targets:

- targets based on existing legislation (for wetlands, forests, grasslands, river and lakes, heath & scrub, rocky habitats and dunes) - improving and re-establishing biodiverse habitats on a large scale, and bringing back species populations by improving and enlarging their habitats.
- pollinating insects – reversing the decline of pollinator populations by 2030, and achieving an increasing trend for pollinator populations, with a methodology for regular monitoring of pollinators.
- forest ecosystems – achieving an increasing trend for standing and lying deadwood, uneven aged forests, forest connectivity, abundance of common forest birds and stock of organic carbon.
- urban ecosystems – no net loss of green urban space and tree cover by 2030, and a steady increase in their total area from 2030.
- agricultural ecosystems – increasing grassland butterflies and farmland birds, the stock of organic carbon in cropland mineral soils, and the share of agricultural land with high-diversity landscape features; restoring drained peatlands under agricultural use.
- marine ecosystems – restoring marine habitats such as seagrass beds or sediment bottoms that deliver significant benefits, including for climate change mitigation, and restoring the habitats of iconic marine species such as dolphins and porpoises, sharks and seabirds.
- river connectivity – identifying and removing barriers that prevent the connectivity of surface waters, so that at least 25 000 km of rivers are restored to a free-flowing state by 2030.

The duty to restore nature is also established in traditional legal contexts, namely in the Water Framework Directive and in the Environmental Liability Directive.

First, the **Water Framework Directive (2000/60/EC)** determines the obligation to protect, enhance and restore all bodies of surface water and groundwater. This implies a coordination of administrative arrangements within river basin districts for the establishment of programmes of measures with the objective of attaining a ‘good ecological status’.

Furthermore, Member States shall ensure the establishment of a register or registers of all areas lying within each river basin district which have been designated as requiring special protection under specific Community legislation for the protection of their surface water and groundwater or for the conservation of habitats and species directly depending on water.

Next, the **Environmental Liability Directive (2004/35/EC)** imposes the duty to restore to the operator that controls specified occupational activities likely to generate environmental damage. Such activities (irrespective of their private or public, profit or non-profit character) are, for instance, the operation of installations subject to environmental permit or authorisation, waste management operations, water abstraction and impoundment of water, any activity relating to dangerous substances or GMOs, etc.

The operator shall take the necessary preventive measures to avoid environmental damage. Where damage has occurred, the operator shall, without delay, take the necessary measures to control, contain, remove or manage the damage factors in order to limit or prevent further environmental damage.

In the end, if damage actually occurs, the operator shall take ‘remedial measures’ or, in other words, actions to restore, rehabilitate or replace damaged natural resources and/or impaired services, or to provide an equivalent alternative to those resources or services.

The Directive foresees, with precision, the successive remediation steps to be followed in order to achieve remediation and attain the desired conservation status.

As a matter of fact, remedying of environmental damage, in relation to water or protected species or natural habitats, is achieved through the restoration of the environment to its baseline condition by way of primary, complementary and compensatory remediation.

Where primary remediation does not result in the restoration of the environment to its baseline condition, then complementary remediation must be undertaken. Complementary remediation is any remedial measure taken to compensate for the fact that primary remediation did not result in fully restoring the damaged natural resources and/or services. In addition, compensatory remediation must be undertaken to compensate for the interim losses.

In the evaluation of the reasonable remedial options, a choice must be made among those measures that employ the best available technologies, considering:

- the effect of each option on public health and safety,
- the cost of implementing the option,
- the likelihood of success of each option,
- the extent to which each option will prevent future damage, and avoid collateral damage as a result of implementing the option,
- the extent to which each option benefits to each component of the natural resource and/or service,
- the extent to which each option takes account of relevant social, economic and cultural concerns and other relevant factors specific to the locality,
- the length of time it will take for the restoration of the environmental damage to be effective,
- the extent to which each option achieves the restoration of site of the environmental damage,
- the geographical linkage to the damaged site.

EU Timber Regulation and the EU Deforestation Regulation

As envisaged in the EU FLEGT Action Plan from 2003, the EU adopted new legislation in 2010 called the EU Timber Regulation ([Regulation \(EU\) No 995/2010](#)). By July 2015, 24 of the 28 EU Member States had implemented the Regulation. The EC has issued pre-infringement notices against the remaining four countries (Greece, Hungary, Romania and Spain).

Recently, the Timber Regulation (**EUTR**) was repealed by the Regulation on deforestation-free products ([Regulation \(EU\) No 2023/1115](#)) – the EU Deforestation Regulation (**EUDR**). As of 30 December 2025, the key articles of the EUDR will apply, leaving a short adaptation and preparation period. Micro and small enterprises will enjoy a longer adaptation period, as well as other specific provisions. Nevertheless, until then, the EUTR is still applicable and therefore worth more detailed introduction.

The EUTR aims to counter illegal logging and associated trade in timber and timber products in the Member States of the European Union, and ultimately contribute to sustainable management of forests and reduced emissions from deforestation and forest degradation beyond EU borders.

The EUTR covers a range of timber products such as solid wood products, flooring, plywood, pulp and paper that are listed in the EUTR's Annex. The EUTR does not cover recycled products, as well as printed papers such as books, magazines and newspapers. The product scope can, however, be amended. The EUTR applies to both imported and domestically produced timber and timber products. Timber and timber products covered by valid FLEGT or CITES licences automatically meet the requirements of the EUTR.

The EUTR establishes obligations on 'operators' who place timber and timber products on the market and on 'traders' who buy or sell timber or timber products already on the internal market. The regulation requires timber importers and traders in the EU to trade only in legal timber and adopt due diligence procedures to ensure their supply chains are legal. It requires EU Member States to have legislation, procedures and penalties in place to enforce the regulation. A 'competent authority' must be designated responsible for the application of the EUTR (Article 7), lay down "effective, proportionate and dissuasive" penalties applicable to infringements of the EUTR, and take all measures necessary to guarantee that penalties are enforced (Article 19).

The EUTR prohibits the placing onto the EU market of illegally harvested timber and timber products derived from such timber. It requires operators who place timber or timber products on the market for the first time to exercise due diligence to make sure that timber and timber products are legal. To facilitate the traceability of timber and timber products, the EUTR also requires traders who buy or sell timber products on the EU market to keep records of their suppliers and customers. The due diligence system shall contain the following three elements:

- **Information:** Operators shall provide the following information: a description of the timber or timber products placed on the market (including trade name and type of product, common name of tree species and, if applicable, their scientific name), country of harvest, quantity, details of the supplier and information on compliance with applicable legislation.
- **Risk assessment:** Operators should analyse and evaluate the risk of illegally harvested timber or timber products placed on the market, based on the information identified above and taking into account relevant risk assessment criteria set out in the EUTR, including but not limited to, assurance of compliance with applicable legislation, prevalence of illegal harvesting of specific tree species, prevalence of illegal harvesting or practices in the sourcing country, complexity of the supply chain.

- Risk mitigation: When the assessment has demonstrated that there is a risk of illegally harvested timber or timber products derived from such timber, operators shall mitigate such risk by requiring additional information and/or verification by a third party.

Operators can set up due diligence systems on an individual basis or with the assistance of monitoring organisations (Article 8). Monitoring organisations are legal entities recognised by the European Commission as fulfilling the EUTR requirements, competent to assist operators in meeting the EUTR due diligence obligations.

Under the EUDR, any operator or trader who places commodities like soy, beef, palm oil, wood, cocoa, coffee, or rubber commodities on the EU market, or exports from it, must be able to prove that the products do not originate from recently deforested land or have contributed to forest degradation. Relevant goods must also be covered by a due diligence statement and be produced in accordance with applicable local laws. The EUDR does not include ‘compound feed’ in the Annex I of relevant commodities or products, meaning the placement of compound feed on the EU market is excluded from the scope of the EUDR requirements. Compound feed containing relevant commodities and products, such as soy and palm oil products, is not subject to the EUDR, except certain traceability requirements linked to feed containing soy and/or palm products destined for cattle.

The new rules aim to

- avoid that the listed products Europeans buy, use and consume contribute to deforestation and forest degradation in the EU and globally;
- reduce carbon emissions caused by EU consumption and production of the relevant commodities by at least 32 million metric tonnes a year;
- address all deforestation driven by agricultural expansion to produce the commodities in the scope of the regulation, as well as forest degradation.

Products produced inside the EU are subject to the same requirements as those produced outside the EU. The EUDR applies to products listed in Annex I, whether they are produced in the EU or imported. For instance, if an EU company produces chocolate (code 1806, which is included in Annex I), then it will be considered an operator subject to the obligations of the EUDR, even if the cocoa powder used in the chocolate has already been placed on the market and fulfilled the due diligence requirements. In contrast, if an EU company produces soap – which is not included in Annex I –, it will not be subject to the requirements of the Regulation, even if the soap contains palm oil.

Voluntary Partnership Agreements (VPAs) and Bilateral Cooperation

The EU has also intensified its collaboration with other consumer and processing countries to address illegal logging. For example, with China, the EU established a [Bilateral Coordination Mechanism on Forest Law Enforcement and Governance \(FLEG\)](#) in 2009. Through this, the EU and China work together to stop illegal logging and the associated trade in illegal timber globally. Meetings are held each year to share information on policy, discuss areas of mutual interest, and agree on annual work plans.

Voluntary partnership agreements (VPAs) between the EU and partner countries aim to ensure that only legally harvested timber is imported into the EU. The bilateral agreements include commitments and actions from both parties to halt trade in illegal timber.

A licence scheme certifies the legality of timber exported to the EU. To issue a licence, the partner country must implement a timber legality assurance system. When fully operational, such a system is both robust and credible, as it includes effective supply chain controls, mechanisms for verifying

compliance and is subject to independent audits. The agreements also aim to promote better enforcement of forest law and an inclusive approach involving civil society and the private sector.

Voluntary partnership agreements have so far been signed with Ghana, the Republic of the Congo, Cameroon, Indonesia, the Central African Republic, Liberia and Vietnam. The EU has concluded negotiations with Honduras and Guyana. Negotiations are ongoing with the Ivory Coast, Democratic Republic of the Congo, Gabon, Laos, Malaysia and Thailand.

Indonesia was the first country in the world that started issuing licences, on 15 November 2016. The licences are issued by Licensing Authorities in Indonesia, which are registered independent organisations.

Marine Ecosystems

Two particular ecosystems whose relevance is unquestionable will be studied in more detail. The first, is the marine ecosystems. The sea is home to a diverse range of habitats that sustain thousands of species of plants and animals. Marine ecosystems and marine biodiversity deliver fundamental ecosystem services which can hardly be replaced.

However, the marine ecosystems are under intense pressure from fisheries, fish farming, kelp harvesting, agrochemical runoff (mostly phosphorous and nitrogen), waste water discharge (urban and industrial) recreational use, among others. Marine biodiversity loss is a clear indicator of the accumulated effects of eutrophication, overfishing, invasive species and climate change.

Internationally, a new [Agreement under the United Nations Convention on the Law of the Sea](#) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, was signed in June 2023. Its objective is to ensure the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, for the present and in the long term. The Agreement is guided by the following principles and approaches:

- a) the polluter-pays principle;
- b) the principle of the common heritage of humankind;
- c) the freedom of marine scientific research;
- d) the principle of equity and the fair and equitable sharing of benefits;
- e) the precautionary principle or precautionary approach, as appropriate;
- f) an ecosystem approach;
- g) an integrated approach to ocean management;
- h) an approach that builds ecosystem resilience, including to adverse effects of climate change and ocean acidification, and also maintains and restores ecosystem integrity, including the carbon cycling services that underpin the role of the ocean in climate;
- i) the use of the best available science and scientific information;
- j) the use of relevant traditional knowledge of indigenous peoples and local communities, where available;
- k) the respect, promotion and consideration of the rights of indigenous peoples or local communities;
- l) the non-transfer, directly or indirectly, of damage or hazards from one area to another and the non-transformation of one type of pollution into another in taking measures to prevent, reduce and control pollution of the marine environment;
- m) full recognition of the special circumstances of small island developing states and of least developed countries;
- n) acknowledgement of the special interests and needs of landlocked developing countries.

At the level of the European Union, seas cover 5.7 million km², an area larger than Europe's land territory.



European Seas (<https://www.eea.europa.eu/publications/marine-protected-areas-in-europes/download>)

The EU Marine Strategy Framework Directive (2008/56/EC) is aimed at achieving and maintaining good environmental status of European marine ecosystems. In other words, the goal is to achieve oceans and seas which are ecologically diverse and dynamic, clean, healthy and productive.

It requires Member States to develop assessment and management measures to address the pressures and impacts on the marine environment originated in human activities. The Maritime Strategy is based on an ecosystem-based approach and on the integration of environmental protection in marine planning and decision-making processes for human activities.

In more precise terms, the good environmental status in the marine environment translates to a status where:

- the structure, functions and processes of the constituent marine ecosystems, together with the associated physiographic, geographic, geological and climatic factors, allow those ecosystems to function fully and to maintain their resilience to human-induced environmental change. Marine species and habitats are protected, human-induced decline of biodiversity is prevented and diverse biological components function in balance;
- hydro-morphological, physical and chemical properties of the ecosystems, including those properties which result from human activities in the area concerned, support the ecosystems as described above. Anthropogenic inputs of substances and energy, including noise, into the marine environment do not cause pollution effects.

Member States shall use 11 descriptors to assess the good environmental status:

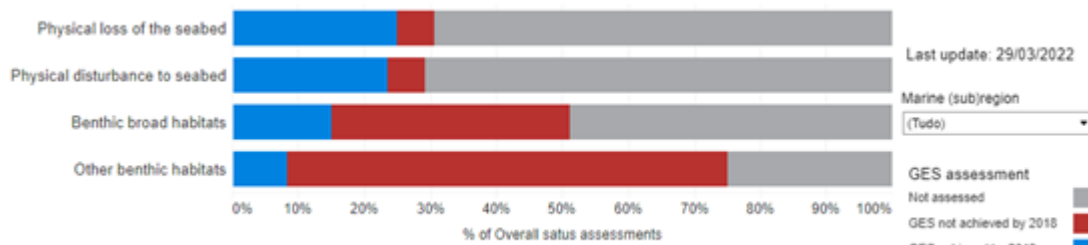
- 1: Biodiversity is maintained
- 2: Non-indigenous species do not adversely alter ecosystems
- 3: Populations of commercial fish and shellfish species are healthy
- 4: Food webs ensure long-term abundance and reproduction of species
- 5: Eutrophication is reduced
- 6: Sea floor integrity ensures the proper functioning of ecosystems
- 7: Permanent alteration of hydrographical conditions does not adversely affect ecosystems
- 8: Concentrations of contaminants give no pollution effects
- 9: Contaminants in seafood are at safe levels

- 10: Marine litter does not cause harm
- 11: Introduction of energy (including underwater noise) does not adversely affect the ecosystem.

An effective strategy to protect the marine environment starts with a good knowledge of essential features and characteristics of sea ecosystems and a precise mapping of predominant pressures and impacts. The characteristics listed in the marine strategy Directive are: physical and chemical features, habitat types, biological features and other features. Regarding anthropic pressures the impacts that should be measured are: physical loss, physical damage, physical disturbance, interference with hydrological processes, contamination by hazardous substances, systematic and/or intentional release of substances, nutrient and organic matter enrichment, biological disturbance.

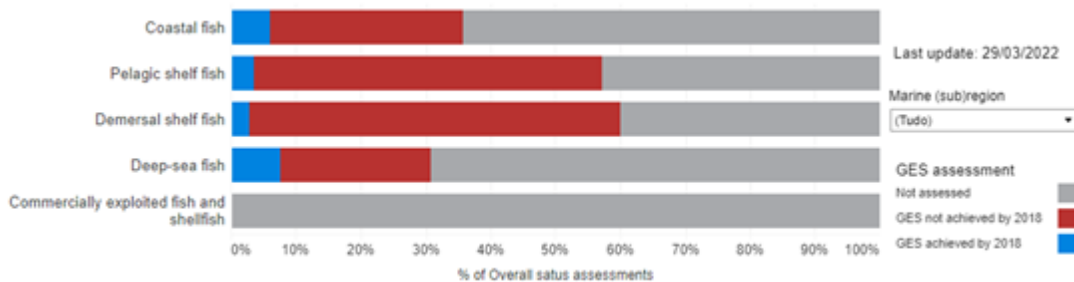
A strong effort still needs to be made to achieve a good conservation status for the various marine habitats and species.

In over 1000 habitat types, less than 30% of benthic habitats had achieved a good conservation status by 2018:



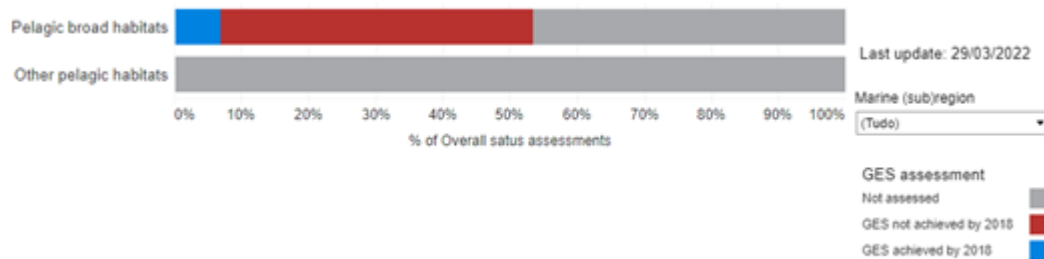
Status of seabed habitats at EU level <https://water.europa.eu/marine/state-of-europe-seas/state-of-biodiversity/benthic-habitats>

In over 1200 species of marine fish and cephalopods, less than 10% of them had achieved a good conservation status by 2018:



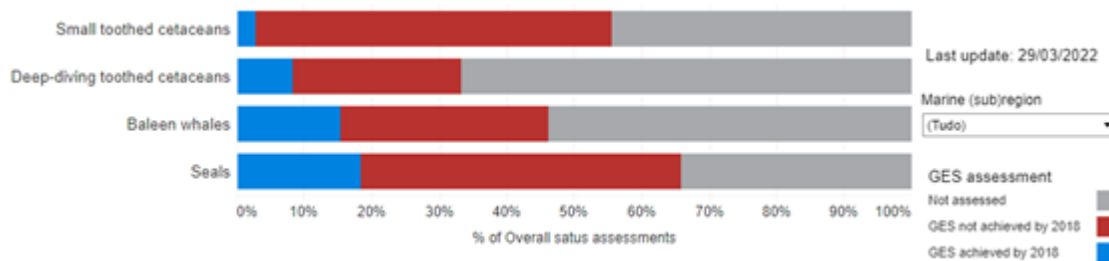
Status of marine fish and cephalopods at EU level <https://water.europa.eu/marine/state-of-europe-seas/state-of-biodiversity/fish>

Despite the importance of pelagic habitats for phytoplankton producers and microbes as well as for the marine food webs, less than 10% of open sea waters were in good conservation status by 2018.



Status of pelagic habitats at EU level <https://water.europa.eu/marine/state-of-europe-seas/state-of-biodiversity/pelagic-habitats>

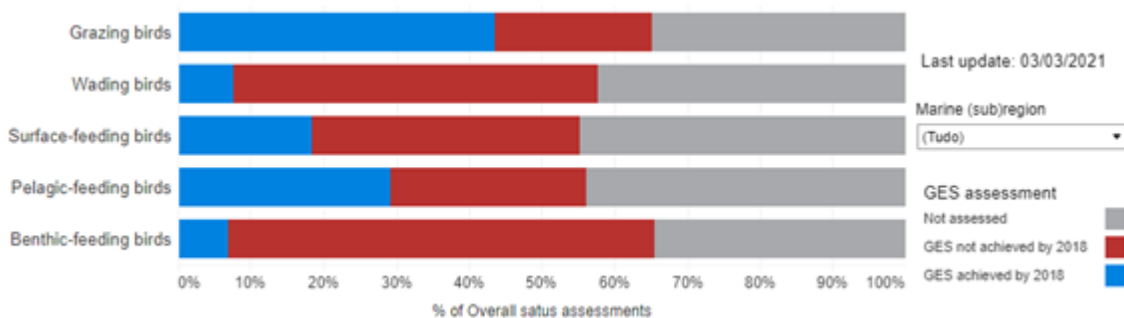
Marine mammals are also present in European seas, there are 44 species of marine mammals including whales, dolphins, porpoises and seals. The case of whales is particularly notorious: 36 species representing 42% of the cetacean species known around the world can be seen in European waters. However, the conservation status is far from ideal.



Status of marine mammals at EU level <https://water.europa.eu/marine/state-of-europe-seas/state-of-biodiversity/marine-mammals>

More than 180 species of marine birds are common in European seas. A significant number of them engage in annual migrations between their feeding and breeding areas. These species encompass various types of waders and waterbirds. Some examples are ducks, geese, swans, divers, grebes, petrels, shearwaters, gannets, cormorants, skuas, gulls, terns, and auks.

Their conservation status is slightly better than the other species but still less than optimal.

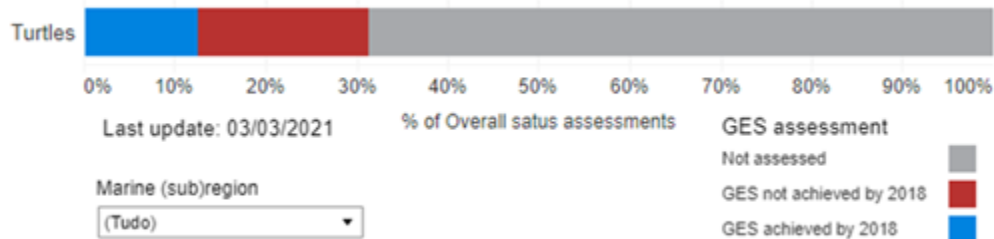


Status of marine birds at EU level <https://water.europa.eu/marine/state-of-europe-seas/state-of-biodiversity/seabirds> .

Finally, marine turtles are a good indicator of marine environmental health, as the population numbers fall when the good ecological conditions are lost.

In Europe, turtles can be primarily found in the Mediterranean Sea, where two nesting populations of turtles are considered indigenous, while another three species of turtle are visitors to the European waters.

The conservation status of turtles is terribly poor, compared to other marine species.

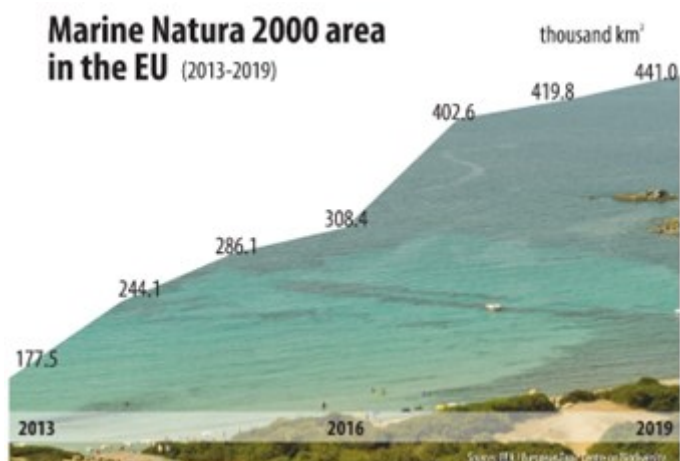


Status of marine turtles at EU level <https://water.europa.eu/marine/state-of-europe-seas/state-of-biodiversity/turtles>

Attaining the good environmental status therefore implies that the Member States make sure that the use of the marine environment is kept at a level that is sustainable, thus safeguarding the potential for uses and activities of marine biodiversity and ecosystems by current and future generations, by:

- protecting and preserving the marine environment, preventing its deterioration or, where practicable, restoring marine ecosystems in areas where they have been adversely affected;
- preventing and reducing inputs in the marine environment, with a view to phasing out pollution, so as to ensure that there are no significant impacts on or risks to marine biodiversity, marine ecosystems, human health or legitimate uses of the sea.

The number of marine Natura 2000 sites and the area covered has doubled in size since 2013.



Marine Natura 2000 area in the EU (2013-2019) <https://ec.europa.eu/eurostat/web/products-eurostat-news/-/edn-20200521-1>

Module 5: Alien invasive species

Introduction

Besides the threats to biodiversity posed by land use change and climate change, another important cause of biodiversity loss are invasive species. Fast spreading and highly resistant foreign species, extremely well adapted to the different environmental conditions, enter into competition, predate or transmit diseases to native species, taking over space and resources and altering the habitats. The extent of the impact of the so-called invasive alien species is growing due to the increase in international transport (globalisation of trade, business and tourism) and also to climate change, which modifies the distribution patterns of species, favouring the predominance of a few stronger species that adopt an invasive behaviour and generate a serious adverse impact on biodiversity and loss of ecosystem services.

This is the context in which the EU was impelled to adopt the [Regulation on the prevention and management of the introduction and spread of invasive alien species \(1143/2014\)](#).

First, *alien species* are any live specimen of a species, subspecies or lower taxon of animals, plants, fungi or micro-organisms introduced outside its natural range. Alien species include gametes, seeds, eggs or propagules.

Then, *invasive* alien species are alien species whose introduction or spread has been found to threaten or adversely impact upon biodiversity and related ecosystem services.

Hybrid species, which carry a mix of the genetic features of the native and the alien species, variety or breed, can be highly harmful in case the hybrids survive, are viable and subsequently reproduce. Therefore, hybrids are treated as invasive.

Most of the alien species labelled invasive in the EU are neither ugly nor frightening. Their appearance does not cause alarm. On the contrary, some are characterised by outstanding aesthetical features. This is the case of some alien species that were introduced for ornamental purposes (the ice plant, the pampas grass, the water hyacinth) or even served as a pet species (the rose-ringed parakeet, the yellow-bellied slider, the Siberian chipmunk) that later were unconsciously released into the wild or escaped.

In some cases, economically valuable species were intentionally brought to Europe for their utility to serve as food (such as the common carp or the red swamp crayfish) to be farmed for their fur (the racoon), or to be used as an agent for bio control in agriculture (the harlequin ladybird).

Other alien species were unintentionally introduced through horticultural plants (the Spanish slug) or in products imported from distant origins (the yellow-legged hornet).

List of Alien Invasive species

In the European Union the number of invasive species, be they aquatic or terrestrial, is quite large.

invasive alien species are strictly regulated	
88	
animal species of Union concern	plant species of Union concern
47	41

The full list is regularly updated by the European Commission by means of an implementing Regulation adopting a list of invasive alien species of Union concern, [Regulation 2016/1141](#) (updated in 2017, in 2019, and in 2022).

On the contrary, the Regulation does not apply either to species that change their natural range without human intervention, in response to changing ecological conditions and climate change, or to species covered by other specific regulation, such as genetically modified organisms, some harmful organisms, species for aquaculture, pathogens that cause animal diseases, micro-organisms manufactured or imported for use in plant protection products or for use in biocidal products.

Specific Requirements

The intentional release of invasive alien species into the wild is forbidden. Any behaviour, deliberate or accidental, that is likely to create a pathway for the introduction or spreading of invasive alien species into the natural environment is restricted. Behaviours that are likely to create pathways or mechanisms for spreading, and are therefore prohibited to prevent spreading, include: bringing to the territory of the Union, transporting, holding, keeping, placing on the market, using, exchanging, breeding, reproducing, growing, cultivating, releasing into the environment.

Each of the above-mentioned measures may be applied immediately, for preventive reasons, when there is preliminary scientific evidence of an imminent risk of introduction of an invasive alien species.

None of these activities are permitted even within "contained holding," which refers to the confinement of an organism in enclosed facilities where escape or spread is not possible.

Exceptions can be granted to research activities, or to the scientific production of alien species for medicinal use for the benefit of human health. Other activities may be permitted subject to authorisation by the Commission, justified by reasons of compelling public interest, including those of a social or economic nature.

To facilitate the early detection – meaning confirmation of the presence of an invasive alien species in the environment before it has become widely spread – Member States shall:

- adopt action plans to identify and address the priority pathways,
- establish a surveillance system of invasive alien species of Union concern,
- carry out the official controls necessary to prevent the intentional introduction of invasive alien species of Union concern and
- apply eradication measures and notify those measures to the Commission and inform the other Member States.

For species that are widely spread on the territory, Member States shall have in place effective management measures, consisting of lethal or non-lethal physical, chemical or biological actions aimed at the eradication, population control or containment of a population of an invasive alien species. The measures shall be proportionate to the impact on the environment and have due regard to human health and the environment, especially non-targeted species and their habitats, and shall ensure that, when animals are targeted, they are spared any avoidable pain, distress or suffering, without compromising the effectiveness of the management measures.

Where there is a significant risk of spreading, the other Member States and the Commission shall be immediately notified and where appropriate, jointly agreed management measures shall be adopted.

Most importantly, whenever possible, appropriate restoration measures shall be carried out to assist the recovery of an ecosystem that has been degraded, damaged, or destroyed by invasive alien species of Union concern.

Module 6: Trade with endangered species (CITES)

Introduction

The core legal mechanisms in the trade of endangered species stem from the CITES – the widely accepted [Convention on International Trade in Endangered Species of Wild Fauna and Flora \(CITES\)](#) adopted in 1972. The EU has an important role to play in addressing wildlife trafficking within the global regulatory, as it constitutes a destination market, a hub for trafficking in transit to other parts of the world, as well as the source region for illegal trade in some species.

As a hub for global wildlife trafficking, the EU has a key role to play in the fight against it. The reported value of illegal wildlife trade in the EU was at least €4.7 million in 2019, but this number is likely to be much higher in coming years. EU Member State authorities consistently seize wildlife in various commodity types ranging from medicinal, corals, reptiles, birds, plants, to mammals. Since 2017, there have been on average over 6 000 annual seizures involving CITES-listed wildlife per year in the EU.

In November 2022, the European Commission issued a revised [EU Action Plan to tackle wildlife trafficking](#) within the EU and to strengthen the EU's role in the global fight against these illegal activities until 2027. The revised plan has four main priorities:

- Preventing wildlife trafficking and addressing its root causes, by reducing consumer demand for illegally traded wildlife, supporting sustainable livelihoods in source countries, and tackling corruption at all levels;
- Strengthening the legal and policy framework against wildlife trafficking by aligning EU and national policies with international commitments and latest evidence, and engaging with business sectors involved in the wildlife trade;
- Enforcing regulations and policies to fight wildlife trafficking effectively, by improving the rate of detection of illegal activities within the EU, focusing on capacity-building along the entire enforcement chain, encouraging coordination and cooperation within and among Member States, and increasing efforts in tackling the online aspects of wildlife trafficking;
- Strengthening the global partnership of source, consumer and transit countries against wildlife trafficking, by enhancing their capacity and improving cooperation among the Member States, EU enforcement actors and key non-EU countries.

Legal Regulation

Wildlife trade from, into and within the EU is regulated through a set of Wildlife Trade Regulations that implement the provisions of the CITES Convention. Most important is [Regulation \(EC\) No 338/97](#). The Convention has to be implemented uniformly in all Member States, in view of the EU's single market and the absence of systematic border controls.

The provisions in the EU Wildlife Trade Regulations go beyond CITES in a number of respects.

Regulation (EC) No 338/97 has four Annexes (A-D) which contain non-CITES species.

Annex	Includes
Annex A	<ul style="list-style-type: none"> • All CITES Appendix I species • Some CITES Appendix II and III species, for which the EU has adopted stricter domestic measures. • Some non-CITES species
Annex B	<ul style="list-style-type: none"> • All other CITES Appendix II species • Some CITES Appendix III species • Some non-CITES species
Annex C	<ul style="list-style-type: none"> • All other CITES Appendix III species
Annex D	<ul style="list-style-type: none"> • Some CITES Appendix III species for which the EU holds a reservation • Some non-CITES species

For species in Annexes A and B, import conditions are stricter than under CITES:

Annex	Conditions
A, B	Commission has not established an import restriction in accordance with Article 4.6 of Regulation 338/97
A	Management Authority is satisfied that the specimens are not to be used for primarily commercial purposes i.e. will be used for purposes of which the non-commercial aspects clearly predominate
A, B (not re-imports and specimens acquired before 1 June 1947)	<p>Scientific Authority has advised the Management Authority of its finding (after considering possible opinion Scientific Review Group) that:</p> <ul style="list-style-type: none"> • import would not have a harmful effect on the conservation status of the species or decrease the population concerned (A, B); • import is under exceptional circumstances required for the advancement of science or for essential biomedical purposes; species is the only one suitable and there are no captive bred animals (A); • specimens are intended for captive breeding (animals) or propagation (plants) from which conservation benefits will accrue to the species concerned (A); • specimens are intended for research or education aimed at the preservation or conservation of the species (Regulation (EC) 338/97 Article 4.1.a.ii, first indent) (A); • import is for other purposes that are not detrimental to the survival of the species concerned (A).

A, B (not re-imports and specimens acquired before 1 June 1947)	Management Authority in consultation with the Scientific Authority are satisfied that there are no other conservation factors against import.
A, B (not re-imports and specimens acquired before 1 June 1947)	Scientific Authority is satisfied that intended accommodation for live animals/plants at the place of destination is adequately equipped to conserve and care for them properly
A, B	Applicant to provide documentary evidence that specimens were obtained in accordance with legislation on the protection of the species: for CITES specimens an export permit or re-export certificate, or copy thereof. Where a copy of an export permit or re-export certificate was the basis for the issue of an import permit, the latter shall only be valid if at the time of introduction it is accompanied by the valid original (re-) export document.

IMPORT PERMITS / NOTIFICATIONS

- An import permit is required for Annex A and Annex B species, to be applied for at the competent authorities in the Member State.
- An import notification is required for Annex C and D species. An import notification is a declaration filled in by the importer and is to be submitted, where appropriate together with CITES Appendix III documents from the (re-)exporting country, to the customs office of introduction into the Community. It is contained in Annex 2 to Commission Regulation (EC) 865/96 and is available from the competent authorities in each Member State.

HOUSING CONDITIONS

One of the conditions for issuing a permit for import of specimens of Annex A and Annex B species is that “the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly”.

TRANSPORT CONDITIONS

Regulation 338/97 and Council Directive (EEC) No 95/29/EEC on the protection of animals during transport make compliance with the IATA Live Animals Regulations for air transport and the CITES Guidelines for Transport legally binding.

The transport into, from or within the Community of specimens from Annexes A to D should be undertaken in such a way as to minimise the risk of injury, damage to health or cruel treatment and in conformity with Community legislation on the protection of animals during transport.

The Commission can also restrict imports for specimens of Annex B species subject to high transport mortality.

INTERNAL TRADE IN ANNEX A SPECIES

Regulation (EC) 338/97 contains special provisions for trade within the European Community, i.e. within and between individual Member States.

The following commercial activities involving Annex A specimens are prohibited:

- purchase,
- offer to purchase,

- acquisition for commercial purposes,
- display to the public for commercial purposes,
- use for commercial gain,
- sale,
- keeping for sale,
- offering for sale,
- transport for sale.

A Management Authority of a Member State can grant a specific exemption by means of a certificate on a case-by-case basis and under certain conditions. By way of example, an exemption can be granted if a specimen was acquired before the relevant legislation became applicable.

The Commission has defined general exemptions. In these cases, the procedure is easier, or no certificate is needed at all. Examples would be internal trade in artificially propagated Annex A plants or trade between scientific institutions with a non-commercial purpose, i.e. for research or education.

ANNEX D

Annex D contains species listed in CITES Appendix III for which one or more EU Member States have entered a reservation as well as species for which Community imports warrant monitoring. The decision to include a species in this Annex is taken by the Management Committee on the basis of a proposal by the Commission and after consultation of the Scientific Review Group.

Data for import of Annex D species is compiled yearly by UNEP-WCMC and can be consulted on this website. If the data gives rise to serious conservation concerns, inclusion of a species into Annex B may be considered.

As regards **other relevant legislation:**

- The **EU Nature Directives** ([the 1992 Habitats Directive](#) and [the 2009 Birds Directive](#)) prohibit the sale and transport of a number of strictly protected wild species in the EU.
- Wildlife trafficking is addressed by the [Environmental Crime Directive](#) (see below).
- EU Illegal, Unreported and Unregulated (IUU) Regulation ([Council Regulation \(EC\) No 1005/2008](#)) provides a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing and [Commission Regulation \(EC\) No 1010/2009](#) lays down detailed rules for its implementation;
- Regulation on deforestation-free products ([Regulation \(EU\) No 2023/1115](#)), which repeals the EU Timber Regulation ([Regulation \(EU\) No 995/2010](#)) – see below;
- EU animal welfare regulations: See Art 4.1 (c), 4.2 (b), 4.6 (c) and 9.4 of [Council Regulation \(EC\) No 338/97](#); [Council Regulation \(EC\) No 1/2005](#) (amending Directives 64/432/EEC and 93/119/EC and Regulation (EC) No 1255/97); [Council Directive 99/22/EC](#) relating to the keeping of wild animals in zoos;
- EU human and animal/plant health regulations, for example, [Regulation \(EU\) 2017/625](#) in relation to trade in animals, or [Commission Directive 93/50/EEC](#) in relation to trade in plants;
- Wider veterinary regulations, for example, the International Air Transport Association Regulations (IATA) regulations for the air transport of live animals, International Animal Health Code, Chapter 1.4. (OIE) IATA – Global;

Case Law

The Court of Justice of the European Union (CJEU) interpreted Regulation (EC) No 338/97 in the following cases:

In [Case C-154/02 \(*Nilsson*\)](#), the CJEU interpreted the notion of *worked specimen* within the meaning of Article 2(w) of Regulation No 338/97. It concluded that the animals referred to in Annex A but which have been stuffed fall within the definition of worked specimens if four conditions are satisfied: first, it must be significantly altered from its natural raw state; second, the purpose of that alteration must be the production of jewellery, items of adornment, art or utility, or musical instruments; third, it must be clearly in one of those categories; and, fourth, no further carving, crafting or manufacture must be needed for it to effect its purpose.

The issue of whether the raw natural state has been significantly altered does not depend on the outer appearance of the specimen in question, but rather on whether its general state has undergone alteration. Both conventional stuffing, where the hide is stripped and the pelt is tanned and stuffed, and modern taxidermy methods alter the specimens in a complete and profound manner. Consequently, the first condition according to which a specimen, in order to be considered as worked, must be significantly altered, is certainly met in the case of a stuffed animal. As regards the three other conditions, it is clear that whether the animal was stuffed for jewellery, adornment, art, utility, or musical instruments, whether it must be clearly in one of those categories, and whether no further carving, crafting or manufacture is needed for it to effect its purpose depends on the individual case. It is for the national court to ascertain whether the criteria are met.

Furthermore, according to the CJEU, receiving specimens as a gift or inheriting them, and killing animals and then taking them into one's possession, makes them acquired within the meaning of Article 8(3)(b) of Regulation No 338/97. It is not necessary that the person who acquired the specimen more than 50 years previously be the present owner. Notwithstanding the provision in the second paragraph of Article 32 of Regulation No 1808/2001, Article 8(3)(b) of Regulation No 338/97 must be interpreted as meaning that the management authority of the Member State concerned must have been able to ascertain that the specimen in question was acquired in accordance with the conditions laid down in Article 2(w) of Regulation No 338/97.

In [Case C-219/07 \(*Nationale Raad van Dierenkwekers en Liefhebbers and Andibel*\)](#), the CJEU dealt with rules which prohibited any commercial use of certain specimens, save where those specimens were explicitly referred to in those national rules. More specifically, a Belgian national decree gave rise to an absolute prohibition on importing from another Member State, holding or trading in mammals belonging to species which are not included in the 'positive' list attached to the decree. The CJEU concluded that EU law does not preclude such national legislation if the protection of or compliance with the species protection cannot be secured just as effectively by measures which obstruct intra-Community trade to a lesser extent. It is for the national court to determine, *inter alia*, whether the national list is based on objective and non-discriminatory criteria, and whether the conditions for the holding of specimens of mammals not referred to in that list are objectively justified and do not go beyond what is necessary to achieve the objective pursued by the national legislation as a whole.

In [Case C-344/08 \(*Rubach*\)](#), the CJEU provided guidance on the standards of evidence of lawful acquisition of specimens. Mr Rubach acquired exotic spiders of a protected specimen belonging to species listed in Annex B to Regulation No 338/97 at terrarium fairs, and he began breeding those arachnids in captivity and auctioning them on the internet. Criminal charges were brought against him. According to the CJEU, Regulation No 338/97 does not specify what evidence must be used to establish that specimens of species listed in Annex B have been acquired lawfully, in accordance with the conditions laid down in Article 8(5), in particular where those specimens have been born in captivity within the Community. The task of determining what evidence may establish that those conditions have been met is thus left to the competent authorities of the Member States. That evidence includes the licences or certificates provided for in Regulation No 338/97 or any other appropriate document which

may be deemed useful by the competent national authorities. Any type of evidence accepted under the procedural law of the Member State concerned in similar proceedings is in principle admissible for the purpose of establishing whether specimens of animal species listed in Annex B were lawfully acquired. Also in light of the principle of the presumption of innocence, such a person may adduce any such evidence to prove that those specimens lawfully came into his possession in accordance with the conditions laid down in that provision.

The judgment in [Case C-87/20 \(*Hauptzollamt B*\)](#) concerns sturgeon caviar seized by German customs. The CJEU was answering the question whether the entire quantity of imported caviar (here 300 g) could be seized or only the quantity exceeding the threshold for which an import permit (125 g) was required under the implementing regulation of Regulation No 338/97. The CJEU first held that the caviar could be classified as 'specimens of a personal or family nature', even though the importer had declared that he intended to give the caviar to a third party. There was nothing to suggest that the caviar was used for commercial purposes. Such a qualification is, on the other hand, permissible where the said caviar is owned or held privately for non-commercial purposes, irrespective of whether it is intended to be given to a third party. Consequently, the CJEU ruled that all caviar imported without a permit must be confiscated, particularly in view of the objective of the legislation in question, which is to ensure the fullest possible protection of species of wild fauna and flora.

[Case C-532/13 \(*Sofia Zoo*\)](#) concerns the interpretation of Article 11(2)(a) and (b) of Regulation No 338/97 (validity of and special conditions for permits and certificates). A border check of a Serbian national entering Hungary en route to Bulgaria discovered a cargo of 17 specimens originating from Tanzania. In order to prove the origin of the animals, a copy of the CITES import permit issued by the Bulgarian authorities was produced. The order for reference indicates that it was clear from the accompanying documents that the animals were being transported from the Netherlands to Sofia Zoo in order to undergo quarantine and that they would subsequently be transported back to the Netherlands through Hungary. The cargo was confiscated, and Sofia Zoo's action sought to have the seizure decision reviewed. The zoo argued that the invalidity of the import permits may concern only those specimens of animals actually affected by the grounds of invalidity, with the result that only those specimens may be seized and confiscated, and not the other specimens which fall within the scope of Regulation No 338/97. The CJEU agreed and ruled that an import permit which does not comply with the conditions laid down in the regulation must be considered void only in respect of the specimens actually affected by the grounds of invalidity of that import permit.

In [Case C-659/20 \(*Ministerstvo životního prostředí*\)](#), the CJEU elaborated on the concept of breeding stock. The request had been made in the proceedings concerning the grant of an exemption from the prohibition of trade for five specimens of parrots (hyacinth macaw). The grandparents of those parrots were initially imported to Slovakia and then to the Czech Republic in 1993, under circumstances incompatible with CITES. The exemption was not granted as the current owner was unable to demonstrate the origin of the grandparent pair. The CJEU concluded that Article 1(3) of Regulation No 865/2006 must be interpreted as meaning that the term 'breeding stock', within the meaning of that provision, does not include the ancestors of specimens bred in a breeding operation, which have never been owned or kept by that operation. At the same time, the EU law precludes a specimen, kept by a breeder, of a species of animal referred to in Annex A to Regulation No 338/97 from being regarded as having been born and bred in captivity, where the ancestors of that specimen, which do not form part of the breeding stock of that breeder, were acquired by a third party before the entry into force of those regulations in a manner which is detrimental to the survival of the species concerned in the wild. The fact that the regulatory framework in force was less stringent when the breeding stock was purchased, since the Czech Republic was not yet a member of the European Union at that time, is irrelevant.