EC Habitats Directive and EC Birds Directive


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Presentation structure

- some relevant EC Directives

- Habitats and Birds Directives:
  - introduction
  - site selection and protection
  - species protection

- some questions
Some relevant EC Directives

- Habitats Directive
- Birds Directive
- Environmental Liability Directive
- Marine Strategy Directive
- Water Framework Directive
- EIA Directive
- SEA Directive

Focus here on **Habitats Directive** (HD) and **Birds Directive** (BD)
Habitats and Birds Directives
- some relevant materials -

- Directives themselves (as amended)
- Treaty establishing the European Community
- case-law of ECJ (and Member States’ courts)
- Commission guidance, regarding:
  - Art. 6 HD (2000)
  - Art. 6 (4) HD (Jan 2007)
  - Arts. 12 and 16 HD (Feb 2007)
  - Marine ‘Natura 2000’ (May 2007)
- Minutes + reports of Habitats Committee / WGs, e.g.
  - Art. 12 WG, final report, April 2005
Habitats and Birds Directives
- marine geographical scope -

- marine internal waters
- territorial sea
- exclusive economic zone (EEZ)
  [Case C-6/04 Commission v UK, para. 117]
Habitats and Birds Directives
- sites -

- site selection

- site protection:
  - focus here on Art. 6 (3) + (4) HD
  - but do not forget Art. 6 (2) + (1) HD
  - reference to Basses Corbières case
Habitats Directive
- site selection 1/2 -

- Special Areas of Conservation (SACs), for:
  - natural habitat types in Annex I
  - habitats of species in Annex II

- Annex II includes, *inter alia*:
  - Harbour porpoise
  - Grey seal, Common seal, Baltic ringed seal

- SACs are ‘designated’ by Member States

- *moderating* role for Commission
  (lists of sites of Community importance (SCIs))

- SACs form part of ‘Natura 2000’
Biogeographical regions
Boreal: Commission Decision 2009/94/EC
Continental: Commission Decision 2009/93/EC

Preamble to each of above Decisions states, *inter alia*:

‘Given that knowledge on the existence and distribution of some of the natural habitat types of Annex I and species of Annex II to [the Habitats Directive] remains incomplete, it should **not** be concluded that the network is either complete or incomplete. The list should be revised, if necessary, ...’ (Emphasis added)
Birds Directive
- site selection -

- **Special Protection Areas** (SPAs), for:
  - bird species in Annex I
  - ‘regularly occurring migratory species’ of birds
- SPAs are ‘classified’ by Member State
- no moderating role for Commission
- SPAs form part of ‘Natura 2000’
Habitats and Birds Directives
- situation ‘on the ground’ -

**SACs** (marine internal waters, territorial sea, EEZ)
What sites are already SCIs?
What sites are due to be proposed as SCIs?
What sites, if any, are already designated as SACs?

**SPAs** (marine internal waters, territorial sea, EEZ)
What sites are already classified as SPAs?
What sites are due to be classified as SPAs?
What sites should have been classified as SPAs?
Habitats Directive
- Art. 6 (3) and (4) -

Plans and projects
- Art. 6 (3) HD: assessment and authorisation
- Art. 6 (4) HD: exceptions
Habitats Directive Art. 6 (3) 1/3

‘Any **plan or project** not directly connected with or necessary to the management of the site but **likely to have a significant effect** thereon, either **individually or in combination** with other plans or projects, shall be subject to **appropriate assessment** of its implications for the site in view of the site’s conservation objectives. …’

(Emphasis added)
Habitats Directive Art. 6 (3) 2/3

‘… In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.’ (Emphasis added)
Habitats Directive Art. 6 (3) 3/3

- cumulative effect to be taken into account

- precautionary formulation: authorisation only if plan or project will not adversely affect site integrity (subject to Art. 6 (4) HD)

- plan or project does not have to be taking place inside the site concerned

- applies to SACs and SPAs and also SCIs (see Arts. 6, 7 and 4 (5) HD)
Competent authorities may agree to plan or project ‘in spite of a negative assessment of the implications for the site’ if:
- no ‘alternative solutions’; and
- necessary for ‘imperative reasons of overriding public interest’ (+ further requirements for priority species/habitats)

But requirement for ‘all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected’
**Basses Corbières case**

Case C-374/98 Commission v France

Art. 7 HD: for SPAs, obligations under Art. 6 (2)-(4) HD replace those under first sentence of Art. 4 (4) BD

ECJ: acknowledged that regime under first sentence of Art. 4 (4) BD is stricter than that under Art. 6 (2)-(4) HD (para. 50 of judgment)

ECJ: ‘It is clear … that areas which have not been classified as SPAs but **should have been** so classified continue to fall under the regime governed by the first sentence of Article 4(4) [BD].’ (para. 47 of judgment; emphasis added)
Habitats and Birds Directives
- species -

Focus here on Arts. 12 and 16 HD

- Art. 12: ‘a system of strict protection’
- Art. 16: derogations

But do not forget species protection provisions in BD
Habitats Directive Art. 12

Member States must take the requisite measures to establish ‘a system of strict protection’ for Annex IV (a) species in their natural range, prohibiting:

‘(a) all forms of deliberate capture or killing of specimens of these species in the wild;

(b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;

(c) deliberate destruction or taking of eggs from the wild;

(d) deterioration or destruction of breeding sites or resting places.’

Annex IV (a) includes, *inter alia*, ‘CETACEA  All species’
Under Art. 16 HD, derogation from Art. 12 HD is possible for specified reasons if:

- ‘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’
One of the specified reasons set out in Art. 16 HD is:

‘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;’
Some questions 1/2

What is happening ‘on the ground’ with SAC designation and SPA classification in the Baltic Sea?

To what extent, if any, will the Nord Stream pipeline be affected by Art. 6 (3) HD regarding particular sites?

To what extent, if any, will Art. 6 (4) HD be applied to the Nord Stream pipeline by Member States?

If Art. 6 (4) HD is applied, what kinds of ‘compensatory measures’ will be necessary?
Some questions  2/2

To what extent, if any, will the Nord Stream pipeline be affected by the Basses Corbières judgment regarding particular sites?

To what extent, if any, will the Nord Stream pipeline be affected by Art. 12 HD, e.g. in respect of Harbour porpoise?

To what extent, if any, will Art. 16 HD be applied to the Nord Stream pipeline by Member States?
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