

**Workshop on the Preparation of the Action Plan for Biodiversity and  
marine protection with special reference to the establishment of  
marine protected areas in the part of the Adriatic Sea belonging to  
BIH**



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Sarajevo, 21/02/2023

# **Convention on the conservation of European wildlife and natural habitats and Natura 2000**

Council of Europe Bern Convention for a wider Natura 2000



# Bern Convention

- The Convention on the Conservation of European Wildlife and Natural Habitats, or the Bern Convention, was signed in Bern in 1979
- The first comprehensive legal instrument for pan-European nature conservation
- Remains the keystone treaty for protection of biodiversity within the Council of Europe framework.
- the Council of Europe committee for environment stresses the difficulties in the global biodiversity protection; *It took more than twelve years for a global treaty of even more comprehensive coverage to emerge – when the Convention on Biological Diversity (the Biodiversity Convention) was signed at the Earth Summit in Rio in 1992. However, the Biodiversity Convention lacks annexes listing the protected species – which, given its global scope, would indeed be a formidable task – and some of the other mechanisms present in the Bern Convention.*
- “In January 1996, a sufficient number of States of Central and Eastern Europe had become Parties to the Convention and were requesting the development of the network of ASCIs



# Areas of Special Conservation Interest (ASCI) – Emerald network

The rules laid down in Article 4 of the convention relating to the establishment of protected areas are general in nature.

- Articles 1, 2, 3, 4, 6 and 9 of the Convention deal with the protection of natural habitats, in particular:
  - – Habitats of the wild flora and fauna species (specially those in Appendices I and II);
  - – Endangered natural habitats;
  - – Areas of importance for migratory species.

**Recommendation No. 16 (1989)** which ask Parties to: "*1. Identify in the areas within their jurisdiction:*

- a. Species requiring specific habitat conservation measures;*
- b. Endangered natural habitats requiring specific conservation measures;*
- c. Migratory species requiring specific habitat conservation measures;*
- d. Species of which the breeding and/or resting sites require protection and their breeding and for each of these categories to indicate, as far as possible, their sites"..*

The Standing Committee provided additional guidance with binding Resolutions:

- Resolution No. 3 (1996) concerning the setting up of a pan-European Ecological Network, establishes the Emerald Network of Areas of Special Conservation Interest. It clarifies a general reference to protected sites in the convention. It also establishes the relevant expert group and invites observer states to the convention to participate in the network.



# Resolutions

- Resolution No. 4 (1996) lists in Annex I the habitat types to be protected (since the convention itself does not have an appendix listing such habitat types).
- Resolution No. 5 (1998) concerning the rules for the Network of Areas of Special Conservation Interest (Emerald Network) states, that for European Union member states the Natura 2000 sites form the Emerald Network.
  - It also establishes the procedure for depositing data regarding the sites with the convention secretariat and the standard data form for site information.




Recommendation No. 16 defines the Areas of Special Conservation Interest as those designated by states where that area fits **one or several of** the following conditions:

- a. it contributes substantially to the survival of threatened species, endemic species, or any species listed in Appendices I and II of the convention;
- b. it supports significant numbers of species in an area of high species diversity or supports important populations of one or more species;
- c. it contains an important and/or representative sample of endangered habitat types;
- d. it contains an outstanding example of a particular habitat type or a mosaic of different habitat types;
- e. it represents an important area for one or more migratory species;
- f. it otherwise contributes substantially to the achievement of the objectives of the convention.



# Resolutions

- Resolution No. 6 (1998) listing the species requiring specific habitat conservation measures provides clarification of the difference of species lists between the relevant appendices to the convention and annexes to the Natura 2000 directives, as species listed in all of these documents are listed in the Appendix 1 to Resolution No. 6 (1998).
-  In 2010, the Standing Committee adopted the “Criteria for assessing the National Lists of **proposed ASCIs at biogeographical** level and procedure for examining and approving Emerald candidate sites”.
  - provides the basis for the identification and scientific evaluation of the sufficiency of the sites proposed by the Contracting Parties for **joining the Emerald Network.**

# Network - Emerald

The Standing Committee, realising this wish and noting that the Habitats Directive was already sufficiently advanced in its work to build Natura 2000, decided to adopt its Resolution No. 3 (1996), in which it resolved to

*"set up a network (Emerald Network) which would include the Areas of Special Conservation Interest designated following its Recommendation No. 16";*

it furthermore *"encouraged Contracting Parties and observer states to designate Areas of Special Conservation Interest and to notify them to the Secretariat".*

Resolution No. 3 (1996) was, in a sense, a second act of birth of the network, after its first creation in 1989.

More precisely it was an act of baptism as the network had not been given a name in 1989 and it had proved rather awkward to promote a network under the name of "network to develop Recommendation No. 16 (1989) of the Standing Committee of the Convention on areas of special conservation interest"

# Network - Emerald

- The conditions for establishing Areas of Special Conservation Interest point clearly towards areas of a great ecological value for both the threatened and endemic species listed in the Appendices of the Bern Convention and for the endangered habitat types which have been identified by the Standing Committee as "requiring specific conservation measures".
- The Emerald Network would thus not be simply a box, into which any type of protected area can be put, or a mere collection of areas designated under other schemes. Its coherence – much like that of Natura 2000 – comes from the limited criteria for choice: they have to be important and contribute substantially to the objectives of the Convention
- Recommendation No. 157 (2011) on the status of candidate Emerald sites and guidelines on the criteria for their nomination.





# The Emerald Network constitution process

The constitution of the Network, although divided in three Phases, is rather an iterative process, starting from the identification of suitable areas at national level under Phase I, through the scientific evaluation of the sites proposals under Phase II to a possible return to Phase I in case the proposed sites are considered insufficient for given species and habitats to be protected.

**Phase I:** Participating countries assess and identify species and habitats to be protected according to the relevant resolutions of the Bern Convention listing them. They subsequently select potential sites which are suitable for ensuring the long-term survival of the “Emerald” species and habitats and they send a database containing scientific information on the proposed sites to the Bern Convention’s Secretariat.


- The proposed sites can be officially nominated candidate Emerald sites by the Standing Committee

**Phase II:** An evaluation of the efficiency of the proposed sites is done on a species by species and habitat by habitat base for each **biogeographical region**. Ideally the evaluation would only start if a complete inventory of proposed sites exists for a certain area.

- Standing Committee has the right to advise the government concerned to designate one or

# The Emerald Network constitution process – final phase

The need for additional designation is further clarified in the document on the *Revised Criteria for assessing the National Lists of proposed ASCIs at biogeographical level and procedure for examining and approving Emerald candidate sites*. Through the **biogeographic process** of assessment of the sites' proposals, the need for further identification of potential sites at national level might be concluded, for ensuring a sufficient protection of given species and habitats.

 **Phase III:** Consists of the national designation of the adopted ASCI's and the implementation of management, reporting and monitoring measures, under the responsibility of national authorities, in line with the requirements.

- In order to designate its ASCIs, any government should deposit a Standard Data Form for each individual site proposed with the Secretariat of the Council of Europe, through the Common Data Repository of the European Environment Agency.
- It is adapted from the Natura 2000 Standard Data Form and covers a larger geographical area and **the more numerous species of the Bern Convention.**

# Emerald v. Natura

- The Council of Europe Bern Convention is the intellectual precursor to the Habitat Directive and has been developed in concert since 1996.
- It can be stated that the Bern Convention, was the conceptual and political “parent” of the Nature directives of the EU.
- **It is, however, the implementation or the enforcement procedure that differs significantly, due to the different legal nature of the Council of Europe and the European Union.**



*...Directive 79/409/EEC on the conservation of wild birds (the Birds Directive) was adopted the same year as the Bern Convention, 1979, and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive) was adopted in 1992.*

*Since the European Union is also a party to the Bern Convention – and indeed these two directives are regarded as the way of implementation of the convention by the European Union..*

- It is complementary to the Habitats Directive that lists habitats to be protected within Natura 2000 in its Annex I.
- **The habitat lists in Annex I to Resolution No. 4 and Annex I of the Habitats Directive are not identical.**

# Emerald v. Natura

- Natura 2000 and Emerald data forms and software were developed in a co-ordinated manner and thus have a similar structure. There is a degree of compatibility between the networks. The Standing Committee's Resolution No. 5 (1998) leaves implementation of the site protection objectives by the European Union member states to Natura 2000.
- *The rules of site designation specified in Article 4 of the Habitats Directive are stronger than the ones in Article 4 of the Bern Convention. The European Union also has stronger mechanisms of reporting and implementation: the European Commission monitors the creation of the Natura 2000 Network and can react to non-compliance with the infringement procedure.*
- Different habitat and species lists may create problems in the coherence of the pan-European network. Co-operation between the European Commission, the European Environmental Agency and the Standing Committee of the Bern Convention is supposed to solve this problem.
- **The need to assess progress in the implementation of the Bern Convention**, Report of the Committee on the Environment, Agriculture and Local and Regional Affairs, January 2011





# Emerald v. Natura

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*The building of the Emerald Network benefits substantially from the work carried out in the European Union on Natura 2000 as in the last decade the Emerald constitution process and methodology got inspired and followed the Natura 2000 examples and best practices. Coherence between the Emerald and Natura 2000 is essential for ensuring the whole of Europe holds a homogeneous network of areas and is additionally helping to break down in this sector the barriers that history, politics and economic reality have imposed on the European continent.*

*This is in line with the missions, the challenges and the ambitions of the Council of Europe. Additionally, the setting-up of the Emerald Network supported the former EU-candidate states to join the European Union, by doing part of the preparatory work necessary to comply in advance with the Habitats Directive.*

***It seems evident that if a state designates a coherent network of ASCIs within the Emerald Network, it will be in a more favourable position to designate its own SACs when it joins the Union. Such a possibility has led to close co-operation between the Council of Europe and the European Commission, in terms of technical and financial matters derived from the building of both networks.... In a sense, the Emerald Network extends the EU nature conservation standards outside its borders and its success will be that of nature conservation in the Pan-Europe***



# Development of the Emerald site

- Creation of the Emerald Network is under way. Pilot projects have been carried out in the relevant countries at different times. Most of the non-European Union contracting parties have received some assistance in setting up the pilot projects.
- A joint European Union-Council of Europe project for the setting up of the Emerald network in seven central and eastern European and Caucasus countries has been under way. These projects have contributed to the development of nature conservation networks in the countries involved but have produced preliminary site list proposals.
- In January 2011, the evaluation of all candidate Emerald sites (Phase II) in the West Balkan area started in collaboration with the European Topic Centre on Biodiversity of the European Environment Agency (Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia and Nord Macedonia”)
- **It is time to revive the process for marine habitats and species**



# Enforcement

Implementation of the convention by the contracting parties is co-ordinated by the Standing Committee, the highest body and the focal point of communication of the convention.

- The Standing Committee is assisted by the secretariat and groups of experts.
-  ➤ It adopts resolutions and recommendations
-  ➤ can open case files in cases of suspected non-compliance with the convention by a contracting party.
- The Greek case under the convention and Natura 2000, is a an example of the legal strength of the two enforcement mechanisms.

# Caretta caretta case

Bay of Laganas on Zakynthos in Greece is a vital breeding region, perhaps even the most important in the Mediterranean, for the sea turtle *Caretta caretta*. Over 40 % of Greece loggerhead and over 25% of Mediterranean loggerhead depend of the 5 km long stretch of beach to hatch their young during the summer months of June and July. Construction and other touristic activities including illumination in the period threatens the nesting ability of the beach.

*Caretta Caretta* is strictly protected under the Bern Convention art. 6.. Greece accordingly adopted protecting laws and regulations in 1980.

Laws were not enforced against local industry. NGO (MEDASSET) brought the insufficient enforcement to the attention of the Standing Committee which brought several actions:



- Special expert group was set to follow and advise and report
- **Recommendation No. 9** (1987) on the specific situation on the Bay of Laganas
- **Declaration** on the conservation of Laganas Bay Zakynthos (Greece) (1993) directed to the Council of ministers of the Council of Europe
- **Decision** of the Standing committee concerning conservation of Laganas Bay Zakynthos (1995) gave the deadline until 1998 to set up the appropriate legal measures including national marine park
- Greece did not comply, but no action for breach of the convention under art. 8. was taken by the council of ministers – case was closed



# Caretta caretta case

## ECJ Case C-103/00, Commission v. Greece 2002

- The deterioration in the conservation conditions for the sea turtle *Caretta caretta* on the island of Zakynthos was criticised by non-governmental organisations. In addition, by a letter of 3 July 1998, the Commission requested information from the Greek authorities on measures for the protection of that species on the island.
- Bay of Laganas on Zakynthos is a vital breeding region, perhaps even the most important in the Mediterranean, for the sea turtle *Caretta caretta*. Given the significance of the bay of Laganas, the Greek authorities have proposed that the region be classified as one of the sites of Community importance for the Natura 2000 network.

42. Under the second indent of Article 1(i) of the Directive, conservation status is regarded as '**favourable**' when **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, that the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future and that there is, and will probably continue to be a sufficiently large habitat to maintain its populations on a long-term basis.**

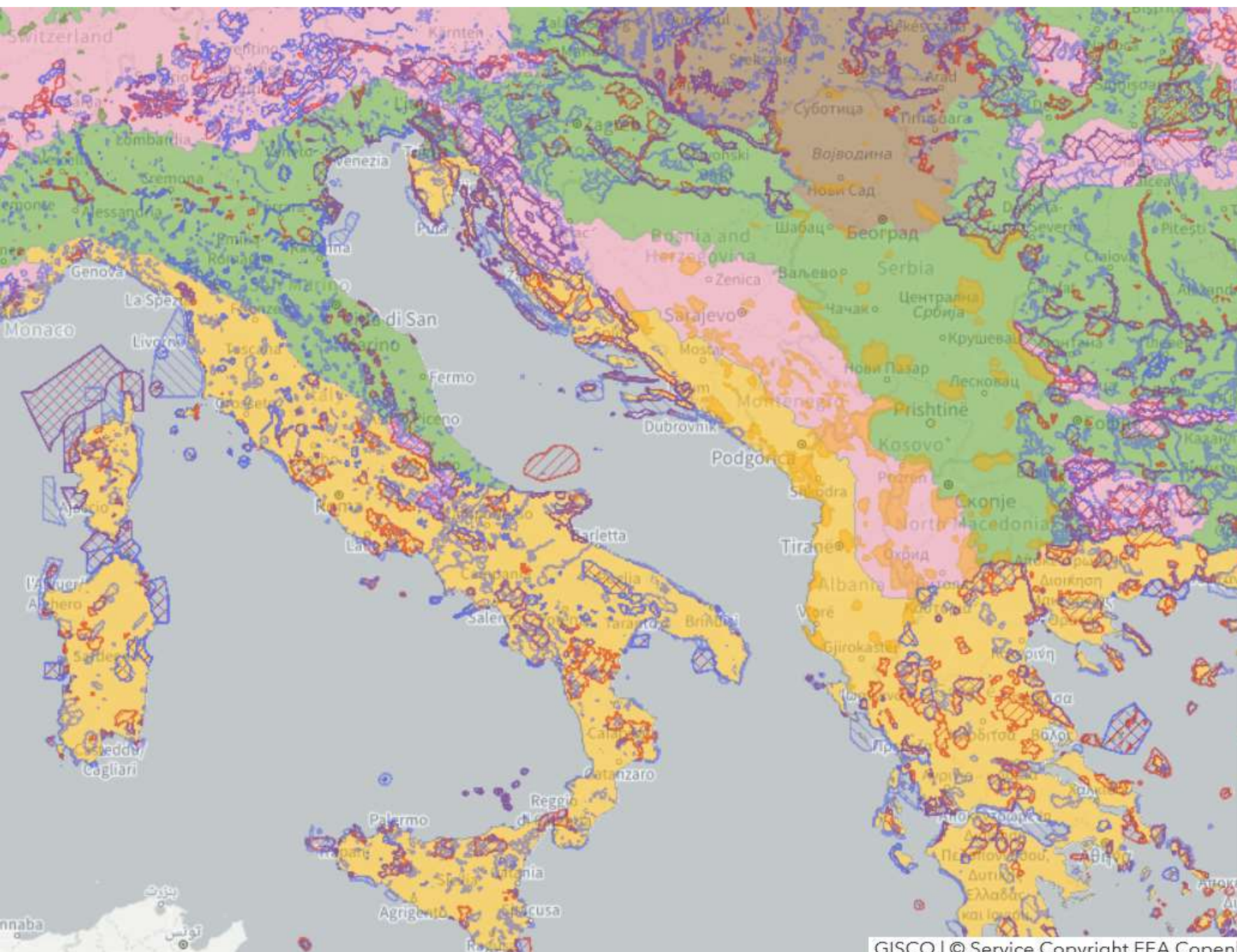
43. It is clear from the wording of these provisions that the obligations stemming from Article 12 of the Directive arise for the Member States **before a reduction in the numbers of the species in issue, the *Caretta caretta* turtle, is found, or there is a real risk of the protected species disappearing. In other words, the measures to be taken are essentially of a preventative nature.** Furthermore, the combined effect of those provisions is apparently that a system of **strict protection** of an animal species of Community interest means a set of **coherent and coordinated measures, of a preventative nature**, which ensure in the long term that the population of the species in question is maintained or restored in the type of natural habitat to which it belongs. This assumes that there is a sufficiently large natural habitat for the species in question.

44. The fact that during the last 15 years no reduction in the number of nests on the island of Zakynthos has been proven is **therefore insufficient to exempt the Hellenic Republic from the obligations incumbent on it under Article 12 of the Directive. In order to comply with the obligations of the Directive, the Hellenic Republic must adopt a set of precise, concrete measures to avoid a reduction in the population of the species, by ensuring in particular that the turtles' breeding area is maintained in a favourable state.**

<https://emerald.eea.europa.eu/>







## WHAT IS THE EMERALD NETWORK?

The Emerald Network is an ecological network made up of areas of special conservation interest (ASCIs) located in 16\* Contracting Parties and Observer States to the Bern Convention in the neighbouring areas of the European Union (EU).

As an ecological network, the Emerald Network is a system of coherent interconnected areas that are subject to management, monitoring and reporting measures. Being developed within the framework of the Bern Convention, its objective is to ensure the long-term survival of the species and habitats of this treaty that require specific site protection measures. These habitats and species are listed respectively in Resolution No. 4 (1996) and Resolution No. 6 (1998) of the Standing Committee to the Bern Convention.

In 2020, the Emerald Network covers:

- nearly 3500 candidate or fully certified Emerald Network sites in 16\* countries;
- almost 700 000 km<sup>2</sup>;
- an average of 14.8% of the national territories of the countries involved.

The Emerald Network is the practical extension of the Natura 2000 Network established in the context of the EU Nature Directives for EU Member States. The two networks are fully compatible with each other and use the same methodology and information tools.

More information on the Emerald Network can be found [here](#)



# At the 40th meeting Strasbourg, 30 November - 4 December 2020

- Standing Committee, when adopted the Evaluation of the 2011-2020 Emerald Network workplan and the Proposal of a post-2020 workplan recognized:

- 3.4. Cluster 4: West Balkan countries

- *“West Balkan countries (Albania, Bosnia and Herzegovina, Croatia, Montenegro, North Macedonia and Serbia), started the bio-geographical process back in 2011 with the first Emerald Network seminar in Montenegro. Unfortunately, no progress was recorded since as none of the countries have submitted an updated database.*



*In 2017 the Secretariat did a great effort to re-vitalise the process and, although some countries showed an interest (Serbia and Montenegro), no concrete steps followed. It is also a pity that a number of EU-funded projects in relation to the preparations for the Natura 2000 process in the West Balkan region, did not stimulate progress in building the Emerald Network.*

- *It is important to mention that one country (Croatia) during the evaluation period became a member of the European Union and already had a Natura 2000 seminar in 2015 with very good results. There is a good reason to believe that this was largely thanks to the Emerald Network evaluation seminar in 2011*



# Marine Natura 2000

The Habitats Directive lists nine marine habitat types and 16 species, for which marine site designation is required

The Birds Directive lists a further 60 bird species, whose conservation requires marine site protection.

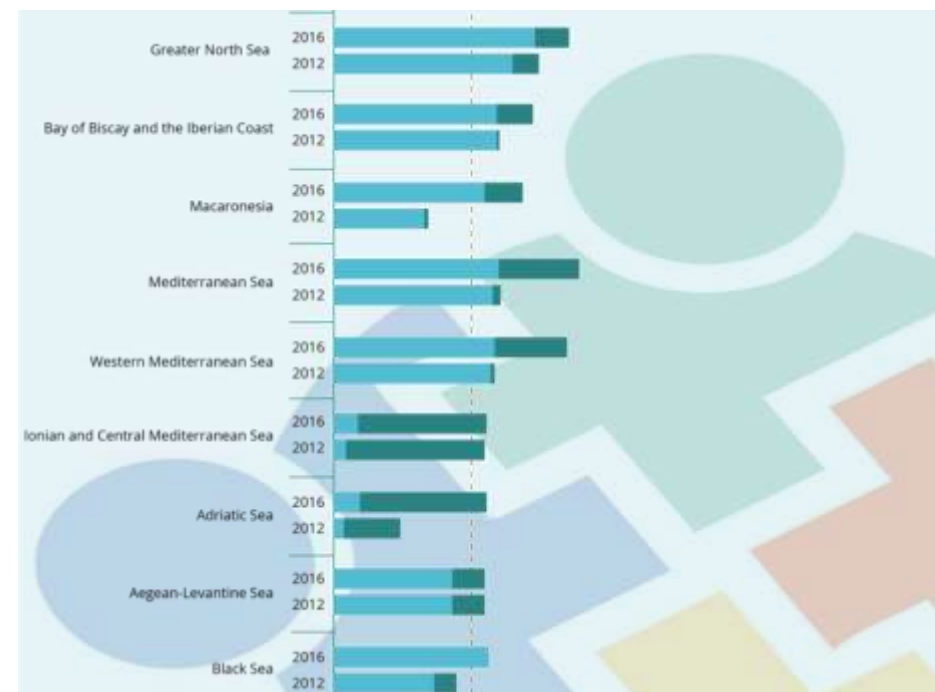
By the end of 2018, more than 3150 marine Natura 2000 sites have been designated, covering almost 10% of the total EU marine area (over 550 000 km<sup>2</sup>)



- **Almost all of the Mediterranean MPAs are part of the NATURA 2000 network.**
- **Annexes of the Habitats Directive have limited focus on marine species and habitats and even more limitations for the offshore waters.**

<https://www.eea.europa.eu/themes/water/europes-seas-and-coasts/assessments/marine-protected-areas#about>

Analysis of marine Natura 2000 sites shows that the surface of the Natura 2000 network — which was established in 2012 — was covered by conservation regimes in most regional seas by 2016 (except for the Adriatic, Aegean and Ionian Seas). Overall, in the last 4 years, **the number of marine Natura 2000 sites with conservation measures has increased**



# NaTURA 2000 NETWORK

Since 1992, the EU has called for the creation of a network of sites called Natura 2000. These integrate the previously designated sites under the Birds Directive, since 1979. Therefore, it is possible that these two types overlap, not only with each other but also with other designations:

- Special Protection Areas (SPAs) under the EU Birds Directive (1979).
- Sites of Community Importance (SCI) under the Habitats Directive, which are eventually designated on a national level as Special Areas of Conservation (SACs).



Member States (MS) are obliged to ensure that the site designation process is based exclusively on scientific criteria. Primarily, the MS should identify a list of Sites of Community Importance (SCI) and assess at a national level the relative importance of the sites for each natural habitat type (Annex I – Habitat types), and each species contained in the Annex II (including priority habitats and priority species).

Each Member State indicates a list of SCI to the European Commission, which consequently adopts the proposed list, in accordance with the Article 21 of the Habitats Directive. Once this procedure is over, the MS should designate these sites as Special Areas of Conservation (SAC), establishing the priorities for the conservation. The Special Protection Areas (SPA) are identified and designated in accordance to the Birds Directive

# NaTURA 2000 NETWORK

Based on the **national lists and the criteria** of Annex III of the Habitats Directive, the Commission will identify Sites of Community Importance (SCIs)

- **‘Stage 2’** within 6 years of the directive’s notification.
- The ‘Union list’ of SCIs consists of separate lists for the **nine biogeographical regions of the EU**.
- After the adoption of these lists, for each SCI ‘the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most **‘Stage 3’**



Criteria also constitute basis for providing information on the listed sites through so-called Standard Data Forms (SDFs), which must also be updated after the designation of the site. Member States must specify the sites that host priority habitat types and priority species.


- Most SACs have been designated, but it is ongoing process and the SCI-lists (and therefore the complex of SACs in the EU Member States) are regularly updated.



# Natura 2000 - strict protection

**Article 6(1)** requires Member States to ‘establish the necessary conservation measures’ to achieve the conservation objectives that must be set for each site.

**Article 6(2)** obliges Member States to avoid ‘the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.’

 EU case law specifies that this means that obstacles for reaching the conservation objectives must be addressed, regardless of whether they are caused, for instance, by authorised human activities or natural causes

*ECJ, C-6/04, (Com. v. United Kingdom), para. 34: ‘[...] it is clear that, in implementing Article 6(2) of the Habitats Directive, it may be necessary to adopt both measures intended to avoid external man-caused impairment and disturbance and measures to prevent natural developments that may cause the conservation status of species and habitats in SACs to deteriorate.’*

# Selection and designation of Natura 2000 sites

Special Protected Areas (SPAs) under the Birds Directive Article 4(1) of the Birds Directive provides that –

- ‘species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

 To ensure this protection, ‘Member States

- shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species in the geographical **sea and land area**.

Protected sites must also be designated for

- regularly occurring migratory species not listed in Annex I’, with ‘particular attention to the protection of wetlands and particularly to wetlands of international importance.

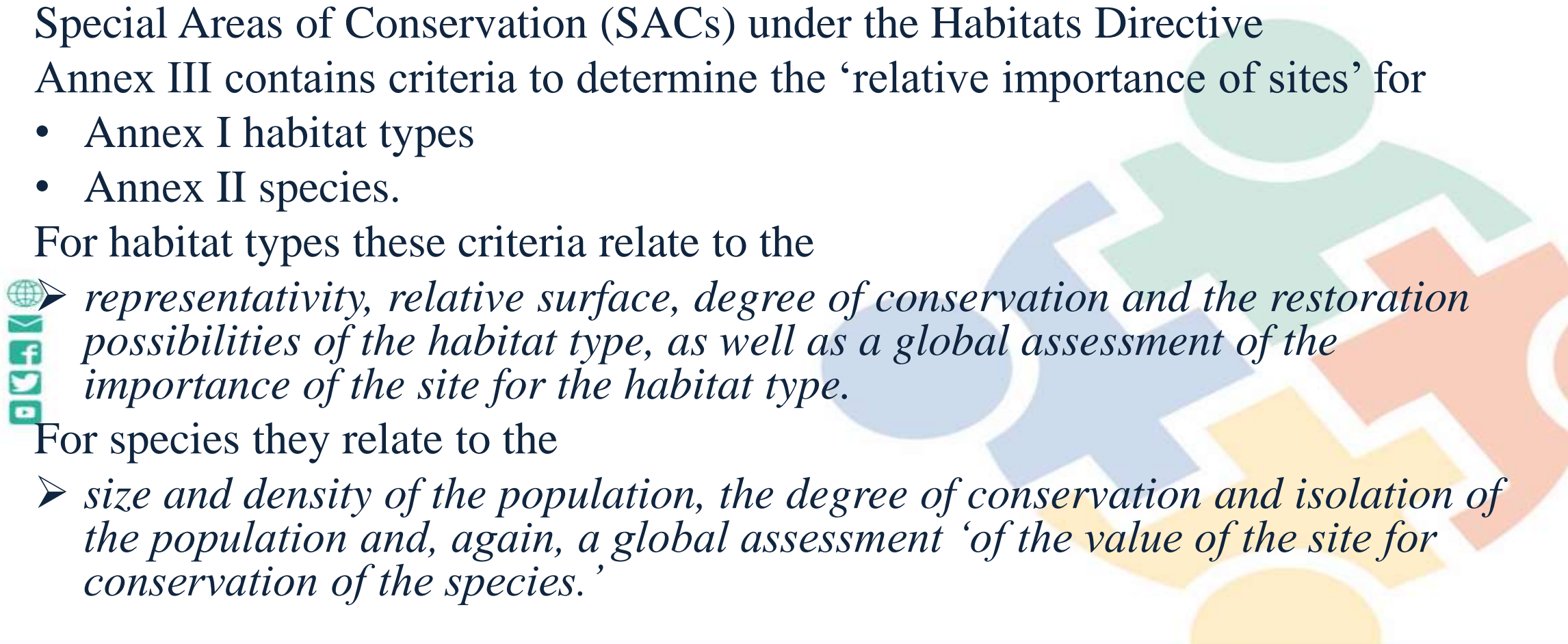
# Selection and designation of Natura 2000 sites

Special Areas of Conservation (SACs) under the Habitats Directive

Annex III contains criteria to determine the 'relative importance of sites' for

- Annex I habitat types
- Annex II species.

For habitat types these criteria relate to the

- 
- *representativity, relative surface, degree of conservation and the restoration possibilities of the habitat type, as well as a global assessment of the importance of the site for the habitat type.*

For species they relate to the

- *size and density of the population, the degree of conservation and isolation of the population and, again, a global assessment 'of the value of the site for conservation of the species.'*

# Legal standard for natura 2000 site

The ECJ has emphasised that only scientific criteria may play a role in the selection and designation of SPAs: ‘It is the criteria laid down in paragraphs (1) and (2) of Article 4 which are to guide the Member States in designating and defining the boundaries of SPAs,’ and it is clear that

- ‘the criteria in question are ornithological criteria
- is not authorized to take account of the economic requirements mentioned in Article 2 thereof when designating an SPA and defining its boundaries.

ECJ went one step further in its judgment concerning case C-418/04 (Commission v. Ireland) by stating:

- *‘that SPA classification cannot be the result of an isolated study of the ornithological value of each of the areas in question but must be carried out in the light of the natural boundaries of the wetland ecosystem [...]’*

On this basis, the ECJ concluded:

- *that an area, which was used as a feeding ground by bird species for which a nearby located SPA was designated, should have been part of the SPA: ‘it is an integral part of the entire wetland ecosystem and for that reason ought also to have been classified as an SPA*







# Legal standard for natura 2000 site

A special part of the second-stage procedure is called by the European Commission the “**Biographic process**”

*ECJ in C-110/08 (Commission v. Austria)*. In that case, the Austrian objections that they cannot follow the scientific bases of the European Commission were rejected with the claim that Austria has been

- *“undisputedly included in the bio-geographic process” from which it evidently stems that Article 4 of the Directive requiring preparation and notification of a complete SCI proposal which fell due in 1995 has been violated.*

 „**Potential Natura**“ Member State has an obligation concerning the area to prevent degradation and preserve the state of the nature giving such areas an objective possibility to be included in the Natura 2000

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- A judgment (*in the case C-244/05, Bund Naturschutz Bayern eV and Others v. Freistaat Bayern*) undisputedly affirmed the principle in the case of areas a Member State proposed for a SCI.

*“[...] If that timetable had been followed, the sites concerned would have already benefited from the protection afforded by Article 6 of the Habitats Directive ... In this respect, it is irrelevant whether or not the sites are sites which have already been included in the national list provided to the Commission pursuant to Article 4(1) of the Habitats Directive or sites which, on account of their characteristics, should be included in the Community list but which have not yet been proposed by the Member State to the Commission as sites of Community importance [...]”.*

# Cross – border natura 2000

Areas cannot be divided by national borders as that would be in evident contradiction to the purpose of the Directive

The *Opinion of the Advocate-General Colomer in the case C-205/08, Umweltanwalt von Kärnten v. Karntner Landesregierung, RC 2009*):

➤ “It would be absurd if national borders would pose no obstacle to fundamental economic freedoms but would be an impediment to environmental protection.”

