



**Coordinating the protected
area regime.**

**The European Network Natura 2000
between European and national law**

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Natura 2000 network and nature legislation

- NATURA 2000 is a EU-wide network of nature protection areas,
 - established under the “Nature Directives”,
- and designated by the Member States, following strictly scientific criteria.



Aim: to assure the long-term survival of Europe's most valuable and threatened species and habitats in a framework of **integrated conservation**.

Natura 2000 network and nature legislation

- It is an experience of co-administration between: Ue, Member States, regional and local authorities
- It represents a way for **Member States to work together** irrespective of political and administrative boundaries.
- It is a **central policy** to safeguard Europe's most important wildlife areas.
- It is also a **combination** of:
 - species conservation and habitats protection
 - with a “**man and biosphere approach**”.

The general framework of Eu Law

- Environmental law as a post-modern legal discipline
- EU law as an innovative instrument to face the problems of multilevel governance
- The relevance of the national and local dimension in environmental law

Environmental law as a post-modern legal discipline

- If we consider post-modern law (opposed to positive modern law) as a conceptual approach open to legal pluralism and inclined to regulate legal problems in terms of principles more than by single rules, then environmental law can be regarded as a symbolic post-modern legal discipline (**result oriented approach**).
- one of the fundamental contributions of environmental law to legal theory concerns a typical area of the post-modernist thought, that is the relationship between science and law in the contemporary society

Environmental law as a post-modern legal discipline

- the development a of mature environmental law has revealed that environmental rules must rest on an interdisciplinary comparison capable of considering and integrating the diverse elements (scientific, political, administrative) concurring to solve environmental matter in a conceptual framework considering a plurality of possible answers (or truths). **The habitat directive offers a good example.**
- In this perspective a fundamental aspect is the development of environmental law as a 'law of principles', well illustrated, for example, by the creation (in international law, then more systematically in European Community law) of **the 'triad' of environmental management principles: the polluter-pays principle, the principle of prevention and rectification at source and the precautionary principle.**

Environmental law as a post-modern legal discipline

- In environmental law such principles perform at least three important functions. The first is that of **directing the legislator**, well illustrated, for example, by the guiding role of the precautionary principle in electronic smog legislation, where decision makers were faced with lingering uncertainties regarding the harmfulness of electro-magnetic pollution. The decision to keep the protection of the environment and of health at a high level, is here clearly adopted on the basis of the precautionary principle.

Environmental law as a post-modern legal discipline

- The second role played by general principles is **supplying the regulators and the courts with valid interpretive keys in relation to technical-scientific questions**. From this point of view the relevant function performed in environmental law by some general clauses should be emphasized. For example the 'best available technology' standard permits to follow the scientific progress without 'crystallizing' the rule at a determinate historical period, allowing evolution on the basis of the development of technology and science.

Environmental law as a post-modern legal discipline

- Finally, environmental principles can perform the function of a **benchmark for the assessment of administrative action**. In this case the European principles of environmental management (notably the preventive and precautionary principles) can be considered as interpretive parameters in the evaluation of administrative action.

EU law as an innovative instrument to face the problems of multilevel governance

- The direct (EU Regulations) and semi-direct (EU Directives) application of EU legislative acts in the European national legal orders assigns to EU law a central role in domestic law
- **Regulations** are the most direct form of EU law: as soon as they are passed, they have binding legal force throughout every Member State, on a par with national laws. National governments do not have to take action themselves to implement EU regulations. They are different from **directives**, which are addressed to national authorities, who must then take action to make them part of national law, and **decisions**, which apply in specific cases only, involving particular authorities or individuals. Regulations are passed either jointly by the EU Council and European Parliament, and by the Commission alone.

EU law as an innovative instrument to face the problems of multilevel governance

- **EU directives** lay down certain end results that must be achieved in every Member State. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so. Directives may concern one or more Member States, or all of them.
Each directive specifies the date by which the national laws must be adapted - **giving national authorities the room for applying them within the deadlines necessary to take account of differing national situations.**
Directives are **used to bring different national laws into line with each other.** The habitat directive tries to coordinate, by different means, the legislation of the different European national systems on protected areas .

EU law as an innovative instrument to face the problems of multilevel governance

- According to the theory of supremacy EU law comprises an integral part of Member States legal system which national administrations and courts are bound to apply
- **Conversely we cannot consider EU law without understanding the principles at work in national law.**
- Those conditions create a **circulation of legal values** and norms in a double direction (top-down and bottom-up)

The relevance of the national and local dimension in environmental law

- Each Member State is responsible for the implementation of EU law (adoption of implementing measures before a specified deadline, conformity and correct application) within its own legal system. Under the Treaties the Commission of the European Communities is responsible for ensuring that EU law is correctly applied.

The relevance of the national and local dimension in environmental law

- Administrative enforcement of EU law is, therefore, achieved through national administrative mechanisms. However, these national administrative mechanisms responsible for enforcing EU law must satisfy EU standards of enforcement.
- The effectiveness of national administrative enforcement mechanisms in enforcing EU law is subject to review. There have emerged three principles: 'equivalence' of enforcement of EU and national law, 'effectiveness' of enforcement of EU law (regardless of national law standards of enforcement) and 'proportionality' of methods of enforcement to the norms being enforced. Together, this Europeanisation of administrative enforcement is said to produce a general 'principle of effective enforcement' applied to administrative processes of enforcement of EU legal standards.

The relevance of the national and local dimension in environmental law

- The enforcement of EU law has its own general principles, but in each Member State it will be influenced by the national system in which it operates.
- Also **sub-state units** such as **Regions (Italy, Spain), member states of a federation (Germany, Belgium)** are responsible for the enforcement of EU law, thus enlarging the “circle” of institutional contribution to European law.

Natura 2000 network and nature legislation

- Let's watch a video introducing N2000 network
 - **Natura 2000: Man and nature go together**
(http://ec.europa.eu/environment/nature/info/pubs/videos_en.htm)

What's new in the Habitat directive

- The directive applies extensively the **integrated conservation model**.
- The integrated conservation model is opposed to the traditional Yellowstone model of conservation (based on public property of the land, technical management of the area, exclusion of residents inside the area)

What's new in the Habitat directive

This model is based on the presence of man inside the protected areas and on the mutual protection of natural and human values (art. 2.3. “measures taken pursuant to this directive shall take account of economic, social and cultural requirements and regional and local characteristics”).

In the introductory notes of the directive (considérants) it is stated that “ the main aim of the directive is to promote the maintenance of biodiversity, taking account of economic, social and cultural requirements and regional and local characteristics ... **whereas the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities;**

What's new in the Habitat directive

- It considers the Ppaas as integrated into the territory (needing coordination between protected areas zoning and ordinary territorial plans). An example is the multi-purpose zoning of the Italian legislation on protected areas (394/1991).
- It is based on networks of protected areas connected also by natural corridors, sensible spaces (mountain areas, coastal areas, etc...)

What's new in the Habitat directive

- Art. 10 of the directive: “Member states shall endeavour ... to encourage the management of features of the landscape which are of major importance for wild fauna or flora. Such features are those which, by virtue of their linear and continuous structure (such as rivers with their banks or the traditional systems for marking field boundaries) or their function as stepping stones (such as ponds or small woods), are essential for the migration, dispersal and genetic exchange of wild species.”

The setting up of Natura 2000 network by Member States

Natura 2000 network and nature legislation

The “*Birds*” Directive
2 April 1979
(79/409/EEC – now 2009/147/EC)



National Birds inventories
Important Bird Areas



Special Protection Areas
(SPA)

The “*Habitats*” Directive
21 May 1992
(92/43/EEC)



National Habitats inventories
Reference guide EUR 27



Special Areas of Conservation
(SAC) - previously they are designated
as *Sites of Community Importance*
(SCI)

NATURA 2000 NETWORK

Natura 2000 network and nature legislation

Identification and designation of sites

The “*Habitats*” Directive

- First step: elaboration of a list of proposed Sites of Community Importance (pSCI) by the Member States.
- Second step: Biogeographical seminars and adoption of the list of Sites of Community Importance (SCI) by the Commission.
- Third step: designation of Special Areas of Conservation (SAC) by the Member States - as soon as possible and within six years at most.

Natura 2000 network and nature legislation

This is a typical example of the EU Co-administration

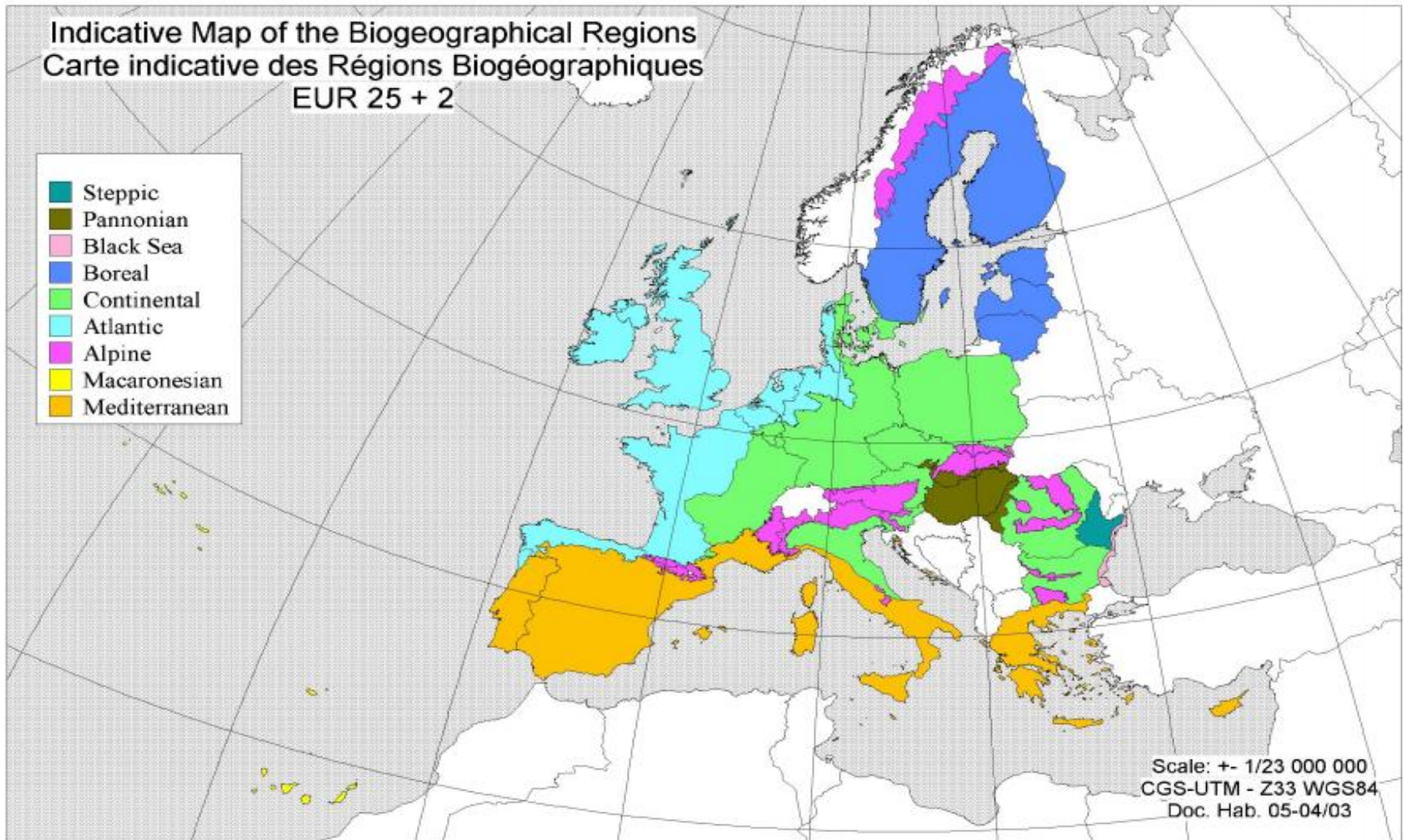
- First step: elaboration of a list of proposed Sites of Community Importance (pSCI) by the Member States. In this phase the criteria are set by the EU (habitat inventories), the screening of the territory is made by the Regions, the final individuation is made by the Central State
- Second step: Biogeographical seminars and adoption of the list of Sites of Community Importance (SCI) by the Commission. In this phase the European Commission convenes the actors and discusses with them (contractual phase) then it decides on the official list of SCIs.
- Third step: designation of Special Areas of Conservation (SAC) by the Member States (thus the States become responsible for the protection and they may be controlled by the Commission and the ECJ)

Natura 2000 network and nature legislation

The “*Habitats*” Directive

From identification to designation of sites

According to Biogeographical Regions



Natura 2000 network and nature legislation

9 Biogeographical regions

- Mediterranean Region
- Atlantic Region
- Continental region
- Alpine Region
- Steppic Region
- Black sea
- Pannonian Region (comprises parts of the Union territories of the Czech Republic, Romania and Slovakia and the Union territory of Hungary)
- Boreal Region (includes most of Sweden and Finland, all of Estonia, Latvia and Lithuania and much of the Baltic Sea)
- Macaronesian Region (consists of three archipelagos: the Azores, Madeira and the Canaries).

Natura 2000 network and nature legislation

From identification to designation of sites

- Member States are responsible for the designation, protection, management, monitoring and financing of NATURA 2000 sites.
- The site designation process is exclusively based on scientific / biological criteria.
- Socio-economic interests, land use and future management issues are not a determining element at this stage.

Natura 2000 network and nature legislation

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Natura 2000 network and nature legislation

→ *Natura 2000 Barometer*

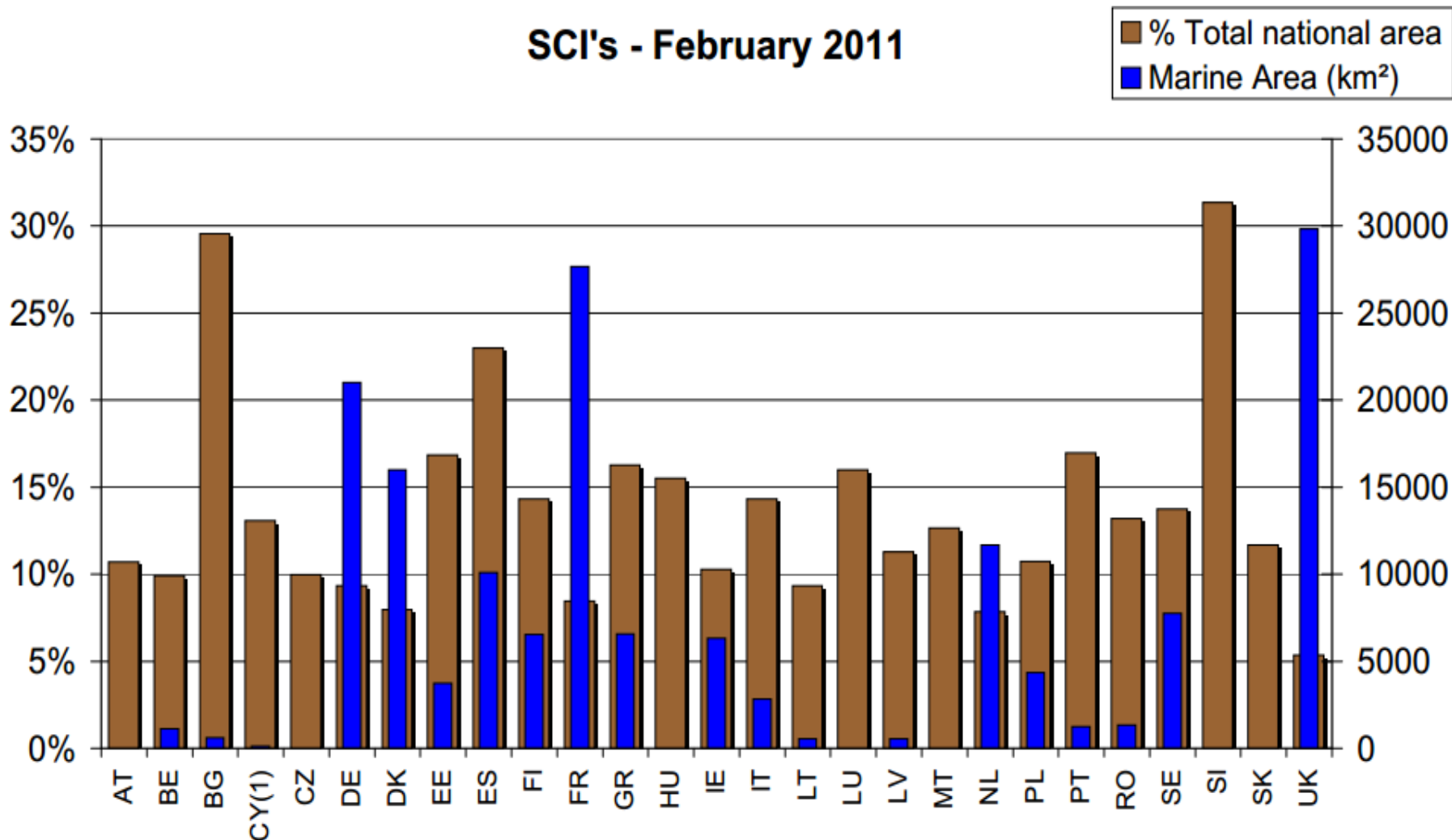
The Natura 2000 Barometer gives an updated statistical information on the progress in establishing the Natura 2000 network.

It contains information on number of sites and areas covered, as indicated by Member States.

It is established and updated twice a year by the European Topic Centre on Biological Diversity in Paris.

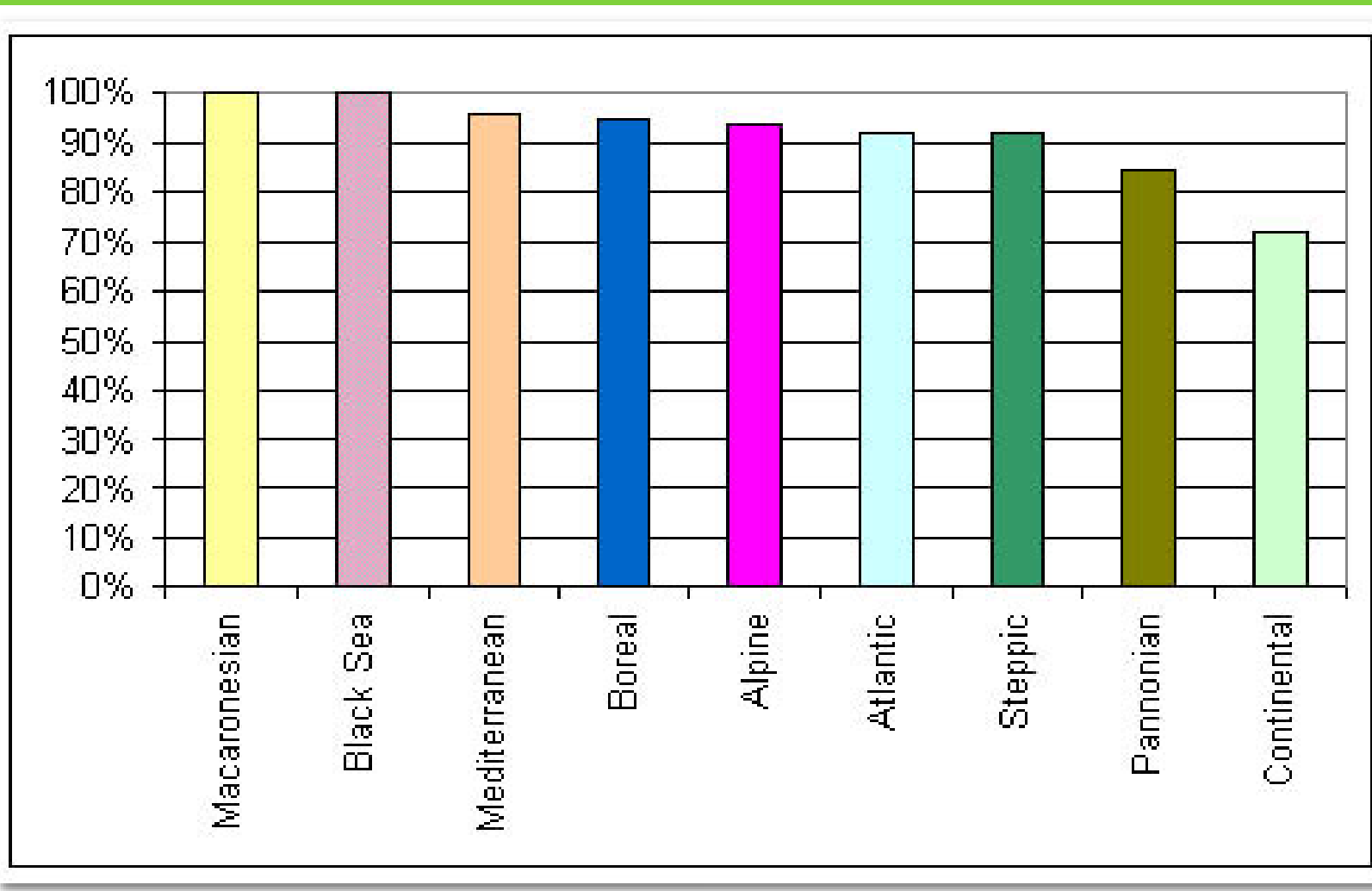
Natura 2000 barometer

SCI's - February 2011



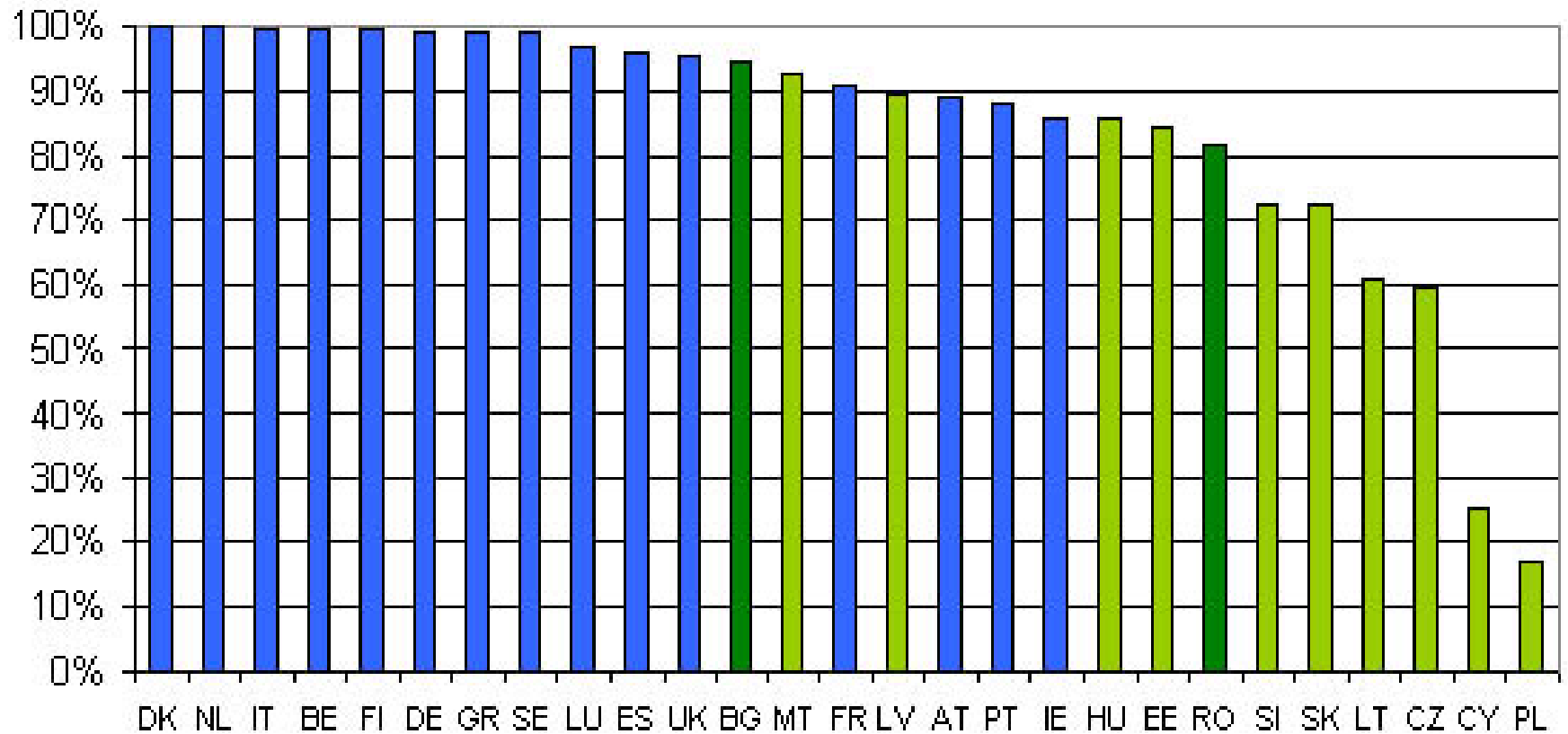
Natura 2000 barometer

Progress biogeographical region



Natura 2000 barometer

Distance to the target



A network of over 26,000 sites (949,910 km²) between terrestrial and marine. The network covers almost 20 % of the EU territory



Some general observations

- The land part of the Natura 2000 network is in the final stages of completion and the priority now must be to ensure the development and implementation of appropriate conservation measures for all Natura 2000 sites, including sufficient financial support.
- For the marine environment, considerable work still has to be done to complete the network.
- Most of the sites of community importance have still to be formally designated as special areas of conservation (SAC) by the Member States.
- The focus is increasingly shifting towards the effective management and restoration of the Natura 2000 network to achieve a measurable improvement in the conservation status of species and habitats of EU conservation concern

Some general observations

The individual Natura 2000 sites range in size from less than 1 ha to over 5,000 km² depending on the species or habitats they aim to conserve, the majority are around 100–1,000 ha.

Some are located in remote areas but most form an integral part of the countryside and contain a range of different habitats, buffer zones and other elements of the landscape.

As a result, Natura 2000, is not only safeguarding some of Europe's rarest species and habitats, but it also provides a safe haven for countless other animals, plants and wildlife features which, although more common, are an equally important part of our natural heritage.

Some general observations

Natura 2000's conservation approach **fully recognizes that man is an integral part of nature** and the two work best in partnership with one another.

Indeed, many sites in Natura 2000 are valuable precisely because of the way they have been managed up to now. In such cases, it will be important to ensure that these sorts of activities (e.g. extensive farming) can continue into the future.

So, whilst there will certainly be some strict nature reserves in the Network where human uses are limited for the sake of the rare wildlife and habitats present, **the majority of Natura 2000 sites will continue to be managed, taking into account the vulnerable habitats and species present.**

In this way Natura 2000 supports the principle of sustainable development. Its aim is not to stop economic activities altogether, but rather to set the parameters by which these can take place whilst safeguarding Europe's biodiversity.

Measures of conservation

Natura 2000 network and nature legislation

Management of NATURA 2000 sites

- After designation, Member States have to restore/maintain natural habitats and species, for which the site has been designated to/in a **favourable conservation status**.
- Member States have **to take appropriate measures** in order to avoid the deterioration of habitats
- **Measures shall take account of economic, social and cultural requirements and regional and local characteristics.**
- Member State authorities can decide to go beyond the requirements of the Directives (stricter protection).

Natura 2000 network and nature legislation

Management of NATURA 2000 sites

- Habitat directive provides a definition of **favourable conservation status of a natural habitat** (art. 1, e):
- conservation status of a natural habitat means the sum of the influences acting on a natural habitat and its typical species that may affect its long-term natural distribution, structure and functions as well as the long-term survival of its typical species within the EU territory.
- The conservative status of a natural habitat will be taken as "favourable" when:
 - its natural range and areas it covers within that range are stable or increasing, and
 - 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
 - the conservation status of its typical species is favourable.

Natura 2000 network and nature legislation

Management of NATURA 2000 sites

- Habitat directive provides a definition of **favourable conservation status of a species** (art. 1, i):
- conservation status of a species means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the EU territory;
- The conservation status will be taken 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, and
 - the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
 - there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis;

Natura 2000: protection and management

Within the *Conservation Chapter*, article 6 sets out provisions which govern the conservation and management of Natura 2000 sites. Seen in this context, this article is one of the most important of the directive, being the one which determines the relationship between conservation and land use.

Considered globally, the provisions of Article 6 reflect the general orientation expressed in the introductory notes of the directive. This involves the need to promote biodiversity by maintaining or restoring certain habitats and species at 'favourable conservation status' within the context of Natura 2000 sites, while taking into account economic, social, cultural and regional requirements, as a means to achieve sustainable development.

There is a parallelism between this Chapter and articles 3 and 4 of Bird directive.

Natura 2000: protection and management

Seen in a wider context — that of the Treaty establishing the European Community — Article 6 can be regarded as a **key framework for giving effect to the principle of integration**, since it encourages Member States to manage the protected areas in a sustainable way and since it sets the limits of activities which can impact negatively on protected areas while allowing some derogations in specific circumstances.

Seen in an international context, Article 6 helps achieve the aims of relevant international nature conservation conventions such as the **Berne Convention and the Biodiversity Convention**, while at the same time creating a more detailed framework for site conservation and protection than these conventions themselves do.

Natura 2000: protection and management

The chapter of '*Protection of species*' deals with strictly protected animal and plant species listed in Annex IV of the directive.

Some provisions of this Chapter cover certain plant and animal species which also appear in Annex II of the directive, and which therefore benefit from the provisions of Article 6 within the Natura 2000 sites hosting them.

As a consequence, an action may at the same time fall within the scope of both chapters.

For example, the destruction of a resting place of the brown bear, *Ursus arctos*, may contravene the prohibition of Article 12(1)(d) while also infringing Article 6 if the resting place is within a Natura 2000 site for the species.

A strict regime of protection of species is provided by the Bird directive too.

Natura 2000: article 6 of the Habitat directive

*“1) For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, **appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures** which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.”*

Article 6(1) makes provision for the establishment of the necessary conservation measures, and is focused on positive and proactive interventions.

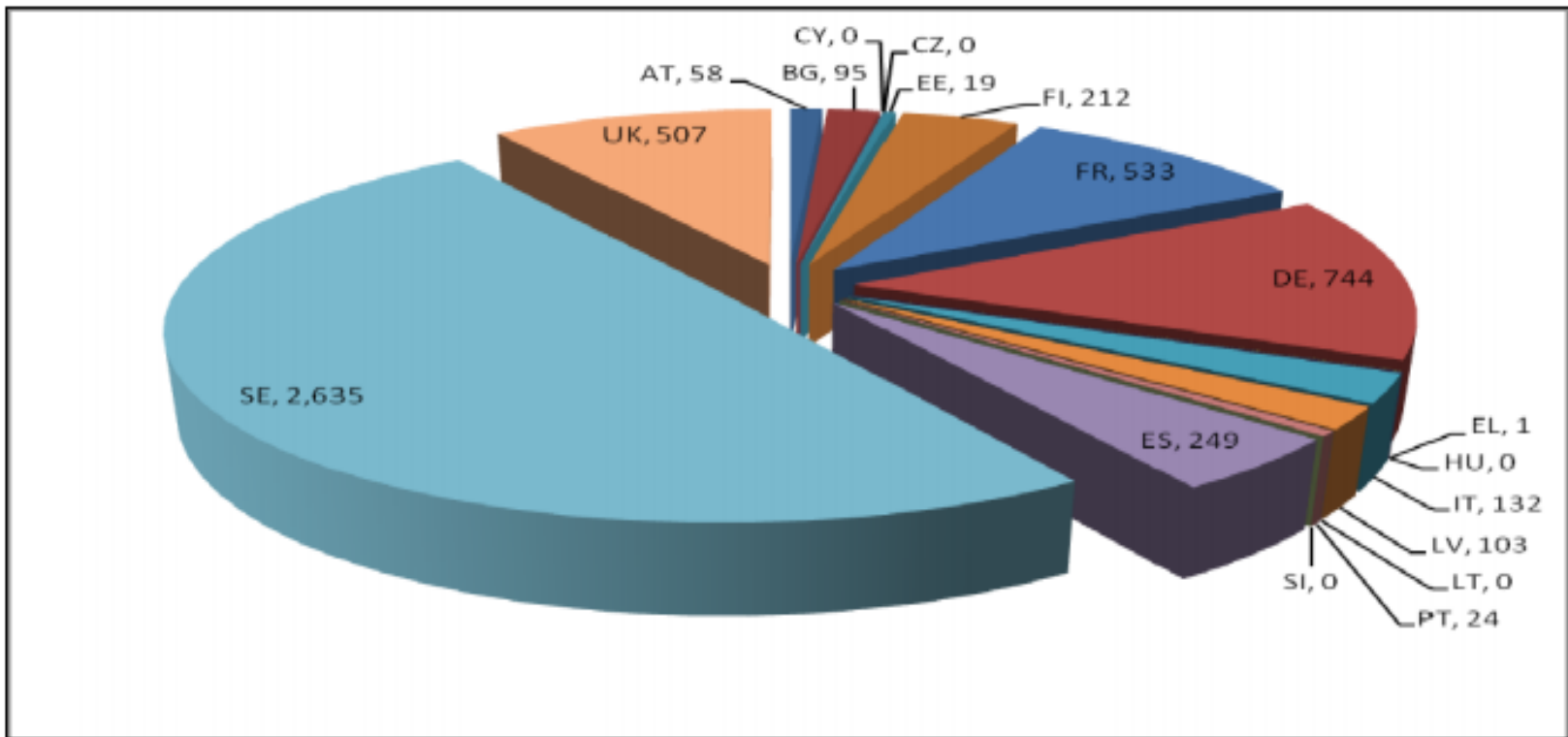


Figure 3: Number of Natura 2000 sites in different Member States with a completed management plan (Source: response to Member State questionnaire).

Source: SEC(2008) 3044

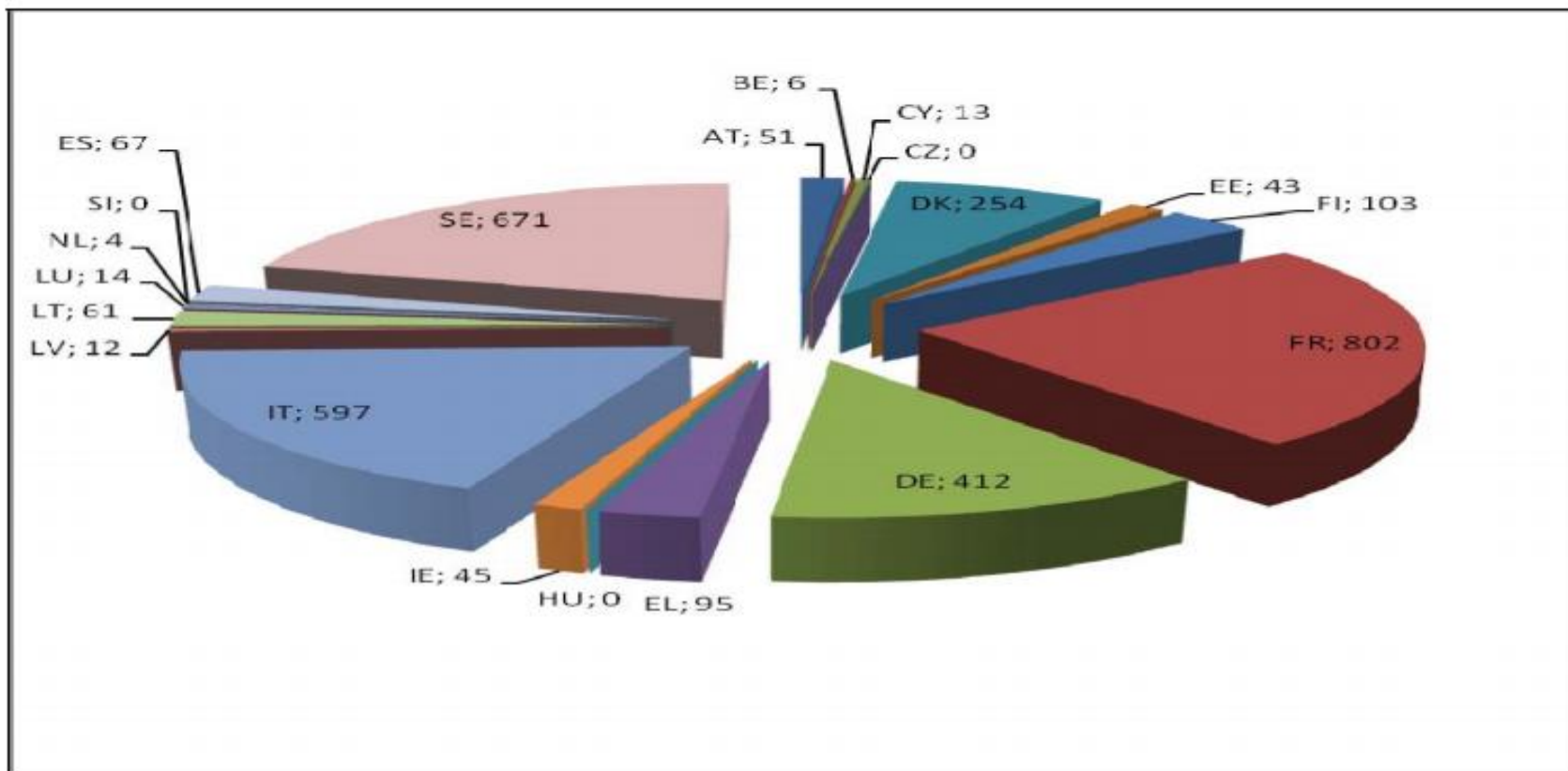


Figure 4: Number of Natura 2000 sites in different Member States with a management plan in preparation (Source: response to Member State questionnaire).

Source: SEC(2008) 3044

Natura 2000: article 6 of Habitat directive

2) Member States shall take appropriate steps **to avoid**, in the special areas of conservation, **the deterioration** of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

Article 6(2) makes provision for avoidance of habitat deterioration and significant species disturbance.

Article 6(1) and (2) define a general regime .

Natura 2000: article 6 of Habitat directive

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

Natura 2000: article 6 of Habitat directive

- 3) Any **plan** or project not directly connected with or necessary to the management of the **site** but likely to have a **significant** effect thereon, either individually or **in combination**, shall be subject to an assessment of its implications for the site's conservation, where the plan or project is likely to have significant effects on the site and could still require AA. Such an assessment shall only be carried out after having ascertained that it will not adversely affect the integrity of the site concerned..

Natura 2000: article 6 of Habitat directive

3) Any **plan** or project not directly connected with or necessary to the management of the **site** but likely to have a **significant** effect thereon, either individually or **in combination** with other plans or projects, shall be subject to **appropriate assessment (AA)** of its implications for the site in view of the site's conservation objectives. The competent national authorities shall carry out the assessment only after having ascertained that the project may adversely affect the site's conservation objectives.

significance is judged in terms of the features for which the site was designated and the site's conservation objectives

Natura 2000: article 6 of Habitat directive

4) *If, in spite of a negative assessment of the implications for the site and in the absence of **alternative solutions**, a plan or project must nevertheless be carried out **for imperative reasons of overriding public interest...** the Member State shall take all **compensatory measures** necessary to ensure that the overall coherence of Natura 2000 is protected...*

Natura 2000: article 6 of Habitat directive

4) *If, in spite of a negative assessment of the implications for the site and in the absence of **alternative solutions**, a plan or project must nevertheless be carried out **for imperative reasons of overriding public interest...** the Member State shall take such compensatory measures as are necessary to ensure that the overall coherence of Natura 2000 is protected.*

Alternative solutions could include alternative locations, processes etc.;

Natura 2000: article 6 of Habitat directive

4) *If, in spite of a negative assessment of the implications for the site and in the absence of **alternative solutions**, a plan or project must nevertheless be carried out **for imperative reasons of overriding public interest**... the Member State shall take all **compensatory measures** necessary to ensure the coherence of Natura 2000 is*

the 'IROPI test' is difficult to pass

Natura 2000: article 6 of Habitat directive

4) *if it is demonstrated that the assessment of the impacts of the project, taking into account the absence of alternative solutions, shows that the project must nevertheless be carried out for imperative reasons of overriding public interest, the Member State shall take all **compensatory measures** necessary to ensure that the overall coherence of Natura 2000 is protected...*

compensatory measures aim to offset precisely the negative impacts of the plan

Natura 2000: article 6 of Habitat directive

AIA promotes a hierarchy of measures:

avoidance: prevent significant impacts from happening in the first place



mitigation: reduce the magnitude and/or likelihood of an impact



compensation: provide a new benefit to balance out the impact

Natura 2000: article 6 of Habitat directive

- Article 6(3) and (4) set out a series of procedural and substantive safeguards governing plans and projects likely to have a significant effect on a Natura 2000 site.
- These paragraphs define a procedure applying to specific circumstances.

Natura 2000: article 6 of Habitat directive

- It is important to note that the provisions of Article 6 **require transposition into national law** (i.e. they need to be the subject of provisions of national law giving effect to their requirements). In this respect, they come within the scope of Article 23 of the directive which states that *'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive within two years of its notification'*. The deadline for transposition was 10 June 1994.
- This reflects the type of Community instrument that has been used, namely a **directive**. A directive is binding as to the result to be achieved, but leaves a Member State some choice as to the form and methods of achieving that result. For most directives, the required result will need national legislation.
- Note that Article 6(1) applies only when an SCI has been designated as an SAC, the provisions of Article 6(2), (3) and (4) become applicable as soon as a site becomes an SCI and before it is designated as an SAC.

THE CONSERVATION STATUS OF HABITAT AND SPECIES

“Composite Report” on the Conservation Status 2009

Article 17 of the Habitats Directive obliges Member States to submit information on implementation every six years.

On 2009 European Commission has publicized a *Composite Report the Conservation Status of Habitat Types and Species* (COM(2009) 358 final).

For the 2001-2006 reporting period, the reports, for the first time, contained assessments of the status of the species and habitats covered by the Directive and found within the territory of each country.

The European Environment Agency used the reports to produce an integrated assessment for each geographic region, habitat type and species.

The Commission then drew on those assessments for a composite report as required under the Directive.

Composite Report on the Conservation Status 2009

The results, covering 2001-2006, **show that only a small proportion of the habitats and species of Community interest are in a favourable conservation status.**

Some of the species protected under the Directive, such as the wolf, Eurasian lynx, beaver and otter, are showing signs of recovery in parts of the EU but for these and a majority of other species we are a long way from achieving healthy, sustainable populations.

The findings demonstrate that the conservation measures in the Directive as well as funding and other instruments under sectoral policies can deliver positive results.

Composite Report on the Conservation Status 2009

Considerable work remains to be done to build on the progress achieved to date. In particular, the Natura 2000 network should be completed, individual sites may need restoration measures and individual sites and the network will need to be managed effectively and properly resourced.

The reports demonstrate that relatively few Member States invest sufficient resources in **monitoring** the status of species and habitats within their territories.

A good monitoring programme requires expert staff and considerable resources. However, in the absence of reliable data it will be impossible to assess the impact of conservation measures.

Detailed results of the Article 17 reporting exercise can be found on the following website: <http://biodiversity.eionet.europa.eu/article17>.

Some general observations

- Given the delays in establishing the network and the fact that in many cases, conservation measures are still being developed, **it is unrealistic to expect to see at this stage, a clear, positive relationship** between the Natura 2000 network and the conservation status of habitat types (Annex I) and species (Annex II) covered by the Directive. This is not to say that there are no positive examples.

Some general observations

- Indeed there are many cases where Natura 2000 sites, especially those receiving funding through LIFE programmes or rural development programmes, have clearly benefited at local level.
- **Furthermore, there is now clear scientific evidence that Natura 2000 sites designated under the Birds Directive, that was adopted 13 years before the Habitats Directive, contribute significantly to the protection of bird species.**
- By the time the second and third reports are due in 2013 and 2019 respectively, the positive contribution of Natura 2000 to the conservation status of the habitat types and species covered by the Habitats Directive should be clearly discernible.

FINANCING N2000 NETWORK

Some general observations

- In 2004, the European Commission estimated that the total annual cost of managing the Natura 2000 network was €6.1 billion. Added to this are the conservation measures that Member States take outside Natura 2000 sites to achieve the objectives of the Directive.
- At EU level, most of the available financial support for nature protection comes from rural development programmes under the Common Agricultural Policy and Cohesion policy programmes.

Some general observations

- In addition, targeted projects financed under the LIFE program have also contributed to improving the conservation status of specific habitats and species.
- The dedicated funding to nature and biodiversity from LIFE+ is of a smaller scale than other EU funding streams, but the approximately € 836 million that is to be spent between 2007-2013 are directly aimed at benefiting nature and biodiversity.
- There are wide variations in the way the different Member States use the opportunities to support biodiversity provided for under EU funding instruments and the results suggest that in many cases the level of investment will need to increase if Member States are to respect their obligations under the Habitats Directive.

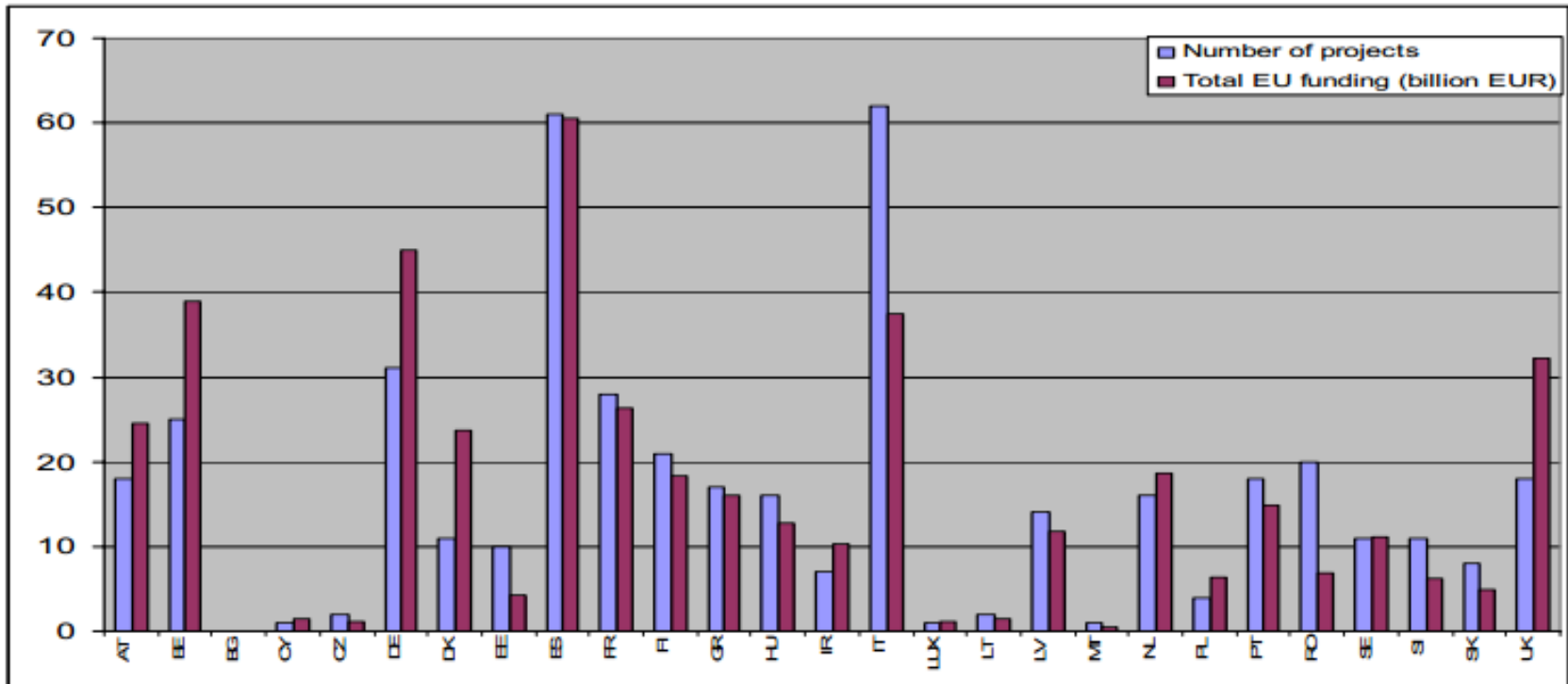


Figure 5: Comparison of EU funding per Member State and number of projects funded by LIFE 2000-2006.

Source: SEC(2008) 3044

THE NETWORK'S SCENARIO

The 2011 Communication of the Commission

- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS
- *Our life insurance, our natural capital: an EU biodiversity strategy to 2020*

The 2011 Communication of the Commission

- The new action plan sets that the full implementation of the Birds and Habitats Directives is critical to preventing further loss and restoring biodiversity in the EU.
- A time-bound, quantified target will accelerate implementation of the Directives and achievement of the objectives set out in them:
- **Target 1**
- *To halt the deterioration in the status of all species and habitats covered by EU nature legislation and achieve a significant and measurable improvement in their status so that, by 2020, compared to current assessments: (i) 100% more habitat assessments and 50% more species assessments under the Habitats Directive show an improved conservation status; and (ii) 50% more species assessments under the Birds Directive show a secure or improved status.*

THE JUDICIAL CONTROL

The method of transposing the Habitats Directive

- In the context of the Habitats Directive, which lays down complex and technical rules in the field of environmental law, the Member States are under a particular duty to ensure that their legislation intended to transpose that Directive is clear and precise, including with regard to the fundamental surveillance and monitoring obligations, such as those imposed on national authorities by Articles 11, 12(4) and 14(2).

The method of transposing the Habitats Directive

- The Commission has continued to assess the completeness of the Natura 2000 network for different Member States as well as of their legal transposition of the Birds and Habitats Directives. On the basis of checking the national measures transposing the Birds and Habitats Directive in EU-25, the Commission has initiated non-conformity cases where gaps have been detected.
- As regards the Birds Directive, infringement procedures related to non-conformity issues are ongoing against 16 Member States (AT, IE, ES, DK, UK, EL, IT, LU, CZ, EE, HU, LT, LV, PL, SK, BG). As regards the Habitats Directive infringement procedures related to non-conformity issues are ongoing against 17 Member States (AT, DE, UK, FR, IE, ES, DK, NL, EL, LU, CZ, EE, MT, PL, SI, SK, BG).
- **These information are updated at 2008.**

Nature and biodiversity cases

ruling of the European Court of Justice - 2006

- The transposition of a directive into national law does not necessarily require the provision of the directive to be enacted in precisely the same words in a specific, express legal provision; a general legal context may be sufficient if it actually ensures the full application of the directive in a sufficient clear and precise manner. However, a faithful transposition becomes particularly important in a case such as the transposition of the Birds Directive concerning the conservation of wild birds in which the management of the common heritage is entrusted to the Member States in their respective territories.
- (C-247/85, Commission v. Belgium; C-252/85, Commission v. France, C-118/94, Italy – “Regione Veneto”)

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- However, it is apparent on examination of the national legislation that it is so general that it does not give effect to the Habitats Directive with sufficient precision and clarity to satisfy fully the demands of legal certainty and that it also does not establish a precise legal framework in the area concerned, such as to ensure the full and complete application of the Directive and allow harmonised and effective implementation of the rules which it lays down.
- **The general duties laid down by the national legislation cannot ensure that the provisions of the Habitats Directive referred to in the Commission's application are transposed satisfactorily and are not capable of filling any gaps in the specific provisions intended to achieve such transposition.** Consequently, there remains no need to consider the Member State's arguments based on the general duties contained in that legislation when analysing the specific complaints relied upon by the Commission.
- (C-6/04, Commission v. United Kingdom)

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- Article 6(2) of the Habitats Directive obliges the Member States to avoid the deterioration of natural habitats and the habitats of species. 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.
- (C-6/04, Commission v. United Kingdom)

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- **Article 6(3) of the Habitats Directive establishes a procedure** intended to ensure, by means of a preliminary examination, that a plan or project which is not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site, while **Article 6(2) of the Habitats Directive establishes an obligation of general protection** consisting in avoiding deterioration and disturbances which could have significant effects in the light of the Directive's objectives, **and cannot be applicable concomitantly with Article 6(3).**
- (C-127/02 – “Waddenvereniging and Vogelbeschermingsvereniging”)

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- **The Directive does not distinguish between measures taken outside or inside a protected site.**
- Therefore the definition of 'project' in national legislation which refers to acts carried out outside a protected site cannot be narrower than that which concerns projects carried out within a protected site.
- (C-98/03, Commission v. Germany)

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- The requirement for an appropriate assessment of the implications of a plan or project is thus conditional **on its being likely to have a significant effect on the site.**
- It follows that the first sentence of Article 6(3) of the Habitats Directive subordinates the requirement for an appropriate assessment of the implications of a plan or project **to the condition that there be a probability or a risk that the latter will have significant effects on the site concerned.** In the light, in particular, of the **precautionary principle**, which is one of the foundations of the high level of protection pursued by Community policy on the environment, and by reference to which the Habitats Directive must be interpreted, **such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have significant effects on the site concerned.**
- **(C-127/02 – “Waddenvereniging and Vogelbeschermingsvereniging”)**

THE ITALIAN JUDICIAL CONTROL

CONSTITUTIONAL COURT

- The judgments of Italian Constitutional Court are mainly related to the distribution of competences between the Central and the Regional governments.
- Actually the Constitutional Jurisprudence looks at the Habitat directive as a *parameter* for constitutional legitimacy of laws.

CONSTITUTIONAL COURT

- The judgments of the Constitutional Court have concerned:
 - the selection of the sites (in particular in the field of the distribution of competences);
 - the adoption of protection measures (in particular in the field of the distribution of competences);
 - the legitimacy of regional laws, which have a negative effect on the favourable conservation status of habitat and species protected by N2000 network (for instance, permitting economic activities).

ADMINISTRATIVE COURT

- The main judgments of Italian Administrative Courts are related to the Appropriate Impact Assessment of Plans and Projects in relation to NATURA 2000 sites.
- They have dealt with:
 - inappropriate method for carrying out the assessment;
 - inadequate compensatory measures;
 - the nature of the procedure, as an expression of *technical discretionary* power.
- Administrative Courts' statements concern also the transposition of the two directives into national and regional law.

CONCLUSIONS

- The Habitat directive is today coordinating the regime of protected areas of 27 countries with different systems of government, legal background (common law, civil law, mixed) and nature conservation laws
- The strategy of the directive may be resumed in three points

CONCLUSIONS

- 1) The directive has established a general regime of protection for the most relevant European habitat/species, identified on the base of scientific criteria
- 2) The directive has a **direct effect** in the sense that the rules concerning Natura 2000 sites are applicable by the local and national authorities and enforceable through national or European courts
- 3) The directive has an **indirect effect** in the sense that a great number of the SACs **fall within national protected areas** (National Parks, natural reserves, etc...; in Italy more than 50% of the network falls within National Parks) and will influence the rules and the management routines of the national authorities, obtaining an **harmonization of the protected areas regime of the 27 countries**

Thank you for the attention

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