

Environmental Law

Birds & Habitat and Air Quality

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Birds and Habitat Directive



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The Directives

- Birds Directive: 79/409/EC
- Habitat Directive: 92/43/EC
- Transposition into:
 - Natuurbeschermingswet 1998 (habitats)
 - Flora- en Faunawet (species)
- Establish a special protection regime for both sites and species, animals and plants

Objectives

- **Article 2 Habitats Directive:**

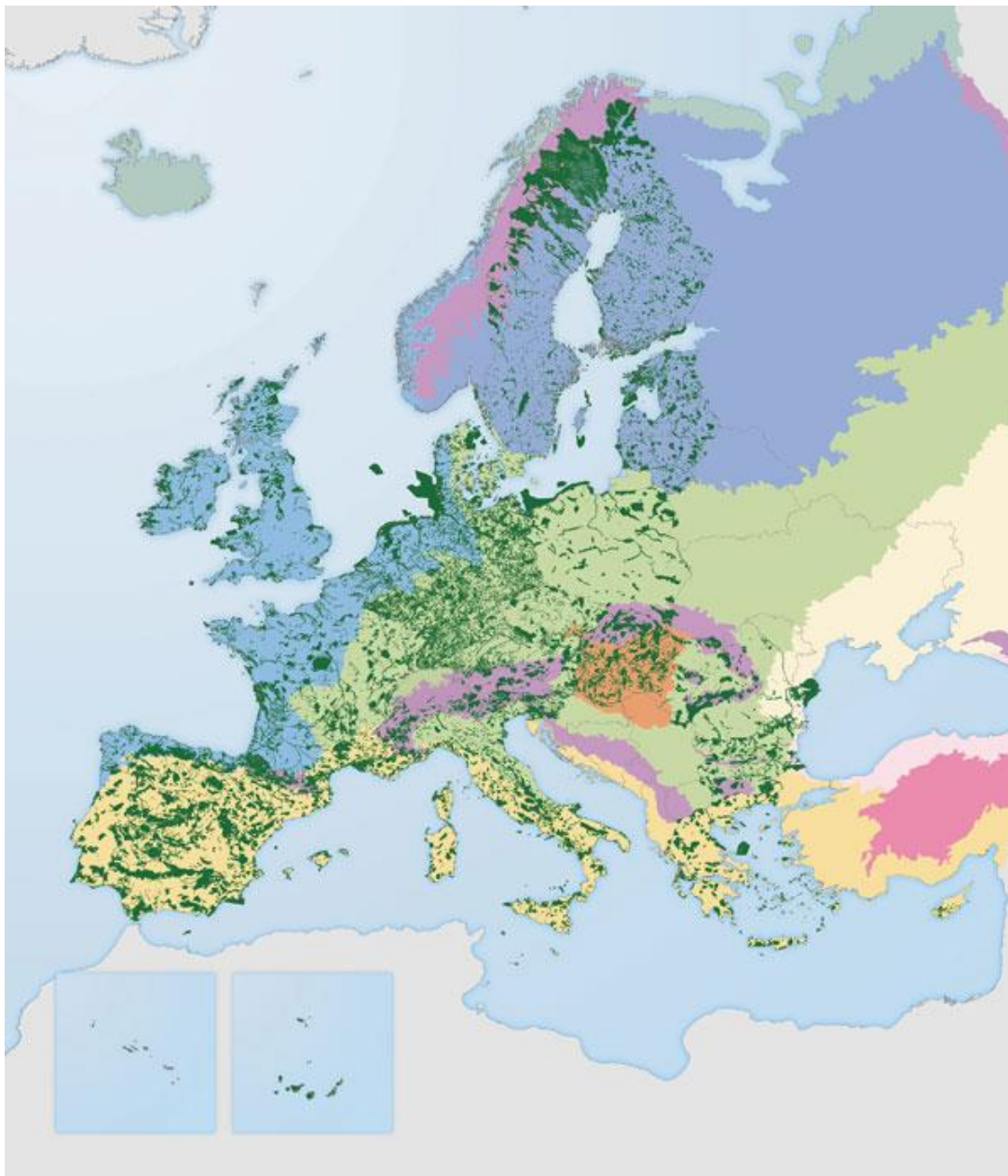
“1. The aim of this Directive shall be to contribute towards **ensuring biodiversity** through the **conservation of natural habitats** and of **wild fauna and flora** in the European territory of the Member States to which the Treaty applies.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, **at favourable conservation status**, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of **economic, social and cultural requirements** and **regional and local characteristics.**”

Natura 2000

- Coherent European ecological network of Special Areas of Conservation (SAC) & Special Protection Areas (SPA; Birds Directive)
- Every MS draws up a list of natural habitats (Annex I) and habitats of species (Annex II) according to the criteria of Annex III
- That list serves as a basis for the adoption of Sites of Community Importance (SCI)
- MS have to designate these areas as SAC / SPA by an official authority act

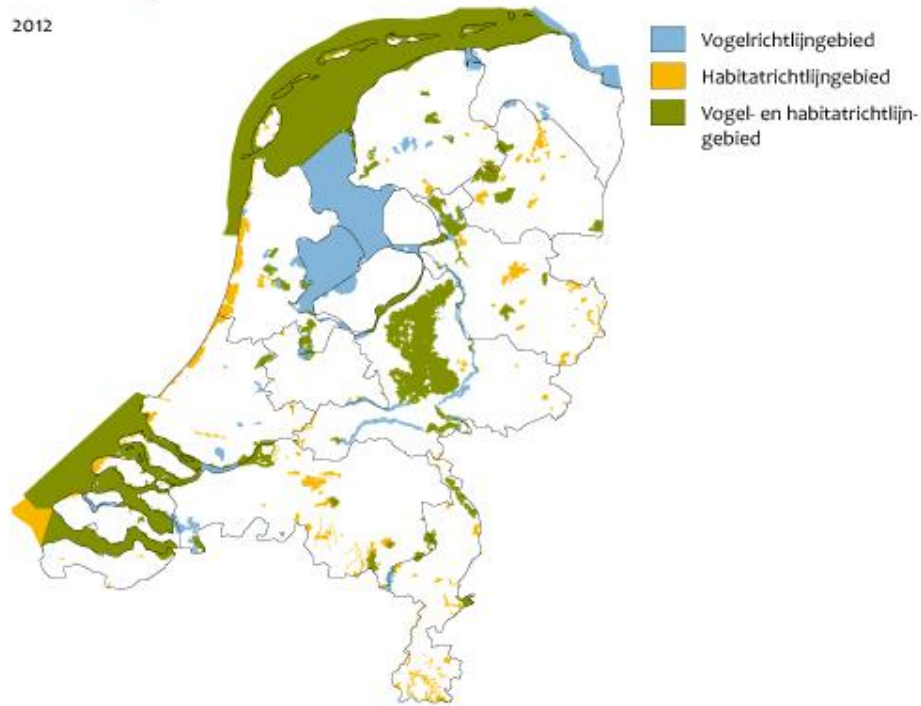


lifeline.org

Natura 2000 and EHS

Natura 2000-gebieden

2012



Bron: EL&I.

gische Hoofdstructuur (EHS), 2011



WUR/okt12/1308

www.compendiumvoordeleefomgeving.nl

Bron: Ministerie van EL&I – GIS Competence Center

EHS volgens 'Natuur op Kaart', 1-1-2011



EHS Noordzee



Alterra/mrts12/1298

www.compendiumvoordeleefomgeving.nl

Protection regimes

1. Sites → art. 6 Habitat Directive
2. Species → art. 12 – 16 Habitat Directive
 - ❖ Art. 12: strict protection of animal species (Annex IVa)
 - ❖ Art. 13: strict protection of plant species (Annex IVb)
 - ❖ Art. 14: less strict regime for Annex V species (animals and plants)
 - ❖ Art. 15: prohibition on non-selective means for capture and killing
 - ❖ Art. 16: derogations to art. 12 – 15; limited grounds!

Art. 6 (1 & 2) Habitats Directive

General obligations:

- MS have to establish the necessary conservation measures for SAC's (management plans, administrative, statutory and contractual measures)
- MS have to take appropriate steps to avoid deterioration of the habitats or disturbance of the species

Art. 6 (3 & 4) Habitat Directive

- Plans and projects that can have significant effects on SACs → Habitat assessment
 - Likely to have significant effects (individually or in combination with other plans or projects)
 - Appropriate assessment of implications
 - Only approval if the plan or project does not adversely affect the integrity of site (after obtaining opinion of the public)

Negative assessment:

- Alternative solutions?
- Imperative reasons of overriding public interest?
- Compensatory measures
- Inform Commission

Protection of animal species

- Prohibition of:
 - (a) all forms of deliberate capture or killing of specimens of these species in the wild;
 - (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
 - (c) deliberate destruction or taking of eggs from the wild;
 - (d) deterioration or destruction of breeding sites or resting places.
- 2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.

Protection of plant species

- Prohibition of:
 - (a) the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild;
 - (b) the keeping, transport and sale or exchange and offering for sale or exchange of specimens of such species taken in the wild, except for those taken legally before this Directive is implemented.

Derogations (art. 16)

- (a) in the interest of protecting wild fauna and flora and conserving natural habitats;
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;
- (c) 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;
- (d) for the purpose of research and education, of repopulating and re-introducing these species and for the breedings operations necessary for these purposes, including the artificial propagation of plants;
- (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

Requirements for derogations

1. One of more of the reasons mentioned in art. 16
2. No alternative solutions
3. Measures should not be detrimental to the conservation status of the species

Question

- Is it allowed to capture the *Rugstreeppad* and transfer it to another appropriate area for reasons of spatial development?

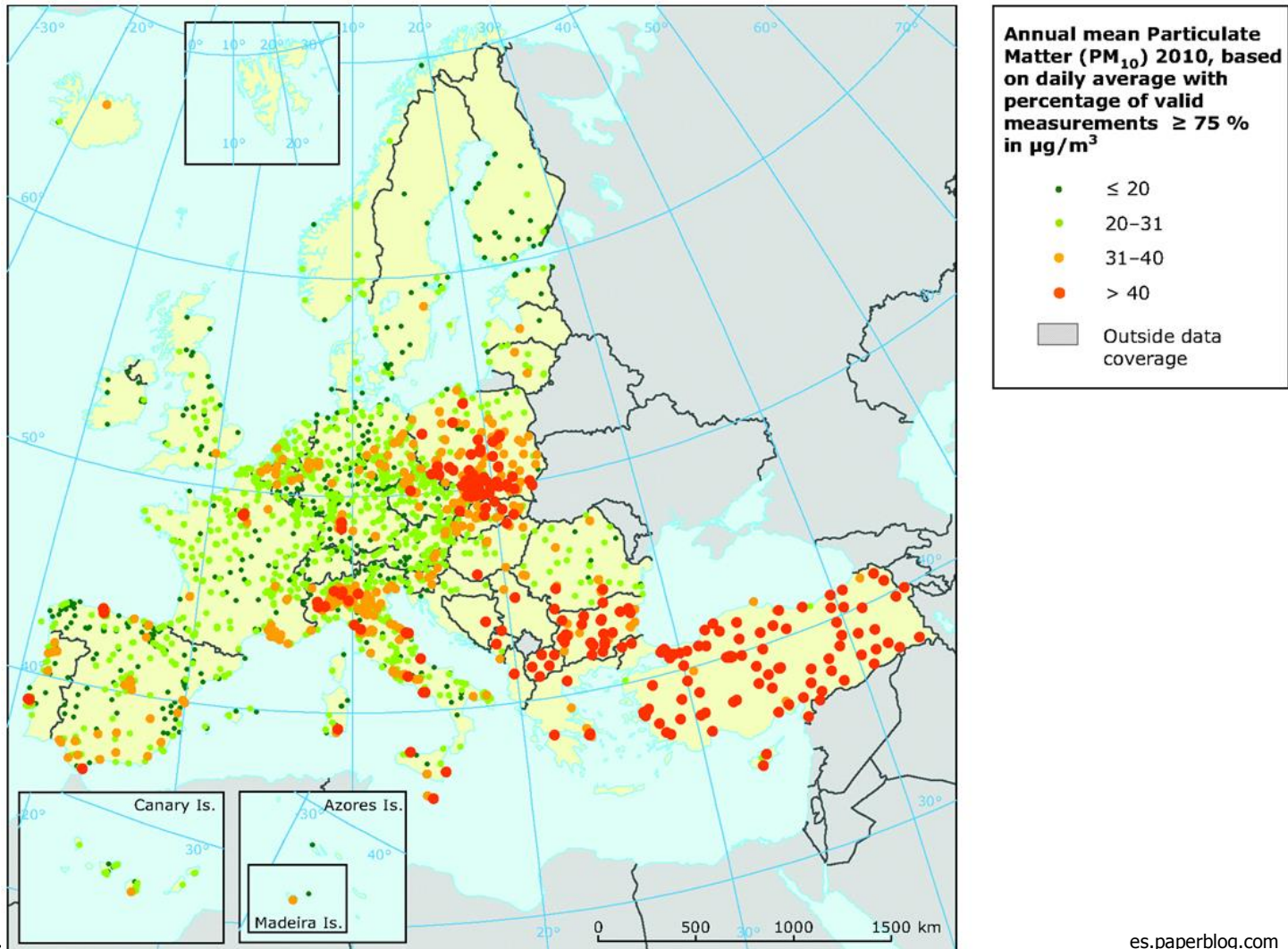


www.portofamsterdam.nl

Possible answers

1. The aim of maintaining a favourable conservation status
 2. "relocation" is not the same as capture or killing (permanently taking out of their natural environment)
 3. Imperative reasons of overriding public interest
- case-by-case basis and actual scientific data

Air quality



es.paperblog.com

The Netherlands

- Air quality attracted a lot of (negative) attention
- Projects were delayed or cancelled because of a deterioration of air quality
- After a judgment of a Dutch court but also in the preparation process
- But in the rest of Europe (almost) no one seemed to bother about their air quality

Case law on air quality

Ch.W. Backes et.al. (2006):

• U.K.	0
• Germany	1
• Flanders	0 (2008: 1)
• France	0
• The Netherlands	40
• Austria	1
• Sweden	0

Why??????

Are the rules so different?

- EU legislation:
- Framework Directive on ambient air-quality (Dir. 96/62/EC)
- 1st Daughter Directive on sulphur dioxide (SO₂), nitrogen dioxide (NO₂) and oxides of nitrogen (NO), particulate matter (PM 10) and lead (Dir. 1999/30/EC)
- 2nd Daughter Directive on benzene and carbon monoxide (Dir. 2000/69/EC)
- 3rd Daughter Directive on ozone (Dir. 2002/3/EC)
- Revised Framework Directive on ambient air quality and cleaner air for Europe (Dir. 2008/50/EC) → transposition date 11 June 2010

Particulate matter (PM10)

LIMIT VALUES FOR PARTICULATE MATTER (PM₁₀)

	Averaging period	Limit value	Margin of tolerance	Date by which limit value is to be met
STAGE 1				
1. 24-hour limit value for the protection of human health	24 hours	50 µg/m ³ PM ₁₀ , not to be exceeded more than 35 times a calendar year	50 % on the entry into force of this Directive, reducing on 1 January 2001 and every 12 months thereafter by equal annual percentages to reach 0 % by 1 January 2005	1 January 2005
2. Annual limit value for the protection of human health	Calendar year	40 µg/m ³ PM ₁₀	20 % on the entry into force of this Directive, reducing on 1 January 2001 and every 12 months thereafter by equal annual percentages to reach 0 % by 1 January 2005	1 January 2005
STAGE 2 (*)				
1. 24-hour limit value for the protection of human health	24 hours	50 µg/m ³ PM ₁₀ , not to be exceeded more than 7 times a calendar year	To be derived from data and to be equivalent to the Stage 1 limit value	1 January 2010
2. Annual limit value for the protection of human health	Calendar year	20 µg/m ³ PM ₁₀	50 % on 1 January 2005 reducing every 12 months thereafter by equal annual percentages to reach 0 % by 1 January 2010	1 January 2010

So Are the rules so different?

No!

At least not the EU rules.....

Transposition

- Besluit luchtkwaliteit 2001 → very strict interpretation of the directives (with extra national layer)
- Besluit luchtkwaliteit 2005 → introduction of the 'balancing rule'
- Wet milieubeheer, Titel 5.2 (2007) → more flexibility
 - Limit values are not exceeded
 - Already excession but decision will not result in larger excession
 - Decision leads to deterioration and improvement but has a positive net effect (*projectsaldering*)
 - Insignificant negative effects
 - Fits within Nationaal Samenwerkingsprogramma Luchtkwaliteit (National Cooperation Programme on Air Quality)

1st reason: measurement and modelling techniques

- Comply with the limit values always and everywhere in the open air?
- Or only in places where humans (and animals) spent a certain amount of time?
- A margin for mistakes? Some MS take a margin, e.g. Belgium; Some MS don't, e.g. France → strict air quality line between France and Belgium but in fact the quality does not differ so much

2nd reason: legal meaning of the limit values

- Differences between MS:
 1. Just values for spatial planning authorities
 2. Aspect to be assessed when planning or issuing licenses but exceeding the limit values does not have to lead to rejection or annulment
 3. Strict application of the limit values to all decisions regarding projects that will affect air quality; exceeding the limit values always leads to rejection or annulment
- ➔ Case Janecek: Do the Directives allow for the possibility to exceed the limit values?

3rd reason: litigation law

- Germany and Austria: only individuals that are actually confronted with bad air quality in their homes, offices or places alike can invoke the limit values
- In a.o. NL an interested party that has *locus standi* can use all arguments he wants
- Other factors, e.g. costs of proceedings, duration etc.

Nationaal Samenwerkingsprogramma Luchtkwaliteit (NSL)

- Air quality 2006 is starting point
 - What would the development be without any projects?
 - What effects do the intended projects have on air quality?
 - Compensating measures
- Served as a basis to request postponement of the date on which the limit values should be met
- Postponement was granted

NSL – case law

- 31 March 2010: first ruling of Dutch Council of State (Afdeling Bestuursrechtspraak) on project that fitted into the NSL
 - Construction of a fly-over and a reconstruction of a roundabout in Utrecht
 - Insufficient research into the consequences for air quality?
 - Project was mentioned in NSL, there is a monitoring mechanism and compensating measures will be taken
- appeal is rejected, decision is uphold

Revised Framework Directive (2008/50/EC)

- More clarification
- “air”: not places where people normally not go
- Pollution by natural resources are not taken into account
- Limit values for PM_{2.5}
- Points for measurements at 10 metres distance of the roads (instead of 5)

Old exam questions



www.medicalfacts.nl

Annex I contains the text of article 191 and 192 TFEU. Can these provisions serve as a legal basis for a Directive on animal welfare?

- a) Yes. 'Preserving, protecting and improving the quality of the environment' is interpreted in such a way that animal welfare falls within its scope
- b) Yes. Since animal welfare is a worldwide problem, it can, according to article 191 TFEU, be dealt with at EU-level
- c) No. Animal welfare is not mentioned as one of the objectives pursued
- d) No. But since article 36 TFEU (also included in Annex I) mentions the protection of health and life of animals, that provision can serve as a legal basis

The municipality of Leiden wants to develop a new urban area. A land use plan is drawn up. This plan is:

- a) Not subject to an assessment of the environmental effects
- b) Subject to an environmental impact assessment, but only for the planned industry
- c) In its entirety subject to an environmental impact assessment
- d) Subject to a strategic environmental assessment

What is meant by 'favorable conservation status?'

- a) That a species is not faced by any direct extinction risk
- b) That a species is doing sufficiently well in terms of quality and quantity and has good prospects of continuing to do so in the future
- c) That a species lives in the habitat that suits it best in terms of food, climate, resting places and breeding places
- d) That is species is on average healthy and not threatened by serious diseases or other external risk factors

Proposition I: The polluting effects of radiation of mobile phones cannot be scientifically proven. The preventive action principle brings that, despite this lack of evidence, the European Community could make regulations to reduce these possible effects.

Proposition II: If a project related environmental impact assessment shows negative effects for the environment, the competent authorities cannot give permission for the project.

- a) Both propositions are correct
- b) Both propositions are incorrect
- c) Proposition I is correct, proposition II is incorrect
- d) Proposition I is incorrect, proposition II is correct