

Identification & Designation of Special Protection Areas under the EU Birds Directive

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1. Introduction

Article 4 of the EU Birds Directive sets out the requirement for Member States to designate Special Protection Areas (SPA) for the bird species listed in Annex I of the Directive and for regularly occurring migratory species not listed in Annex I.

Article 4.1 requires that they “**classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species [listed in Annex I of the Directive] in the geographical sea and land area where this Directive applies**”.

Article 4.2 requires that they also “**take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area this Directive applies**”.

This document collates information from relevant ECJ judgements and EC guidance documents relating to Member States’ obligations to identify and designate SPAs, and the use of BirdLife’s network of Important Bird and Biodiversity Areas (IBAs) as a basis to inform the fulfilment of these obligations.

2. Identification of the Most Suitable Sites for SPA Designation

Member States are required to **designate as SPAs ALL OF THE SITES which based on ornithological criteria appear to be the most suitable** for the conservation of the bird species listed in Annex I of the Birds Directive and all other regularly occurring migratory bird species.

[Case C-3/96 Commission v Netherlands](#) [1998] paragraph 62-63; [C-141/14 Commission v Bulgaria](#) [2016] paragraphs 27-28; [Case C-97/17 Commission v Bulgaria](#) [2018] paragraph 60

The obligation to designate all of the most suitable sites **cannot be avoided by adopting other special conservation measures** for the species concerned.

[Case C-3/96 Commission v Netherlands](#) [1998] paragraph 55

Although Member States have a degree of discretion regarding the application of the ornithological criteria used to select the most suitable areas for designation as SPAs, there is no degree of discretion regarding the designation of the most suitable sites i.e., they are **required to designate as SPAs all areas that appear to be the most suitable according to ornithological criteria** for the conservation of the species concerned.

[Case C-355/90 Commission v Spain](#) [1993] paragraph 26; [Case C-3/96 Commission v Netherlands](#) [1998] paragraphs 60-63

The concept of “sufficiency” of site designations in the EU Habitats Directive does not apply to the designation of SPAs under the EU Birds Directive (see Box 1).

The boundaries of an SPA must be based on the natural boundaries. Partial classification of an area cannot be based on an isolated study of the ornithological value of different sub-areas.

[C-418/04 Commission v Ireland](#) [2007] paragraph 142; [C-141/14 Commission v Bulgaria](#) [2016] paragraph 30

BOX 1: Assessment of Sufficiency – EU Habitats Directive

Article 4 of the EU Habitats Directive sets out the process for the selection and designation of sites to be designated by Member States of Sites of Community Interest (SCI) and Special Areas of Conservation (SACs) for habitats listed in Annex I and species listed in Annex II of the Habitats Directive. Annex III defines criteria that provide a framework for assessing the sufficiency of these designations, at a first stage at the national level and subsequently by the European Commission at the Community (European Union) level.

This ‘sufficiency test’ can only be used for the selection and designation of (terrestrial and marine) sites for habitats listed in Annex I and species listed in Annex II of the Habitats Directive.

It cannot be used by analogy for the selection and designation of SPAs under Article 4 of the Birds Directive.

ECJ case law is clear that the selection and designation of SPAs (both terrestrial and marine sites) must be based exclusively on ornithological criteria. This is explained in section 4.5.1 of the EC Guidance document on Natura 2000 in the marine environment.¹

¹ [Guidelines for the establishment of the Natura 2000 network in the marine environment](#). Application of the Habitats and Birds Directives. May 2007.

3. Economic Considerations

Member States **cannot consider economic requirements when determining whether to designate a site as an SPA, nor when setting the boundaries of an SPA**, even where they are considered to amount to imperative reasons of overriding public interest². The designation must be solely based on ecological requirements.

[C-44/95 Regina v Secretary of State for the Environment, ex parte: Royal Society for the Protection of Birds](#) [1996] paragraph 99; [Case C-355/90 Commission v Spain](#) [1993] paragraphs 16-18

4. The Value of Important Bird & Biodiversity Areas

The support of the European Commission for the development of a reference list of Important Bird and Biodiversity Areas (IBAs) to support Member States to select the most suitable territories for protection under the Birds Directive demonstrates the recognition of their value. In addition the EC guidance document setting out [criteria and guidance for protected areas designations](#) recognises Important Bird and Biodiversity Areas (IBAs) along with Key Biodiversity Areas (KBAs) as a good scientific basis to guide the selection of areas to be protected.

The value of BirdLife's network of IBAs (IBA inventories) to inform Member States obligations under Article 4 of the EU Birds Directive have repeatedly been recognised by ECJ rulings which can be summarised as follows:

- IBAs, although not legally binding on Member States, have been acknowledged, due to their scientific value, as the basis to inform the designation of SPAs.
- **In the absence of scientific evidence demonstrating that the obligation of the Directive can be fulfilled by designating as SPAs sites whose number and total area are smaller than the IBA inventory** (or by designating sites outside of the IBA network) **the IBA inventory is the basis for assessing compliance**.
- Failure to designate IBAs as SPAs has been used to demonstrate a Member State's non-compliance with its obligations under Article 4(1) and (2) of the Birds Directive IBAs:
 - At the national level: where the number and size of sites designated as SPAs are clearly smaller than the IBA network.
 - At the site level: where sites that meet the IBA criteria have not been designated as SPAs.
- They have also been used to demonstrate incorrect setting of SPA site boundaries (where areas of IBAs have been excluded from SPA designations).

[Case C-3/96 Commission v Netherlands](#) [1998] paragraphs 68-70; [C-374/98 Commission v France](#) [2000] paragraph 25; [C-378/01 Commission v Italy](#) [2003] paragraph 18; [C 418/0413 Commission v Ireland](#) [2007] paragraphs 52-54; [C-97/17 Commission v Bulgaria](#) [2018] paragraphs 82-83

² As per Article 6(4) of the [EU Habitats Directive](#)

5. Protection extends to all bird species present in the SPAs

The **protection of SPAs extends to all bird species listed in Annex I of the Birds Directive and all other regularly occurring migratory bird species** and their habitat **present in significant numbers in the site** (i.e., not only those species that have justified the designation of the site as an SPA).

Article 4(1) and (2) of the Birds Directive and Article 6(2) to (4) of the Habitats Directive require Member States to establish, for each SPA, conservation objectives and conservation measures covering all species. In doing so they may define priorities according to the significance of the measures for achieving the conservation objectives set for all species.

[Case C-66/23 Elliniki Ornithologiki Etaireia](#) [2024] paragraph 59

6. Protection of Sites not yet Designated as SPAs

Article 4(4) of the Birds Directive requiring that “Member States shall **take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article**” applies to areas that qualify for protection as SPAs, but which have not yet been designated as SPAs.

[Case C-355/90 Commission v Spain](#) [1993] paragraphs 20-22; [C-374/98 Commission v France](#) [2000] paragraph 47

Useful Documents:

- [Guidelines for the establishment of the Natura 2000 network in the marine environment](#). Application of the Habitats and Birds Directives (May 2007)