

# THE TRANSPOSITION OF THE “NATURA 2000” DIRECTIVES INTO THE SPANISH LAW

José Luis BERMEJO LATRE

University of Zaragoza

*SUMMARY:* 1. Distribution of Environmental Competences in Spain. - 2. Legal framework of Habitats and Ecosystems Protection under Spanish Law.- 3. State of Achievement of Transposition into Spanish Law. 3.1. Brief Historical Survey of Transposition. 3.2. Types, Nature and Binding effect of the Instruments Used for Transposition. 3.3. General Description and Assessment of the Transposition of NATURA 2000 Provisions into Spanish Law. A) Objectives, Principles and Geographical Scope of Birds and Habitats Directives in Spanish Law. B) Definitions. C) Selection, Designation and elimination of SPAs and SACs. D) Management Regime of SPAs and SACs. E) Protection Regime of SPAs and SACs. F) Management and Protection of Habitats and Landscape's Important Elements for NATURA 2000 outside SPAs and SACs. G) Monitoring.- 4. Case-law concerning NATURA 2000.- Annexes.

## 1. Distribution of Environmental Competences in Spain.

The Spanish 1978 Constitution accords strong political and legislative) autonomy to 17 territorial entities, the “Comunidades Autónomas” (Autonomous Communities). The allocation of powers between the State and the Autonomous Communities, is carried out by the so-called “Constitutional block” (which includes mainly arts. 148.1 and 149.1 of the Constitution and the Statutes of Autonomy, i.e the 17 Organic Laws proposed by the Parliaments of the Autonomous Communities and finally approved by the State's Parliament). Firstly, a basic distinction between the different ways in which power is divided between the State and the Autonomous Communities is needed. These allocation of powers is based on the concepts of *sole jurisdiction* and *shared jurisdiction* (or development of legislation).

The notion of *sole jurisdiction* stands for absolute and exclusive reservation of all public powers concerning a specific matter to a given entity. This is granted by virtue of the attribution of powers enumerated in the Constitution and the Statute of Autonomy. In the case of *shared jurisdiction*, there is a division of functions (especially the legislative function) that can be exercised with respect to the same matter. In practice, the State retains the legislative power to establish the general principles governing some specific areas whereas the Autonomous Communities may enact legislation along these lines<sup>1</sup>. Another kind of power sharing occurs when the Constitution and the Statute of Autonomy specify a division of the functions exercised with respect to the same area. This is the case, for example, when the Statute of Autonomy reserves legislative power for the State and attributes the implementation of that legislation to the Autonomous Communities. This gives rise rise, in practice, to what are called *executive powers* or *powers of implementation*. In short, the

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<sup>1</sup> The art. 148.1 of the Constitution shows the Autonomous Communities' *sole jurisdiction* matters, whereas the matters over which the State holds *sole jurisdiction* and *shared jurisdiction to enact basic laws* are displayed in art. 149.1. The eventual gaps between both mentioned sections are filled by the powers and competences listed in every Statute of Autonomy.

Autonomous Communities are charged with the implementation of State legislation in those areas<sup>2</sup>.

In the sphere of environmental issues, State and Autonomous Communities share jurisdiction with regard to nature conservation and forestry, whereas Autonomous Communities have sole jurisdiction over land-use planning and agriculture. This means the State is empowered to enact environmental basic laws (thus establishing a framework that has to be respected by all Autonomous Communities), whereas Autonomous Communities are empowered to enact environmental laws and regulations within the broad State framework, to lay down higher standards of protection (whether by law or administrative regulation) and to implement and execute said legislation<sup>3</sup>.

All the Statutes of Autonomy, in accordance to arts. 148.1 and 149.1.23 of the Constitution, state that “within the framework of the basic legislation of the State and, when appropriate, under the terms established therein, it is incumbent upon the Autonomous Community to develop and implement legislation in the area of protection of the environment, without prejudice of the powers of the Autonomous Community to lay down additional standards of protection”. Moreover, some Autonomous Communities have adopted in their Statutes of Autonomy a competence that was not specifically attributed *ab initio* neither to the State nor to themselves: the sole jurisdiction over natural protected areas (which entails the legislative, regulatory and executive powers). This adoption was accomplished under the procedure and principles laid down by the State laws, in accordance to the art. 149.1.23 of the Constitution.

Under the above described system of allocation of powers, the State has enacted the basic regulation needed for the transposition of the Birds and Habitats Directives, remanding the implementation and the enforcement thereof to the Autonomous Communities.

## **2. Legal framework of Habitats and Ecosystems Protection under Spanish Law.**

The basic protection regime of habitats and ecosystems is crowned by the State Wildlife Conservation and Natural Protected Areas Act 4/1989, of 27th March (LEN hereinafter)<sup>4</sup>. The regulatory development of the provisions contained in Title IV of the LEN

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<sup>2</sup> The integration of the State and the Autonomous Law systems are ruled as follows: the State may challenge any Autonomous law or regulation, suspending its application, before the Constitutional Court, which has jurisdiction over conflicts between Autonomous Communities and between an Autonomous Community and the State. In the case of conflict between State and Autonomous laws not within the sole jurisdiction of the Autonomous Communities, State laws prevail. In addition, State laws are considered to be supplementary to the laws of the Autonomous Communities. The Spanish Parliament, by an absolute majority of each house, has the power to harmonize the laws enacted by the Autonomous Communities if necessary in the general interest, even in areas of sole Autonomous jurisdiction, although this latter possibility has never been exercised.

<sup>3</sup> Initially, the doctrine of the Constitutional Court on environmental matters was State-winged, inasmuch the Constitutional Decision no. 149/1991, of 4th July (on the constitutionality of the State Coasts Law), stated that “on environmental matters, the State duty of respecting shared jurisdiction of the Autonomous Communities over regulatory development of the State basic Law is lesser than in other matters”. This doctrine shifted in the Constitutional Decision no. 102/1995, of 26th June (on the constitutionality of the LEN), being the above mentioned shared jurisdiction of the Autonomous Communities reinterpreted in a broader sense.

<sup>4</sup> Nonetheless, inasmuch the Autonomous Communities have shared jurisdiction for developing this State’s basic legal provisions on environmental protection within their territories, the Autonomous Law must be taken into account, such as the Andalucía Natural Protected Areas Law 2/1989; Aragón Natural Protected Areas Law 6/1998; Asturias Natural Areas Protection Law 5/1991; Baleares Natural Areas and Special Protection Areas Land-use Regime Law 1/1991; Canarias Natural Areas Legislative Decree 1/2000; Castilla la Mancha Nature Conservation Law 9/1999; Castilla y León Natural Areas Law 8/1991; Cataluña Natural Areas Law 12/85; Extremadura Nature Conservation and Natural Areas Law 8/1998; Galicia Nature Conservation Law 9/2001;

(regarding the protection of the wildlife) is secured by Royal Decree 439/1990, of 30th March, that contains the *National Endangered Species Catalogue*. Annexes to this Royal Decree include the wild fauna and flora species that require special protection measures. Also, Royal Legislative Decree 1302/1986, of 28<sup>th</sup> June, which contains the consolidated text of the *Environmental Impact Assessment Law* (LEIA hereinafter), applies to the protection of habitats and ecosystems<sup>5</sup>.

This legal framework applies to the sites designated as natural protected areas, in the basic modalities laid down by the LEN (Parks, Natural Reserves, Natural Monuments, Protected Landscapes and their respective Peripheral Protection Areas) and by the Autonomous environmental Laws<sup>6</sup>. It must be said that due to the Autonomous Communities' shared jurisdiction, the Autonomous environmental Law draws a kaleidoscopic panorama of 37 different features of natural protected areas, a panorama that completes the mentioned basic LEN features. This large number of features, although many of them conceal a similar legal regime under diverse denominations, makes it necessary to find out the correspondences with the IUCN categories. In general terms, there are 135 Parks (122 Natural –Autonomous– Parks and 13 National Parks), covering approximately the 81 % of the protected surface; 202 Reserves and 212 Natural Monuments, both of them covering a surface that hardly reaches circa 176.000 hectares. Other features are less used, such as Protected Landscapes, Natural Areas, Natural Recreation Areas, Protected Biotopes, Micro-reserves, Peri-urban Parks, etc... Besides this protection system, other State and Autonomous Acts on matters such as Forestry, Hunting or Fishing provide a protection regime for some territories, for example the “Marine Fishing Reserves”, the objectives of which are rather the conservation of fisheries than the maintenance of the biodiversity. There are also other areas protected under International Conventions: Ramsar wetlands, UNESCO Biosphere Reserves, Specially Protected Coastal Areas issuing from the Barcelona Convention, etc. The complication of those different regulations leads to a study of the sole protection regime issuing from the LEN, for the Parks and Natural Reserves.

In few words, the protection regime of this framework is composed by the application of a number of measures to the sites designated in accordance with the LEN. Thus, the designation of a natural protected area (Park and/or Natural Reserve) in accordance to the LEN entails: the adoption of a “Natural Resources Management Plan” for the management and maintenance of the protected area, the need for an adaptation *ex officio* of any urban planning instruments existing in the area concerned; the establishment of administrative redemption and pre-emption rights on the conveyances *inter vivos* of land placed inside the protected areas and the declaration of public need for the purposes of the Compulsory Expropriation Law 1954, of 26<sup>th</sup> December; the zoning of several sub-areas within the site and the classification of the permitted and prohibited uses and activities. With regard to the activities which may deteriorate the quality of the habitats of the site or have a disturbing effect on the species concerned, it must be said that the sole permitted activities are those related to the current uses in the natural protected areas concerned (building, recreation, farming, fisheries). Also, in the procedures aimed to grant licenses for those activities (i.e. a building license), there is a need for a previous environmental impact assessment. Finally,

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Murcia Land Protection Law 4/1992; Navarra Natural Areas Law 8/1996; País Vasco Nature Conservation Law 16/1994; and the Valencia Natural Protected Areas Law 11/1994.

<sup>5</sup> In accordance to this Law, any mining activity developed in a natural protected area, or in an area visible from its boundaries, likely to have a significant effect on the natural values of the site, must be made subject to an appropriate assessment.

<sup>6</sup> Except for the National Parks, whose designation is made by an Law issuing from the State, as it retains the jurisdiction to act such.

there is an enforcement system consisting of a strict list of administrative offences, such as performing unlicensed acts, camping in the sites, throwing litter or altering the habitats or collecting biological materials.

### **3. The State of Achievement of the Transposition in the Spanish Law.**

#### ***3.1. Brief Historical Survey of the Transposition.***

The Spanish State always deemed that its Law system offered a high protection degree of the wildlife concerned by the Directives, inasmuch the LEN was yet in force, being its principles quite similar to the Directives'. However, the formal transposition was achieved by the Royal Decree 1997/1995, of 7th December, *on the conservation of natural habitats and of wild fauna and flora* (Royal Decree 1997/1995 hereinafter)<sup>7</sup>. Nonetheless, the recent Law 43/2003, of 21st November, introduced a new Chapter II *bis* in the Title II of the LEN, including five new provisions (arts. 20 *bis*, *ter*, *quarter*, 21.1 and 26.4) therein and trying to make the annexes (lists of habitats and species) of the LEN fully consistent with the Directives'. Also, this Law added a new additional provision to the LEIA, in order to extend the common regulation thereof to the procedure of the Environmental Assessment of the State Government's plans and projects under the art. 6.3 of the Royal Decree 1997/1995, of 7th December (the plans and projects to be developed inside the NATURA 2000 sites). This last amendment was not necessary so far, due to the fact that the common regulation of the Environmental Impact Assessment was being broadly considered to apply to these particular procedures yet. The sole intention of this amendment is to include a formal reference to NATURA 2000 in the LEN (the general Law for protected areas), insofar the transposition was fully achieved yet but not at the legal level.

The Spanish National List of Sites is coming to its end, issuing from the Autonomous Communities' proposals. In fact, many of the proposed Sites issue from the Autonomous Communities' Natural protected areas Networks. Once achieved, the General Direction of Conservation of the Ministry of Environment will officially transmit the List to the European Commission by cartographic means (both digital and physical), in a 1/100.000 scale. Afterwards the European Commission has adopted all the National Sites Lists, each Autonomous Community shall declare the SACs. The Spanish National List of Sites proposes 1.312 SCIs for NATURA 2000, covering an area of approximately 12.175.208 hectares, the 25,7% of the Spanish territory; 394 of which are SPAs covering an area of approximately 7.585.667 hectares. The Autonomous Communities have designated the sites after having called for previous hearings in the concerned areas, as required by the Directive itself. The total number of future SACs shall reach the number of 1.706, covering an area of 19.760.875 hectares<sup>8</sup>.

The European Commission has already adopted the List of Sites of the Macaronesian, Alpine, Atlantic and Biogeographical regions, concerning the Canary Islands, the Atlantic coast and the Pyrennees in Spain. There are 174 Sites in the Canary Islands, covering circa 454.000 hectares, while there are 63 Sites in the Pyrennees, covering circa 973.000 hectares.

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<sup>7</sup> This Royal Decree was published in the State Official Gazette no. 310, of 28th December 1995, came into force on 29th December 1995, and was lately amended by Royal Decree 1193/1998, of 12th June.

<sup>8</sup> At least, 460 Natural Protected Areas designated in accordance to the LEN (circa 3,5 millions of hectares) totally or partially coincide with NATURA 2000 Sites. At the present moment, one of the future challenges of the Spanish environmental authorities is the adoption of co-ordination mechanisms of NATURA 2000 sites and the current Autonomous and State Natural Protected Areas Networks.

The Mediterranean List is still being examined by the European Commission, and at the present moment the Autonomous Communities concerned are still completing their proposals.

Nevertheless, on 26th January 2000, the European Commission brought an action against the Spanish State (A-1999/2212), under art. 226 of the EC Treaty, for failure of fulfilment of the obligations under the EC Treaty. The alleged matter was the infringement of the Birds Directive, for failure of designation SPAs enough, as well as partial SPAs designation. In accordance to the Commission's reasoned opinion of January 2000 (paragraph 25) "in absence of adverse scientific evidence, the Sites as in IBA89 -revised in 1992- and IBA98 catalogues, must be considered as essential territories for the species listed in Annex I and other migratory species, having to be classified as SPAs in accordance to 79/409/CEE Directive arts. 4.1 and 4.2".

### ***3.2. Types, Nature and Binding effect of the Instruments Used for Transposition.***

The Royal Decree 1997/1995, rather than a transposition into Spanish law, is a literal translation of almost all of the provisions of the "Habitats Directive". Nevertheless, the Royal Decree 1997/1995 remands to the LEN in several matters, becoming this Law the substantial transposition instrument for the Birds and Habitats Directives in the matters concerning the protection measures of the wildlife. In fact, "Habitats Directive" arts. 12 and 13 are identical to art. 10 of the Royal Decree 1997/1995, which remands, in every matter concerning the protection measures of the wild fauna and flora species included in paragraphs a) and b) of the annex IV thereof, to both the Title IV of the LEN and the Royal Decree 439/1990, of 30th March, *that contains the National Catalogue of the Endangered Species*.

Nevertheless, the recent amendment of the LEN and the LEIA reveals a serious effort to elevate the transposition of the NATURA 2000 Directives to the statutory level, although some confusion arises due to the permanence of the Royal Decree 1997/1995 itself and the new legal provisions of the LEN. Thus, the formal transposition instrument has been achieved partially by a Law of the National Parliament and by a Regulation enacted by the State Government, whereas the LEN is considered the substantial transposition instrument for the core provisions of the Habitats Directive.

The National Laws such as the LEN are statutory instruments enacted by the National Parliament (Congress and Senate). On the other hand, the State Regulations are the legal instruments issued under an Law, embodied in Royal Decrees, subordinate to the Laws and conceived to develop them, inasmuch any regulation must be consistent with the Law under which it is issued. Both instruments are binding, and addressed both to the authorities and the public. The difference between them is their position in the system of sources of law, where the Regulations are lower-ranking enactments than the Laws. The distorting aspect of this transposition system is that a Regulation remands to a Law, whereas the common way for remands is the opposite (from the Laws to the Regulations).

## ***General Description and Assessment of the Transposition of NATURA 2000 Provisions into Spanish Law.***

### **A. Objectives, Principles and Geographical Scope of Birds and Habitats Directives in Spanish Law.**

The aim and principles of the Royal Decree 1997/1995 are the same as the self-declared objectives of the Habitats Directive, since the arts. 2 and 3.1 of this Directive have been literally transcribed into the Spanish regulation.

### **B. Definitions.**

The list of definitions included in the art. 1 of the Habitats Directive is literally transcribed into the Royal Decree 1997/1995, except for the definition of the “special area of conservation”, contained in the art. 1. 1). The Spanish regulation does not foresee the means by which the Autonomous Governments should designate the sites. In other words, although the Directive remarks the use of “statutory, administrative and/or contractual acts”, the art. 2 of the Royal Decree 1997/1995 does not mention the type of acts or instruments to be used by the Autonomous Governments to designate the SACs, although this omission must not be regarded as relevant.

From 1<sup>st</sup> January 2004, the new art. 20 *ter* of the LEN defines the SAC as “a site designated where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and the populations of the species of Community importance”; whereas the new art 20 *quater* .2 of the LEN defines the SPA as “a designated site where the necessary conservation measures are applied to guarantee the survival and breeding of the species of birds, especially those included in the annex II (thereof) and the regularly occurring migratory birds not included (therein)”.

### **C. Selection, Designation and elimination of SPAs and SACs.**

The implementation of the NATURA 2000 Directives is deferred to the Autonomous Communities, since the SCIs and the SPAs are designated by the Autonomous Governments following the procedure laid down in the Royal Decree 1997/1995, that literally transcribes the art. 4 of the “Habitats Directive”. Also, the new art. 21.1 of the LEN states that “the Autonomous Communities shall designate and manage the (...) NATURA 2000 sites placed in their respective territories, without prejudice of the State jurisdiction over the National Parks and the geographical sea”. The new art. 20 *quater* .3 of the LEN states that “The Autonomous Communities shall communicate the SPAs designated in their territories to the Ministry of Environment, who shall forward this information to the European Commission”.

Thus, the Autonomous Governments propose the lists of sites to be compiled and co-ordinated by the State Government (represented by the Ministry of the Environment), and those lists are then transmitted to the European Commission, with the graphic information required.

In general terms, the transposition of this group of provisions is good, since, i.e., the art. 4.4 of the Habitats Directive is literally transcribed into the art. 5 Royal Decree 1997/1995. Nonetheless, the Spanish regulation does not foresee the possibility of an adaptation of the list of sites, inasmuch the provision contained in art. 4.1 of the Habitats Directive is not transposed in the Royal Decree 1997/1995. This silence can be connected with the lack of a clear mention of the monitoring provisions contained in art. 11, although the

adaptation of the lists achieved by the Autonomous Governments is a current issue at the present moment. Neither the art. 9 of the Habitats Directive (that refers to a possible declassification of SACs as a result of the surveillance provided for in art. 11) nor the art. 5.1 (that regards the exceptional cases where the Commission dissents with the national lists of sites, the bilateral consultations and the subsidiary proposal to the Council to select the site as a SCI), are transposed into the Royal Decree 1997/1995, inasmuch they are addressed to the European Commission<sup>9</sup>.

#### **D. Management Regime of SPAs and SACs.**

The management regime for the sites is based on the elaboration of specific or integrated management plans and on the adoption of appropriate statutory, administrative or contractual measures corresponding to the ecological requirements of the natural habitats. On the other hand, the “statutory, administrative or contractual measures” are foreseen on the paper, and not implemented yet.

The Royal Decree 1997/1995 transcribes literally the art. 6.1 of the Habitats Directive, but does not develop the provisions about the management regime. Although the new art. 20 *quater* .5 of the LEN states that “The necessary conservation measures shall be established, if need be, through appropriate management plans specifically designed for the sites or integrated into other development plans or planning instruments, in accordance with the ecological requirements and objectives pursued”, this provision does not provide for any substantial information on the plans mentioned. Thus, a subsidiary application of the LEN is needed with regard to the “management plans”, in order to achieve a substantial transposition of the Directives in this point.

The LEN lays down a natural resources’ planning system specifically designed for the natural protected areas: the so-called *Planes de Ordenación de los Recursos Naturales* (“Natural Resources Management Plans”, PORN hereinafter). The PORNs are intended to propose a preventative protection regime for the use of the natural resources within an area which shall be designated as a protected area. The objectives of the PORNs are concreted in the art. 4.3 of the LEN: “To assess the conservation status of the natural resources and habitats in a land area, to determine the limitations that must be established, to promote conservation and restoration measures for the resources and habitats when needed, and to draw up criteria for developing public policies towards a sustainable social and economic development”. In accordance to those scopes, the PORNs distinguish diverse internal areas; they also establish both general and specific limitations to the use and development of activities in the protected area, and determine what activities and civil works require an environmental impact assessment. The PORNs are compulsory and binding on the conservation of the wildlife and the protected areas. Thus, the PORNs overrule the land planning instruments yet in force, and co-ordinates those instruments. On environmental matters, the PORNs’ regulations become the limitations for any other regulation. Insofar the LEN does not draw the PORNs as the exclusive plans for the natural protected areas, they can be used for other purposes such as managing and protecting SACs which are not natural

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<sup>9</sup> However, the lack of transposition of the art. 5.4 gives rise to an indetermination about the transitional regime of the sites: in accordance to this provision, “during the consultation period and pending a Council decision, the site concerned shall be subject to the conservation measures contained in the art. 6.2 of the habitats Directive”. Insofar this article is not transposed into the Royal Decree 1997/1995, an interpretation “pro Directiva” is needed, extending the applicability of the art. 6.4 of the Royal Decree 1997/1995: “As soon as a site is placed on the list (of SCIs) it shall be subject to arts. 6.2, 3 and 4”, whatsoever might occur, even a consultation period or a subsidiary intervention of the Council under the art. 5 of the Habitats Directive.

protected areas designated under the LEN, thus they may be identified as the solution for the relative lack of definition of the NATURA 2000 sites regime.

### **E. Protection Regime of SPAs and SACs.**

The arts. 6.2 and 6.4 of the Habitats Directive are literally transcribed in the art. 6.2 of the Royal Decree 1997/1995. Also, the art. 6.3 of the habitats Directive, requiring an environmental assessment of any plan or project likely to have a significant effect on a site, is literally transcribed in the art. 6.3 of the Royal Decree 1997/1995. In this latter case, the Royal Decree 1997/1995 states that “the appropriate assessment must be made in accordance with the *applicable rules*, in the light of the State general Law and the additional protection regulations enacted by the Autonomous Communities”. Thus, the LEIA applies to the environmental assessment of plans or projects to be developed on a NATURA 2000 site, insofar the provisions of the LEIA are the only “applicable rules”, and according to the recent amendment of the LEIA referred to in paragraph 3.1.

This recent amendment of the LEIA has also introduced a specific regulation for the environmental assessment of plans and projects authorised by the State Government to be developed on a NATURA 2000 site: in the light of the conclusions of the environmental assessment, the Ministry of Environment shall take the necessary compensation measures to guarantee the coherence of NATURA 2000, after a due consultation of the Autonomous Community that hosts the plan or project. The opinion of the Autonomous Community may be incorporated into the final State Environmental Impact Report, that shall be fulfilled within 30 days. If the Autonomous Community fails to issue an opinion within the deadline, the environmental State authority shall fulfill the Report without it. The Ministry shall forward the information about the compensation measures adopted to the European Commission.

The new art. 20 *quater* .4 of the LEN states that “The protection of breeding, moulting and wintering areas and staging posts in the migration routes of the migratory species shall be ensured, especially in the wetlands and particularly in those of international importance. The necessary conservation measures shall be established in the SPAs to avoid the deterioration of habitats or any disturbances affecting significantly the birds”. This is a programmatic provision rather than a general one, thus it needs a concrete development in every eventual management plan.

Another protection measure is foreseen in the new art. 26.4 of the LEN, that prohibits “The alteration and destruction of the vegetation in the habitats; all forms of killing, damage and deliberate disturbance of the wild animals, including the capture and keeping of live wild animals; the collection, keeping, destruction of or damage to the nests, breeds or eggs of birds, even if empty; the keeping, trade and exchange of live or dead animals and their parts and derivatives”. Said prohibitions shall particularly apply to the wild animals included in any of the categories referred to in art. 29 of the LEN (the endangered species), but there is a lack for an enforcement regime of this provision.

Finally, the new Forestry Law 43/2003, of 21st November (Forestry Law hereinafter) applies to some NATURA 2000 sites as well as the LEN, the LEIA and the Royal Decree 1997/1995 itself. The relevant point of this Law for the purposes of NATURA 2000 is that the public-owned forest areas designated as SPAs and SACs shall be included in the ‘Catalogue of Forest Areas of Public Interest’, a fact that extends the protection measures issuing from the Forestry Law to the NATURA 2000 sites. Summarizing, the protection measures are: the

presumption of public possession of the protected land, the consideration of this land as exempt property; the land can solely be conveyed by a Law and is subject to prescription of 30 years of continued and regular use). Also, the “Basic Directives for the Forests’ Management” –to be enacted by a State’s Royal Decree- shall determine the adaptation of the Spanish forests concerned by NATURA 2000 to the criteria of sustainability, as established by the Birds and Habitats Directives<sup>10</sup>.

#### **F. Management and Protection of Habitats and Landscape’s Important Elements for NATURA 2000 outside SPAs and SACs.**

Arts. 3.3 and 10 of the Habitats Directive are literally transcribed into the art. 7 of the Royal Decree 1997/1995, entitled “Encouragement of the management of the landscape features essential for wild fauna and flora”. The result of it is a single provision, addressed not only to the Autonomous Governments but also to the Local Councils and to the State Government under their respective competences, stating that “The competent public authorities shall endeavour to improve the ecological coherence of NATURA 2000 by encouraging the management of features of the landscape which are of major importance for wild fauna and flora, especially those which, by virtue of their linear and continuous structure (such as cattle trails, 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, geographic dispersal and genetic exchange of wild species”. Also, the new art. 20 *quater* .5 of the LEN states that “Outside the SCAs, the competent bodies shall also strive to avoid pollution or deterioration of the habitats”.

The vehicles of this improvement, in accordance to the Habitats Directive, are claimed to be the use of the “land-planning and development policies”, but they are omitted in the Spanish regulation, a fact that shows the programmatic character of the provision, rather than its actual legal force.

#### **G. Monitoring.**

The provision on the monitoring of the conservation status of the natural habitats and species NATURA 2000 (contained in the art. 11 of the Habitats Directive) is not literally transposed into the Spanish regulation. In fact, the art. 8 of the Royal Decree 1997/1995 does

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<sup>10</sup> Here is an excerpt from the Forestry Law 43/2003, of 21st November:

Art. 5.1: For the purposes of this Law, “forest area” or “forest” is to be considered as any area in which vegetal species such as trees, bush or other plants grow, whether spontaneously or by means of silviculture; being this area dedicated to environmental, productive, cultural, landscape or recreation purposes.

Art. 13 e): The ‘Catalogue of Forests of Public Interest’ shall contain the public forest areas (...) being part of (...) SPAs and SACs or any other protection features, as well as those showing relevant landscape elements.

Art. 28.1 h): The Ministry of Environment shall co-ordinate other organs within the State’s General Administration and the Autonomous Communities in order to elaborate the Spanish Forest Statistics, that shall contain the (...) characterization of the forest areas included in the NATURA 2000 Network.

Art. 32.2 a): The Ministry of Environment and the Autonomous Communities, after consultation with the National Forests Council, shall elaborate the Basic Directives for the Forests’ Management to be enacted by Royal Decree. Those Directives shall determine the adaptation of the Spanish forests to the criteria of sustainability, its monitoring and assessment, in accordance to the criteria established in international resolutions and treaties signed by Spain, especially those required for the forests included in the NATURA 2000 Network.

only charge the “National Commission for the Protection of the Nature” (*Comisión Nacional de Protección de la Naturaleza*, a public entity created by the LEN and regulated by the Royal Decree 2488/1994, of 23rd December) with the duty of encouraging “the co-operation between the public authorities in adopting surveillance measures of the conservation status of the natural habitats and species, with particular regard to priority natural habitat types and priority species”. On the whole, the transposition of this provision can be deemed as fair in a formal sense but good in a substantial sense, insofar the monitoring responsibilities of the State and Autonomous authorities are only overunderstood.

#### **4. Case-law concerning NATURA 2000.**

In the Spanish Law system, the case-law (so-called “jurisprudence”) is solely constituted by the collection of both the Constitutional Court’s and the Supreme Court’s Decisions. There are few judicial cases dealing with NATURA 2000, and even less cases where the NATURA 2000 issues are the substance of the suit, which are here reported.

In the Supreme Court’s Decision of 15th March 1999, an environmental NGO, the *Coordinadora de Organizaciones de Defensa Ambiental* brought an action against the Royal Decree 1997/1995, art. 13.2 for failure to include in the Annex II the «*Canis Lupus*» species living in its habitats of the South Duero River. The Supreme Court stated that the Royal Decree 1997/1995, art. 13.2 was infringing the range of exceptions allowed by the Habitats Directive, and annulled it.

In the Supreme Court’s Decision of 5th March 2001, the environmental NGOs «EKI» and «Eguzkizaleak» and the State Administration brought an action against the Regulation from the Basque Agricultural Department of 14th January 1992, which authorised the hunting of «*columba palumbus*» for 1993 during their return to their rearing grounds, enlarging the hunting period established as under art. 7.4 of the Birds Directive. The Court stated that the Basque Regulation did not comply to the EC Law, insofar the Basque Administration held the power to determine the concrete dates for the hunting periods, provided that the hunting is not allowed during the rearing periods. Moreover, the derogation of the Basque regulation did not even specify the means, arrangements, conditions, circumstances, controls or methods authorized for capture or killing, as under art. 9.1 c) of the Birds Directive.

An identical case to the latter was the subject of the Supreme Court’s Decision of 21st May 2001, the latter regarding a Basque regulation with the same content of the former, but issued for the hunting season of 1994.