

THE OPERATION OF THE MANAGEMENT PRINCIPLE FOR THE SACs IN THE SPANISH LAW

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1. INTRODUCTION

It is widely accepted in modern environmentalism that nature conservation may only be fully performed through management measures for the habitats and species existing in the protected areas. For the purposes of NATURA 2000, this idea is introduced by art. 6.1 of the Habitats Directive, which obliges Member States to “establish the necessary conservation measures” in the SACs.

Spanish environmental law has rather transcribed than transposed art. 6.1 of the Habitats Directive. The requirements of the Directive have been only met in a formal way. This provision was initially incorporated at a regulatory level, by art. 6.1 of the Royal Decree 1997/1995, of 7th December, *on the conservation of natural habitats and of wild fauna and flora* (RD 1997/1995 hereinafter), which states: “*In the SACs, the Autonomous Communities 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*”.

Much later, the State Wildlife Conservation and Natural Protected Areas Act 4/1989, of 27th March (hereinafter Natural Protected Areas Act 1989), was amended in December 2003 to include a new art. 20 *quater* .5, stating 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*”.

The delay of 8 years in up-grading the provision regarding NATURA 2000 network from a mere regulation to an Act of Parliament, and the bareness of both provisions, show some disdain towards the very milestone of NATURA 2000. Besides, it probably hinders the implantation of the SACs as new features of the Spanish environmental legal framework.

Thus, the difficulties of interpretation of the Art. 6.1 of the Habitats Directive relating to the content, extent and management of the SACs are automatically extended to the interpretation of the Spanish law. In fact, there are many key questions that Spanish law cannot solve regardless the interpretation of the Directives. This is the case as regards (i)

when the conservation measures must be considered as necessary, (ii) when the need for appropriate management plans occurs, (iii) whether the management plans for the SACs are compatible with other statutory, administrative or contractual measures or not, (iv) which among these measures are preferential or (v) what the parameters to assess the correspondence of these measures with the ecological requirements of the habitat and species are, among many others.

In view of such problems and taking into account that Art. 6.1 of the Habitats Directive applies only once the SACs designation process is completed, it does not appear unwise to say that the implementation of Art. 6.1 of the Habitats Directive in Spain is today uncertain and might last longer than expected, because the Autonomous Communities wait for proposed sites to become definitive SACs before establishing management plans under their system of protected areas.

2. THE MANAGEMENT OF THE NATURA 2000 SITES

A) The scientific and technical grounds of the conservation measures

As stated above, Arts. 6.1 of the RD 1997/1995 and 20 *quater* .5 of the Natural Protected Areas 1989 refer to the “*necessary conservation measures*” and the “*need for appropriate management plans*”. They also state that conservation measures should meet the ecological requirements pursued by the Natura 2000 network. The mention of the undetermined concept of “*necessity*” and the need for objective parameters to assess whether the conservation measures meet the ecological requirements recall the importance of meta-legal criteria for these purposes. In summary, the conservation measures for the SACs must find a technical (biological) support that ensures the homogeneity of the environmental protection at a European level.

In the Spanish experience, these criteria, far from recalling the guidelines issued by the European Biogeographic Seminars, attach to other sources. They mainly refer to the “*Spanish Strategy for the Conservation and Sustainable Use of Biodiversity*”, approved in 1998 under the Convention on Biological Diversity of 1992 and completed by other sectorial strategies, such as the “*Spanish Plan for the Conservation and Reasonable Use of Wetlands*” (approved in 1999 under the Ramsar Convention), the “*Spanish Forestry Strategy*” (approved in 1999, suite of the European Forestry Strategy of 1998 and point of the National Forestry Program) and the strategies for the conservation of the Brown Bear (*Ursus arctos*), the Spanish Imperial Eagle (*Aquila adalberti*), the Spanish Lynx (*Lynx pardinus*) and the Lammergeyer (*Gypaetus Barbatus*).

Although these strategies do not have a legal validity neither an EC Law filiation, are also useful for the purposes of NATURA 2000 and act as an umbrella for the eventual management and conservation plans and measures for all kinds of species and sites. They set out the guidelines for the conservation of the Spanish biodiversity on the whole¹.

¹ See the Report from the Commission on the implementation of the Directive 92/43/EEC (COM/2003/0845 final): “Much activity is reported in relation to site conservation measures, although this is often not driven by Natura 2000, but relates to nature conservation activity in existing protected areas and/or for endangered species. It seems the Habitats Directive has not led directly to new conservation measures at site level” and “The use of species action plans or special management plans in Spain ensures strict systems of protection, which sometimes go beyond the requirements of the Directive”.

B) NATURA 2000 Planning schemes

The management regime for the sites, based on the elaboration of specific or integrated management plans for the SACs alternatively, is only foreseen on the paper, as stated above. Given the lack of a specific type of management plan for the SACs, the planning instruments designed for the natural protected areas may be regarded as models for the NATURA 2000 management purposes.

In fact, it has been reminded that “*while SACs already protected under the natural areas protection schemes frequently benefit from management plans and conservation measures, these are in place for relatively few of the proposed SACs outside existing protected areas, which cover large areas of territory in some Autonomous Communities*”².

Therefore, the Autonomous Governments may choose between two planning schemes: the Natural Resources Regulation Plans (*Plan de Ordenación de los Recursos Naturales*) and the Use and Management Plans (*Planes Rectores de Uso y Gestión*). Both types of plans are specifically designed for the management of the natural protected areas, though they may also be used for the purposes of managing and protecting SACs.

1. The **Natural Resources Regulation Plans** (deeply regulated in Arts. 4 and 6 of the Natural Protected Areas Act 1989) establish a preventative protection regime for the use of natural resources within an area before it is designated as a protected area. These Plans assess the conservation status of the natural resources and habitats in a land area, establish the limitations needed, promote the necessary conservation and restoration measures for the resources and habitats, and set out the criteria for developing public policies towards a sustainable social and economic development. Accordingly, these Plans may distinguish a number of internal areas, establish general and specific limitations to the use of land and the development of activities, protect the status of conservation of the existing natural resources and habitats and determine which of the human activities need to be subject to environmental impact assessment.

They are binding. They overrule the relevant land planning instruments and coordinate them (on environmental matters, the regulations of the Plans overrule any other regulation). These Plans should be approved before or along with the designation of the natural protected area, though a maximum delay of one year from that moment to the approval of the Plan is exceptionally permitted, under a reasonable justification. There is not any deadline for the elaboration procedure itself, that may last often not less than two years. A probable reason for this delay is the requirement of public participation, by means of public information and consultations during the procedure. Any stakeholder (whether a single citizen or a social and/or environmental NGO) may submit comments during the public consultation period and respond to the consultations launched by the competent authorities. Although these Plans mainly affect public bodies, third parties, such as environmental NGOs and/or single

² Report from the Commission on the implementation of the Directive 92/43/EEC (COM/2003/0845 final).

citizens, may challenge them in court. Fines in case of breach of the Plan's provisions may range from 60 to 300.000 euro, depending on its gravity³.

2. The **Use and Management Plans** (regulated in art. 19 of the Natural Protected Areas Act 1989 as planning schemes for the National Parks) establish the general regulations for the use and management of every Park. They may overrule the urban planning (if the urban planning in force is incompatible with the Plan's environmental provisions, it must be revised *ex officio* by the competent authorities). These Plans must be drafted by the managing bodies of the Parks, approved by the competent body within the Administration of the Autonomous Community, and periodically revised. These Plans must be consistent with the regulations laid down by the National Parks Network Plan of Spain (*Plan Director de la Red de Parques Nacionales*, Royal Decree 1803/1999, of 26th November) and must, at least, lay down the regulations, directives and general criteria for the use and management of every Park (e.g. the conditions for camping, breeding cattle, motor vehicle circulation and visitor centres), its zoning and the permitted uses of cattle trails across the Park. These Plans must also enumerate the activities deemed incompatible with the Park's objectives (such as building and hunting), and state the measures of protection, research and divulgation of the Park's values; containing an estimate of the investments in infrastructures and conservation, research and public activities programmed.

The elaboration procedure of these Plans requires public consultation and a prior report of the Board of the Park (its participation body, as explained below). The Plans must be developed and implemented by means of annual investment and works plans and, if need be, through specific sectorial plans. The only exception to this rule are unexpected but still necessary works or uses, duly motivated, after due consultation with the Board of the Park. These Plans and their development sectorial plans must last less than six years, and must be revised before, if need be.

The conservation measures may be integrated into many other varieties of development plans, such as urban or land management plans (with compulsory provisions), depending on the Autonomous Governments. The specific management plans issued from the environmental authorities is foreseeable; nevertheless, the choice between a plan for every single SAC and a general plan for all the SACs located in an Autonomous Community remains at the sole discretion of the Autonomous Community.

3. THE EMERGENCE OF A SPANISH POLICY FOR THE MANAGEMENT OF NATURA 2000 SITES

A) Contractual versus Statutory and Administrative ways

Contractual relations between the authorities and citizens in Spanish environmental Law are generally odd (although incipient), and unfeasible when it comes to the protection regime of natural areas. Thus, although there are neither regulatory nor administrative measures specially designed for NATURA 2000, these are the most important protection tools

³ Since 1995, the Penal Code regulates some environmental criminal offences in arts. 332 thereafter, sanctioned with imprisonment from 4 months to 2 years or daily fines ranging from 8 to 24 months and 2 to 400 euros per day, on judicial discretion.

for the SACs, and must be collected from the natural protected areas law. In fact, the SACs may be designated as a wide range of protected sites under the Natural Protected Areas Act 1989. This entails the need for an *ex officio* adaptation of any urban planning existing in the area concerned; the establishment of administrative redemption and pre-emption rights on *inter vivos* conveyances of land placed inside the protected areas and the declaration of public need for the purposes of the Expropriation Act 1954, of 26th December; the zoning of several sub-areas within the site and the classification of the permitted and prohibited uses and activities, among others.

In general, there is a lack of clarity about the legal implications and future financing of NATURA 2000 sites. The human and financial resources devoted to implementing the Habitats Directive are not entirely clear. There are major differences between Autonomous Communities in resources committed to this implementation, since some of those with the greatest biodiversity are trying to implement the Directive with very limited resources (e.g. Aragon, Extremadura)⁴.

The financial measures are drawn only from the EU, mostly within the CAP framework: The Governments of the Autonomous Communities concentrate the agri-environmental aid within the NATURA 2000 sites, in accordance with the Council Regulations n. 1257/1999 of 17th May, on support for rural development from the European Agricultural Guidance and Guarantee Fund and n. 963/2001, of 17th May (detailed rules for 1257/1999)⁵.

B) Management bodies for the Natura 2000 sites

The management regime for the NATURA 2000 sites is foreseen only on the paper, as stated above. There is a lack of relevant details when it comes to the structural model designed for its performance and enforcement. There are no criteria on whether a specific management authority for every single SAC or a global management of the SACs carried out by the Environmental authorities of the Autonomous Communities is preferred, since the Autonomous Communities may freely choose and create the management bodies on their discretion.

Thus, the management authorities created for the National Parks might be considered the model of the NATURA 2000 areas' managing authorities. Though, a problem arises in relation to this model of management from the recent Judgement of the Constitutional Court n. 194, of 10th November 2004, which has stated that the management of the National Parks is under the sole jurisdiction of the Autonomous Communities. This decision, reviewing the Spanish system of environmental jurisdictions completely, recognizes the State's sole jurisdiction to declare by Law the Parks and, exceptionally, adopt the single needed measures to enforce the law and to monitor the consistence of the management of the Parks with the general guidelines for this purpose laid down in the National Parks Network Plan. Correspondingly, the Autonomous governments shall manage the budget granted by the State Administration to every Park, appoint its Director and approve its Use and Management Plan,

⁴ Report from the Commission on the implementation of the Directive 92/43/EEC (COM/2003/0845 final).

⁵ E.g. Aragon Decree 55/2003, of 25th March, establishing complementary agri-environmental requirements to the financial regime under CAP, and Extremadura Decree 11/1999 of 2nd February, regulating the Aid for the sustainable development in natural protected areas and habitats of protected species.

with respect to the National Parks Network Plan. There have been many criticisms to this judgement that the coherence of the National Parks Network may be hindered.

However, until the Autonomous Communities amend their own Laws to make it consistent with the new Constitutional doctrine, adapt their administrative organisation and approve the new Use and Management Plans for the National Parks, the Constitutional Court has allowed the current system to remain in force. This justifies a brief look at the whole discipline of the management bodies for the National Parks in Spain

In accordance with the Natural Protected Areas Act 1989 (as amended in 1997 and 2003), every National Park is governed by a Management Joint Commission (*Comisión Mixta de Gestión*), chaired annually by one of the representatives of the State's or the Autonomous Administration alternatively. The Management Joint Commission elaborates the draft of the Use and Management Plan of the Park and its development plans; approves the annual investment plan; proposes the interadministrative agreements needed to execute the annual investment plan, as well as the projects of works which are not included in the Management and Use Plan of the Park. It also approves the technical conditions required for granting concessions and licences in the Parks and establishes the regulations of the services of the Park. It proposes the distribution of economic aid in the socio-economic influence area of the Park, agrees on the annual report of activities made by the Director, controls the management and conservation and the proper use of the identificative signs of the Park and advises on the financial proposals aimed at improving the Park and its socio-economic influence area⁶.

The Park is managed by a Director designated by the Management Joint Commission. The Director, necessarily a State or Autonomous civil servant, is the Secretary of the Management Joint Commission and attends its meetings (without a right to vote). He is also a member of the Park's Board. The Director is helped by an assistant and a staff of civil servants of the Ministry of the Environment, and holds enforcement powers for the petty offences committed in the Park and against its values.

The participation of the public in the management of every Park is ensured by a Board (*Patronato*) that enforces the regulations regarding the single National Park. It is composed by representatives of the Public administrations and the NGOs concerned by the Park, and administratively attributed to the Ministry of the Environment, and its President is designated by the State Government on a Management Joint Commission's proposal. The Board promotes and performs the management activities in the Park; gives an advise on the Use and Management Plan and its development plans; approves the annual report of activities; gives an advise on the annual investment plans and the projects of works non included in the Use and Management Plan, or those to be performed in the socio-economic influence area; promotes the territorial enhancement of the Park, administrates the financial aid granted and proposes specific regulations for the Park.

⁶ The Management Joint Commission depends on the National Parks Autonomous Body (*Organismo Autónomo Parques Nacionales*), attributed to the Ministry of Environment that co-ordinates all the Management Joint Commissions of the Parks. The State finances this Agency according to the State Budget, then the Body grants funds for every single National Park jointly with the Autonomous Governments concerned, who allot a share. Both its Director and its President hold share enforcement powers for the offences committed in/against the Park. This agency is helped by the National Council of the National Parks Network, composed by some administrative representatives, the Presidents of every single National Park's Board and a representative of an environmental association. It gives advise on the elaboration of the National Parks Network Plan, the general regulations applicable in the National Parks and the proposals of designation of new National Parks. It also establishes the criteria for funding allocation and leads the international promotion of the Parks.

At a national level, the Council of the National Parks Network (*Consejo de la Red de Parques Nacionales*), the highest consultative body composed by representatives of the Autonomous Communities, the Ministry of Environment, the local authorities concerned, the ecologist NGOs and scientists, elaborate the National Parks Network Plan (Plan Director de la Red de Parques Nacionales) and report on the functioning of the protected areas.

CONCLUSION

The transposition of Art. 6.1 of the Habitats Directive into Spanish environmental law is far from being satisfactory, inasmuch Art. 6.1 of the RD 1997/1995 and Art. 20 *quater* .5 of the Natural Protected Areas Act 1989 plainly translate the Directive's provision. Thus, the meaning of "necessary" regarding the conservation measures, the need for appropriate management plans; the compatibility of the management plans with other statutory, administrative or contractual measures, the preference between these measures and the parameters to assess the correspondence of the conservation measures with the ecological requirements of the habitat and species remain uncertain.

The competence for the adoption of the necessary conservation measures and the approval of the appropriate management plans for the SACs, is devolved to the Autonomous Communities. Since Art. 6.1 of the Habitats Directive applies only once the process of designation of the SACs is completed, it seems that the designation of any SAC must be prior or, at least, simultaneous, to the approval of its management plan or the adoption of the conservation measures. In general, the development of management plans for the SACs is still at an early stage, because the Autonomous Communities wait for proposed sites to become definitive SACs before establishing management plans according with their system of protected areas. In this case, SACs already covered by national designations may be underpinned by existing management planning. For other sites, outside existing protected areas, progress on management is still limited, although certain site exceptions are noted in several Autonomous Communities⁷.

In general, many problems remain unsolved when it comes to the management regime of SACs. The lack of specific technical grounds for the conservation measures of the sites, the lack of a specific type of management plans, the unfeasibility of a contractual model of relationships between authorities and citizens in the Spanish natural protected areas Law, etc, make necessary the use of other instruments, such as the "Spanish Strategy for the Conservation and Sustainable Use of Biodiversity" (approved under the Convention on Biological Diversity of 1992) and the general provisions of the Natural Protected Areas Act 1989 regarding the planning schemes and the structural model for the performance of the conservation and management of the NATURA 2000 sites in Spain.

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⁷ E.g. art. 2 of the Galicia Decree 72/2004, of 2nd April, that permits the current uses and activities in the SACs provided that they are carried out in a traditional way, respectful of the natural values.

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