The temporary regime of the natural areas likely to be designated as “Natura 2000” sites in Spain

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SUMMARY: 1. The progressing state of the “Natura 2000” sites in Spain.- 2. *Rationae temporis* applicability of the active management and protection regime in the “Natura 2000” sites.- 3. Legal means of active management to ensure a temporary management of the future “Natura 2000” sites.- 4.Legal means to grant a temporary protection for the future “Natura 2000” sites.-

1. The state of progress in designating “Natura 2000” sites in Spain.

According to arts. 4 and 5 of the Royal Decree 1997/1995, of 7th December (the vehicle for transposition of the “Habitats Directive” in Spain), the Autonomous Communities must draft a list of areas likely to be designated as SACs or “Natura 2000” sites (SPAs and SCIs), and send it to the General Directorate of Conservation of the Ministry of Environment, so that the National List of Sites is co-ordinated and transmitted to the European Commission. When the National List of SCIs has been adopted by the European Commission, the Autonomous Communities must designate the SCIs as SACs within the following six years, establishing the necessary conservation measures.

The last update of the “Natura Barometer” (16th October 2003) shows a Spanish National List including 1,276 SCIs that cover an approximately 118,492 km^2 area (23.5 % of the Spanish territory); and 416 SPAs covering an approximately 78,252 km^2 area (15.5 % of the Spanish territory). Since the European Commission has already adopted the List of Sites of both the Macaronesian and the Alpine Biogeographical regions, some of these Sites are already subject to the provisions of the “Habitats Directive”. Thus, 237 of the Spanish SCIs (174 of which are located in the Canary Islands, covering circa 4,540 km^2, and 63 in the Pyrennees, covering circa 9,730 km^2) fall under the temporary protection regime of the “Habitats Directive”, a regime that shall apply to the SCIs to avoid the deterioration of natural habitats and the disturbance of the species until their designation as SCAs by the Autonomous Communities.

Nevertheless, the rest of the sites placed in the pending Lists (Atlantic, Boreal, Continental and Mediterranean) are still being examined by the European Commission, and the Autonomous Communities are completing their proposals at the present moment in accordance with the Commission’s instructions. If the Spanish national list is adopted without substantial modifications, the number of SCAs in Spain should reach 1,692, covering circa 196,744 km^2. Therefore, 1,455 proposed SCIs covering circa 182,474 km^2, formally lack for a temporary protection regime until the adoption of the rest of the Lists by the European Commission, a fact that is analyzed hereinafter.

2. ***Rationae temporis*** **applicability of the active management and protection regime in the "Natura 2000" sites.**

According to art. 4.5 of the Habitats Directive, "As soon as a site is placed on the list referred to in the third paragraph of art. 4.2, it shall be subject to arts. 6.2, .3 and .4". The third paragraph of art. 4.2 refers to the "list of sites selected as SCIs, identifying those which host one or more priority natural habitat types or priority species", and states that it "shall be adopted by the Commission". In other words, Member States must take appropriate steps to avoid the deterioration of natural habitats and the significant disturbance of species once the sites are included in the List of SCIs; the Member States must also ensure that any plan or project likely to have a significant effect on the site is subject to appropriate assessment of its implications for the site in view of its conservation objectives.

It is rather difficult to state the moment from which the temporary protection measures must be taken, in so far as this moment depends on the inclusion of the Site in the List of SCIs. The inclusion of the Site in the List may be understood either as the moment that the Member State drafts its List (and transmits it to the European Commission) or as the moment that the European Commission adopts the List for each Biogeographical Region.

Nevertheless, the first subparagraph of art. 4.2 regulates the establishment by the Commission of a draft list of SCIs drawn from the Member States' lists, and the third subparagraph refers to the adoption by the Commission of the list of sites selected as SCIs. Thus, the interpretation of art. 4.5 of the "Habitats Directive" suggests that the temporary protection measures are compulsory for the Member States when the List of sites has been adopted by the European Commission. Otherwise, there is no sense in art. 4.3 and .4 of the "Habitats Directive", which fix two terms of six years each: the first one for the Member States to draft their national lists of SCIs, the second one for the Member States to designate the SACs following adoption of the lists by the European Commission.

Accordingly, the third paragraph of art. 6.4 and art. 5 of the Royal Decree 1997/1995 (*As soon as a site is placed in the list of SCIs, it shall be subject to art. 6.2, .3 and .4 hereinabove*) require the establishment of preventative protection measures for the areas recognized as SCIs by the European Commission, until their designation as SCAs by the Autonomous Communities. The temporary regime may last six years from the adoption of the List of sites, and the Autonomous Communities are responsible for it.

Nevertheless, this provision does not extend to the sites proposed as SCIs by the Autonomous Communities, and placed in the Lists not adopted by the European Commission yet. The formal absence of a temporary protection regime for those sites is solved in the Spanish Law by different substantial means. First, some Autonomous Communities have already classified their proposed SCIs included in the pending Lists as natural protected areas under any of the various modalities laid down by their own environmental Acts (i.e., Decree -of *Xunta de Galicia*- 72/2004, of 2nd April, that designates the Galaecian SCIs as "Special Areas of Protection of the Natural Values", and Decree -of *Gobierno de Navarra*- 86/1995, of 3rd April, that designates the areas included in SPAs as "Special Areas of Protection for the Wild Fauna").

Secondly, the Environmental Impact Assessment Act (Royal Legislative Decree 1302/1986, of 28th June) applies to a wide range of plans, projects and/or programmes located in areas designated by the Autonomous Communities as SPAs or SCIs. The Environmental Impact Assessment Act does not make any distinction between the designation of the sites by the competent authority before or after the adoption of the Lists by the European

Commission. Thus, since the Autonomous Communities' proposals of SCIs are published in the Autonomous Official Gazettes (i.e., Agreement -of *Gobierno de Murcia*- of 28th July 2000, that designates the Murcian SCIs), any plan or programme likely to have a significant effect on the conservation objectives of a SCI is subject to an appropriate environmental assessment.

Finally, temporary protection of the future "Natura 2000" sites is ensured by the application of the Wildlife Conservation and Natural Protected Areas Act 4/1989, of 27th March (Natural Protected Areas Act hereinafter) to the 25 % of the Spanish proposed SCIs that fall within its remit, although this specific regime does not issue from the Directives.

3. Legal means of active management to ensure a temporary management of the future 'Natura 2000' sites.

The first sentence of Art. 4.1, the "Birds Directive" states that the species shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution, whereas art 6.1 of the "Habitats Directive" establishes a detailed notion of "conservation measures" (those involving 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 and the species present on the sites). These are the management means likely to be used in the SACs by Member States to ensure an "active" conservation of the "Natura 2000" sites.

With regard to management plans, the Natural Protected Areas Act, lays down a natural resources' planning system, specifically designed for the natural protected areas thereunder but likely to be used for the purposes of the "Natura 2000" Network. The *Planes de Ordenación de los Recursos Naturales* ("Natural Resources Management Plans", hereinafter Management Plans) are conceived to establish a preventative protection regime for the use of the natural resources of an area likely to be classified under any of the various modalities of natural protected areas. Art. 4.3 of the Natural Protected Areas Act details the scope of the Management Plans: "To state the conservation status of the natural resources and habitats in a land area, to determine the limitations that must be established, to promote the conservation and restoration measures for the resources and habitats when needed, and to lay down the criteria for the public policies aimed at a sustainable social and economic development". The Management Plans are also useful outside the natural protected areas, therefore they may be used for other purposes such as managing and protecting SCAs not falling under the protection of the Natural Protected Areas Act.

4. Legal means to grant a temporary protection for the future 'Natura 2000' sites.

Arts. 6. 2 to 4 of the "Habitats Directive" establish the need to take appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as significant disturbance of the species for which the SACs must be designated. These are the "preventative" or "passive" conservation measures of the "Natura 2000" sites, and apply also to SPAs, according to art. 7. The most significant provisions of these paragraphs of the Directives concern the "impact assessment", and its transposition has been achieved in art.

6.2 to .4 of Royal Decree 1997/1995, of 7th December. The national provisions allow the development of human activities in the future SACs (farming, growing and even hunting within some conditions), provided that an appropriate environmental impact assessment is made if those activities are likely to cause deterioration in the quality of the habitats or to disturb the species on the site.

Although there is not a specific regulation of these protection measures, a recent amendment of the Environmental Impact Assessment Act (a new fourth additional provision has been added to the Law), provides for the general regime to apply. Nevertheless, and due to the shared jurisdiction on environmental matters between the State and the Autonomous Communities, the extent of the Environmental Impact Assessment Act is limited to the environmental assessment of plans and projects authorised by the State Government. In fact, art. 6.3 of Royal Decree 1997/1995, of 7th December states that "Any plan or project (…) shall be subject to appropriate assessment (…) *following the applicable regulations in accordance with the basic State Law and the additional protection provisions enacted by the Autonomous Communities*". Thus, the "applicable regulations", in case of plans or projects under the competence of the Autonomous Communities' Governments, further to the analysis of the corresponding Autonomous Communities' Law, remand to the Environmental Impact Assessment Act.

Since this method of protection of the sites applies to the SCIs as soon as they are placed on the list, and the Environmental Impact Assessment Act does not make any distinction between the designation of the sites by the competent authority before or after the adoption of the Lists by the European Commission, the temporary regime is fully ensured. It also applies to SPAs from the time of their designation by the Autonomous Communities, in accordance with the fourth paragraph of art. 6.4 of Royal Decree 1997/1995, of 7th December.