

# Enforcing the Habitats Directive in national courts

Brussels  
4 June 2020

Part I: The EU legal framework on access to  
justice in the context of the Habitats  
Directive, Anne Friel

Part II: Practical insights from wildlife lawyer,  
Soledad Gallego



# Part I: EU legal framework on access to justice

We will cover:

1. Main legal provisions and CJEU cases
2. What decisions can be challenged on HD grounds?
3. Who can bring cases (legal standing)?
4. Scope and standard of review
5. Interim measures
6. Remedies



# Habitats Directive (92/43/EEC)

- Objective: To ensure the conservation of rare, threatened or endemic animal and plant species, as well as rare and characteristic habitats, by:
  - Establishing EU wide Natura 2000 ecological network of protected sites;
  - Establishing lists of protected species;
  - Putting in place protective measures for species and habitats.
- BUT no “access to justice” provision ensuring that individuals and NGOs can enforce measures in national courts!



# Access to Justice: the legal framework

1. EU law principles: effective judicial protection (Art 19(1) TEU) and sincere cooperation (Art 4(3) TEU)
2. Human rights: right to an effective remedy (Art 47 Charter of Fundamental Rights, based on Art 6+13 ECHR)
3. 3rd pillar of the Aarhus Convention:
  - Art 9(2): right to challenge decisions that have been subject to public participation
  - Art 9(3): right to challenge decisions that contravene provisions of national or EU law relating to the environment
  - Article 9(4): effective remedies



# Access to Justice: CJEU case law

Main CJEU cases on access to justice in relation to the Habitats Directive:

- C-127/02 - Waddenvereniging and Vogelsbeschermingvereniging, ECLI:EU:C:2004:482 (Waddenzee)
- C-240/09, Lesoochranárske zoskupenie, ECLI:EU:C:2011:125 (Slovak Bears I)
- Lesoochranárske zoskupenie VLK v Obvodný úrad Trenčín, ECLI:EU:C:2016:838 (Slovak Bear II)
- C-664/15 - Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation, ECLI:EU:C:2017:987





# What decisions can be challenged?

- Any decision that breaches a HD provision that is of direct concern/grants rights to NGOs/individuals:
  - Decisions relating to permitting plans/projects that have a significant effect on the environment (Art 6(3) HD) *C-127/02 Waddenzee paras 66 – 70, C-243/15 Slovak Bear II, para 56*
  - Decisions granting derogations from system of protection for certain species (Article 16 HD) *C-240/09 Slovak Bears I*
- potentially decisions breaching:
  - Art 2(3) re social, economic and cultural requirements;
  - Arts 6(1) and 6(2) on special conservation areas;
  - Art 12 re system of protection for certain species.



# Who can go to court (legal standing)?

- Absence of access to justice provision = MS discretion to decide who has standing
- Discretion restricted by:
  - **Art 288 TFEU + Art 4 TEU + Art 19 TEU**: Individuals and NGOs must have access to national courts to enforce procedural and substantive rights bestowed by EU environmental law
  - **Art 9(2) AC + Art 47 CFR** re decisions requiring public participation
  - **Art 9(3) AC + Art 47 CFR** re the decisions that breach HD provisions that directly concern individuals



# Who can go to court (legal standing)?

- Re decisions subject to public participation under Article 6(3)

HD: Art 9(2) AC + Art 47 CFR

- *De lege* standing for recognised NGOs (fulfilling national criteria to be members of the “public concerned” in Art 2(5) AC) C-243/15 Slovak Bears II, paras 56 – 59





# Who can go to court (legal standing)?

- Re decisions that breach HD provisions that grant rights/directly concern individuals/NGOs: [Article 9\(3\) AC + Art 47 CFR](#)
- National procedural rules on standing must be interpreted in accordance with Article 9(3) AC and the right to an effective remedy [C-240/09 Slovak Bears, para 51](#)
- ...and disapplied if conform interpretation is impossible [C-644/15 Protect, para 56](#)



# Who can go to court (legal standing)?

- Re decisions that breach HD provisions that grant rights/directly concern individuals/NGOs:
- eNGOs: Recognised by CJEU as being directly concerned by obligations in Article 6(3), 12 and 16 HD [C-243/15 Slovak Bears II](#), [C-240/09 Slovak Bears I](#), [C-127/02 Waddenzee](#)
- Individuals: broad approach by CJEU in context of air quality [C-237/07 Janecek](#) and use of a resource [C-197/18 - Wasserleitungsverband Nördliches Burgenland and Others](#), [C-535/18 - Land Nordrhein-Westfalen](#) BUT still unclear re Habitats Directive



# Scope of review

- On what rules can you base your challenge?
  - CJEU:
    1. rules of national law implementing EU environmental law and/or
    2. rules of EU environment law having direct effect.

*Case C-243/15 Slovak Bears II*



# Standard of review

- Definition: level of scrutiny to be applied by the judge
- Basic EU rule: left to MS discretion limited by principles of:
  1. Equivalence: not “less favourable than those governing similar domestic actions”
  2. effectiveness = “it must not be made impossible in practice or excessively difficult to exercise rights conferred by EU law”

C-71/14 *East Sussex*, para. 52



# Standard of review

In practice, CJEU requires quite substantial review

*C-127/02 Waddenzee, paras 66-67*

⇒ Re Article 6(3) HD: national courts are required to assess whether the scientific evidence relied upon by the decision-making authority to authorise the plan/project in question leaves no reasonable scientific doubt as to the absence of adverse effects on the integrity of the site

compare also: *C-723/17 Craeynest*, para. 56 on Air Quality Directive



# Injunctive relief

- Art 9(4) Aarhus: injunctive relief shall be provided as appropriate to ensure adequate & effective remedies
- Must generally be available for EU law infringements + conflicting procedural rules must be set aside *C-213/89 Factortame, para. 23*
- Details left to procedural autonomy of Member States as long as effective & equivalent remedies ensured – useful to refer to:
  - CJEU case law on its own injunctive powers by analogy  
*Good analogy could be: C-441/17 R Commission v Poland, paras 172-173*





# Remedies

## Basic rules:

- Art 9(4) Aarhus: procedures shall provide “adequate and effective remedies”
- EU law :
  - Courts should nullify the unlawful consequences of a breach of EU law (C-201/02 *Wells*, paras 64-65; Art 4(3) TEU + Art 47 Charter)
  - Precise rules are left to procedural autonomy subject to the principles of effectiveness + equivalence (C-201/02 *Wells*, para. 67 and C-420/11 *Leth*, para. 38)



# Habitats remedies

If no appropriate assessment carried out: must still carry out appropriate assessment (art 6.3) + if it shows (risk of) deterioration, assess(art 6.4):

1. Should project still be carried out for imperative reasons of public interest?
2. If yes, are there viable alternative solutions while “weighing the environmental consequences of maintaining or restricting the use of the works at issue, including closure or even demolition, on the one hand, against the important public interest that led to their construction, on the other”
3. If not: take all compensatory measures to ensure the overall coherence of the Natura 2000 site

*Case C-399/14 Grüne Liga Sachsen and Others, paras 68-77.*



# Habitats remedies

CJEU: Exceptionally, activity may continue until replacement assessment is carried out *C-411/17 Inter-Environnement Wallonie*, para. 176

but:

- Art 6(2) applies independently => if deterioration of habitat prior to replacement assessment, authority must take “appropriate steps”

*C-141/14, Commission v Bulgaria*, para 52 and *C 404/09, Commission v Spain*, para 124



# Case study: SEO/Birdlife challenge to an open pit mine project in Zilbeti Forest, Spain.

Soledad Gallego

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ClientEarth

Webinar 5 – Enforcing the Habitats Directive in national courts

4 June 2020



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1. Habitats Directive and Natura 2000 obligations
2. The Zilbeti Court Case
3. Appeal to Supreme Court
4. The question of interim measures
5. Interaction with other EU procedures





# 1. Habitats Directive and Natura 2000 obligations

#EULaw





# The Natura 2000 network

- Natura 2000 Network sites are areas of great value for the protection and conservation of European biodiversity identified with technical and scientific criteria.
- It was created to address the progressive and serious loss of biodiversity in the EU, due to the adverse impact of human activities, and the need to act at EU level.
- The legal mechanisms for its protection and assessment of plan/projects are stricter than in other areas, since the aim is to preserve a common natural heritage, which is increasingly threatened.
- It was created in 1992, through the Habitats Directive 92/43 (it integrated the SPAs of the Birds Directive 79/409)
- Natura 2000 is the most important network of protected areas in the world.



The Natura 2000 Network consists of:

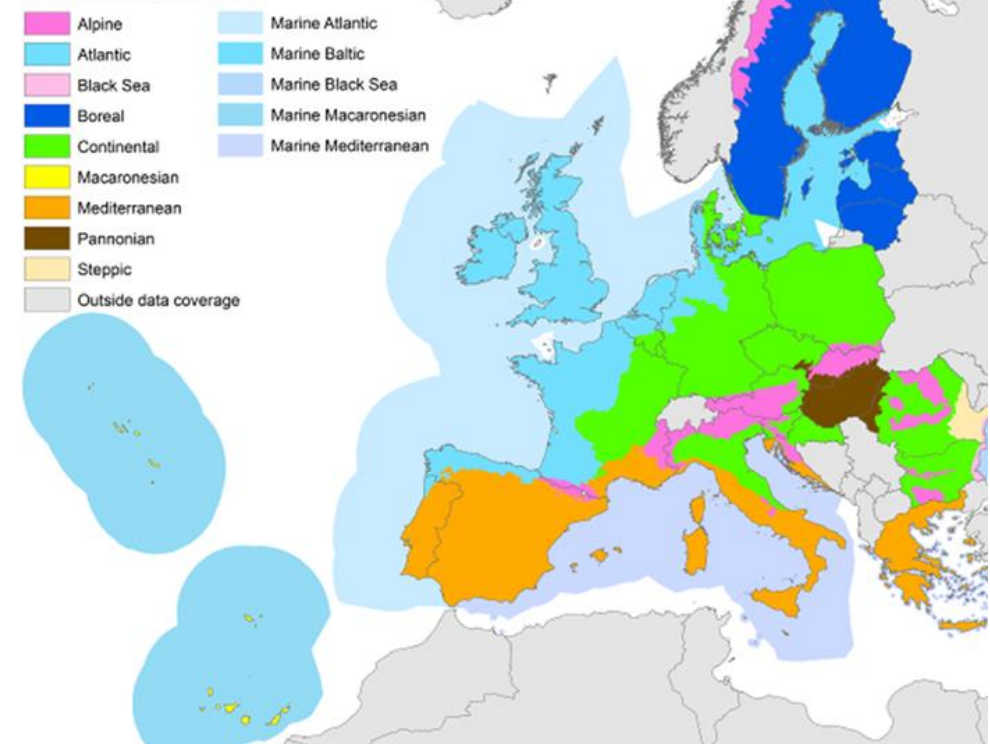
**Sites of Community Importance (SCIs)** to be designated as Special Areas of Conservation (SACs), in accordance with the "Habitat Directive"

**Special Protection Areas for Birds (SPAs)** established under the "Birds Directive".

They aim to ensure the long-term survival of Europe's most valuable and threatened species and habitats:

- Annex I and migratory birds WBD
- Habitats and species Annex I and II HD

Biogeographical and marine regions in the European Union



### Coherent network:

-Not isolated protected areas (migratory species, ecological connectivity, connecting corridors).

-Global consideration of the conservation status of habitats and species across the EU, not just in each MS.



# Natura 2000 Network: Obligations under Habitats Directive

- (a) **Declaration of protected areas** (SCI/SAC, SPA) [arts. 3, 4, 5]
- (b) Adoption of **conservation measures** and, where appropriate, management plans [Article 6(1)]
- (c) Obligation to **prevent deterioration** [Article 6(2)]
- (d) **Appropriate assessment** of plans and projects that may affect these areas. Authorization only if there is certainty of no effect, or exceptionally under certain requirements. [art. 6.3 and 6.4].
- (e) When necessary, **ecological corridors and connectivity areas** (art. 10).
- (f) **Other obligations:** surveillance, research, monitoring and reporting to the European Commission.



# Systemic country breaches:

## Examples Natura 2000 (Birds and Habitats Directives)

- Art. 4 Designation of SCIs/SAC or SPAs
- Art. 6(2) avoid deterioration or disturbance of site's habitats and species.
- Art. 6(3) appropriate assessment and strict authorization criteria
- Art. 6(4) exception: alternatives, overriding public interest, compensatory measures
- Art. 6(1) establish management plans on time (6 years)
- Art. 6(1) set appropriate conservation objectives and conservation measures





## 2. The Zilbeti Court Case



## 2.1. Background. The protected site



- **2002. Proposal SCI (ES2200019) "Monte Alduide"** by Autonomous Region of Navarra (Spain)
- **2003-2004. Decisions European Commission** approves **lists of SCIs**, Atlantic and Alpine region (located in both)
- **2005. Declaration as SAC and approval of Management Plan** ("Foral" Decree 105/2005). [1st in Spain].
  - Endangered species: White-backed Woodpecker (*Dendrocopos leucotos lifordi*), 2<sup>nd</sup> population Spain...
  - Priority habitats and species: (91E0\* Alders), European mink (*Mustela lutreola*)...
  - Strictly protectec species Annex IV HD: Pyrenean Desman (*Galemys pyrenaicus*), coleopteran: *Cucujus Cinnaberinus*, *Osmoderma eremita* and *alpina*....





# Site management Plan

Establishes objectives and conservation measures

Key elements (habitats&species)

1. Habitats
2. Grasslands and Shrublands
3. Peatlands and waterlogged areas
4. Beachwood
5. Piked community (woodpeckers)
6. Chyroptera (bats)
7. Endangered invertebrate community
8. Pyrenean Desman and other species linked to watercourses
9. Bearded Vulture
10. Migratory fauna

Key element	Final Objective
1. Habitats	1.1. Maintain, at least in their current state, the area and conservation status of habitats of Community interest and other natural habitats of conservation interest
4. Beachwood	4.1. To harmonize the execution of the different activities that are carried out in the Site, to avoid the erosion, loss of ground and to guarantee the conditions of naturalness of the forest (...)
5. Piked community (woodpeckers)	5.1. Maintain at least the densities of white-backed beak and black woodpecker estimated in the 1993 studies in the Quinto Real group of mountains



# ZEC Monte Alduide

## Mapa de situación Cantera Legua Acotada

Cantera de Azcárate

Cantera  
Legua Acotada

2.9 km

ZILBETI

### Referencia

- Área Afección DIA 2010 (21,63 ha)
- Hueco mineros
- ZEC
- Túnel minero (trazado aproximado)
- Pistas y accesos
- Carretera

0 260 520 1.040 1.560 2.080 Meters





## Open mine “Legua Acotada”:

- Logging of 50,000 beech trees
- Mining hole (21,63 Ha);
- Túnel, tracks, platforms, accesses, modification of roads and bridges;
- 180,000 tonnes magnesite/year (blasting, excavations, increased heavy traffic, noise, dust, diversion and destruction of streams and water tables...)





## EIA:

- No significant effects have been identified on any of the 11 key elements of the SAC.
- The project will not significantly affect the integrity of the Monte Alduide SAC
- Adverse effects partial and temporary "*the final rehabilitation of the soil morphology and vegetation, ensures environmental conditions very similar to the pre-operational ones, improving them in some aspects related to biodiversity*".



[Azcárate mine, owned by the same company (3 km from Zilbeti project)]



# EIS& permit

- **Unfavourable reports Biodiversity Conservation Service (detailed):**
  - The mine will affect 8 key elements of the SAC,
  - would imply the failure to meet 10 of the 16 final conservation objectives
  - threatens the integrity of the site (the maintenance of its ecological functions); Art. 6.3 HD
- **After, one very short report states:**
  - corrective, compensatory and monitoring measures are included to ensure that the activity does not significantly impact on the key elements of space. Therefore,
- The Region Government issue a **favorable EIS**, and **approve the project**.
- SEO/BirdLife and neighbour's association **challenge** the EIS and permit to the Navarra High Court of Justice in 2011 (breach of art. 6 HD)



## Art. 6(3) Habitats Directive

«Any plan or project not directly connected with or necessary to the management of the site but **likely to have a significant effect** thereon, either individually or in combination with other plans or projects, shall be **subject to appropriate assessment** of its implications for the site **in view of the site's conservation objectives**.

In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national **authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site** concerned and, if appropriate, after having obtained the opinion of the general public»





# HD requires a step-wise procedure before a development can go ahead:

- 1st. Authorities must consider whether there are **any likely significant effects** on a protected site either alone or in combination with other plans or projects (pre-assessment stage or “screening”)
- 2nd. If so, then an “**appropriate assessment**” should be made of the implications for the site and its conservation objectives.
- 3rd. Only where authorities have ascertained that there will be **no adverse effect on the integrity of the site** can they agree to the plan or project.
- 4th. Only where there are no alternative solutions, and there are imperative reasons of overriding public interest, may the plan go ahead despite a **negative assessment** (and, even then, only if compensation is provided).

The case law of the CJEU makes it clear that,

- ✓ these tests must be taken sequentially, and
- ✓ MS cannot take into account compensation in order to rule out a likely significant effect, or adverse effect on the integrity, and thereby avoid carrying out the other tests.



# Zilbeti's case claimant grounds:

- The authorities failed to properly apply art. 6(3) of Habitats Directive in considering impacts of the project on the SAC Alduide Forest and authorizing it.
- Also breaches of arts. 6(4) and 6(2).
- Key elements of the case:
  - Appropriate assessment
  - Integrity of the site
  - The role of preventive, mitigation and compensatory measures
  - The precautionary principle in authorization



Screening

Is the plan or project (PP) directly connected with, or necessary to, the management of the site for nature conservation purposes?

No

Yes

Is the PP likely to have significant effects on the site?

Yes

No

Appropriate Assessment

Assess implications in view of the site's conservation objectives

Assess cumulative and in-combination effects with other plans and/or projects

Can it be concluded that the PP will not adversely affect the integrity of the site?

Yes

Authorisation may be granted

No

Can the negative impacts be removed e.g. through mitigation measures?

No

Authorisation must not be granted

Redesign the plan / project

Yes

-not certainty, but likelihood of significant effects  
“mere probability” (CJEU C-127/02 Waddenzee)



# “Appropriate assessment”

- In-depth, documented, scientifically motivated analysis, taking into account the conservation objectives and the vulnerability of the site.
- up-to-date information (C-43/10) and comprehensive identification of all the potential effects
- *”is not merely a formal administrative act”* (CJEU 14-4-2005 C-441/03).
- economic and social interests cannot be weighed (CJEU 24-6-2011, C-404/09)
- Need to evaluate plans or projects outside N2K may affect the site. Also combined or synergic effects with other plans or projects.
- Often inside the EIA or SEA process, but has to take in account specificities.



# The “integrity of the site”

Database release: [End2018 — 15/03/2019]

SCP

 **NATURA 2000 - STANDARD DATA FORM**  
For Special Protection Areas (SPA),  
Proposed Sites for Community Importance (pSCI),  
Sites of Community Importance (SCI) and  
For Special Areas of Conservation (SAC)

SITE: ES2200019  
SITENAME: Monte Alduide

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[Print Standard Data Form](#)

**1. SITE IDENTIFICATION**

1.1 Type [Back to top](#)  
B

1.2 Site code  
ES2200019

1.3 Site name  
Monte Alduide

1.4 First Compilation date  
1999-03

1.5 Update date  
2015-07

1.6 Respondent:

Name/Organisation:	Dirección General de Medio Ambiente y Agua del Departamento de Desarrollo Rural, Medio Ambiente y Administración Local
Address:	
Email:	dymaa@navarra.es

1.7 Site indication and designation / classification dates

Date site proposed as SCI:	1999-03
Date site confirmed as SCI:	No data
Date site designated as SAC:	2005-08
National legal reference of SAC designation:	DECRETO FORAL 105/2005, de 22 de agosto, por el que se declara el espacio denominado "Monte Alduide" como Zona Especial de Conservación y se aprueba su Plan de Gestión.

**2. SITE LOCATION**

2.1 Site-centre location [decimal degrees]: [Back to top](#)

Longitude:	-1.456100
Latitude:	43.030700

- Relates to the site's **conservation objectives**
- For **all** the habitat types or species for which the site has been designated (**significant presence**, SDF)
- if **just one of them** is significantly affected, taking into account the site's conservation objectives, then the site integrity is necessarily adversely affected (CJEU C-258/11)
- If **conservation objectives have not yet been set**, the AA must assume as a minimum that the objective is not deterioration or significant disturbance, art. 6 (2).





# Zilbeti Court Ruling on the integrity of the site

## Unfavourable reports Biodiversity Conservation Service (detailed):

- The mine will affect 8 key elements of the SAC,
- would imply the **failure to meet 10 of the 16 final conservation objectives**
- threatens the integrity of the site** (the maintenance of its ecological functions);  
Art. 6.3 HD.

**EIS:**  
**corrective,**  
**compensatory and**  
**monitoring measures**  
are included to ensure  
that the activity does  
not significantly impact  
on the key elements of  
space.

## 5 scientific and experts reports (SEO/BirdLife):

- On Key elements: 1. Habitats; 4. Beachwood; 5. Piked community (woodpeckers); 8. Pyrenean Desman, otters...; 9. Bearded Vulture; 10. Migratory fauna;
- Restoration
- Their conservation objectives will be significantly affected, with **no possibility of correction or mitigation** by the proposed measures or other.



# Zilbeti Court Ruling on the integrity of the site

- Given this evidence, there is no other conclusion: the project affects the integrity of the site.
- Therefore, the EIS should not have been formulated in a favourable way.
- In so doing, Article 6(3) of Directive 92/43/EEC has been infringed. The plea must be successful with the consequent estimation of the lawsuit.

[Court of Justice of Navarra. Judgement nº 226 of 8 October 2015]



# Percentage of SAC affected and site integrity

- Space directly affected, **minimum** with respect to the SAC (**0.25%**)  
[argument of the defendants]
- **Zilbeti Court Ruling:** What is relevant is that the effect is on the integrity of the SAC, which is made up of its entire surface area, so that whatever part of it is directly affected, the effect is on the entire area. It is - if we may use the analogy - like a living body in which the effect on one part affects the whole
- The adverse effect **refers to the conservation objectives, not the surface**, and in this case:
  - Conservation objective 5.1. Maintain at least white-backed beak population (12 couple). The project affect 4 (**33%**)
  - Conservation objectives 1.1. and 4.1 . Maintain, at least in their current state, the area and conservation status of habitats and naturalness of Beachwood (50.000 trees logged, excavation, explosions, noise, heavy traffic....)



# Mitigation and compensatory measures in art. 6 HD

**Mitigation measures**, which aim to avoid or reduce impacts or prevent them from happening in the first place, must not be confused with **compensatory measures**, which are intended to compensate for any damage that may be caused by the project.

**Compensatory measures** can only be considered under Article 6(4)

A plan or project with has negative implications for a habitat and provides for the creation of an area of equal or greater size of the same habitat within the site ***“has an effect on the integrity of that site”*** . It is clear these measures not aim to avoid or reduce significant adverse effects, rather to compensate after those effects (CJEU C-521/12)

Each **mitigation measure** must be described in detail, with an explanation based on scientific evidence of how it will eliminate or reduce the adverse impacts. (Commission 2019/C 33/01)





# Mitigation and compensatory measures in Zilbeti case

The EIS proposes **measures to compensate** for the loss of habitat of the White-backed Woodpecker:

- to *improve its habitat* around the mine and exit of the tunnel, and other areas (improved forestry management, and leaving areas of dead wood).
- They say that this guarantees that the integrity of the site will not be affected.
- But on the contrary, establish them shows that the site integrity is adversely affected
- Anyway, mandatory management measure in the SAC (which should be done without a project)
- Experts warned about ecological sinkhole effect (create suitable habitat close to perturbed area, apparently good for survival, bad for reproduction, affects viability)

Other "**mitigation**" **measure** (standard): not works during March-May (breeding season); legal obligation, even if not stated in EIS, and after, disturbance and destruction of habitat.



# Precautionary principle and strict authorization criteria

In this case, the court had no doubts: the project affects the integrity of the site and cannot be authorized.

But,

Where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorisation (CJEU C-127/02).

The onus is therefore on demonstrating the absence of adverse effects rather than their presence, reflecting the precautionary principle (C-157/96)



# Derogation of art. 6(4) of Habitats Directive

- Can not be applied if provisions of art. 6(3) have been breached
- Only where there are **no alternative solutions**, and there are **imperative reasons of overriding public interest**, may the plan go ahead despite a **negative assessment** (and, even then, only if **compensation** is provided). In this order.
- If the site hosts **priority habitats** of species, previous Commission opinion.

## Zilbeti court ruling:

- Did not consider Article 6(4) to have been infringed. Defendants claim there is no effect on the integrity of the site, they have not used the exception.
- But defendants applied compensatory measures, and claimed overriding public interest.
- The court considered art. 6(2) to have been infringed.



### 3. Appeal to Supreme Court.





# Supreme Court Judgement of 29 March 2017 (rec. 3632/2015)

The mining company and some municipalities appealed to the Supreme Court, which fully confirmed the ruling that annulled this mining project.

“With regard to the precautionary principle of the European Union law, the Chamber has thus declared - in a judgment of 15 July 2011 (appeal 3796/2007) - that these principles require an entity to take action that has a negative impact on the environmental burden of proof, to demonstrate the compatibility of the intervention with it”.

In the present case, the High Court of Navarra, after assessment of the evidence, understood that eight of the ten key elements of the SAC would be affected by the mine, and that ten of the sixteen final objectives set out in the Management Plan would not be met if implemented the project.

In those circumstances, **the percentage effect on the surface area of the SAC is not decisive** since, as the judgment under appeal states, **what is relevant is that the effect is on the integrity of the SAC, which consists of its entire surface area”**.

,



## 4. The question of interim measures





# Interim measures and art. 6(3) & 6(4) HD

In Spanish law any authorisation of a plan or project likely to adversely affect the integrity of a Natura 2000 site network is immediately enforceable and construction can go ahead.

*A judicial* review can be lodged against it asking for an interim injunction (suspension of enforceability while the process is underway)

The regime of art. 6.3 and 6.4 of the Habitats Directive for authorisation and execution of plans and projects thus needs to be brought into relation with the elements used by internal courts to grant interim injunctions: weighing up of the interests at stake, *periculum in mora* (danger in delay), *fumus bonis iuris*, and request for bond and sureties.

The national judge is not only a guarantor of Community law when he acts in the main proceedings, but also as an interim judge

It falls under the "competent national authorities" of Art. 6.3 DH



# Rejection of interim measures in Zilbeti case

In the Zilbeti case an interim injunction was rejected at the beginning: The High Court of Navarra considered that although there was danger in delay (adverse effects on the site) the weighting of the interests at stake was tilted towards the administrations that opposed to the precautionary measure.

However,

- Art. 6.3 HD: in case of doubt of non-affectation, or certainty of damage, it cannot be authorized (nor executed). Precautionary Principle
- Art. 6.4 HD: includes weighing of interests (regulated) and other requirements for authorization (and starting works).

Some minor works were started in 2012, but not logging or minery works  
[Public outcry, media attention]









## 5. Interaction with other EU procedures

#EULaw



- 2011.SEO/BirdLife challenged in Court the authorization and EIS.
- 2011 Question to European Parliament by a citizen. Breach of EIA Directive
- Commission answered to Parliament that at least formally an EIA has been carried out.
- 2012. Defendant replied to NGO lawsuit: he provided Com's reply to EU Parliament. Alleged that Commission did not find a breach of EU law and rejected a complaint.



# Open pit mine project in Zilbeti Forest

- NGO submitted a complaint to the Commission for breaching of Habitats Directive.
- Presented as evidence to the Court the Commission's letters registering the complaint and opening the EU Pilot.
- They explained to the Court the difference between a complaint and a parliamentary question.



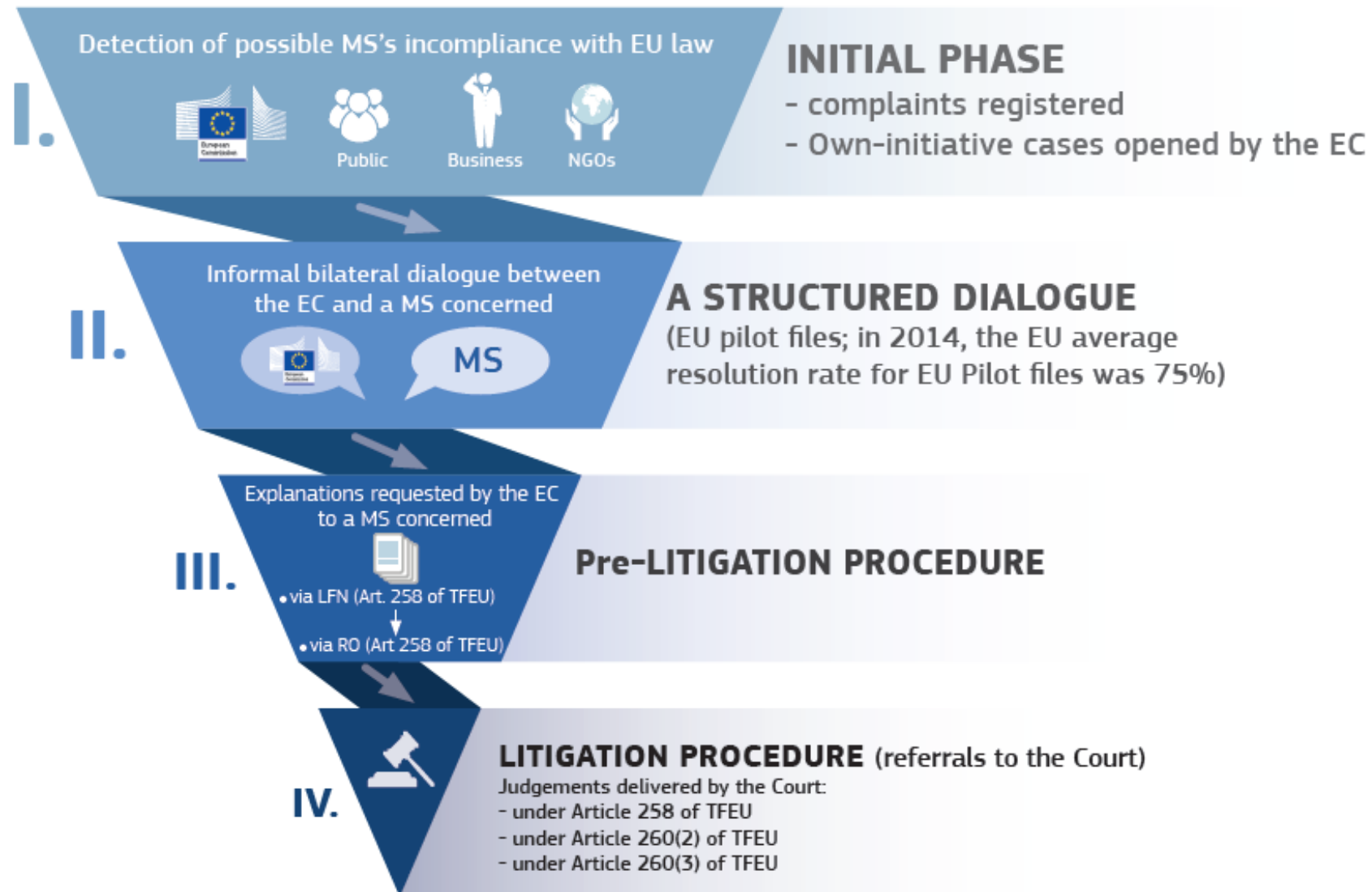


# Petitions and questions to European Parliament

- Article 227 TFEU. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have the **right to address (...) a petition to the European Parliament** on a matter which comes within the Union's fields of activity and which affects him, her or it directly.
- Article 230 TFEU. The Commission may attend all the meetings and shall, at its request, be heard.
- The **Commission shall reply orally or in writing** to questions put to it by the European Parliament or by its Members.



# EU Infringement procedure. Commission



- 2013 Commission closed the complaint because there was a case open before national courts.
  - “It is the practice of the Commission to close files on which no infringement proceedings have been initiated pending decisions taken by national courts”.
- 2015. The High Court of Navarra annuled the mine’s authorization and EIS for breaching of art. 6.3 Habitats Directive.
- Supreme Court confirmed the judgement in 2017





# Thank you

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Next webinar:

# « Enforcing the Industrial Emissions Directive in national courts »

25th June 2020

The previous Webinars are available online on our website *Access to Justice for a Greener Europe*  
<https://www.clientearth.org/access-justice-greener-europe/>

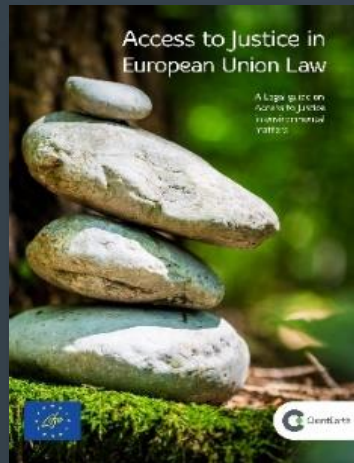


# Thank you!

To know more about our LIFE project on Access to Justice EARL A2J and our next trainings, visit our website:  
<https://www.clientearth.org/access-justice-greener-europe/>

And sign up for updates on Access to Justice :

[https://www.action.clientearth.org/access-justice-newsletter?\\_ga=2.201027438.1583032739.1578912944-2129994527.1571747365&\\_gac=1.195725022.1576580999.CjwKCAiAluLvBRASEiwAAbX3GVAcq2bcPVj6Z129pwjoaBzxsN66dargggcOHZIQFc5uIE2Ph-RqBRoC2usQAvD\\_BwE](https://www.action.clientearth.org/access-justice-newsletter?_ga=2.201027438.1583032739.1578912944-2129994527.1571747365&_gac=1.195725022.1576580999.CjwKCAiAluLvBRASEiwAAbX3GVAcq2bcPVj6Z129pwjoaBzxsN66dargggcOHZIQFc5uIE2Ph-RqBRoC2usQAvD_BwE)



Have a look at our legal publications :

\* Guide on access to justice in environmental matters at EU level:  
<https://www.documents.clientearth.org/library/download-info/16209/>

\* Country-specific legal toolkits on access to justice at national level:  
<https://www.clientearth.org/country-toolkits-on-access-to-justice/>

