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Country Report : Spain
by :
Prof. Dr. Angel-Manuel MORENO,
Carlos III University of Madrid
and
Prof. Dr. Agustín GARCÍA URETA,
University of the Basque Country

I.- General background of the MS relevant for nature protection

- *(A) Legislative and executive competencies regarding nature protection*

In a nutshell, the Spanish constitutional framework for the distribution of legislative and executive competencies regarding nature protection may be summarized as follows:

- Article 149.1.23 of the Constitution allocates the legislative powers on environmental issues between the central government (*basic or national legislation*) and the Autonomous Communities (regions), which in turn have the power to enact more stringent laws and regulations. The most important national statute on nature conservation is the Act 4/1989, of 27 March, 1989. In respect of the issues covered by this questionnaire, this statute has been developped by Royal Decree 1997/95, of December 7, 1995. On the regional side, almost each Autonomous Community has its own statute on nature conservation (example: Castilla-La Mancha: Act 9/1999, of 26 May, 1999; Basque Country: 16/1994, of 30 June, 1994).

- Executive competencies: in general they belong to the Regions (art. 148.9).

- The Constitutional Court has interpreted in a narrow way the executive competencies of the central government (see, decisions 102/1995, of June the 26th, and 194/2004, of November the 4th).

As a result of this allocation of powers:

(1) the State (national government) may only designate "National Parks", by means of a statute of the National Parliament

(2) The Regions may designate any other form of protected areas ("Parks", "Natural monuments", "natural reserves", etc.), including the EC sites and areas.

(3) The Regions are responsible for the protection and management of all kinds of natural, protected areas

(4) Regions are fully responsible in the domain of hunting regulation, supervision and enforcement

-*(B) Characteristics of natural resources and major threats for nature*

Spain is a rather big country by european standards, the second largest in the EU (505.990 square Kms). Nature is extraordinarily varied, from deserts to Atlantic forests. In fact, Spain is the only country to include at the same time areas of the Macaronesian, Mediterranean, Atlantic and Alpine Biogeographical regions. The major threats for natural resources are: (a) intensive urbanisation, tourism industry and associated soil exploitation (especially in the Mediterranean coastline area); (b) agriculture and forestry; (c) illegal landfills; (d) illegal hunting.

The ECJ Case-Law concerning infringement procedures of Spain in the field of nature conservation for Spain includes:

-(1) Judgement of 2 August (Case C-355/90, Rec. I- 4221), concerning the degradation of an area of wetlands in northern Spain, known as *Marismas de Santoña.*

- (2) Judgement of 9 December 2004, *Commission v. Spain* (Case C-79/03). In this case, Spain was condemned because the national authorities did not completely prohibit a traditional killing method called "parany". This method was considered by the Commission to be non selective, thus violating article 8 of Directive 79/409, on the protection of wild birds. It has to be noted that the partial authorisation at stake was not a nationwide system. Rather, it was solely maintained by the region of Valencia, which is fully and exclusively competent in the sector of hunting.

At this moment, Spain has several infringement procedures opened by the Commission, among which:

-(1) Infringement of the Habitat directive: allowance for the use of non-selective methods of capture to control foxes, such as traps (see press release IP/04/128, of 29 January, 2004).

-(2) Infringement of the birds directive: construction project of a new international airport in Ciudad Real, endangering a nearby SPA (see press release IP/04/973, of 20 July, 2004).

-(3) Infringement of the Habitat directive: extraction of sand in certain areas and beaches of the Mediterranean (see press release IP/05/46, of 14 January, 2005).

II.- Natura 2000

1.- Identification and notification of special areas of conservation (SACs) and special protection areas (SPA´s)

(a) Questions on Article 4(1) of Dir. 92/43 and 4.1 of Dir 79/409 (procedure for the identification of areas, sufficient number, criteria for designation, public consultation, main obstacles in the process of identification, etc.)

From the strictly legal point of view, the identification process of SAC and SPA is not regulated in a detailed procedural way, apart from the general directions given by article 4 and 5 of Royal Decree 1997/95. In the majority of the regional legislation, there is no formal decision-making procedure, neither. In general terms, the procedure in Spain is regarded as:

(a) a top-bottom procedure, which is started *ex officio* by the competent administrative agency;

(b) A typical "bureaucratic" procedure, with no substantial involvement from the public;

(c) an "European" affair.

If, however, we are talking about the designation of an area as a "park", a "national park", etc., the procedure is totally different. Public hearings and consultations, political negotiations, information, etc are needed. The fact that a statute is needed for the declaration of a "national park" is a clear indication that in this case an open and participative procedure must be followed (see, among the regional legislation, article 32 of the Act of Castilla-La Mancha of May 26, 1999).

As for the criteria and the technical information used for the designation of SCI by the Autonomous Communities, art. 4 of Royal Decree 1997/95 speaks of "available

scietific information", and sets a number of criteria in Annex III. In practical terms, different sources were used: on the one hand, reports and studies conducted "ad hoc" by the government, like the national inventories of habitats and taxons included in Annex I and II of Dir 92/43, which were performed by the General Directorate of Nature Conservation of the Ministry for the Environment. Documents elaborated by NGOs have also been taken into consideration. Of all of them, the most important –at least in the understanding of the Commission.- is the "Inventory of important bird areas" (IBA) drawn up by the *Sociedad Española de Ornitología* (Spanish Ornithological Society) in 1998 (SEO/Birdlife Inventory 98). In the view of the Commission, this is the best documented and most accurate basis available for defining the most suitable territories for conservation and, in particular, for the survival and reproduction of important species of birds in Spain. This document plays a significant role in one of the infringement procedures that have been opened by the Commission against Spain (see, *below*).

Another important point in the designation procedure is that the Regions are the only competent authorities for the designation of proposed Sites of Community Importance (SIC), Special Areas of Conservation (SAC) and Special protection Areas (SPA). In a nutshell, the procedure in Spain is as follows:

(1) Each Autonomous Community elaborates a List with the Sites of Community Interest (SCI) existing in its territory. The list is forwarded to the Ministry of the Environment
(2) The Ministry of the Environment makes a "consolidated" national list of SCI, for each of the four biogeographical regions that may be found in Spain, and send it to the Commission;
(3) Once the Commission approves the different lists of SCI, it is again for the Autonomous Communities to take all the necessary steps to designate the SAC.
(4) The Autonomous Communities communicate their decisions to the central government, which, in turn, sends the information to the Commission.

Accordingly, the central government has no actual competence or responsibility in the designation of these areas.

As for the number of candidate SACs and other Community areas, the number of protected areas and zones that have been declared is quite high: according to the Commission´s Newsletter "Natura 2000" (issue 19, November 2005) as of 20 June, 2005 Spain has proposed 1382 Sites of Community Importance, with a total extension of 119.122 square Kms, the largest extension among all MS. This extension represents 22.6% of the national extension, the second largest percentage in the EU. Concerning Special Protection Areas (SPA) Spain has designated 502 of such areas, with a total extension of 86.537 square Kms, the largest extension among all MS. This extension is the equivalent to 17% of the total national extension (the third largest percentage in the EU).

It has to be noted that there is an open infringement procedure against Spain in this field: On 4 June 2004, the Commission sued Spain before the ECJ (Case C-235/04). According to the Commission, Spain has not classified territories of a sufficient number and size as special protection areas for birds in order to provide protection for all the species of birds listed in Annex I to Council Directive 79/409. From a comparison of the data of the SEO/Birdlife Inventory 98 with the special protection areas designated by Spain, the Commission infers that the number and size of the areas classified as special protection areas are insufficient under Article 4 of the directive.

More than a failure to designate, the problem in Spain is one of weak enforcement and inadequate protection of the designated areas.

(b) Questions on article 4, para.2 and art.5, Dir/43 (Commissions decisions with regard to lists of areas, proposed areas, not retained ones, etc.)

- The decision of the Commission may be challenged under the ECTreaty (annulment process)
- Most of the proposed SICs have been included so far in the lists for the biogeographical regions.
- A candidate area which has been proposed by a MS but not retained may still be protected by the national authorities under any of the national regimes of natural areas. -
- If an area is not retained by the Commission, then the MS has no specific obligation in regard to it, at least under Dir 92/43.

(c) Questions on art. 4(4) of Dir 92/43

Since the list for the Mediterranean Region –which covers the most part of Spain- has not been approved yet, most SAC have not been designated yet. In the Autonomous Communities that are covered by other biogeographical regions (for instance, the Atlantic one), the decision-making is progressing.

(d) Are Natura 2000 sites protected through a genuine category of area protection, or are the existing categories of protected areas used for Natura 2000 areas?

Spanish national legislation on nature protection does not regulate in detail the protection regime of Community Law sites (Natura 2000, SAC, SPA, etc.). Royal Decree of 7 December 1995 establishes some rules on the matter, and requires Autonomous Communities to take "all the necessary conservation measures", which will include in any case, management plans. Besides this general directions, the mmost part of the substantive conservation regime for this areas is left to regional legislation. As a matter of fact, "Community sites" were not even mentioned in the national statute on nature conservation (Act 4/1989) until 2003. The Act 43/2003, of 21 November 2003 (on forest management) introduced in Act 4/1989 three new articles, which respectively speak of the Natura 2000 network, the SACs and SPAs.

Depending on the legal situation of a given Autonomous Community, EC sites may be included in any of the following situations:

(I) "Community Sites" are not explicitly regulated in a separate way or as an autonomous category, thus Natura 2000 sites are protected through the existing categories of protected areas. That is, a natural protected area has the *status* of any of the several *forms* or *categories* ("figuras de protección") that are regulated by the State Act 4/1989, or by the regional legislation. In addition, the "park" or the "reserve" might be designated for the purpose of EC Law as a "Community area".

(II) "Community sites" have a specific or separate protection regime for "Community areas", which is regulated by Regional Legislation (for example, the Act 4/2003, of the region of La Rioja)

(e) Are there decisions by national courts dealing with the identification and notification of areas under art. 4(1) of Dir 92/43?

(Not applicable)

(f) If the notification of the first round is completed, is there an obligation to improve the list of Natura 2000 sites, eg under art. 10 Dir 92/43? Is it possible to reduce or abolish already designated sites (for other reasons the indicated in point II.3.c)?

There is no clear ground for supporting the existence of a "never ending" process of designation, at least in the light of the wording of Dir 92/43. Once a site has been designated, it is unlawful to reduce or modify it for reasons other than the ones explicitly authorised by the directive.

As for the Spanish legislation, there is a clear principle that the designation of an area is an irreversible process.

2.- Management of Natura 2000 sites

-(a) Questions on art. 6, paras. 1 and 2, Dir 92/34

As stated *supra,* Royal Decree 1997/95 orders the Regions to draw management plans. On the other hand, under the national Spanish legislation, all parks (*parques*) and natural reserves (*reservas naturales*) must have a comprehensive set of management plans approved both before and after the designation as protected areas. Besides some special provisions in regional legislation, the national one requires basically to approve two plans: (a) a "natural resources management plan" *(plan de ordenación de los recursos naturales)* ; (b) a "guiding management and uses plan" (*plan rector de uso y gestión* . A "park" requires both pans, while a "natural reserve" only the first one. Both plans perform a thorough, comprehensive and integral planning of the area: guidance, rules, regulations and general criteria for the use of the park; zoning of the different areas and sectors of the park, which prevails over existing zoning plans and ordinances; activities that are compatible and prohibited within the park; forest management plans, etc.

Apart from the actual territory of the protected area itself, the designation of some areas may involve the designation of zones which are outside the actual boundaries of the park (Peripheral areas of protection) and Areas of Social and economic influence. Economic instruments, in terms of subsidies and economic agreements are also used.

-(b) Who does administer/supervise Natura 2000 sites?

Under the Spanish system of allocation of powers in the domain of nature protection (see answer I, a, *supra*) the administration, protection, management and supervision on Natura 2000 sites is the exclusive competence of the Regions (*Comunidades Autónomas*). The national Act 4/1989, of 27 March, 1989 sets some basic and common rules regarding "National Parks" (which must be interpreted narrowly in the light of the Spanish Constitutional Court case-law), which are applicable to Community Sites only when they coincide with such "national parks". In this case, the administrative organisation dealing with such sites is mainly regulated in the regional legislation. As the number of regions is 17, there are many different possibilities of administrative organisation, but these responsibilities are usually entrusted to a regional environmental Agency or Department (*Consejería*). In addition,

there are usually organs for the administration and management of each protected area (*Patronato, Junta rectora,* etc), in which there is usually a number of representatives of NGOs, Local authorities included of affected by the protected area, etc. As a rule, environmental associations are not given formal "supervision" powers, as supervision is performed by regional environmental guards, agents and inspectors. However, NGOs perform a "de facto" role of watchdogs and awareness-raisers.

-(c) Questions on GMOs and nature protection.

There is no substantive and specific discussion in Spain regarding the issues raised by this question. It is considered that: (a) the release of a GMO must take into consideration all potential effects and uses, one of which is the sowing in nature protection area. The impact of such a possibility must be severely weighed in the final decision; (b) as every "National Park", "Park", and "Natural Reserve" must have a specific set of plans for its management and for the planning and regulation of authorised and prohibited activities (see, answer in letter a, *supra)* it is perfectly possible to prohibit in such plans the release (the sowing) of genetically modified seed in the whole o part of one Park.

3. Appropriate assessment' and authorisation of plans and projects

a) Article 6 para 3 and 4 Dir 92/43

- *How was Article 6(3) and (4) Dir 92/43 transposed in your country*

Article 6(3) and (4) was formally transposed by Royal Decree 1997/1995, of 7 December. However, it should be noted that Spanish Law has not developed certain matters such as the environmental assessment procedure to be followed in the case of plans or projects affecting an SPA, pSCI, or SCA. Spain has not yet implemented Directive 2001/42 although the Spanish Parliament is currently discussing a draft Law. The existing environmental assessment legislation, Royal Decree 1302/1986, of 28 June (as amended) includes certain categories of projects that must be subject to assessment provided they are carried out *in* SPAs or SCAs. This is the case of Annex II, group 9 (*Other projects*), (k)(5). However, it should be noted that this heading only refers to changes or extensions of projects. Annex III(2)(5) (*location of projects*) includes among the criteria to take into account when deciding whether a project should be subject to assessment the environmental sensitivity of geographical areas likely to be affected. Among those areas, the Annex enumerates those protected by Directives 79/409 and 92/43.

- *does national law/case law make Article 6 para 3 and 4 applicable also to a) Proposed Sites of Community Importance (pSCIs) b) non proposed but eligible sites (npSCIs)? If yes is this regarded as required by EC law or as a stricter national measure?*

Spanish law only requires the application of Article 6(3) and (4) to pSCIs, (apart from SPAs and SCAs), following Article 4(5) of Directive 92/43. Non proposed but eligible sites should be protected under general nature protection legislation. In this regard, it should be noted that the Spanish Supreme Court delivered a judgment, on 7 July 2004, in respect of a plan, of 22 October 1999, for the management of Barcelona's airport affecting an SPA (already designated by the Spanish authorities). The Supreme Court held that (a) Directive 2001/42 had not been transposed when the Spanish authorities

had approved the plan; (b) Directive 92/43 had merely been implemented but there was no further legislation developing its requirements; and (c) since there was only Spanish legislation on the environmental assessment of projects, it could not be applied for the assessment of plans. The Supreme Court also declared that it was not necessary to carry out an assessment of the plan since it was not specific enough to be regarded as a project. Other courts, such as the High Court of the Autonomous Community of Extremadura in its judgment of 28 June 2005, have indicated that the designation of an area as an SPA does not necessarily mean that projects located in those areas should be subject to assessment. The absence of further legislation or of a plan for the management of natural resources of the SPA justified the conclusion that the designation of the SPA was not incompatible with the carrying out of a project. Needless to say that the above mentioned case-law contradicts the obligations set out in the Habitats Directive and ECJ's consistent case-law.

- *what is the factual information on plans and projects affecting Natura 2000 candidates or determined sites*

If the notion of "factual information" refers to the data to be submitted to the authorities, Royal Decree 1997/1995 does not cover this matter. As regards projects, the factual information is set out in Royal Legislative Decree 1302/1986, of 28 June, as supplemented by Royal Decree 1131/1988, of 30 September. However, these two pieces of legislation refer to environmental assessment of projects pursuant to Directive 85/337 (as amended). The Autonomous Communities may, however, demand further information according to their legislation. In the case of plans, there is no basic legislation. The draft Law for the implementation of Directive 2001/42 includes in Annex I the information to be submitted by the developer of the plan, following the data required by Annex I of the said Directive. However, the draft Law does not expressly mention the areas protected by Directives 79/409 and 92/43 (Annex I(d) of Directive 2001/42).

Housing infrastructures are the main developments affecting Natura 2000 sites, as repeatedly reported by the press in the case of the Autonomous Community of Valencia and also of Murcia, alongside the south-eastern coast of Spain. Other projects such as wind farms (in the Basque Country) and plants for the management of dangerous waste affecting SPAs (e.g., in the Autonomous Community of Aragón) have also been the subject of the press and of appeals before the corresponding administrations. Bearing in mind that Spain offers a wide range of habitats and species it is likely that the construction of development projects (and plans) will remain contentious in the future.

b) Relation of the appropriate assessment under Article 6 to the EIA under EIA Directive and SEA under SEA Directive

PROJECTS

- *Does the assessment for the purposes of Article 6(3) take the form of an assessment under EIA Directive /or SEA Directive (if not – please shortly indicate the form, content and procedure of 'appropriate assessment ', including questions of public participation*

Article 6(3) of Royal Decree 1997/1995 does not elaborate on the procedure for the assessment of plans or projects. This is mainly (but not entirely) a matter for the

Autonomous Communities to develop. In any case, Royal Decree 1997/1995, Article 6(3) (first sentence), leaves open this matter since it merely refers to an adequate assessment to be carried out according to applicable measures, either from the State or from the Autonomous Communities. The latter have adopted measures on the assessment of plans or programmes requiring the assessment of those affecting, *inter alia*, areas designated under Directives 79/409 and 92/43. However, those measures neither repeal nor amend the obligation set out in Article 6(3) of Royal Decree 1997/1995 (for instance, Law 4/2003, of the Autonomous Community of La Rioja).

- *is the appropriate assessment confined only to EIA Directive Annex I and II projects or also to other projects (if yes - how they are being defined and what triggers the procedure)*

Article 6(3) of Royal Decree 1997/1995 applies to either projects and plans irrespective of the rules for the assessment of projects (under Royal Legislative Decree 1302/1986) or plans (the latter not yet approved by the Spanish Parliament). There is no express reference in Royal Legislative Decree 1302/1986 indicating that it supersedes Article 6(3) of Royal Decree 1997/1995. In any case Spanish law cannot set aside Article 6(3) of Directive 92/43.

- *is the appropriate assessment confined only to 'development consent" under EIA Directive or also to other permits (for example: IPPC permit)*

Under Royal Legislative Decree 1302/1986 an environmental assessment of projects is required before granting development consent. However, Spanish law (including the Autonomous Communities) has never specified under which authorization procedure a project is to be subject to assessment, e.g., under IPPC rules, or when requesting an authorization for the discharge of effluents into a river, or when applying for an authorization for the management of hazardous waste, or for the production of electricity. The applicable legislation only indicates that the assessment procedure is to be included within the procedure for the authorization of the project. Royal Decree 1997/1995 deliberately avoids this matter. Article 6(3) indicates that if a plan or project is likely to affect an SPA or SCA (or pSCI, according to Article 4(5) of the Habitats Directive) an assessment will be carried out following applicable rules either from the State or the Autonomous Communities. The Decree does not openly establish a link between the application for development consent and the carrying out of an assessment. However, the wording of Article 6(3) of Royal Decree 1997/1995 and of the Directive points out that the assessment has to be performed before granting consent to the plan or project. In any case, provided a project requires development consent and it is included within the list of projects subject to assessment, this procedure will be carried out. The trouble is that, as seen above, the scope of Royal Legislative Decree 1302/1986 is not as wide as that of Decree 1997/1995. As regards plans, an assessment will be required before granting the authorization for their execution. As in the case of the assessment of projects, this procedure is to be included into the specific procedure for the authorization of the plan, e.g., under town and country planning rules.

- *is the scope of EIA procedure and EIA documentation (EIS) limited in case of 'appropriate assessment' as compared with those under EIA Directive?*

As already indicated, strictly speaking, Royal Decree 1997/1995 does not elaborate on this matter. The last amendments of nature conservation Law 4/1989 have avoided considering this matter. Therefore, it is mainly for the autonomous Communities to set up regulations, either by adopting specific rules on this matter or by referring to existing environmental assessment legislation. It should be noted that the High Court of the Autonomous Community of Cantabria quashed, in its judgment of 22 March 2002, the authorization for a harbour's extension (affecting an SPA) because the environmental impact study had only analysed the impacts on the subsoil, thus neglecting any examination of effects on habitats and species.

- *has there been any discussions concerning the possible effects on the national legal scheme of the Waddenzee case; Draggagi case*

So far, there have not been any discussions before the Spanish courts. On the academic front two comments have been published, first, on the ECJ's ruling in the *Waddenzee* case,[1] and, secondly, on the Spanish Supreme Court of 7 July 2004, already mentioned. The latter comment was highly critical of the judgment highlighting the lack of knowledge of the ECJ case-law on the application of Article 6(3) of Directive 92/43 and also of other obligations to be complied with by national courts, i.e., under the judgment in the *Kraaijeveld* case.[2] It should be noted, however, that the Autonomous Communities may protect pSCIs even before the adoption of the list of sites of Community importance by the Commission. This is the case, for instance, of the Autonomous Community of the Basque Country (Law 3/1998; and Decree 188/2003), which requires the assessment of plans or projects affecting proposed sites under Directive 92/43. These rules are applicable in the case of sites included within the Mediterranean region, not yet approved by the Commission.

PLANS

- *is the 'plan'' under the Habitat Directive (and legal implications under Article 6.4) interpreted to cover all plans and programs covered by SEA Directive? How in practice it is determined that they are "likely to have significant effects on the site'? what triggers the procedure?*

Royal Decree 1997/1995 requires an assessment of plans irrespective of the requirements of Directive 2001/42. As indicated above, the Spanish Supreme Court mistakenly understood, in its judgment of 7 July 2004, that in so as far as the implementation of that Directive had not taken place, there was no need to carry out an assessment. This interpretation contradicts the wording of Directives 92/43 and 2001/42. The latter does not amend any of the provisions of the former Directive. In fact Article 11(1) indicates that "[a]n environmental assessment carried out under this Directive shall be without prejudice to any requirements under Directive 85/337/EEC *and to any other Community law requirements*." (emphasis added).

[1] García Ureta, A., and Cubero Marcos, J.I., "Directiva de Hábitats: Principio de Precaución y evaluación de planes y proyectos. Comentario a *Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels v. Staatssecretaris van Landbouw, Natuurbeheer en Visserij*, asunto C-127/02, sentencia del TJCE (Gran Sala) de 7 de septiembre de 2004.", (2004) n. 70 *Revista Vasca de Administración Pública* pp. 361-381.

[2] Case C-72/95 [1996] ECR I-5403; Lazcano Brotons, I., and García Ureta, A., "Evaluación ambiental de planes y zonas de especial protección de aves silvestres. Comentario a la Sentencia del Tribunal Supremo del 7 de julio de 2004" (2005) n.8 *Revista Aranzadi de Derecho Ambiental* 125-133.

- *is there any special decision making procedure to decide in case a plan will "adversely affect the integrity of the site". Who decides whether to agree to the plan and what compensatory measure be taken (the authority competent to prepare/adopt the plan or any other authority)?, in what legal form?*

The Spanish legislation has not elaborated specific requirements. The Autonomous Communities have set up lists of plans subject to assessment following Directive 2001/42. They have also developed procedures in order to decide whether a plan has to be subject to assessment (e.g., Law 2/2002, of the Autonomous Community of Madrid).

c) Interpretation of certain terms according to administrative adjudication, court decisions, and academic debate (you can illustrating the following problems on significant case/cases or just answer the questions)

- *design of impact studies*

  The content of impact studies is specified in applicable environmental assessment rules. Royal Decree 1997/19956 does not include any minimum requirements on this particular matter. In its judgment STC 90/2000 the Spanish Constitutional Court held that the Autonomous Communities were entitled to demand different items of information depending on the environmental assessment procedures they had adopted (e.g., ordinary or simplified), provided the criteria set out by the Spanish Parliament in general environmental assessment legislation were respected.

- *meaning of „significant effect" and „adversely affect", e.g.: is the cutting of a special area of conservation (SAC) per se an adverse effect? Any mandatory or indicative thresholds (for example - projects within certain radius from a site deemed to be likely to have significant effect on it)*

  Royal Legislative Decree 1302/1986, mentioned above, does not formally transpose the principle that projects having significant environmental effects must be subject to assessment (Article 1(1) of Directive 85/337 (as amended)). The Legislative Decree assumes that those included within its Annexes embrace those effects, although in the case of Annex II projects it is mainly for the Autonomous Communities to decide whether they may produce significant effects. Royal Decree 1131/1988, which supplements Royal Legislative Decree 1302/1986, does not define the concept of significant effects. It does, however, define, "negative effect" as follows: that effect which produces a loss of natural, aesthetic, cultural, landscape, ecological value, or leads to increasing damages due to pollution, erosion or any other environmental risks conflicting with ecological conditions in a certain area.

- *what is and what not regarded as „imperative reason of overriding public interest"? On what level of concretion are the objectives of the plan or project formulated (mark that the more concrete the less alternatives come into play)? Are they sometimes expressed in monetary terms?*

So far, there are no decisions on this matter. Applicable legislation has merely transposed the exceptions set out in Article 6(4) of Directive 92/43.

- *what is the scope of alternatives to be considered? must any alternative considered be realisable by the original applicant? Are alternatives involving more costs than the prime variant excluded from further consideration?*

  Royal Decree 1997/1995 does not elaborate on this matter. General environmental assessment legislation demands consideration of alternatives under several of the items of information submitted by an applicant for development consent. This is specified in Articles 8-12 of Royal Decree 1131/1988. The environmental assessment legislation of the Autonomous Communities has followed this approach. However, broadly speaking, environmental assessment studies submitted by applicants for development consent do not fully comply with this requirement. The courts have accepted that there is no need to consider all feasible alternatives. A preliminary selection can be done setting aside those which may not be convenient to develop (e.g., judgment of Audiencia Nacional of 31 July 2003).

- *Are compensatory measures (Art. 6 para 4 subpara 1) be counted as reducing the adverse effect?*

  Spanish law follows the exact wording of Article 6(4) of Directive 92/43. Therefore, in principle, compensatory measures must be designed to reduce adverse effects if the project or plan is finally executed. The Autonomous Communities follow this approach (e.g., Article 53 of Law 4/2003 of La Rioja).

- *Do „prioritary" species under under Art. 4 para 4 subpara 2 Dir 92/43 also include endangered birds, such as those listed in Annex 2 of Dir 79/409 recognised?*

  This matter is not expressly addressed by Spanish law, probably due to fact that Directive 92/43 does not include wild birds in its annexes and the Spanish authorities carried out a literal implementation of the Directive in 1995.

- *what counts and what not as an „opinion from the Commission"? Is an informal statement sufficient? Are there instances of lobbying the Commission to render obtain a favorable opinion? What is the legal role of a positive or negative opinion?*

  According to Spanish law, a Commission's formal opinion is required for the purposes of the assessment procedure. In principle, Spanish law does not envisage "informal" opinions. In fact, the Common Administrative Procedure Law 30/1992 expressly refers to the request of opinions from Community organs (e.g., the Commission; Article 42(5)(b)). Those requests must be notified to the people concerned and the procedure may be suspended until the Commission notifies its opinion. The Directive supports this approach which is parallel to that under Article 37 EURATOM and the *Land de Sarre* case (*Land del Sarre v. Ministre de l'Industrie*, asunto 187/87 [1988] ECR 5013). In principle, the Commission's opinion is not binding on the Spanish authorities. However, it may affect the final decision, particularly if the Commission rejects the approach

adopted the Spanish authorities. It may also be significant if an appeal is brought forward before the courts.

- *who has standing to challenge decisions under Art. 6 para 4 Dir 92/43? is it a difference between plans and programs in this respect? Does Article 10a of the EIA Directive apply?*

  Those who may be affected by the decision regarding the execution of the project or plan are entitled to challenge it before the courts (Article 19 of Law 29/1998). However, in many cases, an *actio popularis* is also included in relevant environmental laws thus granting standing to anyone. Remarkably, Law 4/1989 does not contain such clause. It only allows the *actio popularis* in the case of National Parks (Article 23 quáter).

- *Is Art. 4 para 4 Dir 79/409 either as such or in combination with Art. 7 /Art. 4 para 4 Dir 92/43 directly applied if the site was not notified?*

  There is no provision on this matter under Spanish law. However, Royal Decree 1997/1995 draws a distinction between SPAs already designated and others subject to future designation following the wording of Article 7 of Directive 92/43. In a judgment of 16 October 2000, the High Court of the Basque Country rejected allegations that a certain area, where a wind farm was to be executed, was an SPA (not yet designated). Those allegations were based on reports published by the Basque Government, which affirmed the presence of several species included within Annex I of Directive 79/409. The court held that (a) the area had not been regarded as an SPA under country planning rules; and (b) that according to the data before it, it could not be concluded that the area was an SPA. In its judgment of 13 October 2003, the Supreme Court supported this line of reasoning and declared that it was not the mere presence of birds that triggered the process for the designation as SPA but the combination of several factors which required their protection and survival.

- *Is Art. 4 para 4 Dir 92/43 directly applied aa) if the site was notified and listed by the Commission (Draggagi case) bb) if the site was notified but not yet listed cc) if the site was not notified but qualifies as potential Natura 2000 site*

  Royal Decree 1997/1995 follows the wording of Article 4(4) of the Directive. Therefore, the ruling in the *Draggagi* case is applicable. Nevertheless, as indicated before, the Autonomous Communities may adopt stricter measures as it happens in the case of the assessment of plans in the Autonomous Community of the Basque country (Decree 183/2003).