

# The EU Habitats Directive and wolf conservation and management on the Iberian Peninsula: a legal perspective

Arie Trouwborst

Tilburg Law School, Department of European and International Public Law, PO Box 90153, 5000 LE Tilburg, The Netherlands

Corresponding author: a.trouwborst@tilburguniversity.edu

## Abstract

The focus of this legal paper is on the implications of the EU Directive on the Conservation of Natural Habitats and of Wild Fauna and Flora (Habitats Directive) for wolf (*Canis lupus*) conservation and management in Portugal and Spain. It addresses the (potential) relevance of both the area protection and the generic species protection rules from the Directive. Special attention is paid to legal issues raised by the range expansion of the northwest Iberian wolf population beyond the Duero River (both south and east), the immigration of wolves from France, the looming extinction of the Sierra Morena population, and the need for transboundary cooperation.

**Keywords:** EU Habitats Directive, Bern Convention, wolf conservation and management, transboundary cooperation.

## Resumen

Este artículo jurídico está centrado en las consecuencias de la Directiva de la UE para la Conservación de Hábitats Naturales y de la Fauna y Flora Silvestres (Directiva de Hábitats) para la conservación y gestión del lobo (*Canis lupus*) en Portugal y España. Aborda la importancia (potencial) de tanto la normativa de la Directiva sobre áreas protegidas como la normativa sobre la protección genérica de las especies. Se presta especial atención a cuestiones jurídicas provocadas por la expansión de distribución de la población lobuna del noroeste peninsular más allá del Río Duero (tanto al sur como al este), así como por la inmigración de lobos desde Francia, la extinción inminente de la población de Sierra Morena y, por último, por la necesidad de cooperación transfronteriza.

**Palabras clave:** Directiva de Hábitats de la UE, Convenio de Berna, gestión y protección de lobos, cooperación transfronteriza.

## Introduction

Among the many international legal instruments for wildlife conservation that apply in Europe, European Union (EU) Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora (Habitats Directive) is a particularly influential one, including in terms of its impact on national legislation and policy. The aim of this legal paper is to help clarify the Directive's implications for wolf conservation and management in Portugal and Spain. In contrast to the natural and social sciences, academic literature addressing the conservation and management of wolves and

other large carnivores is still scarce within the domain of international and EU law (Trouwborst 2010, Darpö 2011, Borgström 2012, Epstein & Darpö 2013, Epstein 2013, Trouwborst 2014a,b,c), whereas the need for legal clarity in this context is considerable. The present paper is intended as a contribution towards narrowing the gap. It addresses the (potential) relevance of both the area protection and the generic species protection rules from the Directive for the conservation and management of wolves on the Iberian Peninsula. Special attention is paid to a number of legal issues raised by the range expansion of the northwest Iberian wolf population beyond the Duero River (both south and east),

the immigration of wolves from France, the likely extinction of the Sierra Morena population, and the question of transboundary cooperation.

## Methods

The paper employs standard EU and international law research methodology. It chiefly comprises the identification and interpretation of the main pertinent obligations from the Habitats Directive. Pertinent case law of the EU Court of Justice (CJEU) is utilized, as well as guidance adopted by the European Commission. Moreover, it is kept in mind that the Directive serves the implementation within the EU of the Council of Europe's 1979 Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention). Given that all EU member states and the EU itself are contracting parties to the Bern Convention, the Habitats Directive is to be interpreted consistently with the latter. Finally, relevant legal and biological literature is utilized as a subsidiary source. As regards delimitation, the focus of the paper is on the EU rules and their potential implications for the situation on the Iberian Peninsula. For reasons of space, the Portuguese and Spanish domestic implementing legislation and policy are not assessed, nor is the degree to which European obligations are actually complied with.

## Results and discussion

### General observations

The Habitats Directive is a legal instrument binding the twenty-eight EU member states, including Portugal and Spain. It contains various uncompromisingly phrased legal obligations concerning the protection of species and habitats. Whereas EU directives in general, and the Habitats Directive in particular, are frequently invoked and applied in national judicial proceedings, it is the EU Court of Justice which has the final say about the correct interpretation of directive provisions. This, in combination with the teleological (goal-driven) and result-oriented interpretation of these obligations in the already vast and growing jurisprudence of the Court concerning the Habitats Directive, and the high enforceability of EU law in general, has given rise to relatively far-reaching practical consequences

(see, e.g., García Ureta 2010, Verschuuren 2003, Fleurke & Trouwborst 2014).

The Habitats Directive aims for the maintenance or achievement of a 'favourable conservation status' for the species and the natural habitats it covers, in order to contribute to biodiversity conservation in Europe (Article 2). It stipulates in general terms that all measures taken by EU member states pursuant to the Directive 'shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest' (Article 2(2)). The status of a species is deemed favourable when, *inter alia*, the species 'is maintaining itself on a long-term basis as a viable component of its natural habitats' and 'there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis' (Article 1(i)).

Like several other international legal instruments on wildlife conservation, the Habitats Directive operates on a system of Annexes. These list the so-called 'species of Community interest' covered by the Directive and determine what legal regimes apply to each species and where. Annex II includes species for which 'Special Areas of Conservation' (SAC) must be designated and protected, as part of the Natura 2000 network. In the sphere of generic species protection, Annex IV lists species that are to be strictly protected, whereas a more flexible regime applies to species included in Annex V.

The analysis below involves interpretation questions at two levels, respectively concerning (i) which legal regimes apply where, and (ii) what are the implications of each regime. In addition, it addresses (iii) the overarching issue of transboundary cooperation.

### What regimes apply to wolves north, south and... east of the Duero River?

The legal status of some species varies from one (part of an) EU member state to the other. The wolf is one of these, and wolves on the Iberian Peninsula are subject to different combinations of the aforementioned legal regimes depending on their location. Indeed, the legal status of an individual wolf can change upon crossing an international boundary between two countries, or even upon crossing a river within one country. Moreover, with regard to some parts of Spain in particular there is considerable confusion as to the applicable regime(s). From a legal point of view, it

is this complicated and uncertain legal situation that sets Iberian wolves apart from those in other European regions. Hence, an important part of this paper is dedicated to examining which of the above regimes apply to wolves in what parts of the Iberian Peninsula. This examination is embarked on in the present section. After that, the various legal regimes themselves are addressed in some detail.

As the present section includes some intricate questions of legal interpretation, it is appropriate first to briefly sketch the main methods according to which EU law is generally interpreted, particularly by the EU Court of Justice. These are the literal, historical, contextual and teleological methods (Brown & Kennedy 2000). Although a formal hierarchy does not exist, there is a certain logic to this order. Literal interpretation is the starting point, as each interpretation must evidently begin from the words of the provision(s) involved. If the meaning of these words is plain, the analysis usually ends there. In the same vein, there is a very strong presumption against any interpretation the result of which would actually contradict the wording in question (also known as *contra legem* interpretation). Historical interpretation looks for the subjective intentions of a text's author. In the case of legislative instruments like the Habitats Directive, such intentions can to a considerable degree be gleaned from the instrument's preamble – i.e., the 'opening statements' preceding the binding provisions. Contextual interpretation obviously involves viewing a provision within its context and interpreting it in relation to other provisions of EU law. Teleological interpretation, finally, is guided by the objective(s) of the legal text in question. This method is an increasingly dominant feature in the case law of the EU Court of Justice. In a few extreme judgments overarching objectives have even been accorded so much weight as to justify *contra legem* interpretation (Brown & Kennedy 2000). This is not the rule, however.

### Portugal

In Portugal, the legal situation is straightforward. Biologically, a distinction exists between a fragile and fragmented occurrence of wolves to the south of the Duero (or, in Portuguese: Douro) River and a more robust population on the river's northern banks, which is connected to the Spanish wolf population across the border (Álvares 2013). Legally, however, all wolves in Portugal are subject to the regimes of

Annex II (requiring Natura 2000 areas for wolves) and Annex IV (strict protection).

### Spain

Not so in Spain, where the legal status of wolves under the Habitats Directive is relatively clearcut in two parts of the territory, but a rather contentious issue in two other parts (see Figure 1). As this legal status is of great practical consequence, it is an important objective of this paper to create as much clarity as possible in this regard. The uncertainty regarding the legal status of Spanish wolf populations is a direct consequence of the formulations used in the Directive's Annexes. It will become apparent that the literal interpretation method is of limited utility in this regard. The Annexes involved apply to wolves as follows (bold print not in original):

Annex II: *Canis lupus* (except the Estonian population; Greek populations: only south of the 39<sup>th</sup> parallel; **Spanish populations: only those south of the Duero**; Latvian, Lithuanian and Finnish populations)

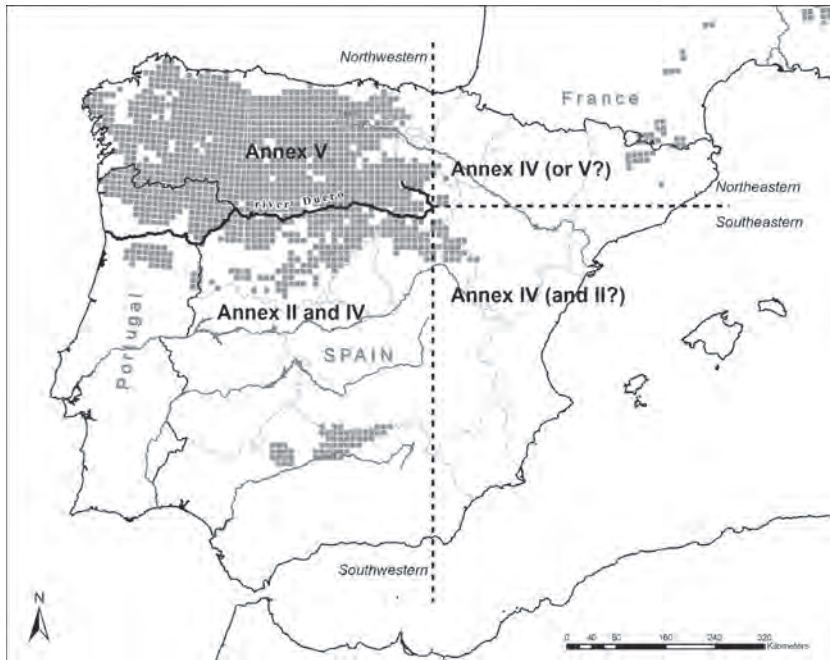
Annex IV: *Canis lupus* (**except the** Greek populations north of the 39<sup>th</sup> parallel; Estonian populations, **Spanish populations north of the Duero**; Bulgarian, Latvian, Lithuanian, Polish, Slovak populations and Finnish populations within the reindeer management area as defined in paragraph 2 of the Finnish Act No 848/90 of 14 September 1990 on reindeer management)

Annex V: *Canis lupus* (**Spanish populations north of the Duero**, Greek populations north of the 39<sup>th</sup> parallel, Finnish populations within the reindeer management area as defined in paragraph 2 of the Finnish Act No 848/90 of 14 September 1990 on reindeer management, Bulgarian, Latvian, Lithuanian, Estonian, Polish and Slovak populations).

It should be noted that other language versions of the Habitats Directive, including the Spanish one, contain identical formulations. For present purposes it is helpful to distinguish between four sectors of Spanish territory, as indicated on Figure 1. These will be referred to hereinafter as the northwestern (NW), southwestern (SW), northeastern (NE) and southeastern (SE) sectors.

### Northwestern Spain

The NW sector comprises the Spanish territory located north of the Duero, up to a line running due north from the easternmost point of the river



**Figure 1.** Four sectors of Spanish territory with corresponding legal regime(s) under the Habitats Directive (Roman numbers refer to Annex II, IV and/or V), with wolf distribution. Data from The Atlas of Spanish Mammals database.

in the Province of Soria. This sector is where the great majority of wolves on the Iberian Peninsula are presently located (Blanco 2013a, Blanco 2005, see also Figure 1). According to the text from the Habitats Directive just cited it is quite clear that wolves within this sector are *not* subject to the regime of Annex II. It is equally clear that wolves within this sector are not subject to Annex IV, but to Annex V instead. Most Spanish wolves are thus subject to the regime of Annex V only.

### ***Southwestern Spain***

The SW sector comprises the Spanish territory located due south of the Duero, between the Portuguese border and a line running south from the easternmost point of the Duero. Although in terms of surface area this is the largest of the four sectors outlined here, it presently (still) contains far fewer wolves than the NW sector. A few decades ago, the only wolves it hosted were those of the isolated and critically endangered remnant population in the Sierra Morena area, located far south of the Duero (and before that a few other, currently extinct remnants). That the regimes of Annex II and Annex IV apply in respect of the Sierra Morena population is undisputed. The fact that this population appears to be on the verge of extinction – if it is not already extinct – is viewed from a legal perspective below.

Wolves from the northern banks of the Duero have, in any event, crossed the river since,

demonstrating that the Duero is not the barrier it was long held to be (Blanco & Cortés 2001, 2009, Blanco *et al.* 2005, Llaneza & Blanco 2005). This has resulted in a growing number of wolves progressively reoccupying the species' former range to the south of the river (see Figure 1). To illustrate, in 2011 wolves reproduced again, for the first time in roughly 60 years, in the Autonomous Region of Madrid (Alonso *et al.* 2012). This development has complicated the picture, as the different legal status of wolves on either side of the river in what is essentially a contiguous population has been viewed as problematic, not in the least by the competent regional authorities.

In principle, an historical interpretation of the Habitats Directive would appear to provide a solid argument for the position that the Annex V status attaches to the northwest Iberian wolf population *as a whole*, and that this status would continue to apply to the part of this population extending beyond the Duero. The wolves' range extension across the river was apparently unforeseen at the time the Directive's text was drafted. Had it been foreseen, then the frontier between the Annex V and Annex IV regimes would likely have been drawn further south, to ensure a uniform legal status for the entire population. The text of the Habitats Directive, however, would seem to leave little room for the above position. It confers strictly protected Annex IV status on all wolves within the EU, 'except [*inter alia*] the Spanish populations

north of the Duero'. To conclude that, instead, the more flexible Annex V regime covers the contiguous wolf population south of the river as well would constitute a particularly flagrant case of *contra legem* interpretation. Interpreting 'north' as including 'south' would be revolutionary indeed. Although ruling this out 100% is not possible, the acceptance of such an interpretation by the Court of Justice must be deemed highly unlikely.

According to the Spanish Supreme Court, in any case, north means north and south means south. In a recent ruling (Tribunal Superior de Justicia 22 March 2013) it scrutinized the 2008 Wolf Conservation and Management Plan of Castilla y León, an autonomous region straddling the Duero River. A number of the Plan's provisions, concerning the management of wolves, did not distinguish between wolf populations to the north and the south of the river, and according to the Supreme Court in fact treated the wolf as a game species on both sides of the river. As according to the Court the Habitats Directive requires strict protection for wolves south of the Duero, the judgment considers that the provisions in question violate the Habitats Directive, and declares them void. In light of this outcome, the Administration of Castilla y León has proceeded to the elaboration of a revised Wolf Plan.

To all intents and purposes, therefore, achieving Annex V status for wolves south of the Duero would appear to require an amendment of the Directive's Annexes. This conclusion is reinforced by the repeated attempts by the Spanish authorities, both national and regional, to seek such an amendment. Among other things, an intention to modify the Directive on this count is expressly stated in the national Spanish wolf strategy adopted in 2005. Specifically, the document aims for Annex V status for the contiguous population to the south of the Duero, while maintaining the Annex IV status of the Sierra Morena population (Grupo de Trabajo del Lobo 2005). It is informative to cite the reasons for the proposed amendment, as formulated by the Spanish delegation to a meeting of the Council of the EU in 2012 (Council of the European Union 2012):

The situation of the wolf population is considerably more precarious at European level than in Spain, which is why the species has been included in Annex IV to the Habitats Directive: animal and plant species of Community interest in need of strict protection.

The management of the wolf population north of the Duero River has proven satisfactory, as demonstrated by the fact that there is a good level of conservation and conflicts with human activities are kept to a minimum.

In view of the expansion of the wolf population north of the Duero River towards the south of the river, Spain has a particular interest in asking the Commission to extend the same legal status under the Habitats Directive to the population south of the Duero River, so that the wolf population south of the Duero River can be managed in the same way as the population north of the river.

This proposal and similar attempts have hitherto not succeeded, however, because of the European Commission's refusal to back such a change for the time being (e.g., Méndez 2012). In case such backing could be obtained in the future, deciding where to draw the new dividing line between Annex IV and Annex V on the Spanish map will be a hard nut to crack. In particular, it is a long-term objective of the Spanish national wolf strategy to achieve a connection between the Sierra Morena population and the continuous northwest Iberian population (Grupo de Trabajo del Lobo 2005). The document does not indicate, however, where the border between the Annex IV and Annex V areas ought to be drawn once this connection is established – if indeed the Sierra Morena population lives to see it – or whether declaring Annex V applicable to *all* Spanish wolves is perhaps the ultimate long-term goal. The latter objective is clearly not without merit, particularly in view of the fact that the northwest Iberian population has been expanding under the Annex V regime.

As regards the regime of Annex II, which entails the obligation to designate and protect SACs for wolves, the Directive's text reproduced above declares this regime applicable to 'only those [wolves] south of the Duero'. To all intents and purposes, this not only covers the Sierra Morena population, but clearly also encompasses the growing wolf population extending southwards from the Duero River. Hence, south of the river the most important areas for wolves in Castilla y León and other relevant autonomous regions must be designated as Natura 2000 sites for the species. Parallel to the above discussion on Annex V, an historical argument may be raised regarding the uniform legal status intended for the northwest Iberian population by the Directive's drafters, so as

to exclude the contiguous wolf population south of the Duero from the Annex II regime. Such an interpretation must, however, be deemed similarly untenable, given the plain meaning of the wording employed. Incidentally, the application of Annex II to these wolves appears to be less hotly debated than the issue of Annex IV versus Annex V.

In summary, it must be concluded that *all* wolves within the SW sector as defined above are subject to the legal regimes of Annex II and Annex IV of the Habitats Directive.

### ***Northeastern Spain***

The NE and SE sectors are where the situation actually becomes complicated, as these involve areas that are, strictly speaking, located neither to the north nor to the south of the Duero River. The NE sector comprises the Spanish territory east of the north-south line touching the Duero's easternmost tip, and north of an imaginary eastward extension of the Duero riverbed all the way to the Mediterranean (see Figure 1). When the Habitats Directive was drawn up, there was no permanent wolf presence in this area. Since then, however, wolves have begun to recolonize it, both from the west and from the north. Regarding the former, recent distribution data indicate that the ongoing eastward range expansion of the northwest Iberian wolf population has approached, and in some places already crossed, the line extending northward from the Duero River's easternmost point (Blanco 2013a, Figure 1). In other words, an increasing number of wolves are, technically speaking, no longer 'north of the Duero'. This eastward range expansion can be expected, slowly but steadily, to continue. This development is complemented by wolves with different genetic signatures arriving from the north. These are French wolves that, in turn, appear to have their own ancestry largely in Italy (Valière *et al.* 2003, Lampreave *et al.* 2011). A tentative population of these wolves has settled in the eastern Pyrenees, on both sides of the French-Spanish border. Especially in the Autonomous Region of Cataluña, wolves have been observed recurrently since the first sightings in the year 2000 (see Figure 1). Lampreave *et al.* (2011) identified the presence on Catalan soil of 13 different individuals between 2000 and 2010.

One thing is for certain, the NE sector is emphatically not located 'south of the Duero'. The regime of Annex II is therefore evidently not

applicable to wolves residing here. Hence, there is no obligation to select, now or in future, Natura 2000 sites for the Catalan and other wolves just discussed.

It is much more difficult to determine, however, whether wolves in the NE sector have Annex IV or Annex V status. The answer to this question is determined by what is to be understood precisely by the 'Spanish populations north of the Duero'. The Directive text accords Annex V status to the latter, and Annex IV status to all wolves except, as far as Spain is concerned, the 'Spanish populations north of the Duero'. There appear to be three main alternative answers to the interpretation question concerned (see also Trouwborst 2014b). Depending on which answer is correct, wolves in the NE sector are subject to (i) Annex V; (ii) Annex IV or V, depending on the population they belong to; or (iii) Annex IV.

The first of these possibilities is to view the reference to the Duero River as bisecting the *entire* country into a northern and a southern part, even if the river itself does not extend all the way to the east. In other words, a line is drawn from the river's easternmost point, in an easterly direction, cutting across the Autonomous Regions of Aragón and Cataluña right through to the Mediterranean coast – thus extending the river's rough east-west trajectory across the whole territory (see Figure 1). According to this interpretation, Annex V status would apply to the north of this line, and Annex IV status to the south of it. To illustrate, the section on Spanish wolves in the latest European large carnivore inventory conducted by the Large Carnivore Initiative for Europe (LCIE) apparently adopts this view and refers to (a part of) Cataluña as being 'north of the river Duero' (Blanco 2013a). An obvious drawback of this interpretation is that it is not clear at all where and how the dividing line between north and south should be drawn. Should it be a straight eastward line starting from the easternmost point of the river, like the dotted line in the map, or should it somehow follow jurisdictional boundaries between provinces or municipalities? It seems impossible to know the answer, for the simple reason that the possibility of wolves in the eastern part of Spain was apparently not pondered when the phrases from the Habitats Directive involved here were formulated.

A second possible answer is that 'Spanish populations north of the Duero' ought to be interpreted historically, as a reference to the

contiguous northwest Iberian wolf population. (The use of the plural – ‘populations’ – does not appear a serious obstacle to this interpretation, as the plural is used in a standard manner in respect of all countries mentioned in the sentences delineating the scope of the various Annexes, regardless of whether one or more separately distinguishable wolf populations are involved.) According to this line of reasoning, the northwest Iberian population should be regarded as a uniform legal unit, in accordance with the presumed original intentions of the Habitats Directive’s authors. As stated above, such an historical interpretation cannot be deemed strong enough to overrule the plain meaning of the word ‘north’ by including ‘south’ within it. The present context is different, however, and concerns the interpretation of the word ‘north’ as encompassing the area north of the Duero *and* north of the aforementioned dividing line in the eastern part of the country, following an imaginary continued trajectory of the Duero eastward. This does not as clearly constitute an interpretation *contra legem*, and is therefore less problematic. Under this second alternative interpretation, wolves in the NE sector that belong to the northwest Iberian population would be governed by the Annex V regime, whereas the nascent Catalan population and other wolves coming from France would be subject to strict protection under Annex IV. There is a downside of a practical nature to this otherwise not implausible interpretation, however. Attaching legal status to particular populations rather than to geographically defined areas is problematic, as wolves move around much. Furthermore, it may not always be easy or even possible to spot from the outside from what population an individual wolf originates. Finally, the above interpretation leaves unresolved the question what the legal situation would be when both populations mix – which is a real prospect (Blanco & Cortés 2009). One answer to this question could be that applying Annex V status to *all* wolves in northeastern Spain would be most appropriate once the northwest Iberian and French populations have fully connected.

A third option, finally, is to interpret ‘Spanish populations north of the Duero’ narrowly, as actually meaning *north of the Duero*, and not northeast or even east-northeast of it. The application of Annex V would thus be confined to the area defined above as the NW sector. This would appear to be the approach that sits most comfortably with the literal interpretation

method, as it is apparently closest to the ordinary meaning of the text. For instance, as Lampreave *et al.* (2011) aptly observe, the Autonomous Region of Cataluña and its wolves are situated neither north nor south of the Duero, but in fact quite a bit east of the river’s origin. Moreover, this third interpretation would also seem to make the best fit with the teleological approach permeating the case law of the EU Court of Justice regarding the Habitats Directive. Concretely, the Court often interprets provisions from the Directive in the light of its Article 2, which states that the ‘aim of this Directive shall be to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora’ within the EU, and furthermore that measures taken by member states under the Directive ‘shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.’ In light of this overarching objective, the Court has interpreted exceptions to the protection of species narrowly, in particular in the context of derogations from strict protection under Article 16 of the Directive, discussed below (e.g., CJEU 20 October 2005, Case C-6/04; CJEU 14 June 2007, Case C-342/05). It may be expected that a similarly restrictive interpretation would be applied by the Court to the geographic limits defined in Annex IV, especially since these are also formulated as exceptions – wolves are subject to strict protection ‘except the ... Spanish populations north of the Duero’. Furthermore, in situations of uncertainty the Habitats Directive is to be interpreted in light of the so-called ‘precautionary principle’, which advocates erring on the side of caution in situations of uncertainty, in the best interest of the species involved (CJEU 7 September 2004, Case C-127/02). It is plainly of some importance within the context of the teleological interpretation at hand, to determine which of the two alternative regimes, Annex IV or Annex V, would serve the interest of wolves in northeastern Spain best. For the emerging and still very fragile French-Catalan Pyrenees population this is likely to be Annex IV, strict protection. Incidentally, this regime also applies to wolves across the border in France. For the vanguard of the northwest Iberian population approaching from the west, this is less apparent. In any event, the Court of Justice is likely to hold the view that strict protection, in the absence of solid evidence to the contrary, will generally

serve the interest of a species better than Annex V status. The above thus appears to plead in favour of an interpretation whereby ‘Spanish populations north of the Duero’ is interpreted restrictively as concerning those wolves that find themselves to the north of the river in the strict geographical sense.

Upon close consideration one will, however, detect a slight blemish on this interpretation as well. Strictly speaking, the area lying properly to the north of the Duero is the one between a line running due north from the river’s easternmost point (see Figure 1) *and* a line running due north from the river’s *westernmost* point (i.e., the point where the river reaches the Atlantic). The latter part of such a rigid interpretation is rather problematic. It would entail that wolves in the westernmost part of the Province of A Coruña and in some small bits of Pontevedra are subject to Annex IV instead of Annex V. Since the drafting of the Habitats Directive until today it has, however, always been the understanding of the Spanish authorities, and apparently also of the European Commission, that the areas in question, like the rest of northwestern Spain, is governed by the regime of Annex V.

None of the three interpretations discussed above is thus without shortcomings, or completely consistent. That a single consistent interpretation cannot be found reveals the problematic nature of the formulations chosen in the Directive’s Annexes to delineate the application of the various regimes to Spanish wolves. These formulations reflect an apparent lack of foresight on the part of the European legislator. The latter evidently did not anticipate the possibility that wolf populations in Spain (and Italy and France) would develop the way they have. That said, the third interpretation – according to which the Annex V regime is confined to the NW sector as defined previously – appears to be superior (legally speaking) to the other two. In particular, this interpretation seems to do most justice to the plain meaning of the text involved and, importantly, conforms to the teleological approach that is such an influential feature in the case law of the EU Court of Justice. Weighing all the evidence, therefore, in the present author’s view this third interpretation is the one most likely to be adopted by the EU Court of Justice if the issue would arise in a case before it. All the same, it cannot be conclusively ruled out that the Court would opt for one of the other two interpretations.

In summary, it is likely that the Habitats

Directive entails that wolves within the NE sector are subject to strict protection under Annex IV. This is not certain, however. It can presently not be ruled out entirely that Annex V applies instead, or indeed a combination of both. Certainty on this count will only ensue if and when the EU Court of Justice pronounces on the matter. One thing that *can* be taken for certain at present is that the protected area regime of Annex II does not apply in the NE sector.

### *Southeastern Spain*

The last remaining part of Spain to be dealt with is the SE sector. This part of the country has long harboured no or hardly any wolves. In the area’s northwest corner, however, wolves from the northwest Iberian population have recently arrived and appear poised for a further recolonization (see Figure 1). Besides, in future, wolves from the Italian-French population may find their way into southeastern Spain.

The Annex IV versus Annex V question has an easy answer in this sector. Like the SW sector, there is no credible way of considering the SE sector as being ‘north of the Duero’. Any wolves setting foot in this area are thus subject to strict protection under Annex IV.

No such easy answer is available, nonetheless, in respect of the question whether or not the regime of Annex II, regarding Natura 2000 areas, would apply to wolves settling in the SE sector. It would have been convenient if some consistency had been applied in the choice of words used to stipulate the scope of the various Annexes of the Habitats Directive with regard to Spanish wolf populations. Specifically, it would have been convenient if Annex II would have been declared applicable, like Annex IV, to all wolves ‘except the ... Spanish populations north of the Duero’. This would have resulted in a division between just two parts of Spain: one where only Annex V applies, and another where Annexes IV and II apply. The only real question then would have been to which of the two parts the NE sector belonged. The present article would have been briefer. Unfortunately, however, a reverse approach was followed instead, with the relevant clause on the scope of Annex II stating: ‘Spanish populations: only those south of the Duero’.

To some degree, the interpretation issues involved here mirror the prior discussion on whether ‘north’ means only north, or also northeast and beyond.



Specifically, if ‘north of the Duero’ is to be understood as the NW and NE sectors combined – that is, if the first interpretation regarding the NE sector as discussed above is correct – then it stands to reason to likewise understand ‘south of the Duero’ as the SW *and* SE sectors combined. In that case, the Directive’s provisions regarding SACs would also apply to any wolves in the SE sector. This leaves unresolved the question where and how exactly to draw the line between the SE and NE sectors. Conversely, if ‘north of the Duero’ is to be interpreted strictly, one might expect a similar approach to be applicable to the phrase ‘south of the Duero’. This would, in turn, entail that the Annex II regime would cover the SW sector only, and not the SE sector.

There is, however, no necessary causal link between the northern interpretation regarding Annex V and the southern interpretation regarding Annex II. In other words, even if ‘north of the Duero’ is to be interpreted restrictively in respect of Annex V, it does not inevitably follow that ‘south of the Duero’ is to be interpreted restrictively as well. In the former instance, the term ‘north’ is interpreted narrowly as a consequence of a teleological interpretation favouring Annex IV over Annex V. Here, however, the choice is between Annex II or no Annex II – protected areas for wolves or no protected areas for wolves. An interpretation in light of the aim of the Habitats Directive would clearly favour the former, and hence a broad understanding whereby ‘south of the river Duero’ would also extend to the SE sector. Especially if the EU Court of Justice were to deal with the Annex II question in isolation, its adoption of the latter teleological interpretation is conceivable. If the Court were to settle all outstanding questions regarding the geographic scope of Annexes II, IV and V in Spain in an integrated manner, however, it is harder to anticipate the outcome. It is difficult to predict whether the Court would give preference to avoiding an apparent inconsistency in the interpretation of terms that are each other’s perfect mirror image (‘north of the Duero’ and ‘south of the Duero’), or whether it would accord decisive weight to the Directive’s objectives when interpreting each of the separate clauses involved.

In summary, that Annex IV applies to any wolves in the SE sector can be taken for granted. Whether Annex II applies to wolves recolonizing the area is, however, uncertain.

### *Living with legal uncertainty and resolving it*

It apparently seemed a good idea at the time to select the Duero to demarcate the different legal regimes for wolves in Spain, as the river seemed a natural barrier between the remaining populations. Yet, the choice of this barrier, and the formulations used to describe it in the three Annexes, have clearly turned out problematic in light of Spanish – and Italian-French – wolf population dynamics subsequent to the Habitats Directive’s entry into force. Among other things, the choices made in the early 1990s have produced two additional legal boundaries drawn on the Spanish map (see Figure 1). These appear just as artificial as the delimitation used in Greece, where wolves moving across the 39<sup>th</sup> parallel flip back and forth between Annex IV and Annex V status (see citation above). Be that as it may, at least in Greece the legal situation is clear, which cannot be said of the Spanish one.

The urgency of resolving the legal issues raised above is likely to keep pace with the ongoing wolf range expansions in the northern half of Spain. Particularly the question whether or not wolves in *northeastern* Spain are to be strictly protected under Annex IV of the Habitats Directive can be expected to come increasingly to the fore in the near future. There are two ways in which definitive clarity in this regard could be provided, namely (i) an interpretation of the Directive by the EU Court of Justice on this count, or (ii) an amendment of the Directive. As for the latter, a modification of the Annexes as regards Spanish wolf populations seems unlikely, except perhaps as part of a future overall revision of the (Annexes of the) Directive. By then, all sorts of options to achieve a more coherent and unambiguous legal regime for wolves in Spain would evidently be on the table. Such a revision would entail a long process, however, and at any rate it appears unlikely that the Commission will instigate this process in the near future.

As for the other route, the only way to obtain definitive clarity regarding the Directive as it is currently in force is through a ruling by the EU Court of Justice. There are two procedures through which such a ruling could come about. The first is the so-called infringement procedure under Article 258 of the 1958 Treaty on the Functioning of the European Union (TFEU). This procedure can be instigated by the European Commission when it believes that a member state is not complying with its obligations under EU law. A procedure

concerning alleged non-compliance is usually triggered by the submission of a complaint to the Commission by one or more concerned NGOs. Applied to the present circumstances, such a procedure could in theory result, for instance, when the competent authorities somewhere in the Spanish NE sector decide to allow quota hunting of wolves, and this is brought to the attention of the European Commission. Nonetheless, the chances of this scenario leading to a Court judgment providing the desired certainty seem modest at best. Firstly, it remains to be seen whether the Commission is of the view that Annex IV applies. It may be that, instead, the Commission believes that Annex V applies throughout northeastern Spain, or at least to wolves within this area belonging to the northwest Iberian population. Secondly, it would make little sense for the Commission (and it may indeed be counterproductive) to dedicate its scarce resources to an infringement procedure on an issue that is in essence the result of a conservation success story, i.e., the expansion of the northwest Iberian population. The lack of effective measures by Spain to prevent the extinction of the Sierra Morena wolf population would be a likelier candidate, and more poignant examples of poor performance with regard to wolves and other large carnivores can be found outside the Iberian Peninsula (Austria being a case in point). Thirdly, even if the Commission were to pursue an infringement procedure in such a case, it is not certain that this will result in a ruling by the Court of Justice. Most procedures started by the Commission are closed before reaching the stage of an actual case before the Court.

The other procedure is that of a preliminary ruling under Article 267 of the TFEU. When a national court in one of the member states is confronted with a question of EU law and is in doubt regarding the correct answer, it can refer that question to the EU Court of Justice. If no further appeal is possible in the domestic proceedings involved, the national court is even *obliged* to refer the matter to the EU Court. The national proceedings are put on hold until the EU Court has issued its ruling, which is then used by the national court to reach its verdict. Article 267 TFEU thus provides for a mechanism – from one judge to another – to ensure the uniform application of EU law across all member states. An EU Court ruling under Article 267 on the present subject matter may come about in a similar situation to the one sketched above with regard to the infringement procedure, namely when the

legality of treating wolves as game species in the NE sector of Spain is challenged before a national court. Concretely, one may envisage a case wherein the hunting of wolves is authorized without an assessment against the criteria of Article 16 of the Habitats Directive (which set out the conditions to be met for any derogations from strict protection to be permissible). If it is alleged in court that such an assessment should have taken place because the regime of Annex IV applies, then the judge(s) in question will need to address the question whether Annex IV or Annex V applies. As the above analysis demonstrates, the judge(s) will be unable to answer this question with any certainty, and will therefore probably refer the issue to the EU Court of Justice. (If this is not done, the judgment could be appealed, and the highest court would *have* to refer the question to the EU Court.) Yet, it is uncertain if and when such a scenario will play itself out. Moreover, the wheels of justice tend to revolve slowly. It is hard to foretell, therefore, if and when either of the two procedural routes will actually result in a ruling by the Court of Justice that adequately resolves one or more of the legal questions regarding the legal status of Spanish wolves.

In the meantime, it would in any case be a logical step for the Spanish authorities to seek the opinion of the European Commission on the legal status of wolves in the various corners of the country. Although from a clarification perspective this is second-best – only the EU Court can provide certainty – it would give the Spanish authorities a useful indication of the likelihood of enforcement action by the Commission against Spain under different scenarios. Until further clarity is obtained, the safest option from a legal point of view is to act on the assumption that Annex IV applies to wolves in northeastern Spain, and that Annex II applies to wolves settling in southeastern Spain. After all, EU member states are expressly allowed to take stricter protection measures than those required under the Habitats Directive (Article 193 TFEU), but not the other way around.

### **What are the implications of the various regimes for wolves on the Iberian Peninsula?**

Contrary to the above questions regarding their geographical scope, the implications of the various legal regimes themselves have already been addressed, to some degree, in the academic

literature, both generally (e.g., García-Ureta 2010, 2012, Fleurke & Trouwborst 2014) and with respect to wolves (Trouwborst 2010, Darpö 2011, Epstein 2013, Trouwborst 2014a,b). Their discussion below is therefore largely limited to highlighting some points of particular relevance to wolves on the Iberian Peninsula.

## *Annex II*

The regime of Annex II is applicable to wolves in Portugal and southwestern Spain (and, as discussed above, perhaps also southeastern Spain). It requires the designation of SACs for wolves under Article 4 and the protection of these sites according to Article 6 of the Directive (European Commission 2000, García-Ureta 2010). Whereas allegedly ‘no protected area or Natura 2000 site in Europe on its own is large enough to ensure the persistence of a viable wolf population’ (Boitani & Ciucci 2009), such protected areas obviously do play a role in wolf conservation. In Portugal, for instance, protected areas cover about 30% of wolf range within the country (Álvares 2004). Designation takes place according to a multi-stage procedure. On the basis of preliminary lists of candidate SACs submitted by the member states, the Commission compiles lists of Sites of Community Importance (SCIs), which are then actually designated as SACs by the member states. Examples of Iberian SCIs selected for wolves are Peneda-Gerês in Portugal and Sierras de Andújar in Spain.

For designated SACs, Article 6(1) of the Directive requires Portugal and Spain to take ‘the necessary conservation measures’ which ‘correspond to the ecological requirements’ of the species involved. With regard to wolves, this may entail ensuring the availability of sufficient wild prey and of forest patches. In addition, for SACs and SCIs, Article 6(2) states that member states ‘shall take appropriate steps to avoid’ any significant ‘disturbance’ (a broad term) with regard to the animals concerned, and any deterioration of their habitats. Lastly, any project or plan that is potentially harmful to the conservation of the wolves within an SAC or SCI selected for the species, is subject to a restrictive authorization scheme elaborated in Articles 6(3)-(4) of the Directive:

3) 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 light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned...

4) If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.

The CJEU has developed an extensive jurisprudence regarding these rules, ever tending to interpret the rules involved in such a way as to maximize their effectiveness in light of the Directive’s objectives. For instance, the Court has made it abundantly clear that considerations of an economic nature, or those concerning expected future management difficulties, are to play no part in the site designation process (e.g., CJEU 19 May 1998, Case C-3/96). Another important example is the (in)famous *Wadden Sea* judgment, in which the Court determined that under Article 6(3), plans or projects may in principle be authorized only ‘where no reasonable scientific doubt remains as to the absence’ of harmful impacts (CJEU 7 September 2004, C-127/02). The above obligations may therefore evidently be of significance for mining activities, the construction of highways and other infrastructure, the erection of fences, the construction of wind turbines and other activities in or nearby wolf SACs. All of these activities are recognized in Spain’s national wolf strategy as potentially having adverse impacts on wolves (Grupo de Trabajo del Lobo 2005).

Crucially, Articles 6(1) and 6(2) must both be considered as laying down obligations of result rather than effort (e.g., CJEU 25 November 1999, Case C-96/98; CJEU 13 June 2002, Case C-117/00). Simply put, member states must do what it takes to conserve the species involved within the corresponding Natura 2000 sites. Hence, with regard to the Sierras de Andújar and other Natura 2000 sites selected for wolves (e.g., Sierras de Cardena y Montoro and Despeñaperros) in the

Sierra Morena region, Spain has evidently failed to comply with its obligations under the Habitats Directive. In particular, it has not met its obligation under Article 6(2) to avoid ‘significant disturbance’ of the species. The latter term is to be interpreted broadly: ‘Any event which contributes to the long-term decline of the population of the species on the site can be regarded as significant disturbance’ (European Commission 2007). The term thus clearly covers the illegal killing of wolves, which has been identified as the main driver of the Sierra Morena population’s decline (Blanco & Cortés 2001, Blanco 2013a). The competent authorities in the Autonomous Regions of Andalucía and Castilla-La Mancha have evidently not undertaken the actions necessary to avoid such illegal killing, be it through effective enforcement and prosecution, economic incentives, or otherwise. (This simultaneously results in a breach of Article 12, discussed below.)

A related question is what the legal situation would be once the wolf population of the Sierra Morena region actually goes extinct. Notably, such extinction would *not* exonerate Spain from its obligations regarding wolves in the Natura 2000 sites concerned. Declassifying sites (whether entirely or for specific species or habitat types) is possible under Article 9 of the Habitats Directive, but only when species or habitat types have disappeared on account of ‘natural developments’ over which a member state has no control, such as a volcanic eruption or perhaps climate change (Cliquet *et al.* 2009). However, declassification of the Sierras de Andújar or other sites for wolves because the population was poached to extinction is clearly out of bounds. Such declassification would run counter to the basic principle that a member state may not profit in any way from its own violation of EU law. Moreover, restoration is a dominant notion in the Directive. Article 6(2), for instance, not only requires member states to stop adverse impacts on species protected within Natura 2000 sites, but also to ensure that the population recovers from those impacts (CJEU 13 June 2002, Case C-117/00). In sum, even if wolves were to disappear from the region altogether, Spain would still be required to take the necessary measures to restore the species within the Natura 2000 sites concerned (see, by analogy, CJEU 13 December 2007, Case C-418/04). Specifically, the Spanish authorities would be under a duty to ensure that the Natura 2000 sites involved remain – or, rather, become – suitable (i.e., safe) for wolves, and promote their prompt return. If it is unlikely

that the latter will happen in the foreseeable future through spontaneous repopulation, then the active reintroduction of wolves may be required.

#### *Annex IV*

The strict protection regime of Annex IV applies to wolves in Portugal, southern Spain and – probably – northeastern Spain. Under Article 12(1) of the Habitats Directive, the Portuguese and Spanish authorities are required to ‘take the requisite measures to establish a system of strict protection’ for these wolves. In particular, prohibitions must be put in place on, *inter alia*, the killing, capturing and disturbing of individual wolves, and on the ‘deterioration or destruction of breeding sites or resting places.’ To be sure, this protection is generic, applying both within and outside SACs. Moreover, not only must the acts in question be prohibited, but the competent authorities must also take all measures necessary to ensure that the prohibitions in question are not violated in practice (CJEU 30 January 2002, Case C-103/00; CJEU 16 March 2006, Case C-518/04; CJEU 18 May 2006, Case C-221/04). In other words, the Portuguese authorities, and the Spanish authorities with regard to the areas where Annex IV applies, are under a duty to take all measures necessary to prevent the (illegal) killing of wolves, and to protect their denning sites. It is open to doubt whether either country has hitherto been fully living up to this obligation. In particular, it seems apparent that Spain has failed to meet this obligation with regard to the Sierra Morena wolves, as the demise of this population is to be attributed largely to illegal killing.

Exemptions from the above prohibitions may not be granted unless all of the three conditions laid down in Article 16(1) are met. First, such derogations may be allowed only:

- a) in the interest of protecting wild fauna and flora and conserving wild habitats;
- b) to prevent serious damage, in particular to crops, livestock, forests ... and other types of property;
- c) in the interest of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature...;
- d) for the purpose of research and education, of repopulating and re-introducing these species...;
- e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens ... in

limited numbers specified by the competent national authorities.

Second, satisfactory alternatives must be absent. Third, a derogation may not hinder the achievement of a favourable conservation status. Despite the fact that the EU Court of Justice has already clarified some aspects of Article 16 in a case concerning wolves, in Finland (CJEU 14 June 2007, Case C-342/05), there are still several outstanding interpretation issues to be resolved in this context. It would certainly be a welcome development from the current perspective if the pending infringement procedure regarding Sweden's controversial wolf policy (Darpö 2011, Epstein 2013, Epstein & Darpö 2013) would reach the Court stage, particularly with respect to the interpretation of the enigmatic Article 16(1)(e). Another unresolved matter of significance is how to determine precisely when conservation status is 'favourable', and at what level (or combination thereof) this is to be assessed – the national level, the level of each (transboundary) population, and/or the biogeographic level (Trouwborst 2010, 2014b, Epstein 2013). It is beyond much doubt, at any rate, that there is more scope for derogations in the southern part of Castilla y León than with regard to wolves belonging to the critically endangered Sierra Morena population. This is not the place to delve more deeply into the matter, however, as Article 16 and its application to large carnivores like wolves have already been extensively discussed elsewhere (European Commission 2007, Linnell *et al.* 2008, Trouwborst 2010, 2014b, Darpö 2011, Epstein 2013).

According to the CJEU, Article 12(1) of the Habitats Directive 'requires the Member States not only to adopt a comprehensive legislative framework but also to implement concrete and specific protection measures,' whereas likewise the provision presupposes the 'adoption of coherent and coordinated measures of a preventive nature' (CJEU 11 January 2007, Case C-183/05). Court and Commission both recommend species action plans, 'on condition that they are correctly established and applied,' as effective means of implementing the requirements of Article 12 – without such plans or similarly comprehensive and species-specific measures, 'the system of strict protection contains gaps' amounting to a violation of the Directive (Case C-183/05). For example, in a case concerning hamsters in France, the

Court determined that 'by failing to establish a programme of measures to ensure strict protection of the European hamster (*Cricetus cricetus*), the French Republic has failed to fulfil its obligations under Article 12(1)(d) of the Habitats Directive' regarding breeding sites and resting places (CJEU 9 June 2011, Case C-383/09). A comprehensive and focused set of measures for wolves is thus required under EU law, and species protection plans are recommended to give this shape.

Furthermore, Article 11 of the Directive requires member states to guarantee that surveillance of species covered by the Directive 'is undertaken systematically and on a permanent basis' (CJEU 20 October 2005, Case C-6/04), with 'particular regard to ... priority species' – which latter include the wolf. Notably, this duty applies to all wolves, regardless of their Annex IV or V status. A specific obligation to monitor 'incidental capture and killing' of Annex IV animals is laid down in Article 12(4), which moreover requires member states to take the conservation measures necessary to ensure that such killing does not have a 'significant negative impact' on the species involved. One example of such incidental killing is mortality in traffic, as reportedly 'many [Spanish] wolves are killed by vehicles' (Blanco 2013a). Hybridization between wolves and dogs (Godinho *et al.* 2011) is another threat that is clearly covered by the above obligations under Articles 11 and 12. In particular, the Portuguese and Spanish authorities are to ensure that the issue is adequately monitored, and measures implemented to prevent and mitigate wolf-dog hybridization (see further Trouwborst 2014a). A final point to be highlighted here is that a zoning system, whereby entire areas are declared off-limits to wolves, is apparently incompatible with Annex IV status, and may only be established where Annex V applies (see further Trouwborst 2014b).

### *Annex V*

The regime of Annex V covers wolves in northwestern (and *perhaps* also northeastern) Spain. It leaves the competent authorities with significantly more leeway as regards the conservation and management of wolf populations than in the areas covered by Annex IV. In particular, the prohibitions just discussed are not required. Article 14 of the Habitats Directive enumerates a number of measures that may be applied by member states to regulate the exploitation of Annex V populations, for instance

closed seasons and license systems. Yet, these are presented as options rather than obligations.

The discretionary room for the Spanish authorities with respect to the wolves in question is not unlimited, however. First and foremost, they are bound by a general obligation to ensure a favourable conservation status (European Commission 2007, García-Ureta 2010, López-Precioso 2012). Second, the aforementioned duty from Article 11 applies, requiring permanent and systematic surveillance. Third, Article 15 outlaws the use of certain means and modes of capture and killing in respect of wolves, including poison(ed baits), (semi-)automatic weapons and all other ‘indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations.’ Exceptions to allow such means may only be made under the three conditions set out in Article 16, discussed above.

In response to a recent question in the European Parliament, the European Commission addressed the compatibility with the Habitats Directive of the (rather polemic) culling of wolves within the National Park of Picos de Europa, located in the NW sector of Spain where Annex V definitely applies. In the words of the Commission, these ‘wolf culls are permissible as long as this is compatible with the conservation status of the species and provided that this does not prevent the achievement of the ecological requirements of the habitats and other species for which the areas have been designated’ (Commission’s answer to parliamentary question E-000135/2013, 14 February 2013) – the latter part of the statement being a consequence of the Natura 2000 status of the area (albeit for other species than the wolf).

Crucially, the above commitments under the Habitats Directive in respect of Annex V wolves must be read in light of Spain’s obligations under the Bern Convention in respect of the species. In the entire Spanish territory, wolves enjoy the status of ‘protected fauna species’ under Appendix III of the Bern Convention, in accordance with a reservation submitted by Spain when it signed the Convention in 1979. When compared to the Habitats Directive, this level of protection appears to hover between Annex IV and Annex V, albeit closest to Annex V. In particular, Article 7 of the Convention stipulates that states parties ‘shall take appropriate and necessary legislative and administrative measures to ensure the protection of the wild fauna species specified in Appendix III’; that any exploitation of

such species ‘shall be regulated in order to keep the populations out of danger’; and that measures to be taken ‘shall include’, *inter alia*, ‘closed seasons and/or other procedures regulating the exploitation’ and the ‘temporary or local prohibition of exploitation, as appropriate, in order to restore satisfactory population levels’. Bern Convention Appendix III thus clearly constitutes a more restrictive, less voluntary regime than the one of Habitats Directive Annex V. The bottom line is that the conservation and management measures actually applied to wolves in northern Spain may not drop below the minimum level of protection required under the Bern Convention.

### Transboundary cooperation

Wolf populations on the Iberian Peninsula span many jurisdictional boundaries, between municipalities, provinces, autonomous regions and countries. Moreover, the applicable European legal framework is subject to a degree of fragmentation that is probably amongst the highest in Europe. In Portugal, wolves are governed by the regimes of Habitats Directive Annexes II and IV, and constitute a ‘strictly protected fauna species’ under Bern Convention Appendix II. In Spain, a confusing mixture applies of Annexes II, IV and V, and wolves constitute a ‘protected fauna species’ under Bern Convention Appendix III. In addition, there are significant differences between the respective regulations of the various autonomous regions within Spain. In France, finally, which is an increasingly important country from the perspective of wolves on the Iberian Peninsula, the situation is again identical to the Portuguese. The need for governmental cooperation to coordinate wolf conservation and management at the population level, which has been identified for Europe at large (Linnell *et al.* 2008, Linnell & Boitani 2012, Blanco 2013b), is thus particularly urgent on the Iberian Peninsula.

The European Commission has commissioned and in 2008 endorsed specific guidelines, elaborated by the LCIE, to promote the adoption of a population level management plan, by the competent authorities of all countries involved, for each large carnivore population (Linnell *et al.* 2008). Clearly, as the European Commission has put it, ‘a Member State cannot be held responsible for the failure to develop a coordinated management plan if one (or more) of its neighbours does not agree to develop such a coordinated plan’

(European Commission 2008). That is not to say that population level cooperation can be regarded an entirely voluntary exercise. On the one hand, the conservation duties set out in the Habitats Directive target member states individually, and the Directive does not set out any explicit duties of transboundary cooperation. On the other hand, it can clearly be argued that member states are under a duty to coordinate and cooperate with neighbouring states where this is necessary for the achievement or maintenance of a favourable conservation status of particular populations, in view of Article 2 in combination with other provisions discussed above (Trouwborst 2014b). Moreover, as the Directive is meant to implement the Bern Convention, a duty of transboundary cooperation follows from Articles 10 and 11 of that Convention, which *inter alia* require parties to ‘cooperate whenever appropriate and in particular where this would enhance the effectiveness’ of required conservation measures (see also Fleurke & Trouwborst 2014). Accordingly, the European Commission has indicated that the 2008 LCIE Guidelines ‘constitute a reference point against which [the Commission] will monitor the actions taken by the Member States in fulfilment of their obligations under the Habitats Directive’ (European Commission 2008).

There is thus an apparent obligation for the Portuguese and Spanish authorities to enter into transboundary cooperation regarding the northwest Iberian wolf population, and increasingly also for Spain to become involved as a partner in intergovernmental cooperation with France, Italy and other states regarding the denominated Alpine wolf population. Whereas on either front such cooperation has yet to take off in earnest (Blanco 2013b), the added value of a transboundary approach appears significant.

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### References

- Alonso O., Laso R. & Martín D. 2012. El lobo cría en la Comunidad de Madrid: localizada una manada con cachorros en la Sierra de Guadarrama. *Quercus*, 321: 16-25.
- Álvares F. 2004. Status and conservation of the Iberian wolf in Portugal. *WolfPrint*, 20: 4-6.
- Álvares F. 2013. Wolf – Portugal. In: Kaczensky P., Chapron G., Von Arx M., Huber D., Andrén H. & Linnell J. (eds). *Status, management and distribution of large carnivores – bear, lynx, wolf & wolverine – in Europe, Update 2012*. European Commission, Brussels.
- Blanco J.C. 2005. La recuperación de un carnívoro adaptable en un ambiente cambiante: el caso del lobo en España. Pp. 221-250. In: I. Jiménez Pérez & M. Delibes de Castro (eds). *Al borde de la extinción: una visión integral de la recuperación de fauna amenazada en España*. EVREN, Valencia.
- Blanco J.C. 2013a. Wolf – Spain. In: Kaczensky P., Chapron G., Von Arx M., Huber D., Andrén H. & Linnell J. (eds). *Status, management and distribution of large carnivores – bear, lynx, wolf & wolverine – in Europe, Update 2012*. European Commission, Brussels.
- Blanco J.C. 2013b. *Towards a population level approach for the management of large carnivores in Europe: challenges and opportunities*. European Commission, Brussels.
- Blanco J.C. & Cortés Y. 2001. *Ecología, censos, percepción y evolución del lobo en España: análisis de un conflicto*. SECEM, Málaga.
- Blanco J.C. & Cortés Y. 2009. Ecological and social constraints of wolf recovery in Spain. Pp. 41-66. In: M. Musiani, L. Boitani & P.C. Paquet (eds). *A new era for wolves and people: wolf recovery, human attitudes, and policy*. University of Calgary Press, Calgary.
- Blanco J.C., Cortés Y. & Virgós E. 2005. Wolf response to two kinds of barriers in an agricultural habitat in Spain. *Canadian Journal of Zoology*, 83: 312-323.
- Boitani L. 2000. *Action plan for the conservation of the wolves (Canis lupus) in Europe*. Council of Europe Publishing, Strasbourg.
- Boitani L. & Ciucci P. 2009. Wolf management across Europe: species conservation without boundaries. Pp. 15-39. In: M. Musiani, L. Boitani & P.C. Paquet (eds). *A new era for wolves and people: wolf recovery, human attitudes, and policy*. University of Calgary Press, Calgary.
- Borgström S. 2012. Legitimacy issues in Finnish wolf conservation. *Journal of Environmental Law*, 24: 451-476.
- Brown L.N. & Kennedy T. 2000. *The Court of Justice of the European Communities (5<sup>th</sup> ed)*. Sweet & Maxwell, London. 470 pp.
- Cliquet A., Backes C., Harris J. & Howsam P. 2009. Adaptation to climate change: legal challenges for protected areas. *Utrecht Law Review*, 5: 158-175.
- Council of the European Union. 2012. Proposal for the modification of the status of the wolf in Directive 92/43/EEC for the population of Castilla y León, south of the Duero River. *7369/12 ENV 188*, 7 March 2012.
- Darpo J. 2011. Brussels advocates Swedish grey wolves: on the encounter between species protection

- according to Union law and the Swedish wolf policy. *SIEPS European Policy Analysis*, 2011(8): 1-19
- Epstein Y. 2013. Population based species management across legal boundaries: the Bern Convention, Habitats Directive, and the gray wolf in Scandinavia. *Georgetown International Environmental Law Review*, 25: 549-597.
- Epstein Y. & Darpö J. 2013. The wild has no words: environmental NGOs empowered to speak for protected species as Swedish courts apply EU and international environmental law. *Journal for European Environmental & Planning Law*, 10: 250-261.
- European Commission. 2000. *Managing Natura 2000 sites: the provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*. European Commission, Brussels.
- European Commission. 2007. *Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC*. European Commission, Brussels.
- European Commission. 2008. *Note to the Guidelines for population level management plans for large carnivores*. European Commission, Brussels.
- Fleurke F.M. & Trouwborst A. 2014. European regional approaches to transboundary protection of biodiversity resources. In: L. Kotze & T. Maruhn (eds). *Transboundary Governance of Biodiversity*. Martinus Nijhoff Publishers, Leiden/Boston. (In press.)
- Godinho R., Llana L., Blanco J.C., Lopes S., Álvares F., García E.J., Palacios V., Cortés Y., Tategón J. & Ferrand N. 2011. Genetic evidence for multiple events of hybridization between wolves and domestic dogs in the Iberian Peninsula. *Molecular Ecology*, 20: 5154-5166.
- García-Ureta A. 2010. *Derecho Europeo de la biodiversidad: aves silvestres, hábitats y especies de flora y fauna*. Iustel, Madrid. 755 pp.
- García-Ureta A. (ed). 2012. *La Directiva de Hábitats de la Unión Europea: balance de 20 años*. Editorial Aranzadi, Cizur Menor.
- Grupo de Trabajo del Lobo. 2005. *Estrategia para la conservación y la gestión del lobo (Canis lupus) en España*. Approved by Comisión Nacional de Protección de la Naturaleza, 16 December 2004. Approved by Conferencia Sectorial de Medio Ambiente, 29 January 2005.
- Lampreave G., Ruiz-Olmo J., García-Petit J., López J.M., Bataille A., Francino O., Sastre N. & Ramírez O. 2011. El lobo vuelve a Cataluña: historia del regreso y medidas de conservación. *Quercus*, 302: 16-25.
- Linnell J.D.C. & Boitani L. 2012. Building biological realism into wolf management policy: the development of the population approach in Europe. *Hystrix, the Italian Journal of Mammalogy*, 23: 80-91.
- Linnell J.D.C., Salvatori V. & Boitani L. 2008. *Guidelines for population level management plans for large carnivores in Europe*. European Commission, Brussels.
- Llana L. & Blanco J.C. 2005. Situación del lobo (*Canis lupus*) en Castilla y León en 2001: evolución de sus poblaciones. *Galemys*, 17: 15-28.
- López-Precioso B. 2012. La protección de las especies de la fauna y flora en la Directiva de Hábitats. In: A. García Ureta (ed). *La Directiva de Hábitats de la Unión Europea: balance de 20 años*. Editorial Aranzadi, Cizur Menor. Pp. 69-102.
- Méndez R. 2012. Bruselas frena el intento de Cañete de ampliar la caza del lobo ibérico: la UE se opone a incluir la especie como cinegética también al sur del Duero. *El País*, 20th March 2012.
- Trouwborst A. 2010. Managing the carnivore comeback: international and EU species protection law and the return of lynx, wolf and bear to Western Europe. *Journal of Environmental Law*, 22: 347-372.
- Trouwborst A. 2014a. Exploring the legal status of wolf-dog hybrids and other dubious animals: international and EU law and the wildlife conservation problem of hybridization with domestic and alien species. *Review of European, Comparative & International Environmental Law*, 23: 111-124 .
- Trouwborst A. 2014b. Living with success – and with wolves: addressing the legal issues raised by the unexpected homecoming of a controversial carnivore. *European Energy and Environmental Law Review*, 23: 89-101.
- Trouwborst A. 2014c. Country report: the Netherlands – gearing up for wolf comeback. *IUCN Academy of Environmental Law E-Journal*, 5: 224-230.
- Valière N., Fumagalli L., Gielly L., Miquel C., Lequette B., Poule M.-L., Weber J.-M., Arlettaz R. & Taberlet P. 2003. Long-distance wolf recolonization of France and Switzerland inferred from non-invasive genetic sampling over a period of 10 years. *Animal Conservation*, 61: 83-92.
- Verschuuren J. 2003. Effectiveness of nature protection legislation in the EU and the US: the Birds and Habitats Directives and the Endangered Species Act. *Yearbook of European Environmental Law*, 305-328.

Associate Editor was José María López