

Nature conservation in Portugal: brief overview in 2005

After the ECJ sentence of the 24th July 2003, (in the case C-72/02), against Portugal, it was clear that the national regime (Decree-law 140/99 of the 24th April 1999) had to be deeply changed and thoroughly completed.

This change finally came into force after the adoption of the Decree-law 49/2005, on the 24th February 2005. In spite of being formally assumed as a light alteration, this latter Decree-law turns the 1999 regime upside down.

Here are the most substantive changes:

1. Provisional regime

There was never a provisional regime for the protection of *habitats/species* in the sites proposed for those regions not yet proclaimed by the Commission as Nature 2000 sites.

For this reason all the protective measures adopted, in the meantime, by the public authorities were self-classified as non binding overgenerous and altruistic measures.

Now there is a provisional regime, materially equivalent to the future final protection regime for the SACs.

2. Definitive regime

The regime of SPAs and SACs used to be the result of a collection of omissions due to legal or administrative inertia. While there was no National Plan for Nature 2000 (it hasn't been approved yet), the protection regime was the one established in the management plan for each site. In the case that these management plans don't exist (most of them are still being produced but not yet approved), in the meantime, the municipal plans are applicable. If these plans don't deal with nature conservation (they normally don't), they should be revised. While they are not revised, the authorisation of some activities more likely to have meaningful impacts is dependent upon a previous opinion by the Nature Conservation Institute (public body, with a very low budget, dependent on the Ministry of the Environment). This reasoned opinion should be issued in 45 days, but in the case that it isn't, then the silence leads to a presumption of a favourable opinion and the activity can be carried out.

Now, in 2005, the regime settled for SPAs and SACs is slightly clearer although still iterative.

3. Ecological corridors

In the previous legislation there was no reference, direct or indirect, to ecological corridors and, in practice, no corridors were designated as so. However, the ministry staff considered that there were indeed ecological corridors considering that some river branches as well as its banks were classified as SPAs or SACs.

Now they are considered "other habitats" and they must be protected by the territorial management instruments, namely, the plans.

Subsisting weak points and reasons for concern are:

1. Buffer zones

The protection of habitats outside the designated areas is still missing in the law and in the practice of national authorities. However, they deny this charge arguing that the external borders of the national sites proposed for European classification is much larger than it

should, precisely in order to include buffer zones¹. The effect was that every activity proposed to be carried out OUTSIDE the site was automatically considered legal. The alternatives to be taken in consideration were reduced to going through the site or around it, developing the proposed activity inside it or in the close neighbourhood.

2. Imperative reasons

Projects for developing alternative energy sources (namely Aeolian towers grouped in Aeolian parks) are authorised every day for imperative reasons of public interest inside Nature 2000 sites.

3. Environmental impact assessment

There are two environmental impact assessment regimes: one for the projects falling under the EIA regime and another for the other “actions, plans or projects”.

In the first case, the strict EIA regime is applicable.

In the second case, a softer regime, called “environmental incidences analysis”, in which public participation rights are not safeguarded, is carried out.

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¹ In the case C-117/02 one can see that deteriorated areas, where the designation criteria are surely not present, can be a part of and can be classified as nature conservation sites in Portugal.