Perspective

Large carnivores and the EU Habitats Directive – legal obligations to restore and coexist

Photo: Robin Rigg

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Introduction

In discussions on the management of large carnivores in the European Union, the Habitats Directive[1] is never far away. The Directive imposes legal obligations on EU Member States regarding the conservation and restoration of large carnivore populations. These obligations focus both on the animals themselves and on their habitats and can be enforced in court at EU and national levels. Thus, the Habitats Directive sets out legal limits that Member State authorities must respect when developing and applying national policies affecting large carnivores, including policies on the prevention and mitigation of damages to livestock and other property. These hard and enforceable limits around national discretion have made the Directive "one of the most contentious pieces of legislation" in the EU [1]. They also seem to have played a meaningful part in the ongoing comeback of large carnivores across Europe [2,3].

The Habitats Directive, which dates from 1992, sits in a broader law and policy landscape. Although international standards are generally more stable than national ones, they, too, are subject to change. An important development was the adoption in 2022 of the Global Biodiversity Framework (GBF)[2] under the Convention on Biological Diversity (CBD), which sets out the principal overarching objectives for biodiversity policy around the world. Notable modifications at the pan-European level were the 2017 listing of the Balkan lynx (*Lynx lynx balcanicus*) and the 2024 downlisting of the wolf under the Bern Convention[3]. Recent changes at the EU level include the adoption of the Nature Restoration Regulation[4] in 2024.

The modalities of the Habitats Directive itself are open to change as well. A case in point is the recent change of the wolf's legal status by uniformly listing it in Annex V of the Directive, thus removing the strictly protected status it enjoyed until then in most Member States. At least as important are changes in interpretive clarifications, particularly those forthcoming from the evolving case law of the Court of Justice of the EU (CJEU). The CJEU is the ultimate authority when it comes to the way the various obligations are to be understood and applied by Member States.

[1] Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01992L0043-20130701
[2] Kunming-Montreal Global Biodiversity Framework: https://www.cbd.int/gbf
[3] Convention on the Conservation of European Wildlife and Natural Habitats: https://www.coe.int/en/web/bern-convention
[4] Regulation (EU) 2024/1991 of the European Parliament and of the Council on nature restoration and amending Regulation (EU) 2022/869: https://eur-lex.europa.eu/eli/reg/2024/1991/oj/eng

The purpose of this perspective piece is to provide readers with a concise impression of the various obligations of Member States under the Habitats Directive, especially in relation to damage prevention, in combination with a more detailed update regarding recent developments. After introducing the Directive's objectives and broader context, the three principal legal regimes that apply in differing degrees to large carnivore species within the EU will be addressed, namely those of Annex II (area protection), Annex V (flexible species protection) and Annex IV (strict species protection). This overview is far from exhaustive. For readers looking for more detail, various guidance documents by the European Commission are a good first port of call[5]. Particular attention is paid below to the important implications of two recent CJEU judgments which address wolf management in Austria and Spain but are of relevance to large carnivores generally.

Restoration and coexistence: objectives and context

The Habitats Directive aims to contribute to biodiversity conservation by restoring or maintaining, as the case may be, a 'favourable conservation status' (FCS) for the species it covers (Article 2). These include the wolf (*Canis lupus*), Eurasian lynx (*Lynx lynx*), Iberian lynx (*Lynx pardinus*), brown bear (*Ursus arctos*), wolverine (*Gulo gulo*) and golden jackal (*Canis aureus*). Conservation status is taken as "favourable" when the species in question is "maintaining itself on a long-term basis as a viable component of its natural habitats", its range is "neither being reduced nor is likely to be reduced for the foreseeable future", 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)).

The Habitats Directive is to be read and applied in light of relevant commitments under international treaties. The CBD GBF provides the global compass for biodiversity policy and law in the coming years. From a large carnivore perspective, relevant GBF targets include restoring degraded ecosystems; giving ecosystems the space they need to thrive by meeting a minimum 30 % protected area target by 2030; and promoting human–wildlife coexistence while minimising human–wildlife conflict (GBF Targets 2–4). The Habitats Directive must also be read against the background of the demanding obligation in the CBD itself to "restore degraded ecosystems" (Article 8(f)). Meeting this obligation not only requires providing sufficient space, ecological connectivity and room for natural processes, but also restoring the diversity and densities of Europe's depleted (mega)fauna as far as possible – which is indeed quite far [4]. Further ambitions and bounds that inform the application of the Habitats Directive flow from the Bern Convention, for instance through a binding obligation of result to ensure, for all large carnivore species, minimum population levels that correspond inter alia to "ecological … requirements" (Article 2) [5]. Notably, both the CBD and the Bern Convention expressly acknowledge the "intrinsic value" of wildlife species, that is, their value in and of themselves, regardless of any utility or harmfulness to humans (see both Preambles).

The new Nature Restoration Regulation builds on these general commitments, while adding legal detail. Among other things, it sets out a duty to put in place, where necessary, the restoration measures required to improve the habitats of large carnivores to a "sufficient quality and quantity," thus contributing to reaching or maintaining a favourable conservation status (Articles 4(7) and 3(9–10)). At the same time, the Regulation entails a shift of focus from species and habitat types to ecosystems [6]. Its overarching objective is the "long-term and sustained recovery of biodiverse and resilient ecosystems across the Member States" (Article 1(1)(a)). Europe's large carnivores and other species are expressly viewed as part of the properly functioning, dynamic ecosystems for which the Regulation ultimately aims (Article 3(1)).

These various commitments lend support to the argument that for a large carnivore species to meet the Habitats Directive's FCS threshold means inter alia that it is able to "fulfill its ecological function … to its full extent", as an Advocate General (an impartial advisor) of the CJEU put it recently with reference to a case on wolf hunting in Estonia[6]. [*Editor's note: see Box 1.*]

[5] For example, the European Commission's Guidance document on the strict protection of animal species of Community interest under the Habitats Directive, 2021/C 496/01.
[6] Opinion of CJEU Advocate General in Case C-629/23, 12 December 2024, par. 39.

Natura 2000: the Annex II regime

The brown bear, wolf, wolverine and two lynx species are listed in Annex II of the Habitats Directive, with some exceptions for a few countries[7]. This listing entails obligations to designate protected sites for these species as part of the Natura 2000 network (Articles 3–5). The management of these 'special areas of conservation' (SACs) must subsequently be adjusted to the needs of the large carnivores involved; habitat deterioration and significant disturbance are to be avoided; and the sites must be adequately protected against potentially harmful plans or projects (Article 6). Lethal management of large carnivores in and around such areas will often be difficult to reconcile with these obligations.

The selection of SACs must be based on ecological criteria and may not be dictated by socio-economic factors. In other words, what the most suitable candidate areas are, is primarily indicated by the large carnivores themselves through settlement and reproduction. For this reason alone, the designation of 'wolf-free' or 'bear-free' zones, where management is aimed at preventing large carnivore populations from establishing themselves (the opposite of Natura 2000 sites), is difficult to reconcile with the Habitats Directive [7].

Likewise, the selection and designation of SACs is not a one-off operation, but must keep pace with natural dynamics, such as the recolonisation of former range. The Netherlands is a case in point. In the Veluwe area – a relatively large, wooded region in the country's centre and a Natura 2000 site for various species and habitat types – wolves returned after an absence of about 150 years in 2018, followed by the first reproduction in 2019. Currently, the area is home to seven of 11 Dutch wolf packs. That the wolf has not yet been added to the list of species for which the area is designated as an SAC therefore appears to be at odds with the Netherlands' obligations under the Habitats Directive.

Flexible protection: the Annex V regime

The regime of Annex V applies to golden jackals across the EU; to lynx in Estonia; and recently it was decided to extend its application to all wolves[8]. The Habitats Directive requires Member States (i) to systematically monitor these populations (Article 11); (ii) to take the measures necessary to ensure a favourable conservation status (Articles 2(2) and 14); and (iii) to outlaw certain means and modes of capture and killing, including poison(ed baits), (semi)automatic weapons and all other "indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations" (Article 15). Unlike the strict protection regime of Annex IV (discussed below), Member States are not expressly required to prohibit the killing of Annex V animals except under authorisation. In practice, however, it will be difficult to guarantee a favourable conservation status without regulating such killing, i.e. permitting it only in certain controlled circumstances.

The recent CJEU judgment on wolf hunting in Spain[9] provides significant clarifications concerning these obligations, especially the question under what conditions Annex V large carnivores may be killed. First, it underlines the importance of adequate monitoring and stipulates that such monitoring is in fact a precondition for any exploitation to be permissible. In particular, the hunting of an Annex V species may not be allowed "if effective surveillance of its conservation status is not ensured" (par. 59). Indeed, when Member States take decisions to authorise hunting of Annex V animals, they must "justify those decisions and provide the surveillance data on which the decisions are based" (par. 62). Furthermore, such decisions must, "to the extent possible", take account of the impact of such hunting on wolf populations also at a "cross-border level" (par. 63).

[7] Not in Annex II: Eurasian lynx in Estonia, Finland and Latvia; brown bears in Finland and Sweden; wolves in Estonia, Finland, Greece and Latvia.
[8] Before the downlisting, only wolves in Bulgaria, Estonia, Finland (reindeer zones), Greece (north of the 39th parallel), Latvia, Poland, Slovakia and Spain (north of the Duero River) were included in Annex V; other wolf populations were in Annex IV.
[9] CJEU Case C-436/22, 29 July 2024.

Second, the Court confirms the general obligation of Member States to ensure a favourable conservation status for Annex V populations. Member States "have some discretion in determining whether it is necessary to adopt measures" pursuant to Article 14, such as hunting limitations (par. 53). However, this discretion is "limited by the obligation to ensure" that any taking of specimens is "compatible with that species being maintained at a favourable conservation status" (par. 55). Indeed, where a population has an unfavourable conservation status, the authorities must take measures to restore the population to a favourable status (par. 69). The "restriction or prohibition of hunting" the species may then well be a "measure necessary to restore its favourable conservation status" (id.).

Third, the judgment highlights the potentially far-reaching influence of the so-called precautionary principle. When the best available evidence still leaves uncertainty as to whether the hunting or other killing of Annex V wolves, jackals or lynx is "compatible with the maintenance of that species at a favourable conservation status", then the Member State involved "must refrain from authorising such exploitation" (par. 72). In other contexts, the Court has equated "certainty" with the absence of "reasonable scientific doubt"[10]. Fourth and finally, the judgment confirms that there is no airtight connection between a species' conservation status and its listing in any given annex. The fact that a species is included in Annex V "does not mean that its conservation status must, in principle, be regarded as favourable" (par. 50).

In sum, under the Annex V regime the killing of large carnivores is, in principle, only to be authorised when (i) monitoring of the population is up to par; (ii) the population's conservation status is demonstrably favourable; and (iii) no uncertainty remains regarding the compatibility of the proposed killing with the maintenance of this favourable status.

Strict protection: the Annex IV regime

Annex IV includes most large carnivores in most Member States: all brown bears, all wolverines, all Iberian lynx and all Eurasian lynx except those in Estonia. (Until the recent downlisting it also included wolves in most places.) Regarding these populations, the same obligations apply as just discussed for the Annex V regime, plus several additional ones. The most important of those requires the establishment of a "system of strict protection" and particularly the enactment and effective enforcement of prohibitions on the deliberate capturing, killing or disturbing of any of the animals involved and of the damaging of their breeding sites or resting places (Article 12(1)). These prohibitions apply to (wild) large carnivores anywhere they go, including in towns and farmyards[11].

Exemptions (or 'derogations') from the prohibitions may be granted on a case-by-case basis, but only when all three conditions mentioned in Article 16 are demonstrably met. First, the exemption must be for one of a limited set of purposes, for instance to "prevent serious damage" to property such as livestock or crops, or in the interest of "public safety". Second, there must be "no satisfactory alternative" method through which the purpose can be achieved without harming the animal(s) in question. Third, the exemption must not hinder the maintenance or achievement of a favourable conservation status for the population concerned.

The recent CJEU judgment on wolf management in Austria[12] contains several pointers concerning the interpretation of all three conditions, which are highly relevant in the context of damage prevention. Firstly, the Court makes clear that indirect, long-term macroeconomic developments that are not imputable to a particular animal – such as a possible future impact of wolf predation on Alpine farming – do not come within the scope of the derogation ground of preventing "serious damage" to livestock and other types of property.

Secondly, the Court went into the practically important question whether the economic costs of non-lethal livestock protection measures can render those measures "unsatisfactory" as an alternative to killing large carnivores. According to the judgment, a balancing act is called for, which may involve economic, social and cultural factors besides ecological ones. In any given case, the economic costs of an alternative, non-lethal, measure are to be weighed against "the ecological cost of taking [the] specimen" concerned (par. 84), in a manner that secures

[10] CJEU Case C-127/02, 7 September 2004.
[11] CJEU Case C-88/19, 11 June 2020.
[12] CJEU Case C-601/22, 11 July 2024.

the attainment of the Directive's objectives. The economic costs of a technically feasible alternative measure may not, however, by themselves determine the outcome. They may be "taken into account under one of the criteria to be balanced, but without however being decisive" (par. 82). A non-lethal preventive measure may not be "rejected at the outset solely on the ground that the economic costs of its implementation are particularly high" (id.).

Significantly, the Court emphasises that this issue must be viewed within the broader context of the obligations of Member States to implement "systemic measures and management plans" to ensure the protection of the species concerned (par. 83). This may involve introducing "changes in the agricultural activities concerned" in order to become sufficiently predator-proof, by employing fencing, guarding dogs or other non-lethal practices. Such changes in animal husbandry practices, the Court acknowledges, "are necessarily accompanied by certain costs," but those costs "cannot constitute a sufficient ground for derogating" from strict protection (par. 83). In other words, the considerable costs associated with the implementation of non-lethal preventive measures in certain regions are 'simply' the inevitable price of coexistence with large carnivores, and can as such not justify keeping said regions predator-free by lethal means. This reinforces the conclusion that the Annex IV regime, like the Annex II regime discussed above, is difficult to reconcile with the designation and operationalisation of 'wolf-free' areas and the like, whether in the Alps or elsewhere [7].

Favourable conservation status at local and national levels

The Austrian judgment contains the very important clarification that the impact of a contemplated derogation must be assessed at the level of the "local and national territory of the Member State concerned" and that including the transboundary population within the assessment can make it harder, rather than easier, to comply with the FCS condition (par. 47–66). Whereas this conclusion was reached in the Austrian case within the context of the Annex IV regime, it stands to reason that a similar approach will apply concerning the obligation to ensure a favourable conservation status for Annex V populations. The CJEU judgment in the aforementioned Estonian wolf hunting case[13] provides further clarity in that regard (Box 1).

In the Austrian case, the Court was asked to clarify to what extent transboundary wolf populations (i.e. in this case, the wolves across the Austrian borders in neighbouring countries) may or must also be the focus of assessment when applying Article 16. The answer given is that the role of the transboundary population in this context is very limited indeed, and that the decisive levels of assessment – both when determining conservation status as such, and when determining the impact of proposed derogations on that conservation status – are the levels of "the local and national territory of the Member State concerned" (par. 66). According to the Court, assessments of conservation status and the impact of derogations thereon "must be carried out, in the first place, at local and national level and, in the event of a favourable conservation status at that level, as far as possible, in the second place, at a cross-border level" (par. 60).

Crucially, the judgment makes clear that including the transboundary wolf population in the assessment does not make it easier to meet the FCS criterion, contrary to what has often been assumed or proposed [8]. Indeed, the exact opposite appears to be the case, in the sense that taking cross-border segments of a wolf population into account will, if anything, make the granting of a derogation more difficult. This would play out, for instance, in a scenario where the conservation status of wolves at local and national level is favourable, but the proposed derogation concerns a wolf that is part of a transboundary pack, shared with a country whose national wolf population does not have a favourable status. In a nutshell, an "unfavourable national status cannot be remedied through favourable status at the cross-border level"[14].

As in the Spanish case on the Annex V regime, the Court also emphasised the importance of the precautionary principle in the Austrian case on the Annex IV regime. That is "if, after examining the best scientific data available, there remains uncertainty as to whether or not a derogation will be detrimental to the maintenance or restoration of [the] species at a favourable conservation status, the Member State must refrain from granting or implementing that derogation" (par. 64). Such uncertainty may pertain to the

[13] CJEU Case C-629/23 (pending).
[14] Opinion of CJEU Advocate General in Case C-601/22, 18 January 2024, par. 73 (expressly referred to by the Court in par. 57 of the judgment).

conservation status of the population as such and/or to the impact of the envisaged derogation thereon.

A question that remains unanswered thus far is what criteria are to be used exactly in order to determine whether a large carnivore population is at a FCS at the local and national level, i.e. in this case, "at the level of the Province of Tyrol and at national level" in Austria (par. 65). But clearly, those are the levels that count.

The Austrian judgment shows that the adoption and implementation of transboundary population-level management plans, as advocated by the European Commission[15] and the Bern Convention's Standing Committee[16], do not justify shifting the level of assessment of FCS to the transboundary population. They are not 'silver bullets' in that sense. However, it may still well be that large carnivore population segments across the border can to some extent be taken into account in assessing whether a favourable status at national level exists[17]. In that connection, population-level management plans may still have a role to play in making it easier, especially in small Member States, to meet the FCS criterion. Building on this assumption, a recent guidance document compiled for the European Commission offers concrete avenues to operationalise such approaches [9]. The Estonian wolf judgment of the CJEU sheds further light on this matter (Box 1).

Concluding observations

The legal landscape for large carnivore conservation and management in the EU, as sketched above, can be expected to undergo further change. The political winds blowing across the continent may result in additional amendments of species listings and, perhaps, of the Habitats Directive itself. Conversely, the recent wolf status amendment might be challenged and even reversed, in light of questions of both a procedural and substantive nature that have arisen in this regard [10,11]. Likewise, interpretive clarifications are likely to continue flowing from CJEU judgments. The near future will also see the application of the Nature Restoration Regulation to large carnivore habitat as Member States draft and implement their national restoration plans, as required by the Regulation.

Regarding the overall direction of global and European biodiversity policy, in line with which the Habitats Directive is to be applied, it is clear that coexistence and ecosystem restoration are key objectives. As readers of *CDPnews* know well, coexisting with large carnivores can be quite a challenge and tends to come with a price tag, mostly expressed in euros but occasionally in human injuries and even lives. At the same time, it is crucial to realise that restoration and coexistence are part of a bigger picture and serve the long-term interests of wildlife and humanity alike [12,13].

An important guiding principle in this connection, besides the precautionary principle, is the principle of "common but differentiated responsibilities" enshrined inter alia in Principle 7 of the 1992 Rio Declaration[18], which calls for fairness and solidarity in a developmental context. According to this principle, developed countries, given "the pressures their societies place on the global environment and of the technologies and financial resources they command," have a greater responsibility than countries in the Global South when it comes to environmental protection and restoration. That is, the richest countries in the Global North, such as those in the EU, are expected to lead by example when it comes to restoring and coexisting with wildlife – especially with regard to challenging species such as large carnivores – for two plain reasons: (1) their societies have caused the greatest wildlife losses; and (2) they have the economic and other resources needed to turn this around.

As long as Europeans expect underprivileged people in Africa and South Asia to continue to coexist with lions, tigers, elephants and hippos, they ought themselves to be ambitious about restoring the European ecosystems they and their ancestors have so severely degraded [14] and, at the very least, attempt to generously share their own landscapes with the likes of wolves and bears. To some extent, parallel considerations can be applied within European societies. Also on that level, it appears to make sense to extend solidarity to those stakeholders that bear the biggest costs for coexistence with large carnivores. That is, of course, part of the reasoning behind subsidies

[15] European Commission (2008) Note to the Guidelines for population level management plans for large carnivores in Europe. ENV.B.2 D/14591.
[16] Recommendation No. 137 (2008) of the Standing Committee of the Bern Convention on population level management of large carnivore populations.
[17] Opinion of CJEU Advocate General in Case C-629/23, 12 December 2024, par. 39.
[18] UN Declaration on Environment and Development (1992).

for measures to prevent predation of livestock and payments to compensate for losses.

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Box 1: Stop press! Estonia wolf ruling

On 12th June 2025, after this article was completed, the CJEU issued a ruling of importance in the Estonian wolf case[1] that was mentioned in the text several times. This concerns wolf management under the Annex V regime. In its judgment[2], the Court builds on its prior findings in the Spanish and Austrian wolf cases and adds several significant clarifications regarding the FCS concept.

The Estonia judgment confirms that Member States must ensure that any killing of Annex V animals is compatible with maintaining FCS. When doubt remains in this regard, killing may not be authorised. Where conservation status is unfavourable, there is a duty to take the necessary measures to restore the population to a favourable status and keep it there.

The judgment also confirms that the general approach outlined in the Austrian case for the Annex IV regime also applies to the Annex V regime. That is to say, FCS must be ensured and assessed, first and foremost, at the "local and national level". An unfavourable status at these levels cannot be compensated for by a favourable status at the level of the transboundary population.

The main added value of the Estonian wolf judgment, however, concerns the question of how to determine in the first place whether FCS exists at the levels involved. It provides four key pieces of this important puzzle:

1) The Court makes clear that the conservation status concept of Article 1(i) of the Habitats Directive has its own logic and does not neatly overlap with the IUCN Red List methodology.
2) Crucially, the Court confirms that the "ecological function" of the species involved is an essential component of the concept. Indeed, for conservation status to count as favourable in a Member State, the species must be able to fulfil its ecological function there "fully". What this means exactly is not explained in further detail, but it does appear to raise the bar above conventional standards of population viability.
3) The Court acknowledges the importance of big-picture thinking when it comes to wide-ranging species such as wolves and other large carnivores. In particular, it affirms that a Member State may take account of immigration from population segments in neighbouring countries when determining whether a favourable conservation status exists at local and national level. The weight that may be accorded to such exchanges with transboundary populations will depend on the legal protection guaranteed in the countries concerned; the level of cooperation with those countries; and foreseeable influences on connectivity, for instance from border fences.
4) The judgment clarifies the role of "economic, social and cultural requirements and regional and local characteristics" – as mentioned in Article 2(3) of the Directive – in connection with the FCS concept. Whereas these factors will often have an influence on a species' population, range, habitat and future prospects, they may not be used to set the bar lower than what is required according to the definition in Article 1(i). In other words, the ecological standards flowing from the Directive's FCS definition are non-negotiable and may not be adjusted for reasons of 'social carrying capacity', conflict reduction and the like.

In sum, although not every question has yet been answered, the Austrian, Spanish and Estonian wolf judgments do provide competent authorities with a more concrete picture of how to operationalise the FCS concept for large carnivores.

[1] CJEU Case C-629/23, 12 June 2025.
[2] https://curia.europa.eu/juris/document/document.jsf?text=&docid=301163&pageIndex=0&doclang=FR&mode=req&dir=&occ=-first&part=1&cid=3555690