The Habitats Directive in the case law of the CJEU: case study – from Manor Farm to Animal Farm: a legal obstacle course

Hendrik Schoukens & An Cliquet
Ghent University, Belgium
Legal duties when aligning intensive pig-farming close to a Natura 2000-site with overloaded habitats and .... wolves!
Facts

1. Manor Farm - biological farming (CSA) - limited use of pesticides and 50 sheep (free-roaming)
2. Located next to Natura 2000-site - vulnerable habitats (woodlands) and species (incl. birds of prey) - recovery targets yet no concrete action, nor management plan - overload of nitrogen deposition
3. Return of wolves and beavers - strictly protected species - unfavourable conservation status
4. Animal Farm - industrial pig farm (5000 pigs) - appropriate assessment - future restoration and reduction pledges - authorization
5. Culling of wolves and beavers - damage to crops and livestock - public acceptance
Legal questions

1. The authorisation of additional nitrogen deposition in the immediate vicinity of a Natura 2000 site whose habitats are already impacted by an overload of nitrogen is not in line with Articles 6(2) and 6(3) of the Habitats Directive, seeing that the applicable conservation objectives point out that the site is already in an unfavourable conservation status and taken into account the accumulative impacts of all nearby farms on the site.

Quid?
2. The application of quantitative thresholds, such as the threshold value of 5% of the critical loads, cannot be used as a determinative factor to definitively exclude significant effects related to the nitrogen deposition generated by industrial farming.

Quid?
3. In the permit no reference to national reduction pledges - agreed upon by the farmer unions - can be taken into account as an argument to authorise additional nitrogen emissions on an already affected Natura 2000 sites. Only genuine mitigation measures, aimed at limiting the impact of harmful interventions at the source, could be taken into account in an appropriate assessment.

Quid?
Legal questions

4. The creation and/or restoration of additional habitats in the affected Natura 2000 site cannot be taken into account in an appropriate assessment when the implementation of these measures is uncertain at the time of the evaluation of the effects in light of the precautionary principle. Such action can only be considered when application is made of the derogation clause of Article 6(4) of the Habitats Directive. In any case, Article 6(4) of the Habitats Directive cannot be used as fallback option seeing that the exploitation of Animal Farm does not amount as an ‘Imperative Reason of Overriding Public Interest’ (IROPI).

Quid?
5. Habitat restoration measures which already have to be undertaken pursuant to Articles 6(1) and 6(2) of the Habitats Directive cannot be taken into account when carrying out an appropriate assessment for a new development, such as the operation of a pig farm.

Quid?
Legal questions

6. The usage of fertilizers, extraction of groundwater and grazing of cattle on pastures all qualify as ‘projects’ within the meaning of Article 6(3) of the Habitats Directive and therefore need to be taken into account when an overall assessment is carried out according to Article 6(3) of the Habitats Directive.

Quid?
7. The authorisation for the hunting of **wolves** and culling of **beavers** is not lawful in view of Article 16(1) of the Habitats Directive not restricted to those specimens which need to be killed in order to prevent damage and in addition no adequate scientific basis for its effectiveness has been put forward.

**Quid?**
8. Seeing that the wolf and beaver populations have not yet reached a *favourable conservation status* in the Netherlands, no general hunting authorisations can be granted. Also, the alleged increase of societal acceptance cannot be used as a justification ground to grant additional permit for wolf hunting.

*Quid?*