



**EUROPEAN COMMISSION**  
DIRECTORATE-GENERAL  
ENVIRONMENT  
Directorate E - Implementation & Support to Member States  
**ENV.E.1 - Mainstreaming & Environmental Assessments**  
Head of Unit

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Dear Sir,

Thank you for your letter of 10/10/2017, in which you draw our attention to the draft legislative proposal aiming to amend the Governmental Emergency Ordinance no 57/2007 on the regime of natural protected areas, conservation of natural habitats, wild flora and fauna, and you ask for the point of view of the Commission services. In that respect, we would like to provide you with the following information.

As regards Special Areas of Protection (SPAs), it is the constant case-law of the Court of Justice of the European Union (CJEU) that, although the Member States have a certain discretion with regard to the choice of the territories which are most suitable for classification as special protection areas pursuant to Article 4(1) of the directive<sup>1</sup>, *"they do not have the same discretion under Article 4(4) of that directive in modifying or reducing the extent of the areas"*<sup>2</sup>. Member States can reduce the extent of a special protection area only on exceptional grounds, which *"must correspond to a general interest which is superior to the general interest represented by the ecological objective of the directive. In that context, the interests referred to in Article 2 of the directive, namely economic and recreational requirements do not enter into consideration"*<sup>3</sup>.

As concerns Sites of Community Interest (SCIs), the fact that, on the basis of evidence of a scientific nature, an error that vitiated the relevant scientific information is made at the time of the initial classification may warrant, where appropriate, a reduction in size of a SCI<sup>4</sup>. Reducing the size of a site placed on the list of SCIs requires proof that the areas in question do not have a substantial interest in achieving the objective of the Habitat Directive both at

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<sup>1</sup>Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds.

<sup>2</sup>Case C-57/89 para. 20.

<sup>3</sup>Case C-57/89 para. 21 and 22 and C-355/90 para. 17-19.

<sup>4</sup>Case C-281/16, para. 33.

national level and EU level<sup>5</sup>. Apart from cases of scientific errors, modifications to already designated Natura 2000 sites must be warranted by natural developments in the area and must not be, in any case, a result of inadequate management of the sites. Such modifications (or declassification) must be carried out following the same procedure as that for entry in the list of the site<sup>6</sup>. A thorough evaluation of the proposed changes would be carried out by the Commission. If the modifications are justified, there should be an update of the Standard Data Form for the site concerned and the associated database and the changes will require a new Commission Decision to enter into force.

Consequently, Member States must take the measures necessary to safeguard the sites and the failure of a Member State to fulfil the obligation of protecting a particular site does not justify the declassification of that site<sup>7</sup>.

We trust that the abovementioned information will be of assistance to you. We would like to stress that the Commission services are closely monitoring the case and, if any non-compliant amendments are adopted by Romania, we will not hesitate to take all necessary measures to ensure that the obligations under EU law are respected.

Should you have further updates on the progress in adopting the legislative proposal, I would invite you keep us informed.

Yours faithfully,

*(e-signed)*

Georges Kremlis

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<sup>5</sup> Case C-281/16, para. 36.

<sup>6</sup> Case C-301/12, para. 26.

<sup>7</sup> Case C-301/12 para. 31 and 32.