

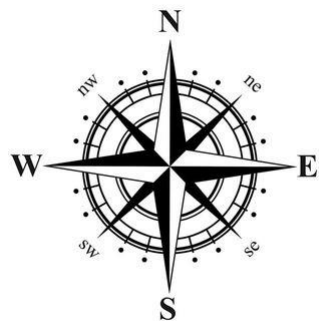
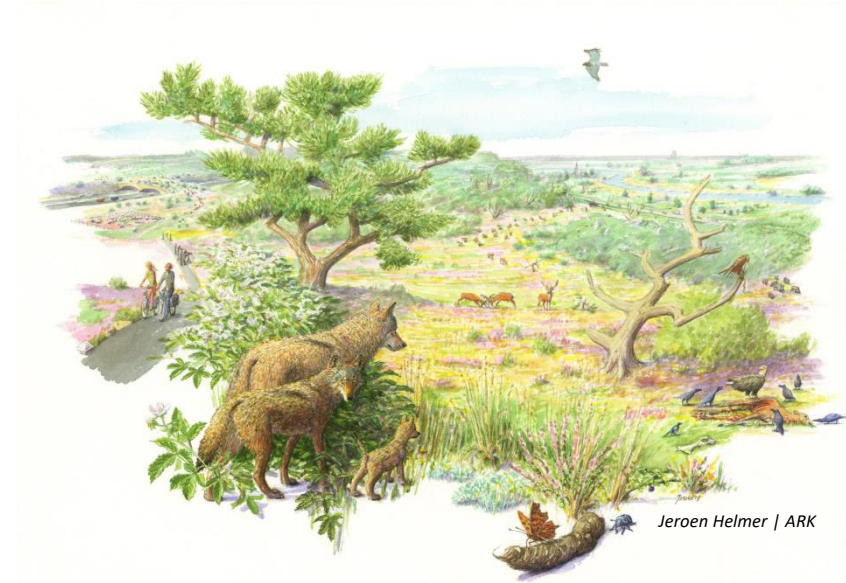
Wolves & European law



Rewilding Law Group | 1 October 2025

International & EU legal landscape

- Convention on Biological Diversity (CBD, 1992)
- Convention on European Wildlife Conservation (Bern Convention, 1979)
- **EU Habitats Directive** (HD, 1992)
- EU Nature Restoration Law (2024)
- ...



CBD Global Biodiversity Framework:

- More space for nature
- Restore ecosystems
- Human-wildlife coexistence



Key issues

- Downlisting
- Annex V regime: 'flexible protection'
- Annex II regime: Natura 2000
- Favourable conservation status (FCS)



Bern Convention



- Everywhere: ensure **population level** that “corresponds in particular to ecological, scientific and cultural requirements” (Art. 2)
- Appendix II: **special protection** – killing **prohibited** except under case-by-case derogations (Art. 6)
- Appendix III: **flexible protection** – killing **regulated** “in order to keep the populations out of danger” (Art. 7)

Wolf (2025): II -> III



Habitats Directive

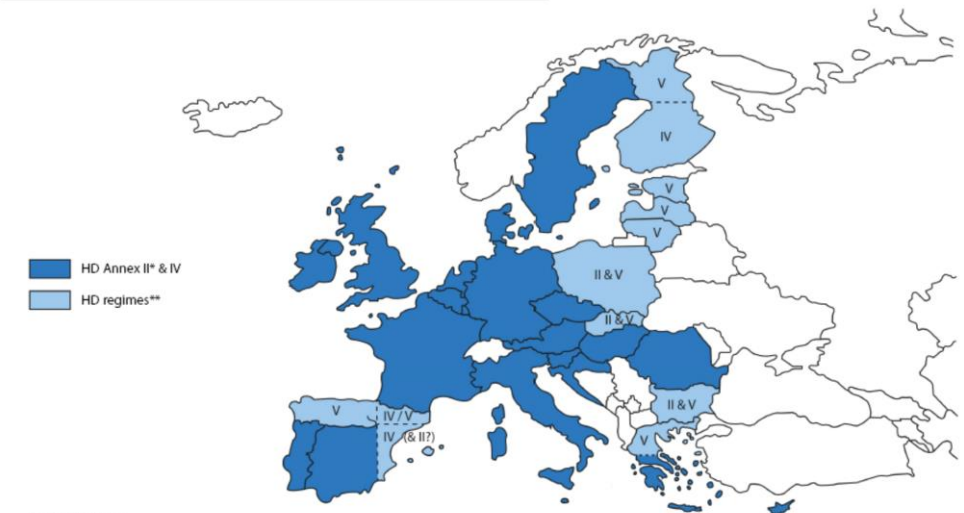


- Everywhere: **'favourable conservation status'** (FCS)
- Annex II: **protected areas** (Natura 2000)
- Annex IV: **strict protection** (\approx Bern App. II)
- Annex V: **flexible protection** (\approx Bern App. III)

Wolf (2025): II* & IV/V \rightarrow II* & V



Wolf *Canis lupus* - Habitats Directive



*priority species

**e.g. in Greece Annex V is only applicable north of the 39th parallel and Annex II and IV only south of the 39th parallel.

© Ole Neumann | Jennifer Dubrulle
IUS CARNIVORIS 2015

Wolf in Nederland is Europees succesverhaal

Het is vooral aan Brussel te danken dat het beter gaat met de wolf in Europa, betogen Arie Trouwborst en Kees Bastmeijer.

De voorhoede van de Europese wolvenopmars heeft Nederland bereikt, zoveel is duidelijk. Sinds het heengaan van de laatste Nederlandse wolf in de 19e eeuw is hier nogal wat veranderd, zoals Wim Boevink constateerde (Trouw, 11 maart). Neem het simpele feit dat de wolf die de afgelopen week door het land zwierf niet is afgeschoten. Wetgeving speelt hierbij een sleutelrol. Onder de 'Jagt en Visscherijwet 1814' werd men voor het inleveren van een dode wolf nog beloofd met een premie van, naar huidige maatstaven, 500 euro.

Nu genieten wolven juridische bescherming, vooral van Europa, via de EU Habitatrichtlijn. Die schrijft zulke bescherming voor – niet alleen voor de wolf, maar voor tal van kwetsbare soorten. Maar is dat geen doorgeschoten Europese regelzucht? Zijn wij in Nederland zelf niet in staat te bepalen of de wolf welkom is?

Effectieve bescherming

Die Europese waarborgen zijn echter juist de crux voor een effectieve bescherming. In landen waar het beleid omtrent terugkerende wolven wordt overgelaten aan een vrije nationale afweging krijgt de soort nauwelijks afweging aan de grond. Dat is zo in Noorwegen en Zwitserland, waar de Habitatrichtlijn niet geldt. De Noren beperken de nationale wolvenpopulatie al jaren tot een schamele 3 roedels, en in Zwitserland ligt het aantal wolven nog lager.

Dit staat in scherp contrast met de EU-lidstaten Zweden, Frankrijk en Duitsland. De nationale sentimenten aangaande de wolf in deze landen verschillen echt niet radicaal met die van de burens. Wel geldt hier de Habitatrichtlijn. Die laat weliswaar ruimte voor nationaal beleid waarin ook andere belangen meewegen, maar die mogen het bereiken van



De wolf deed op zijn tocht ook een industrieterrein in het Groningse Hoogezand aan. FOTO KEVIN SCHUURMAN, ANP

een gezonde wolvenpopulatie niet verhinderen. In zowel Zweden, Frankrijk als Duitsland staat de teller rond de driehonderd wolven. Er zijn maar weinig andere soorten die de toegevoegde waarde van de Habitatrichtlijn zo helder illustreren.

Dat wolven geen wildernis nodig hebben, weten we al langer. Sterker nog, de dieren lijken slechts twee eisen te stellen aan hun habitat, namelijk dat er genoeg te eten is, en dat ze niet bij elke gelegenheid op de korrel worden genomen. Desondanks vormt het dichtbevolkte Nederland een uitdaging van een kaliber waarvan de wolf zich niet eerder waagde.

Pluim voor provincies

De uitdaging voor de Nederlandse autoriteiten wordt nog vergroot door de recente decentralisatie van het nabestuurbeleid naar de provincies. De wolf legt de klauw wat dat betreft stevig op de zere plek. Het Drents bevestigd gezag had nog maar net een plan de campagne of het dier was alweer de grens over naar Groningen. Bovendien was deze eerste wolf geen

doorsnee exemplaar, vanwege een opvallend gebrek aan schuwheid. In dit licht is de beheerste wijze waarop de provinciale autoriteiten met de situatie omgingen een pluim waard.

De Europese Commissie beziet momenteel de Habitatrichtlijn aan zijn doelen beantwoordt. Mogelijk komen er pleidooien om de Europese regels af te zwakken en meer vrijheid toe te bedelen aan de lidstaten. Het bovenstaande suggereert dat zo'n afzwakking voor de onder druk staande biodiversiteit in Europa geen aanrader is. Die over de Nederlandse velden (en trottoirs) sjokkende wolf is hiervoor een krachtig symbool.



Arie Trouwborst
universitair hoofddocent milieurecht
Tilburg en lid Large Carnivore Initiative
for Europe

Kees Bastmeijer
Hoogleraar natuurbeschermings- en
waterrecht Tilburg

Wolf amendment Habitats Directive: IV → V

Criticism:

- Procedure
- Substance

Review:

- European Ombudsman: inquiry 1758/2024/FA (closed)
- Court of Justice of the EU (CJEU):
 - Pending case T-634/24
 - Future preliminary reference case(s)?



Wolf amendment Habitats Directive: IV → V

❑ Amendment procedure HD **Art. 19 bypassed**:

- Art. 19: purposeful high bar for Annex IV amendments (unanimity)
- Fitness check (2016): Directive “fit for purpose”
- CJEU (C-601/22, 2024): Art. 19 = procedure for amendment of Annexes

❑ Only move species from IV to V **where FCS is solid**:

“to comply with the precautionary principle, removal of a species” from Annex IV should happen only for member states where wolves’ “favourable conservation status is certain (that is to say, not a short-term fluctuation), and there would be reasonable evidence that the factors that caused it to have an unfavourable status no longer apply” (Advocate-General CJEU C-601/22)



Annex amendment Habitats Directive: IV → V

❑ Lack of sound **scientific basis & precaution**

Blanco & Sundseth (EC, 2023):

- “the overall impact of wolves on livestock in the EU is very small [and] no fatal wolf attacks on people have been recorded in Europe in the last 40 years”

LCIE (2024):

- proposed amendment = “premature and faulty”
- “the proposed generic downlisting of the wolf across the continent does not appear warranted”
- “deeper social conflicts that appear to be the real drivers of the present discussions over wolf management ... are unlikely to be resolved by downlisting”



Annex V – flexible protection

Obligations:

- Systematic monitoring (Art. 11)
- Ensure **favourable conservation status** (Art. 2 & 14)
- Outlaw certain means of capture & killing (Art. 15)
- (No specific prohibition to kill, capture, disturb, destroy dens; no alternatives test)

Killing wolves:

- Prohibition of killing not expressly required
- **Regulation** (and at times full **prohibition**) of killing:
 - *may* be necessary to ensure FCS
 - *is* necessary to comply with Art. 7 of Bern Convention



Annex V → Bern Convention Art. 7

(HD Annex V regime ≥ BC Appendix III regime)

“Any exploitation of wild fauna specified in Appendix III **shall be regulated** in order to keep the populations out of danger, taking into account the requirements of Article 2.

Measures to be taken **shall** include:

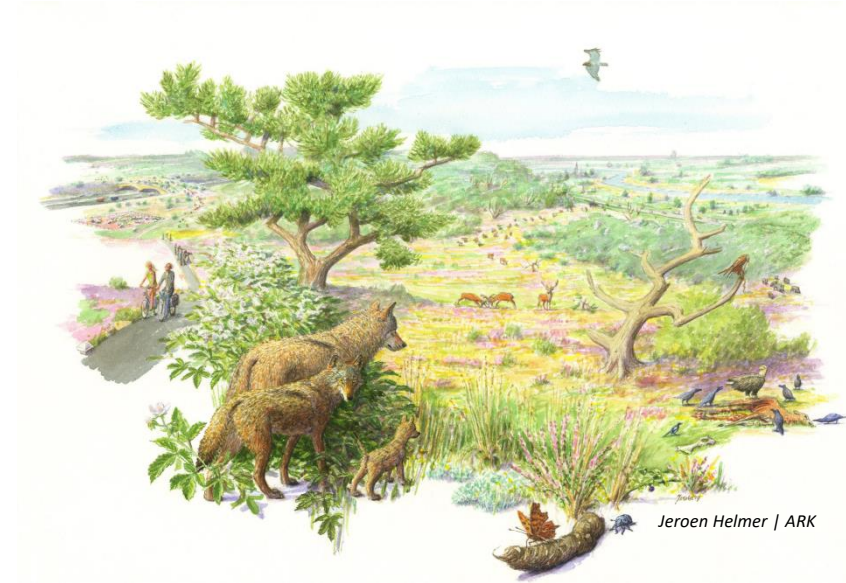
- a) closed seasons and/or other procedures regulating the exploitation;
- b) the temporary or local prohibition of exploitation, as appropriate, in order to restore satisfactory population levels”



Annex V – CJEU Spanish wolf case (C-436/22, 2024)

Killing wolves = permissible, in principle, **unless**:

- (1) monitoring inadequate;
- (2) conservation status unfavourable; or
- (3) uncertainty regarding conservation status or effect of proposed killing

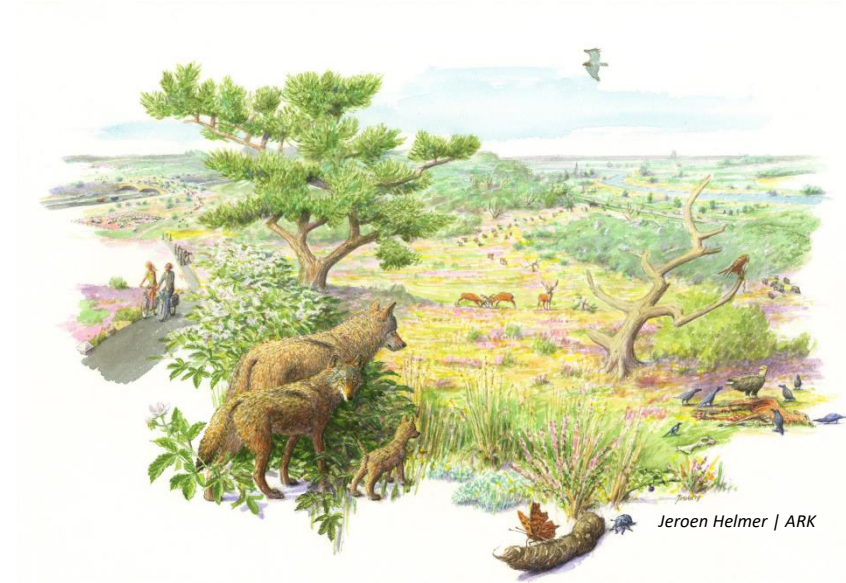


Jeroen Helmer | ARK

Annex V – CJEU Spanish wolf case (C-436/22, 2024)

Monitoring:

- member states authorizing hunting must “justify [their] decisions and provide the surveillance data on which the decisions are based”
- wolf hunting may not be allowed “if effective surveillance of its conservation status is not ensured”



Annex V – CJEU Spanish wolf case (C-436/22, 2024)

Precaution & hunting:

- “in accordance with the precautionary principle ..., if, after examining the **best scientific data available** there remains **uncertainty** as to whether the exploitation of [an Annex V species] is compatible with the maintenance of that species at a **favourable conservation status**, the Member State concerned must **refrain from authorizing** such exploitation.”



Annex II – Natura 2000

Site designation (Art. 3-5)

- Dynamic process: range expansion → new sites
- Based on ecological, not socio-economic, criteria: 'wolf-free' zones ↔ Natura 2000

Site protection (Art. 6)

- No habitat deterioration / significant disturbance
- No harmful plans or projects
- Lethal management ↔ Natura 2000



Favourable conservation status (FCS) – definition Art. 1(i)

“**Conservation status**” = “sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations”

Conservation status "**favourable**" when:

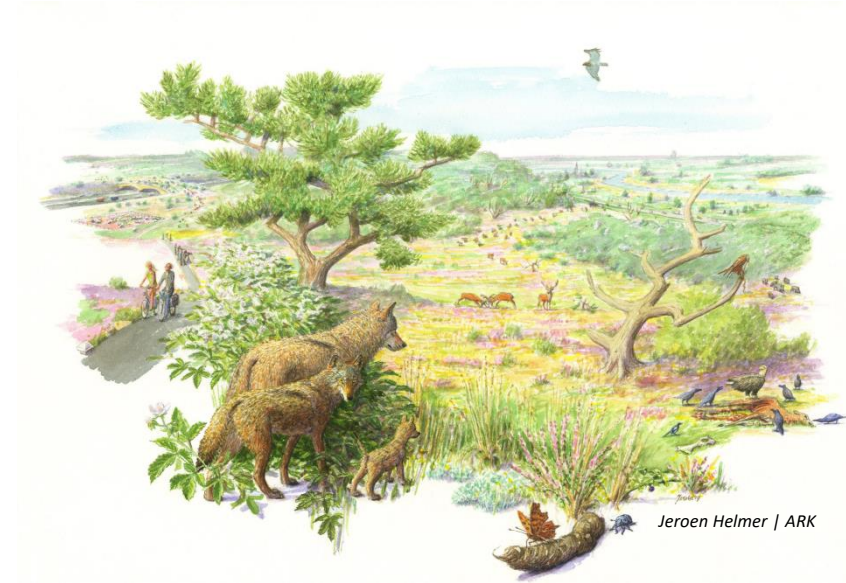
- “**population** dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and
- the natural **range** of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large **habitat** to maintain its populations on a long-term basis”



Annex V ≠ FCS

“the fact that an animal ... species ... is included in **Annex V** to the Habitats Directive **does not mean** that its conservation status must, in principle, be regarded as **favourable**”

– CJEU, C-436/22



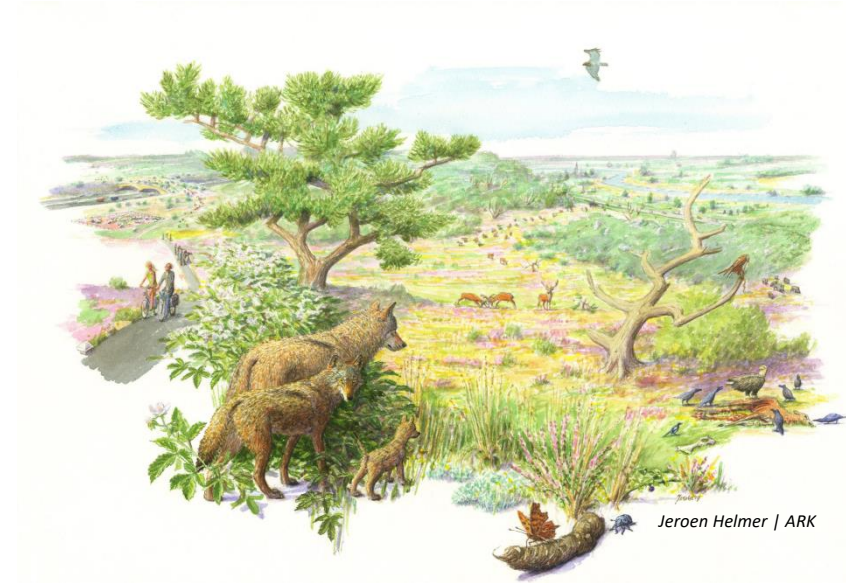
Assessing conservation status

□ At what level(s)?

- Local?
- National?
- Biogeographic zone?
- Transboundary population?

□ How?

- Demographic / genetic / ecological viability?
- Extinction risk / carrying capacity?



FCS – at what level(s)?

CJEU, Austrian wolf case (C-601/22, 2024), **Annex IV:**

- **Local &**
- **National**
- (Transboundary)

“the favourable conservation status ... must **exist** and be **assessed**, in the first place and necessarily, at **local and national level**, so that an unfavourable conservation status on the territory of a Member State or a part thereof is not hidden by the effect of an assessment carried out solely at a cross-border level ...”



FCS – at what level(s)?

“it is only when the conservation status of the animal species concerned is favourable at local and national level that the assessment may, in the second place, if the available data allow, be considered at a **cross-border level**”

–CJEU, C-601/22, 2024

“an unfavourable national status cannot be remedied through favourable status at the cross-border level”

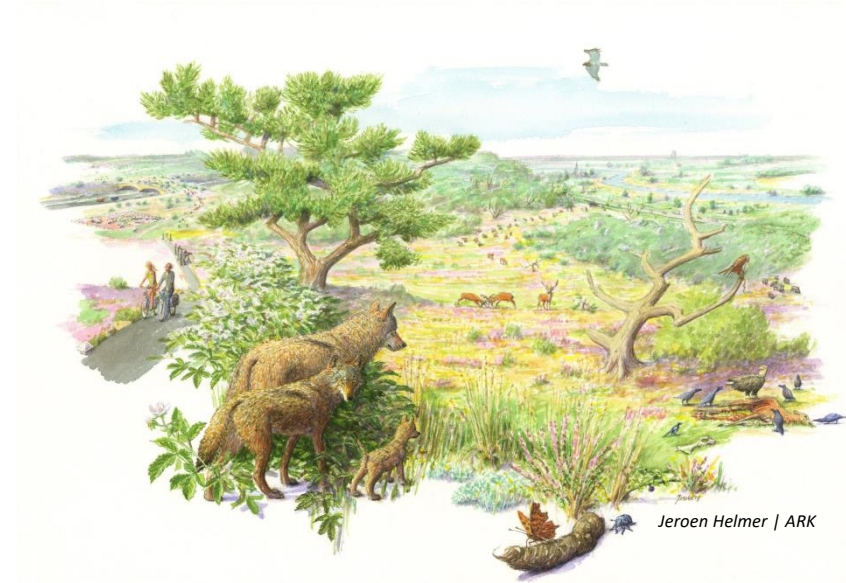
– Advocate-General CJEU, C-601/22, 2024



FCS – at what level(s)?

CJEU, Estonian wolves (C-629/23, 2025), **Annex V:**

- Refers to Austria case: FCS “in the first place and necessarily, at **local and national level**”
- “The same necessarily applies when implementing **Article 14** of the Habitats Directive.”



FCS – how to determine?

CJEU, Austrian wolves (C-601/22, 2024):

- FCS means different things at different levels

CJEU, **Estonian wolves** (C-629/23, 2025):

- Economic, social & cultural factors
- Red List methodology
- Transboundary population → FCS at local & national level
- Ecological function



Jeroen Helmer | ARK



Determining FCS – economic, social & cultural factors

Art. 2(3): “Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.”

CJEU, Estonian wolves (C-629/23, 2025):

- ESC factors can **influence** whether FCS bar is **reached**
- ESC factors have **no role** in determining height of FCS bar itself → determined exclusively by ecological requirements of Art. 1(i)



Determining FCS – Red List methodology

CJEU, Estonian wolves (C-629/23, 2025):

- FCS \neq IUCN Red List method
- Art. 1(i): own logic
- Red Lists part of assessment criteria, but not decisive
- *In casu*: wolf designation as ‘vulnerable’ on national Red List “does not, as such, preclude” that FCS exists



Determining FCS – transboundary population

CJEU, Estonian wolves (C-629/23, 2025):

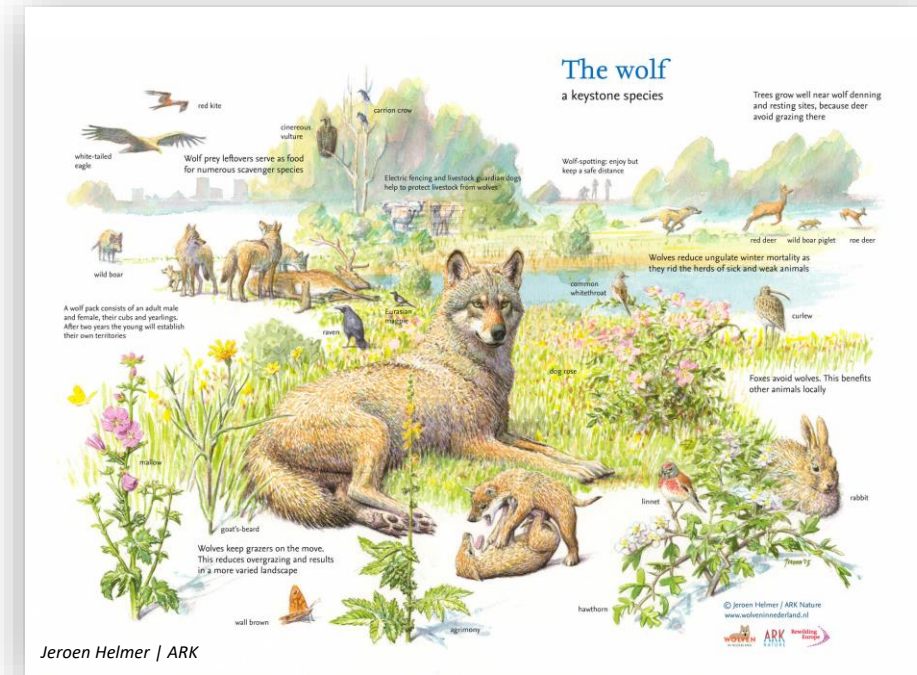
- When determining FCS at “local and national level”:
“take into consideration the **exchanges** between ... the population ... within its territory and ... populations [in] neighbouring Member States or third countries”
- Factors:
 - degree of legal protection
 - degree of cooperation
 - foreseeable influences on connectivity
- In “relatively **small Member States**” this can still “make it possible to establish that the [FCS conditions] are satisfied as regards that [national] population”



Determining FCS – ecological function

CJEU, Estonian wolves (C-629/23, 2025):

- **FCS ≈ fulfilling ecological function (“to its full extent”)**
- “As the Advocate General observed ..., if the conservation status of a species is not favourable in a Member State ..., that species cannot fulfil its **ecological function** there, or at least not to its **full extent.**”



Determining FCS – ecological function

Advocate General, Estonian wolves (C-629/23):

- “the Habitats Directive does not seek to conserve the protected species only somewhere in the European Union. Rather, according to [Art. 1(i)], each species should form a viable component of its natural habitats. In that natural habitat, the species has an ecological function.”
- Wolf → prey species
- FCS: “fulfil its ecological function ... to its full extent”



Determining FCS – ecological function

Additional arguments:

- Bern Convention: population level corresponding to “**ecological ... requirements**” (Art. 2)
- Biodiversity Convention: “restore degraded **ecosystems**” (Art. 8(f))
- Global Biodiversity Framework: restore **ecosystems** (Target 2)
- UN Decade on **Ecosystem** Restoration
- EU Nature Conservation Law: “recovery of biodiverse and resilient **ecosystems**” (Art. 1)

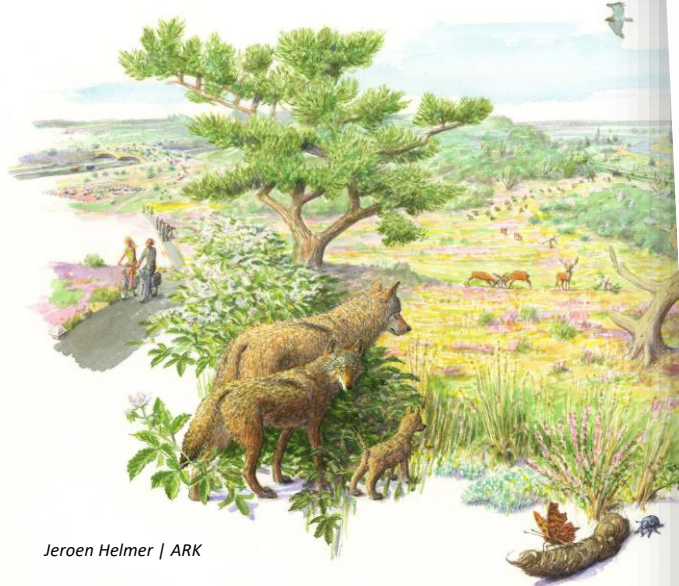


In sum

- **Amendment IV-V:** validity in doubt
- **Annex V:** not blank cheque for killing wolves
- **Annex II:** Natura 2000 sites for wolves
- **FCS:** more clarity, and some question marks
 - What does FCS at “local level” mean?
 - What does it mean for a species to “fulfil its ecological function ... to its full extent”?
 - ...



Thank you!



Jeroen Helmer | ARK



Developing methodology for setting Favourable Reference Values for large carnivores in Europe

Final version: January 2025



13 November 2024

Statement on the proposed downlisting of the wolf under the Bern Convention and the EU Habitats Directive

The Large Carnivore Initiative for Europe (LCIE)¹ hereby expresses its concern regarding the current proposal² of the European Union (EU) to move the wolf (*Canis lupus*) from Appendix II to Appendix III of the Bern Convention,³ and the associated intention to subsequently move the species from Annex IV to Annex V of the EU Habitats Directive.⁴

The LCIE does not oppose the notion of downlisting species (or populations) as such. However, the current proposal raises serious questions, *inter alia* in light of the important principle that decisions on the conservation and management of wildlife be based on sound science, not (just) on political reasons. As elaborated below, at this time, the proposed generic downlisting of the wolf across the continent does not appear warranted.

If the proposal were to be accepted by the Standing Committee of the Bern Convention, this could create a troubling precedent, potentially affecting future (down- and de-)listing decisions regarding other species.

As the Standing Committee has stressed in Recommendation No. 56 (1997), amendments of the Convention's appendices ought to take place "in a coherent manner, based on best available science."⁵

European Law Blog

On an anti-wolf mission, Commission ignores science and law

Floor Fleurke Arie Trouwborst

European Law Blog

Published on: Mar 25, 2025

DOI: https://doi.org/10.21478/9885764c_a25018f4

License: [Creative Commons Attribution-ShareAlike 4.0 International License \(CC-BY-SA 4.0\)](https://creativecommons.org/licenses/by-sa/4.0/)



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

Arie Trouwborst

Tilburg University, The Netherlands and North-West University, South Africa
Contact: a.trouwborst@tilburguniversity.edu

Introduction

In discussions on the management of large carnivores in the European Union, the Habitats Directive¹ 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 level.

The Habitats Directive sets out legal limits that authorities must respect when developing national policies affecting large carnivores, on the prevention and mitigation of restock and other property. These hard limits around national discretion have made one of the most contentious pieces of legislation [1]. They also seem to have played a part in the ongoing comeback of large carnivores [2,3].

The Directive, which dates from 1992, sits in a policy landscape. Although international

standards are generally more stable than national ones, they, too, are subject to change. A

ment was the adoption in 2022 of the Framework (GBF)² under the Convention on Biological Diversity (CBD), which sets out the objectives for biodiversity policy and lists the Balkan lynx (*Lynx lynx*) as a 2024 downlisting of the wolf under the Nature Restoration Regulation³ in 2024.

The modalities of the Habitats Directive to change as well. A case in point is the wolf's legal status by uniformly in the Directive, thus removing the strict it enjoyed until then in most Member States. Recent changes at the EU level include important are changes in interpretation particularly those forthcoming from the the Court of Justice of the EU (CJEU) mate authority when it comes to the gations are to be understood and applied

¹ 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:32019L0043-20130701>
² Global Biodiversity Framework: <https://www.cbd.int/gbf/>
³ Conservation of European Wildlife and Natural Habitats: <https://www.coe.int/en/web/bercn-convention>
⁴ 24/1991 of the European Parliament and of the Council on nature restoration and amending Regulation (EEC) No 1991/1991: https://eur-lex.europa.eu/legislation/summaries/2024/1991/1991_en

ARTIKEL

212. Gunstige staat van instandhouding: cruciale meetlat scherper in beeld na drietal Europese wolvenzaken

ARIE TROUWBORST

In het natuurbeschermingsrecht is de 'gunstige staat van instandhouding' een centraal criterium. Drie recente uitspraken van het Hof van Justitie van de EU over wolvenbeheer bieden meer duidelijkheid over twee vragen: wat groot praktisch belang: op welk(e) niveau(s), en aan de hand van welke criteria, dient de houding van soorten te worden bepaald?

'Habitatrichtlijn' is om 'bij te dragen tot van de natuurlijke diversiteit door het in Europese grondgebied van de lidstaten.' 'Zowel het Biodiversiteitsverdrag als het Verdrag van Bern zeggen hun eigen waarde' van fauna en flora, dat wil behoudens of te herstellen.'

te worden bezien tegen de achtergrond in het bredere, internationale en Europese inzake biodiversiteit. Het wereldwijde Framework (GBF) dat in 2022 de de partijen bij het Biodiversiteitsverdrag in het huidige verband relevant zijn, het ruimte geven aan ecosystemen, te herstellen van aangestaste ecosystemen van 'human-wildlife conflict' naar de Habitatrichtlijn moet tevens worden in een veelvuldige verplichting in het zelf om gedegradeerde ecosystemen

Anderde doelen en grenzen die van invloed zijn op de toepassing van de Habitatrichtlijn vloeien voort uit het Verdrag voor alle soorten een minimum populatieniveau te waarborgen dat onder meer voldoet aan 'ecologische vereisten'.⁴ 'Zowel het Biodiversiteitsverdrag als het Verdrag van Bern zeggen hun eigen waarde' van fauna en flora, dat wil behoudens of te herstellen.'

De 'staat van instandhouding van een soort' wordt in de Habitatrichtlijn gedefinieerd als 'het effect van de som van de invloeden die op de betrokken soort inwerken en op de termijn een verandering kunnen bewerkstelligen in de staat van instandhouding van de soort' op het grondgebied van de lidstaten.¹¹ Deze staat van instandhouding wordt als 'gunstig' beschouwd wanneer:

'uit populatiedynamische gegevens blijkt dat de natuurlijke habitat waarin zij voorkomen, en dat verspreidingsgebied van die soort niet kleiner wordt of binnen een aanzienlijke tijd lijkt te zullen worden, en er een voldoende grote habitat bestaat en waarschijnlijk zal blijven bestaan



BRILL NIJHOFF

JOURNAL FOR EUROPEAN ENVIRONMENTAL & PLANNING LAW 22 (2025) 364-384

JOURNAL FOR EUROPEAN ENVIRONMENTAL & PLANNING LAW
brill.com/jeeep

Rewilding and the EU Nature Restoration Law: Plotting the Course of Ecosystem Restoration in Europe

Arie Trouwborst
Professor of Nature Conservation Law, Tilburg University, Tilburg, the Netherlands; Extraordinary Professor of Law, North-West University, Potchefstroom, South Africa
a.trouwborst@tilburguniversity.edu

Received 3 October 2024 | Accepted 9 December 2024 | Published online 11 June 2025

Abstract

'Rewilding' is a form of nature restoration that prioritizes natural processes and the restoration of ecosystems.