



Legal and Practical Challenges of Implementation of NATURA 2000 Before and After Accession to EU

Algirdas Klimavičius

Head of Protected Areas Strategy division

Ministry of Environment

9 June 2016

Tbilisi



COUNCIL DIRECTIVE 92/43/EEC
of 21 May 1992
on the conservation of natural habitats and of wild fauna and flora
(OJ L 206, 22.7.1992, p. 7)

DIRECTIVE 2009/147/EC
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 30 November 2009
on the conservation of wild birds
(codified version)



Main areas of legal intervention under Birds and Habitats directives (1)

- designation of Natura 2000 ecological network (N2K sites);
- introduction of necessary conservation measures for the N2K sites;
- introduction of system of assessments of plans and projects likely to have impact on the N2K sites;
- change of territorial planning practices to ensure ecological functionality of N2K network (HD Art. 10);
- introduction of surveillance system of birds and habitats and species of Community Interest (CI) and of preparation of reports;

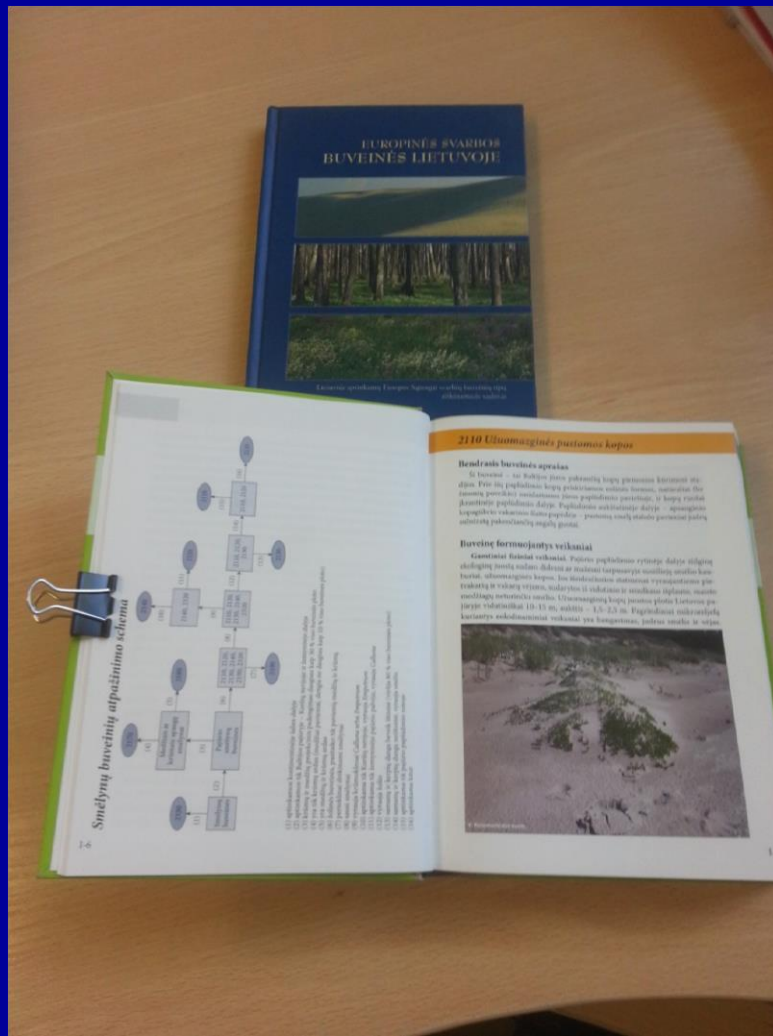


Main areas of legal intervention under Birds and Habitats directives (2)

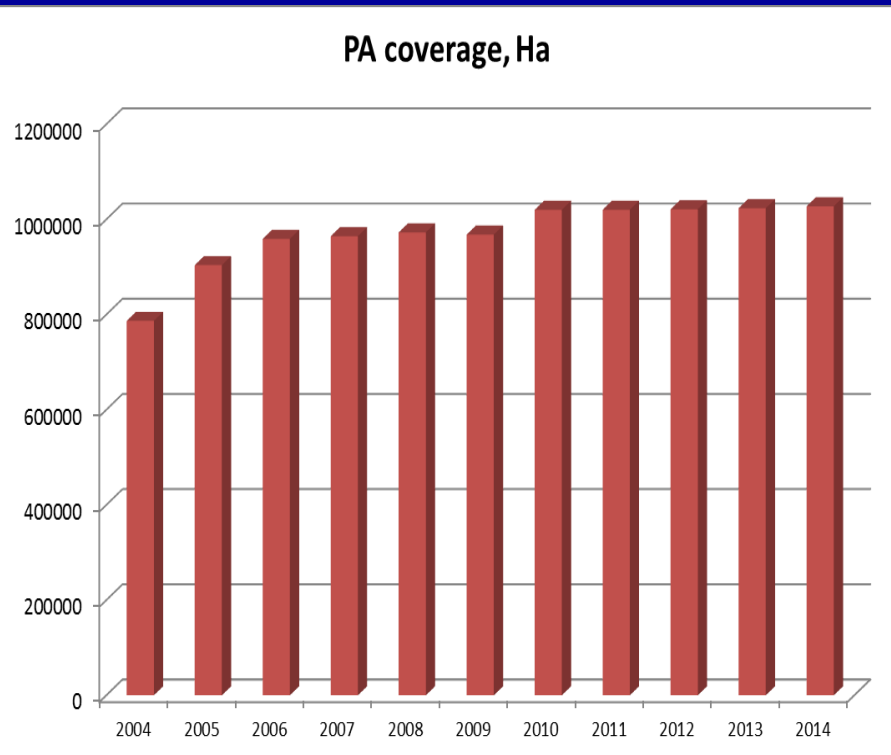
- introduction of strict protection regime for certain species of CI;
- introduction of legal system of granting exemptions from strict protection of species of CI.

The most challenging tasks: designation of N2K network

- elaboration of national Habitats Interpretation Manual;
- formulation of sites selection criteria;
- finding way of accommodation of N2K sites into national protected areas system;
- amendment of Law on Protected Areas;
- involvement of scientific community, NGO and land owners;



The most challenging tasks: designation of N2K network (2)

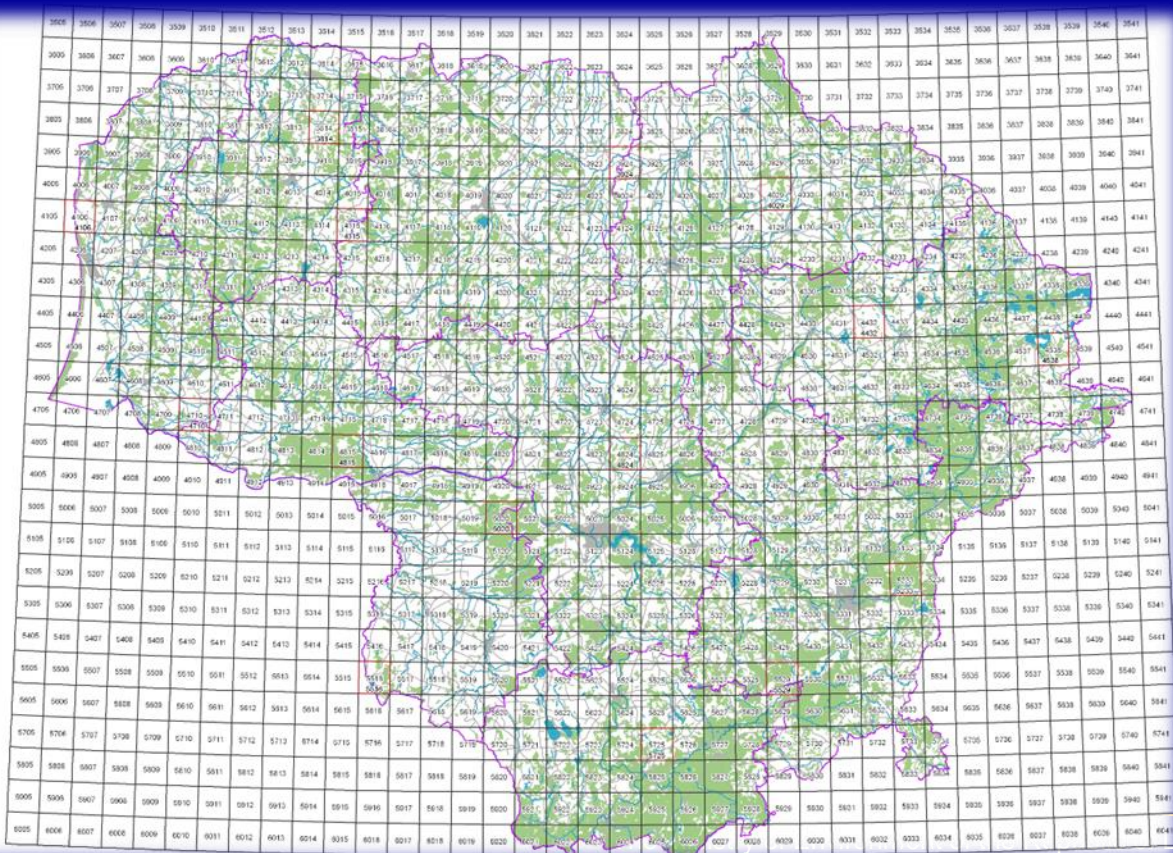


- new habitats and species to be protected; their sites of occurrence were outside national PA;
- sites selection at sea and EEZ;
- percentage of national PA has increased from 12 to 16 % (by 241 kHa);
- still, some 15 % of N2K network sites are outside national PA;
- other legal, administrative or planning instruments had to be introduced.

The most challenging tasks: designation of N2K network (3)



- need for exhaustive data on habitats and species occurrences: consider a plan for national inventory;



- learn from mistakes of others: LT undertook national inventory of natural habitats in whole country only in 2009-2014;
- expensive inventories at sea;

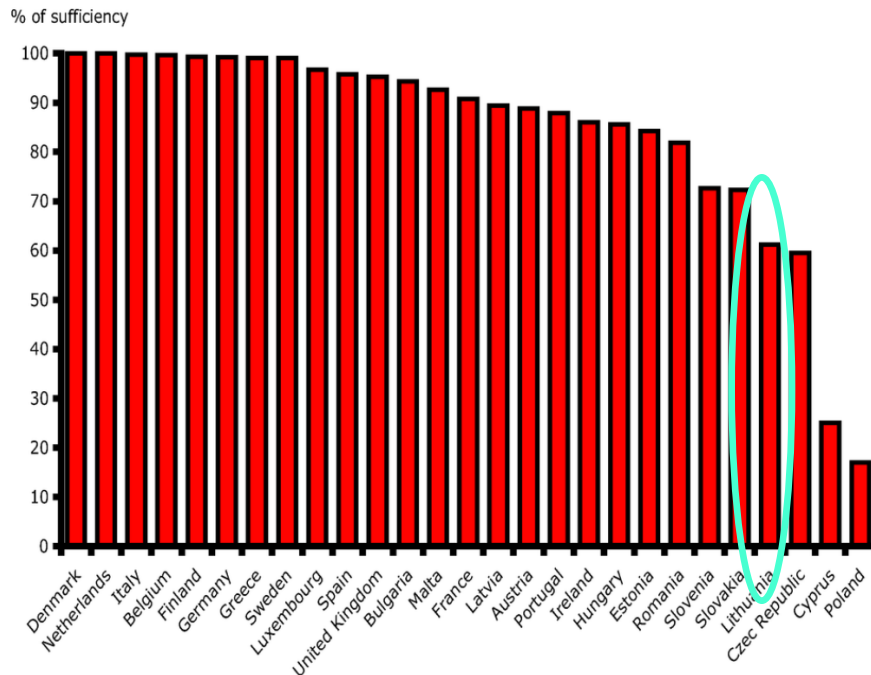
Results of national inventory of natural habitats of CI

Sutartiniai ženklai

- Smėlynų buveinės
- Vandenių buveinės
- Pievų buveinės
- Pelkių buveinės
- Olų ir atodangų buveinės
- Miškų buveinės

Designation of N2K network: evaluation of its sufficiency

Fig. 4: Sufficiency Index (State of progress by Member States in reaching sufficiency for the Habitat Directive Annex I habitats and Annex II species)



- concepts of biogeographical seminars in the EU;
- marine seminars;
- “species by species, habitat by habitat”;
- evaluation rule “20-60 % of stock”;
- evaluation rule “good geographical representation of range area”;
- strong role of scientific community and NGOs



The most challenging tasks: introduction of system of necessary conservation measures

- Three distinct obligations: 1) to establish necessary conservation measures, 2) to implement proactive measures to avoid deterioration of habitats and disturbance of species, and 3) carry out an assessment of plans and projects;
- National choice on necessary conservation measures: management plans or statutory, administrative or contractual measures;
- Very important - establishment of conservation objectives at national and site level for habitats and species of CI;



Management planning for N2K sites

- Plan is not mandatory, but broadly used in the EU countries;
- Explains conservation objectives, gives roles to stakeholders, can be referenced to while formulating decision in the processes of impact assessment;
- In LT, 235 sites (out of total 494) have already their management plans;
- Two dedicated projects for preparation of management plans were implemented.

The most challenging tasks: assessment of plans and projects



- Attentively supervised topic in the implementation of Environmental *Acquis*;
- National choice on way of implementation: separate procedure or integral part of Environmental Impact Assessment (EIA) and Strategic Impact Assessment (SIA).
- Very important aspects: “...likely to have significant effect...”
- EIA and SIA are expensive and time-consuming procedures → separate simple procedure on determination of probability and significance at initial stage;
- “Significance procedure” filters plans and projects analyzing their place and scale.



Assessment of plans and projects likely to have effect on N2K network

Guidance document on Article 6(4) of the 'Habitats Directive' 92/43/EEC

CLARIFICATION OF THE CONCEPTS OF: *ALTERNATIVE SOLUTIONS, IMPERATIVE
REASONS OF OVERRIDING PUBLIC INTEREST, COMPENSATORY MEASURES,
OVERALL COHERENCE, OPINION OF THE COMMISSION.*

January 2007

This guidance document should be read in conjunction with the booklet published by the European Commission in 2000 and entitled "Managing Natura 2000 sites. The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC". The current document intends to further develop and replace the section on Article 6(4) of this earlier publication leaflet. The document reflects the views of Commission services only and it is not of a binding nature.

Challenges in proper implementation of rules on:

- agreeing only to plans with no significant impact on sites;
- looking for alternative solutions;
- granting permission to damage site only in case of overriding public interest;
- determining obligatory compensatory measures if damage is going to be allowed;



Plans or projects approved prior to accession to the EU

- The European Court of Justice (ECJ) has repeatedly ruled out that projects which were designed and approved prior to date of implementation of the Environmental *Acquis* but not implemented have to undergo EIA procedure according the EU legislation;
- Look up for “Rospuda valley” case in Poland: 2006-2009 conflict around Augustow forest area (SPA and SAC).



The most challenging tasks: surveillance system of species and habitats

- Understanding the concept of “favourable conservation status”;
- new methodological guidance was essential;
- administrative capacity is limited, seasonal tasks;
- monitoring efforts are also needed outside N2K network;
- in LT, monitoring of natural habitats has not started yet;
- limited possibility to relay on best expert judgement while preparing implementation reports every 6 year;

Estimated financial needs and actual expenditures



In 2010, LT estimated N2K costs:

1) Investments (one-off costs) for 10 year period:

- finalization of N2K network would require 11 MEur;
- Land purchase and one-off compensation - ? MEur;
- Infrastructure – 11 MEur;

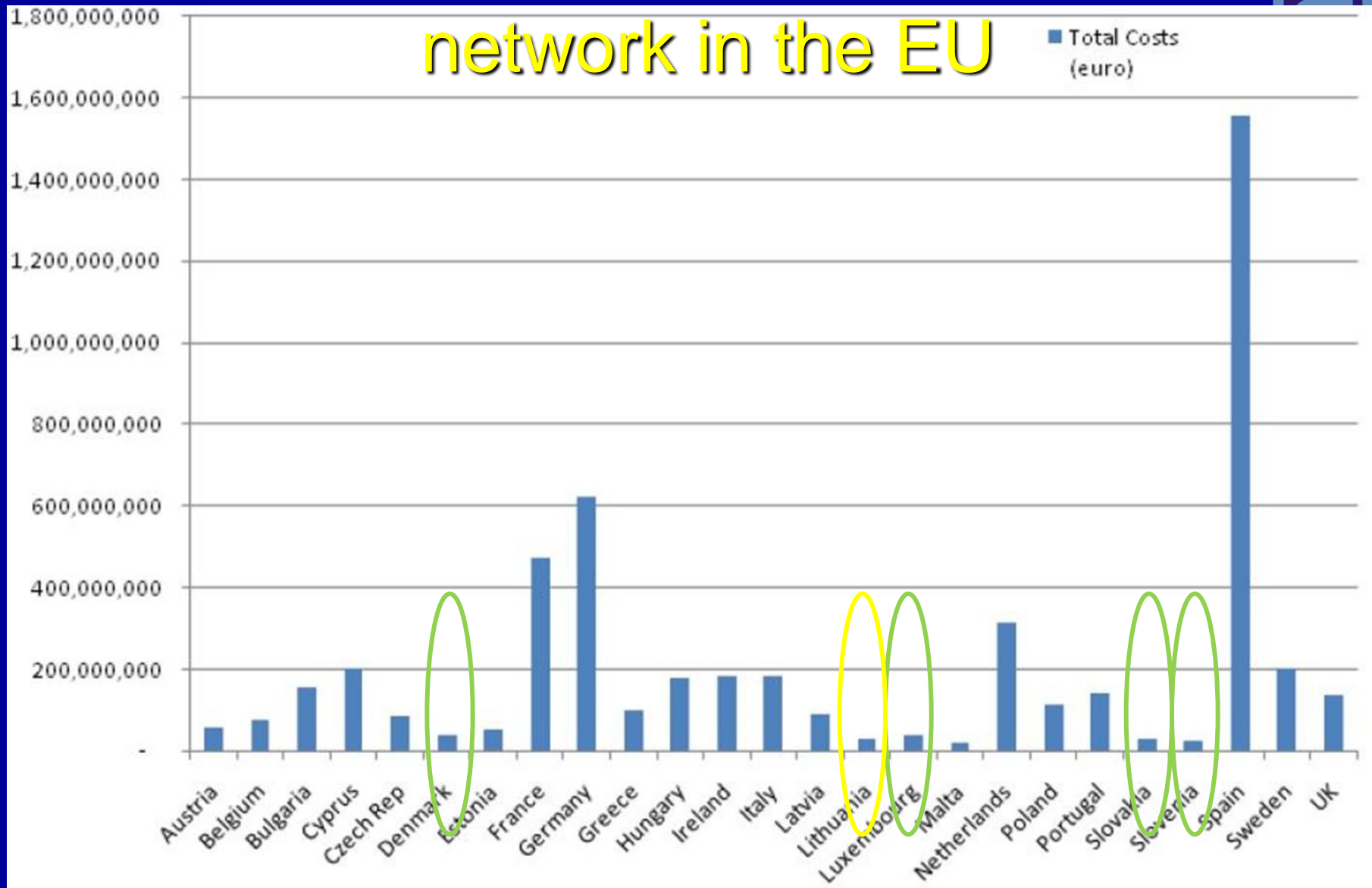
Total investments: ~ 25 MEur.

2) Recurring costs (annually):

- management planning and admin. running costs – 3 MEur;
- Habitats management – 21 MEur;
- Total annual recurring costs: 24 MEur.

Total annual costs: 28 Meur, or 36 Eur/Ha

Total annual costs for N2K network in the EU





Actual expenditures

In 2004-2015, LT has actually spent:

- 1) N2K selection and designation, habitats mapping – 6 MEur;
- 2) management planning – 1.2 MEur;
- 3) habitats management – 7.9 MEur;
- 4) conservation status surveillance 2.8 MEur.

12 years: 17.9 MEur, ~1.5 MEur annually.

NB: calculation does not include NGO sector projects.

NATURA 2000: dispelling some of the myths (1)



Myth: "The European Commission decides the sites to be included in Natura 2000"

In fact:

The responsibility for proposing sites within N2K lies first and foremost with the MS.

The HD defines three stages in the establishment of the N2K network:

- 1) each MS proposes a list of sites for their country;
- 2) on the basis of these national lists, the Commission selects, in agreement with each MS, a European list of Sites of Community Importance (SCI);
- 3) it is then the MS who must designate them as a Special Area of Conservation (SAC) within 6 year period.

The BD has only one stage. It is the MS who designate sites directly as Special Protection Areas (SPA).

NATURA 2000: dispelling some of the myths (2)



Myth: "Natura 2000 sites will all become nature reserves"

In fact:

In many cases, species or habitats of CI can only be maintained at favourable conservation status thanks to existing human activities, e.g. traditional agriculture. Nominating a site as SCI does not therefore *a priori* imply that current activities taking place within the site will have to change or stop.

MS have a choice of mechanisms to use to manage a site, they *can* be statutory (e.g. making a nature reserve) but do not *have* to be. They could just as well be done contractually (e. g. signing a management agreement with the land owner).

Maintaining species or habitats in a favourable conservation status is not necessarily incompatible with human activities. This even applies to well managed hunting.

NATURA 2000: dispelling some of the myths (3)



Myth: "Once a site is included in Natura 2000 it becomes untouchable as regards future developments"

In fact:

The HD does not *a priori* prevent any new developments within a N2K site. Art. 6 does however require that new plans or projects that are likely to have a significant effect undergo an appropriate IA before being implemented. If significant damage is expected and all possible alternatives have been exhausted, it may still go ahead but only if the project is of overriding public interest and if measures are taken elsewhere to compensate for the loss of the species or habitats affected.

NATURA 2000: dispelling some of the myths (4)



Myth: "Brussels will dictate to us what can or cannot be done in each site"

In fact:

Implementation of the HD and all the N2K network, is based on the principle of subsidiarity. It is up to the MS to decide how best to conserve the sites that are identified as being of CI.

E. g., management plans are proposed as a useful tool in determining what needs to be done on a site to keep it in FCS. These plans are site specific and give opportunities for consultations with local interest groups. Thus conservation strategy for the site can be decided together and in a spirit of cooperation and co-management.



Thank you - მადლობა !