

# Favourable conservation status: EU Court clarifies crucial yardstick for wildlife preservation and restoration in wave of wolf cases

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## Abstract

In EU biodiversity law, the ‘favourable conservation status’ of species is a central benchmark. However, the interpretation and application of this concept have been subject to notable uncertainties. Two questions of considerable practical importance stand out, namely, (1) at what level(s) and (2) in what way(s), must conservation status be assessed? Three recent judgments by the EU Court of Justice on wolf management in Austria, Estonia and Spain offer long-awaited clarity concerning several aspects of both questions. The judgments provide fresh insights concerning, inter alia, the respective roles of (i) local and national populations versus cross-border populations, (ii) ecological versus socio-economic factors and (iii) the ecological functions of species. This article explores these new insights, their broader context and their practical consequences. It finds that the Court's interpretation of the favourable conservation status concept is ambitious and pragmatic at the same time and keeps pace with developments in the broader biodiversity law and policy landscape.

## 1 | INTRODUCTION

The case law of the EU Court of Justice (CJEU) on *Canis lupus*—commonly known as wolf, or grey wolf—continues to expand. In 2024 and 2025, the Court issued three important decisions in preliminary reference procedures concerning the application of the EU Habitats Directive<sup>1</sup> to wolf management in Austria,<sup>2</sup> Spain<sup>3</sup> and Estonia.<sup>4</sup> Until recently, the wolf was covered by the strict protection regime of Annex IV of the Directive in most Member States. In 2025, the species was downlisted—controversially, and perhaps not irreversibly—to

Annex V, entailing application of a more flexible protection regime across the EU.<sup>5</sup>

The three aforementioned judgments all concern the question under what conditions Member States may authorise or undertake the killing of wolves. In the Austrian case, the Court addressed the validity and fairness of the species listing process under the Directive, as well as the interpretation of the three conditions under which a Member State may make exemptions from the prohibitions (of killing, capturing etc.) that apply with regard to strictly protected Annex IV animals under Article 12.<sup>6</sup> The modalities of killing wolves under the

<sup>1</sup>Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1992] OJ L206/7 (Habitats Directive).

<sup>2</sup>CJEU, C-601/22, 11 July 2024.

<sup>3</sup>CJEU, C-436/22, 29 July 2024.

<sup>4</sup>CJEU, C-629/23, 12 June 2025.

<sup>5</sup>In July 2025, an amendment entered into force which placed the wolf in Annex V for the entire EU. There is quite a bit to be said about this amendment, in both procedural and substantive terms, and it cannot be ruled out that the amendment will still be reversed by the CJEU, for instance in a future preliminary reference procedure. See Floor M Fleurke and Arie Trouwborst, ‘On an Anti-Wolf Mission, Commission Ignores Science and Law’ (*European Law Blog*, March 2025) <<https://doi.org/10.21428/9885764c.a25018f4>> accessed 20 December 2025.

<sup>6</sup>See Habitats Directive (n 1) art 16(1).

more flexible regime of Annex V and Article 14 were addressed in the Spanish and Estonian rulings.

The focus of this article is on the various significant new insights provided in the three wolf judgments regarding the concept of a ‘favourable conservation status’ of species.<sup>7</sup> After introducing the conservation status concept, its broader context and various questions surrounding its interpretation and application (Sections 2 and 3), the article describes and analyses the findings of the CJEU regarding the respective roles of local, national and transboundary populations (Sections 4 and 5), the role of economic, social and cultural factors in conservation status assessments (Section 6) and the role of species’ ecological function (Section 7). The article concludes with several overarching reflections (Section 8).

## 2 | FAVOURABLE CONSERVATION STATUS

The overarching aim of the Habitats Directive is to ‘contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora’ on the European territories of the Member States.<sup>8</sup> For the species of ‘Community interest’ included in its annexes, the Directive envisages the taking of measures to ‘maintain or restore’ these species ‘at favourable conservation status’.<sup>9</sup>

These goals ought to be viewed against the backdrop of developments in international and European biodiversity law at large. The principal compass towards 2030 and beyond is to be found in the Global Biodiversity Framework (GBF) that was adopted by the parties to the Biodiversity Convention (CBD) in 2022.<sup>10</sup> Relevant GBF targets include granting ecosystems more space, inter alia by protecting at least 30% of land and sea by 2030; restoring degraded ecosystems; and turning human–wildlife conflict into coexistence.<sup>11</sup> The Habitats Directive must also be read in light of a demanding ecosystem restoration obligation within the Biodiversity Convention.<sup>12</sup>

Other objectives and limits affecting the application of the Habitats Directive flow from the pan-European Bern Convention.<sup>13</sup> An example is the obligation to ensure a population level for all species

that corresponds, among other things, to ‘ecological requirements’.<sup>14</sup> Both the Biodiversity Convention and the Bern Convention recognise the ‘intrinsic value’ of fauna and flora, that is to say, the value they have in and of themselves, regardless of any utility or harmfulness to humans.<sup>15</sup>

The ‘conservation status of a species’ is defined in the Habitats Directive as ‘the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations’ in the territories of the Member States.<sup>16</sup> Conservation status is considered ‘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 habitat, 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.<sup>17</sup>

The application of these criteria concerning populations, distribution and habitat to individual species is a scientific exercise. However, which particular methods, out of all available options, are the most appropriate is something Article 1(i) does not reveal. In fact, quite a few questions have arisen regarding this provision. An important one is at what level(s) conservation status ought to be assessed and a favourable status achieved. Is it the local level, the national one, the biogeographical zone(s) involved, or for some species—such as large carnivores—perhaps (also) the (sub)population extending across more than one country?<sup>18</sup> To exemplify this, the wolf population in the Netherlands currently comprises 13 (perhaps 14) packs—wolf family units—but in a biological sense these ‘Dutch’ packs are part of the much larger Central European Lowland population, which is primarily located in Germany and western Poland.<sup>19</sup>

The next, and equally important, question is how exactly to determine conservation status at the level(s) involved. What is the most

<sup>7</sup>For brief discussions of (most of) the Court’s other findings, see Arie Trouwborst, ‘Large Carnivores and the EU Habitats Directive – Legal Obligations to Restore and Coexist’ (2025) 30 CDPnews 9; Arie Trouwborst, ‘Trapping and Re-Educating Bold Wolves in the European Union: Obligatory and Illegal at the Same Time?’ (2025) 34 RECIEL 76.

<sup>8</sup>Habitats Directive (n 1) art 2(1).

<sup>9</sup>ibid art 2(2).

<sup>10</sup>Convention on Biological Diversity (CBD or Biodiversity Convention), 1992; see CBD COP Decision 15/4, 2022.

<sup>11</sup>GBF Targets 2–4.

<sup>12</sup>CBD, art 8(f); see inter alia Arie Trouwborst and Jens-Christian Svenning, ‘Megafauna Restoration as a Legal Obligation: International Biodiversity Law and the Rehabilitation of Large Mammals in Europe’ (2022) 31 RECIEL 182.

<sup>13</sup>Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention), 1979.

<sup>14</sup>ibid art 2: ‘The Contracting Parties shall take requisite measures to maintain the population of wild flora and fauna at, or adapt it to, a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements and the needs of sub-species, varieties or forms at risk locally.’ On this provision, see also Arie Trouwborst, ‘Verdrag inzake het Behoud van Wilde Dieren en Planten en hun Natuurlijk Leefmilieu in Europa (Verdrag van Bern)’ in Kees Bastmeijer (ed), *De Europees- en Internationaalrechtelijke Status van de Waddenzee* (Boom 2024) 131, 134–137.

<sup>15</sup>See both preambles.

<sup>16</sup>Habitats Directive (n 1) art 1(i).

<sup>17</sup>ibid.

<sup>18</sup>See, e.g., Yaffa Epstein, José Vicente López-Bao and Guillaume Chapron, ‘A Legal-Ecological Understanding of Favorable Conservation Status for Species in Europe’ (2016) 9 Conserv Lett 81; Arie Trouwborst, Luigi Boitani and John DC Linnell, ‘Interpreting “Favourable Conservation Status” for Large Carnivores in Europe: How Many Are Needed and How Many Are Wanted?’ (2017) 26 Biodivers Conserv 37.

<sup>19</sup>See, e.g., Hugh AH Jansman and others, *The Return of Wolves to the Netherlands: A Fact-Finding Study* (Wageningen Environmental Research Report 3107, 2021).

appropriate point of departure for this purpose: extinction risk,<sup>20</sup> ecological carrying capacity<sup>21</sup> or perhaps both? Is Article 1(i) mainly about the demographic and/or genetic viability of populations, or also about the ecological functionality of the species in question?<sup>22</sup> Different Member States have made different choices in these respects, leading to widely diverging applications in practice, as expressed among other things in the six-yearly reports compiled by Member States under Article 17 of the Habitats Directive.<sup>23</sup>

To offer the competent authorities in the Member States some practical assistance, and to promote consistency, several technical guidance documents have been drawn up by, or for, the European Commission.<sup>24</sup> To operationalise the conservation status concept, the approaches in these documents employ so-called 'favourable reference values' for a species' population ('favourable reference population' or FRP) and range ('favourable reference range' or FRR).<sup>25</sup> These guidance documents are not legally binding, and insofar as their content has not been confirmed by the CJEU, it remains uncertain to what degree the recommended approaches are also correct in terms of European law.

In its three recent wolf decisions, the CJEU offered significantly more clarity regarding both the 'level question' and the 'how question'—while also creating one or two new questions. In the discussion of the Court's findings below, it should be borne in mind that what is applicable to wolves will not always be applicable to bats, hamsters, frogs, insects or plants. Even so, several aspects of the three wolf judgments are of definite relevance also for other species.

### 3 | A YARDSTICK OF GREAT PRACTICAL IMPORTANCE

The favourable conservation status of species is not only a central aim of the Habitats Directive but also plays a pivotal role in the specific legal regimes pertaining to the species listed in the Directive's various annexes. For instance, exceptions to the strict protection that is mandatory for Annex IV species—such as bison, brown bears, Barbastelle bats, butterflies like the dusky dark blue, dragonflies like the bulbous white-faced darter and plants like *Bencomia brachystachya*—may only

be allowed when they are compatible with the maintenance or achievement of a favourable conservation status of the population concerned.<sup>26</sup> Aside from prohibiting certain harmful activities, Member States must also actively take those measures which appear necessary to ensure a favourable conservation status.<sup>27</sup> Once a favourable conservation status has been attained for a population, it 'must be protected against any deterioration of that status'.<sup>28</sup>

For species of Annex V, safeguarding a favourable conservation status is the most important obligation,<sup>29</sup> besides ensuring adequate monitoring<sup>30</sup> and prohibiting certain means and modes of capture and killing.<sup>31</sup> Animals to which this regime of 'flexible protection' applies include Spanish moon moths, noble crayfish, golden jackals and of late also grey wolves across the EU. For such species, there is no express requirement to prohibit their killing, capture, disturbance or destruction of breeding sites and resting places. However, there is a duty to take the necessary measures to keep their populations at a favourable status or, as the case may be, to restore them to said status.<sup>32</sup>

As García-Ureta sums it up, in his handbook on European biodiversity law, the objective of maintaining or achieving a favourable conservation status 'underpins the entire normative structure of the [Habitats Directive], including Article 14'.<sup>33</sup> How important the favourable conservation status criterion in fact is for Annex V species was elucidated by the CJEU in its Spanish wolf judgment. For one thing, it follows from this ruling that a population's conservation status must always be determined on the basis of Article 1(i) and quite without regard for the particular annex(es) in which the species is listed. The Court stated in so many words that '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'.<sup>34</sup>

The Habitats Directive does not explicitly require Member States to prohibit the killing of wolves and other Annex V species. However, the regulation of such killing and, depending on the circumstances, its outright prohibition *can* still be necessary in order to ensure a favourable conservation status.<sup>35</sup> Moreover, this definitely *is* required in order to comply with Article 7 of the Bern Convention, which simultaneously applies to most species of Habitats Directive Annex V.<sup>36</sup> That provision reads as follows:

<sup>20</sup>I.e., the calculated or estimated probability that a population will disappear within a particular period of time, which is a central concept of Red Lists of Threatened Species.

<sup>21</sup>I.e., the calculated or estimated population size that can be supported by available habitat, food supply and related parameters (usually involving a certain bandwidth, in light of natural dynamics).

<sup>22</sup>Epstein and others (n 18); Trouwborst and others (n 18).

<sup>23</sup>ibid; see also Andrew J McConville and Graham M Tucker, *Review of Favourable Conservation Status and Birds Directive Article 2 Interpretation within the European Union* (Natural England Commissioned Reports No 176, 2015); Zoë van Eldik, Ralph Pessers and Janien van der Gref-van Rossum, *Favourable Reference Values and Nature Conservation Objectives across the EU* (Wageningen Environmental Research Report 3352, 2024).

<sup>24</sup>E.g., DG Environment, *Reporting under Article 17 of the Habitats Directive: Explanatory Notes and Guidelines for the Period 2013–2018* (European Commission 2017); DG Environment, *Reporting under Article 17 of the Habitats Directive: Guidelines on Concepts and Definitions* (European Commission 2023); John DC Linnell and Luigi Boitani, *Developing Methodology for Setting Favourable Reference Values for Large Carnivores in Europe* (Large Carnivore Initiative for Europe & Istituto di Ecologia Applicata 2025).

<sup>25</sup>ibid.

<sup>26</sup>Habitats Directive (n 1) art 16(1).

<sup>27</sup>E.g., CJEU, C-183/05, 11 January 2007.

<sup>28</sup>CJEU, C-601/22, para 44.

<sup>29</sup>Habitats Directive (n 1) arts 14 and 2(2).

<sup>30</sup>ibid art 11.

<sup>31</sup>ibid art 15.

<sup>32</sup>E.g., CJEU, C-436/22, para 69; C-629/23, para 41.

<sup>33</sup>Agustín García-Ureta, *EU Biodiversity Law: Wild Birds and Habitats Directives* (2nd revised edn, Europa Law Publishing 2025) 453.

<sup>34</sup>CJEU, C-436/22, para 50.

<sup>35</sup>Habitats Directive (n 1) art 14(1): 'If, in the light of the surveillance provided for in Article 11, Member States deem it necessary, they shall take measures to ensure that the taking in the wild of specimens of species of wild fauna and flora listed in Annex V as well as their exploitation is compatible with their being maintained at a favourable conservation status.'

<sup>36</sup>Bern Convention (n 13) art 7 and Appendix III. Given that both the EU itself and the 27 Member States are parties to the Convention, the protection of species within the EU may be stricter than required under the Convention (see the Convention's art 12), but it may not be more lenient.

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.<sup>37</sup>

The corresponding Article 14 of the Habitats Directive covers not only the ‘exploitation’ of the species involved—a term that is reminiscent of hunting and other forms of utilisation—but also the ‘taking’ of specimens. The latter term would appear to comprise all forms of killing and capture, regardless of their purpose. This would include, for instance, the killing of wolves for damage prevention or human safety reasons.

From the Spanish judgment, it follows that the killing of wolves under the Annex V regime is permissible in principle, as long as such killing is demonstrably compatible with the maintenance of a favourable conservation status. Killing may not be allowed when the monitoring of the population is not up to par or when uncertainty remains as to the effect of killing on the population's conservation status. As regards the duty to monitor imposed by Article 11 of the Habitats Directive, Member States that allow wolf hunting, or the taking of other Annex V species, must ‘justify [their] decisions and provide the surveillance data on which the decisions are based’.<sup>38</sup> As a reliable insight into the population's conservation status is of the essence in this connection, ‘a species cannot be ... hunted if effective surveillance of its conservation status is not ensured’.<sup>39</sup>

Under Article 14, Member States have ‘some discretion’ as regards the measures they can or must take with regard to Annex V species.<sup>40</sup> This discretion, however, is ‘limited by the obligation to ensure that the taking in the wild of specimens of a species and their exploitation are compatible with that species’ being maintained at a favourable conservation status’.<sup>41</sup> Killing wolves and other Annex V species while their conservation status is *not* favourable will therefore often be problematic:

where an animal species has an unfavourable conservation status, ... the competent authorities must ... take measures within the meaning of Article 14 of the Habitats Directive in order to improve the conservation status of the species in such a way that, in future, its populations are sustainably maintained at a favourable status. The restriction or prohibition of hunting following the determination of the unfavourable

conservation status of that species may then be regarded as being a measure necessary to restore its favourable conservation status.<sup>42</sup>

It is apt to recall in this connection that the CJEU, in two Finnish wolf cases dating from 2007 and 2019, has already established that the killing of one or a few animals may exceptionally be authorised even at an unfavourable conservation status, when the effect of such killing is demonstrably ‘neutral’ in the sense that it will not worsen conservation status or hinder the achievement of a favourable status.<sup>43</sup> At the same time, the Court has consistently acknowledged the importance of the precautionary principle<sup>44</sup> in its relevant case law. As the Spanish wolf ruling confirms, in case of doubt regarding a population's conservation status or the impact of hunting activities thereon, such activities must not be permitted:

in accordance with the precautionary principle ..., if, after examining the best scientific data available, there remains uncertainty as to whether the exploitation of a species ... is compatible with the maintenance of that species at a favourable conservation status, the Member State concerned must refrain from authorising such exploitation.<sup>45</sup>

Incidentally, as the CJEU confirmed in its Austrian wolf judgment, a similar conclusion applies in the context of derogations from strict protection under the Annex IV regime.<sup>46</sup> All of this goes to underline the significance of a good understanding of the meaning of the ‘favourable conservation status’ concept as such.

#### 4 | FAVOURABLE STATUS REQUIRED AT ‘LOCAL AND NATIONAL LEVEL’

In the Austrian judgment, the CJEU provided several clear and notable answers to the big ‘level question’. The judgment unambiguously spells out that, in the context of derogations from strict protection, the impacts on conservation status of killing one or more wolves must primarily be assessed ‘at local and national level’ and that assessing the impacts of such killing at ‘cross-border level’ may make it harder rather than easier to meet the associated criterion from Article 16 of the Directive.<sup>47</sup> The Estonian judgment subsequently confirmed that the same approach applies with respect to the obligation to ensure a

<sup>42</sup>ibid para 69; this was confirmed in the Estonian case, C-629/23, para 41.

<sup>43</sup>CJEU, C-342/05, 14 June 2007, para 29; CJEU, C-674/17, 10 October 2019, para 68.

These cases concerned the Annex IV regime of strict protection, so it stands to reason that the exception also applies under the Annex V regime.

<sup>44</sup>See Treaty on the Functioning of the European Union (TFEU), 1957, art 191(2).

<sup>45</sup>CJEU, C-436/22, para 72.

<sup>46</sup>CJEU, C-601/22, para 64: ‘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 populations ... at a favourable conservation status, the Member State must refrain from granting or implementing that derogation’; see also CJEU, C-674/17, 10 October 2019, para 66.

<sup>47</sup>CJEU, C-601/22, paras 47–66.

<sup>37</sup>Bern Convention (n 13) art 7 (emphasis added).

<sup>38</sup>CJEU, C-436/22, para 62.

<sup>39</sup>ibid para 59.

<sup>40</sup>ibid para 53.

<sup>41</sup>ibid para 55.

favourable conservation status under the flexible protection regime of Annex V.<sup>48</sup>

In the Austrian case, the Court was asked to what extent transboundary wolf populations—that is, wolves in countries neighbouring Austria—may be taken into account when assessing the expected impact of an envisaged derogation under Article 16. The answer is that the role of the transboundary population in this context is relatively limited and that the decisive levels of assessment—both when assessing conservation status as such and when determining the impact of killing thereon—are the ‘level of the local and national territory’<sup>49</sup> of the Member State involved:

the favourable conservation status of the animal species concerned 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 which would show that that species is at a favourable conservation status.<sup>50</sup>

An assessment at the level of the transboundary population of which the ‘national’ wolves, biologically speaking, form a part is merely an optional next step and cannot replace the pivotal assessment at local and national level:

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.<sup>51</sup>

Indeed, the Court clarifies that taking the cross-border population into account will not necessarily make it easier to permit exceptions from strict protection—contrary to what has often been presumed or proposed.<sup>52</sup> The opposite can even be the case.<sup>53</sup> An example is the scenario wherein conservation status is favourable at local and national level, but killing one or more wolves in a transboundary pack is nevertheless off-limits because of an unfavourable conservation status in the neighbouring country concerned.<sup>54</sup>

In sum, when conservation status at local and national level is favourable, killing wolves could still be forbidden in light of the cross-border situation. Conversely, in the words of Advocate-General Capeta, an ‘unfavourable national status cannot be remedied through favourable status at the cross-border level’.<sup>55</sup>

## 5 | TAKING TRANSBOUNDARY WILDLIFE MOVEMENTS INTO ACCOUNT

The confirmation, in the Austrian wolf case, that the ‘local’ and ‘national’ levels are those that count ostensibly indicates that a ‘favourable conservation status’ can mean different things at different levels. In the case itself, this concerned the wolf populations ‘at the level of the Province of Tyrol and at national level’.<sup>56</sup> The Advocate-General in this case also referred to the local level as the ‘local Alpine population in Tyrol’.<sup>57</sup> The Province of Tyrol covers about 12,000 km<sup>2</sup>. In its second Finnish wolf judgment, the CJEU had already taken an even more detailed approach, apparently equating the ‘level of the territory of a local population’<sup>58</sup> with the ‘level of the territory of a local pack’.<sup>59</sup> The size of a wolf pack territory normally ranges between 80 and 400 km<sup>2</sup>.<sup>60</sup>

The Austrian judgment still left uncertainty regarding the ‘how question’—that is, the question what concrete criteria may or must be used by Member States when determining whether a (wolf) population is at a favourable conservation status at local and national level. It should be noted in this regard that one piece of this puzzle had already been provided in, again, the second Finnish wolf case. There, the Court clarified that to ensure a favourable conservation status effectively means ‘to ensure the long-term preservation of the *dynamics* and *social stability* of the species in question’.<sup>61</sup>

At any rate, the Court’s answers in the Austrian case clearly indicate that concluding and implementing international agreements at the level of transboundary populations (‘population level management plans’)—as recommended for large carnivores by the European Commission<sup>62</sup> and the Bern Convention’s Standing Committee<sup>63</sup>—does *not* entail a subsequent shift of the level of conservation status assessment to the transboundary population. International cooperation is not a ‘silver bullet’ in that sense.

Nonetheless, the Austrian judgment did not preclude the possibility that population segments across the border may yet have a role to play when determining conservation status *at local or national level*. In that regard, international ‘population level management plans’ might still make it easier (or possible at all) to meet the conditions of a favourable conservation status, especially in smaller Member States such as Estonia, Slovenia, Denmark and the Benelux countries. There is, after all, a big difference between the viability of a tiny national population that is completely isolated and the viability of an equally tiny national population that is an integral part of a robust, large population extending beyond the borders, from which fresh blood is

<sup>48</sup>CJEU, C-629/23, paras 47–48.

<sup>49</sup>CJEU, C-601/22, para 66.

<sup>50</sup>CJEU, C-601/22, para 57; repeated in CJEU, C-629/23, para 47.

<sup>51</sup>CJEU, C-601/22, para 58.

<sup>52</sup>See, e.g., John DC Linnell, Valeria Salvatori and Luigi Boitani, *Guidelines for Population-Level Management Plans for Large Carnivores* (LCIE Report for European Commission 2008); Trouwborst and others (n 18).

<sup>53</sup>CJEU, C-601/22, para 58.

<sup>54</sup>Advocate-General Capeta, C-601/22, 18 January 2024, paras 84–86.

<sup>55</sup>*ibid* para 73; the Court explicitly refers to this paragraph, in para 57 of the judgment.

<sup>56</sup>CJEU, C-601/22, para 65.

<sup>57</sup>Advocate-General Capeta, C-601/22, para 82.

<sup>58</sup>CJEU, C-674/17, para 59.

<sup>59</sup>Advocate-General Saugmandsgaard, C-674/17, 8 May 2019, para 83 (to which the Court refers in para 59 of the judgment).

<sup>60</sup>Jansman and others (n 19) 76–77.

<sup>61</sup>CJEU, C-674/17, para 57 (emphasis added).

<sup>62</sup>European Commission, *Note to the Guidelines for Population Level Management Plans for Large Carnivores in Europe* (ENV.B.2 D/14591, 2008).

<sup>63</sup>Recommendation No. 137 (2008) on Population Level Management of Large Carnivore Populations.

flowing in on a frequent basis.<sup>64</sup> Building on the above assumption, a guidance document that was recently produced for the European Commission contains concrete suggestions to operationalise such an approach.<sup>65</sup>

A similar line of reasoning was taken by the CJEU in its Estonian wolf judgment. When assessing conservation status at ‘local and national level’, the Court explained, a Member State may, in principle, ‘take into consideration the exchanges between, on the one hand, the population of the species concerned present within its territory and, on the other, the populations of that species present in the neighbouring Member States or third countries’.<sup>66</sup> In ‘relatively small Member States’, this can still ‘make it possible to establish that the three cumulative conditions’ for a conservation status to be taken as favourable *sensu* Article 1(i) ‘are satisfied as regards that [national] population’.<sup>67</sup> In other words, the Habitats Directive does not demand something from such smaller countries that is physically or biologically impossible—such as independently housing a number of wolf packs for which there would simply be no place on the territory even in the most favourable scenarios. To illustrate, according to current insights, around 500 wolf packs are needed in a population for it to be deemed viable.<sup>68</sup>

To determine the weight to be accorded in conservation status assessments to transboundary wolf traffic or cross-border exchanges of other listed species, Member States ‘must take into account’ three factors, namely, (1) ‘any foreseeable and probable change capable of affecting those exchanges’, such as border fences and other influences on connectivity, (2) ‘the level of legal protection guaranteed by [the] other Member States and third countries’ in question and (3) ‘the extent to which the respective competent authorities are cooperating’.<sup>69</sup> In light of these factors, and the third in particular, transboundary population level management plans still seem capable of adding significant value in the present context.

## 6 | ECONOMIC, SOCIAL AND CULTURAL FACTORS

A second aspect addressed in the Estonian wolf judgment, which is also of considerable practical consequence, is the role of Article 2(3) of the Habitats Directive. This provision states the following:

Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.<sup>70</sup>

The CJEU acknowledges that such requirements and characteristics can be ‘part of the influences acting on the species’ and can therefore be ‘relevant for the purpose of establishing whether or not the conservation status of a species ... is favourable within the meaning of Article 1(i)’.<sup>71</sup> However, the species’ conservation status ‘cannot be taken as favourable owing to those requirements and characteristics if the three cumulative conditions laid down in ... Article 1(i) are not satisfied’.<sup>72</sup>

What a favourable conservation status as such entails is thus *exclusively* determined by the criteria from Article 1(i). In other words, the economic, social and cultural factors and other local circumstances mentioned in Article 2(3) can exert an influence on whether or not the bar of a favourable conservation status is *reached* in a Member State, but they are not allowed to lower or otherwise influence that bar *itself*. The bar and its height are the exclusive domain of the ecological requirements enumerated in Article 1(i). Clearly, these findings have significant ramifications for Member States which have hitherto assigned a role of sorts to economic, social and/or cultural interests when determining favourable reference values.<sup>73</sup>

To apply this to wolves, the Court has now made clear that the parameters needed to meet the criteria of Article 1(i), such as the required range and number of packs, may not be adjusted downwards with a view to factors such as ‘social carrying capacity’—that is, the level of acceptance of wolves among the human public—or damage prevention policy targets. There is thus a strong parallel between the Court’s logic in this area and its (in)famous case law on the selection of Natura 2000 sites, which Member States must also base *exclusively* on ecological factors, and not on socio-economic considerations and the like.<sup>74</sup>

A third aspect that was clarified in the Estonian wolf case concerns the relevance of Red Lists and their associated methodology, as employed by the International Union for Conservation of Nature (IUCN). According to the judgment, the Red List methodology differs from the approach that must be applied under Article 1(i) of the Habitats Directive.<sup>75</sup> On the one hand, ‘the data, criteria and assessments leading to the classification of a species on the IUCN Red List’ are also ‘likely to form part of the scientific data which the Member State concerned must take into consideration for the purposes of its own assessment’ under Article 1(i).<sup>76</sup> On the other hand, the inclusion of a species in a Red List—in *casu* this concerned a classification of the wolf as ‘vulnerable’ on the national Estonian Red List—‘does not, as such, preclude the conservation status of that species, within the territory of the Member State concerned, from still being taken as favourable if the cumulative conditions laid down in ... Article 1(i) ... are satisfied’.<sup>77</sup>

<sup>64</sup>Linnell and others (n 52).

<sup>65</sup>Linnell and Boitani (n 24).

<sup>66</sup>CJEU, C-629/23, para 66.

<sup>67</sup>*ibid* para 55.

<sup>68</sup>Joachim Mergeay and others, ‘Estimating the Effective Size of European Wolf Populations’ (2024) 17 *Evol Appl* art e70021.

<sup>69</sup>CJEU, C-629/23, para 66.

<sup>70</sup>Habitats Directive (n 1) art 2(3).

<sup>71</sup>CJEU, C-629/23, para 68.

<sup>72</sup>*ibid* para 71.

<sup>73</sup>See, e.g., Van Eldik (n 23).

<sup>74</sup>E.g., CJEU, C-3/96, 19 May 1998.

<sup>75</sup>CJEU, C-629/23, para 50.

<sup>76</sup>*ibid* para 51.

<sup>77</sup>*ibid*.

## 7 | THE ECOLOGICAL FUNCTION OF THE SPECIES

A fourth and final finding of the CJEU in the Estonian wolf case, which is again of considerable importance, concerns the weight to be accorded within the logic of Article 1(i) to the role(s) played by the species involved within the bigger ecological scheme. The Court asserted the following in this regard:

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.<sup>78</sup>

Put another way, a favourable conservation status presupposes that a species can fulfil its ecological function—to ‘its full extent’, no less. In her advice to the Court, Advocate-General Kokott had indeed explicitly linked the concept of a favourable conservation status with ecological function:

the Habitats Directive does not seek to conserve the protected species only somewhere in the European Union. Rather, according to the first indent of the second sentence of Article 1(i) ..., each species should form a viable component of its natural habitats. In that natural habitat, the species has an ecological function.<sup>79</sup>

Kokott then drew attention to the function of the wolf, especially its influence as a ‘large carnivore’ on prey populations, with ensuing benefits for natural habitats such as forests.<sup>80</sup> ‘Direct control of such species by humans’, as in deer hunting, is ‘merely a makeshift solution, which is often less effective for various reasons’, Kokott observed.<sup>81</sup> This was followed by the statement that was later confirmed by the Court itself: ‘If the conservation status of a species is not favourable in a Member State, it cannot fulfil its ecological function there, or at least not to its full extent.’<sup>82</sup>

Ecologists and legal scholars had already argued more than once that the criterion in question from Article 1(i)—that the species must be and remain a ‘viable component of its natural habitat’—requires its distribution and densities to be such that the species can adequately perform its role in the ecosystems in which it occurs.<sup>83</sup> Short of this, the reasoning goes, conservation status cannot be deemed favourable. In 2016, Yaffa Epstein and colleagues phrased it as follows:

The relevant clause of the Directive does not emphasise that the species is just demographically viable as

an isolated entity, but instead the role the species plays in the ecosystem of which it is a part, even though having a viable role naturally requires being first a viable entity. That a species must remain a ‘component’ of its habitat implies ecological functionality in addition to demographic viability. ... The language of the Directive indicates ... that ecological viability, which considers interactions among species and between a species and its habitat is the more appropriate interpretation for this particular clause. The challenge is to quantify when the strength of trophic interactions makes a species ecologically functional.<sup>84</sup>

This reasoning now appears to have been confirmed by the CJEU. What it means precisely for a species to ‘fulfil its ecological function’—indeed, ‘to its full extent’—is not explained in the judgment. Determining this for each species therefore remains a ‘challenge’, as Epstein *cum suis* put it. In many instances, this challenge is likely to be a rather complicated one, not least because of the significant influences humans exercise on the functioning of ecosystems in Europe.<sup>85</sup> What *does* seem clear is that the bar is located considerably higher than what would be required by conventional standards concerning ‘minimum viable populations’ (MVP), as favourable conservation status is clearly not just linked to extinction risk but also to carrying capacity.

For the wolf, the Court’s formula in the Estonian judgment may be taken to imply the premise that wherever there are substantial populations of wild prey animals—such as roe deer, fallow deer, red deer, moose, ibex, wild boar, bison, beavers or ‘rewilded’ herbivores such as horses, cattle and water buffaloes (acting as ecological substitutes for vanished wild species)—there ought, in principle, to be wolves as well. In other words, all the most suitable areas ought to be occupied. Habitat suitability analyses can help determine (and predict) what these areas are. To provide an illustration, a model study has mapped the most suitable areas for wolves in the Netherlands, based on the occurrence of wild ungulates and forest cover.<sup>86</sup> On the basis of this analysis, the study estimates that there is room for 23–56 wolf packs in the country.<sup>87</sup> These parameters could thus be viewed as favourable reference values providing concrete indicators of what a favourable conservation status means for wolves in this Member State—and precisely that was the conclusion of a study commissioned by the Dutch authorities to answer this question.<sup>88</sup>

<sup>84</sup> *ibid* (emphasis in original).

<sup>85</sup> Trouwborst and others (n 18); for a fascinating discussion of this question with regard to the wolf, see Diederik PJ Kuijper and others, ‘Wolves Recolonize Novel Ecosystems Leading to Novel Interactions’ (2024) 61 *J Appl Ecol* 906.

<sup>86</sup> Lars Biersteker and others, *Habitatgeschiktheid voor de Wolf in Nederland – een Modelanalyse* (Wageningen Environmental Research Report 3350, 2024).

<sup>87</sup> *ibid*.

<sup>88</sup> Fabrice GWA Ottburg and others, *Favourable Reference Values for the Wolf in the Netherlands: Population Size and Range in accordance with the Habitats Directive* (Wageningen Environmental Research Report 3458, 2025).

<sup>78</sup> *ibid* para 48.

<sup>79</sup> Advocate-General Kokott, C-629/23, 12 December 2024, para 37.

<sup>80</sup> *ibid* para 38.

<sup>81</sup> *ibid*.

<sup>82</sup> *ibid* para 39.

<sup>83</sup> E.g., Epstein and others (n 18) 83.

It should be borne in mind that a proper understanding of the EU Court's ecological function criterion must accommodate the fact that under the logic of the Annex V regime there is, in principle, a place for a degree of wolf hunting. In light of the above, it stands to reason that any such hunting would primarily be authorised outside of the aforementioned most suitable areas. Inside them, if the killing of any wolves is authorised at all, it would be for the Member State concerned to demonstrate that this killing does not impair the ability of the local wolf population to fulfil its ecological function to its full extent. 'If, after examining the best scientific data available, there remains uncertainty' as to whether this is the case, 'the Member State concerned must refrain from authorising' such killing, to cite the Spanish judgment again.<sup>89</sup> Needless to say, where areas have been designated as Natura 2000 sites for the species, any authorisations to kill wolves in or around these sites would also need to conform with the obligations flowing from Article 6 of the Habitats Directive.

At any rate, the attention for ecological functionality in the Estonian case aligns well with the broader landscape of international and European biodiversity law and policy, sketched above, including the already mentioned Article 8(f) of the CBD and Article 2 of the Bern Convention. The latter provision, for example, can be read as an obligation to ensure that the numbers, densities and distributions of species are such that they can adequately fulfil their ecological functions.<sup>90</sup> According to the CBD, an 'ecosystem' is a 'dynamic complex of plant, animal and micro-organism communities and their non-living environment *interacting* as a *functional unit*'.<sup>91</sup> Also of relevance is the definition of a favourable conservation status in the Bonn Convention on Migratory Species (CMS),<sup>92</sup> which is quite similar to the one provided in Article 1(i) of the Habitats Directive. According to the Convention, the conservation status of a species is favourable when, among other things, 'the migratory species is maintaining itself on a long-term basis as a viable component of its *ecosystems*'.<sup>93</sup>

The focus in this wider law and policy landscape appears to be shifting more and more from individual species to the ecosystems encompassing them, as part of a growing realisation that the most promising way forward consists of creating more space for nature and reviving ecosystems, *inter alia* by restoring populations of (keystone) species. As indicated before, ecosystem restoration is a central GBF target, and the current decade is the 'United Nations Decade on Ecosystem Restoration'.<sup>94</sup> Likewise, the new EU Nature Restoration Law has as an overarching objective to contribute to the 'long-term and sustained recovery of biodiverse and resilient *ecosystems*' across the EU.<sup>95</sup> The wolf and other species are viewed as parts and parcels of

the well-functioning, dynamic ecosystems for which the Nature Restoration Law ultimately aims.<sup>96</sup>

## 8 | CONCLUSION: COMBINING AMBITION AND PRAGMATISM

The three latest wolf rulings of the CJEU have removed or diminished several important question marks concerning the interpretation and application of the 'favourable conservation status' concept. Some question marks have been replaced by new ones. All in all, the Court's canine triptych has rendered a sharper image of the Habitats Directive's central benchmark. The following is an attempt to capture the result in a few key terms and messages.

- **Ambition.** The 'favourable conservation status' of species is not a meagre objective. It is not (merely) about saving populations from extinction, but about flourishing nature, in which each species is given ample opportunity to 'fulfil its ecological function'.
- **Priorities.** Favourable conservation status is an ecological concept. It embodies certain minimum standards of an ecological nature, which may not be lowered or compromised because of economic, social or cultural factors.
- **Accountability.** Conservation status must be assessed, and be(come) favourable, at 'local and national level'. Member States are thus expected to do their own homework, and not to shift responsibility to their neighbours.
- **Realism.** At the same time, nothing impossible is being asked. When determining and maintaining or improving conservation status, Member States may take account of exchanges between populations within their national borders and beyond.
- **Science.** When verifying and safeguarding species' conservation status, Member States must base their assessments and decisions on the best scientific information available. Adequate monitoring of populations is of the essence in this regard.
- **Precaution.** The killing of wildlife involved is difficult to reconcile with the Habitats Directive when conservation status is demonstrably unfavourable, but not only then. Also in cases of uncertainty about a population's conservation status, or the effect of killing thereon, Member States will often be required to refrain from authorising or conducting such killing. To capture the essence of the precautionary principle: *in dubio pro natura*.

With ecological characteristics differing from one species to the next, a customised approach is called for when operationalising the various requirements outlined above. For the wolf, and its continued return to (parts of) Member States from which it had been previously expelled, the new insights flowing from the CJEU's recent case law—especially the Estonia judgment—appear to be consequential. In particular, those insights appear to support the assumption that wolves must, in

<sup>89</sup>CJEU, C-436/22, para 72.

<sup>90</sup>Chris W Backes and others, *Natuur in de Omgevingswet* (Boom 2024) 336; Trouwborst (n 14) 135.

<sup>91</sup>CBD, art 2 (emphasis added).

<sup>92</sup>Convention on the Conservation of Migratory Species of Wild Animals (CMS), 1979.

<sup>93</sup>*ibid* art 1(1)(c)(a) (emphasis added).

<sup>94</sup>Resolution 73/248 of the UN General Assembly, 2019.

<sup>95</sup>Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 [2024] OJ L1991/1 (Nature Restoration Law), art 1(1)(a) (emphasis added).

<sup>96</sup>*ibid* art 3(1); see also Arie Trouwborst, 'Rewilding and the EU Nature Restoration Law: Plotting the Course of Ecosystem Restoration in Europe' (2025) 22 JEEPL 364.

principle, be allowed to settle wherever the presence of wild prey populations invites them to do so. This squares with the Court's emphasis, in the Austrian case, on human-wolf coexistence as overarching aspiration, and the associated task of 'wolf-proofing' livestock farming practices rather than striving for 'wolf-free' zones.<sup>97</sup>

Altogether, the Court's case law appears to be in step with the prevailing scientific and policy consensus that turning the tide of the current ecological crises requires societal adjustments that are radical—'transformative change'<sup>98</sup>—but certainly not impossible.<sup>99</sup>

#### DATA AVAILABILITY STATEMENT

Data sharing is not applicable to this article as no datasets were generated or analysed during the current study.

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**How to cite this article:** Trouwborst A. Favourable conservation status: EU Court clarifies crucial yardstick for wildlife preservation and restoration in wave of wolf cases. *RECIEL*. 2026;1-9. doi:[10.1111/reel.70036](https://doi.org/10.1111/reel.70036)

<sup>97</sup>CJEU, C-601/22, paras 81–83; see also Arie Trouwborst, 'Wolves Not Welcome? Zoning for Large Carnivore Conservation and Management Under the Bern Convention and EU Habitats Directive' (2018) 27 *RECIEL* 306.

<sup>98</sup>IPBES, *Summary for Policymakers of the Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services* (IPBES/7/10/Add.1, 2019), 27.

<sup>99</sup>For a more elaborate exploration of the role of biodiversity law in this broader context, see Arie Trouwborst, 'The Serengeti Rules and the Untold Value of Fellow Earthlings: Wildlife Law in an Era of Ecological Emergency, Eye-Opening Science, and Maturing Morality' (2024) 27 *JIWLP* 74.