



EU legislation on nature protection

1. Invasive alien species
2. Forest
3. Nature restoration



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This presentation will cover there 3 legal regimes and highlights from EU case law.

A strong regulation in the case of invasive species.

A less strong regulation on nature restoration, the controversies are known and will be discussed.

In the case of forest protection, the subsidiarity principle leads to a patchwork of legislation accross the EU.

Invasive



Ice plant (*Carpobrotus edulis*)



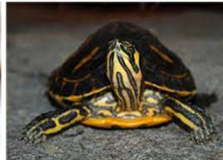
Pampas grass (*Cortaderia selloana*)



Water hyacinth (*Eichhornia crassipes*)



Parakeet (*Psittacula kramera*)



Yellow-bellied slider (*Trachemys scripta*)



Siberian chipmunk (*Tamias sibiricus*)



Common carp (*Cyprinus carpio*)



Red swamp crayfish (*Procambarus darkii*)



Raccoon (*Procyon lotor*)



Harlequin ladybird (*Harmonia axyridis*)



Spanish slug (*Arion vulgaris*)



Yellow-legged hornet (*Vespa velutina nigrithorax*)

alien species

There is an EU regulation regarding this topic, there is no transposition required.

Most invasive species are not ugly. They are introduced for aesthetic purposes and then spread causing problems.

Invasive alien species: concept

- Alien species are any live specimen of a species, subspecies or lower taxon of animals, plants, fungi or micro-organisms introduced outside its natural range.

There needs to be a human introduction of a species, outside of its natural habitat.

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- Hybrid species, which carry a mix of the genetic features of the native and the alien species, variety or breed, can be highly harmful in case the hybrids survive, are viable and subsequently reproduce. Therefore, hybrids are treated as invasive.

Hybrid species are particularly dangerous for biodiversity. They sometimes combine features from 2 species. For example hybrid wolves do not fear humans, combining the strength of a wolf with dog features.

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- Some are characterized by outstanding esthetical features.
- Some alien species that were introduced for ornamental purposes (the ice plant, the pampas grass, the water hyacinth)



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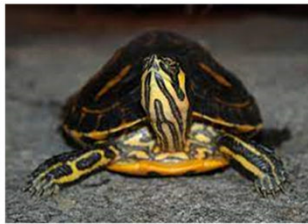
Pampas grass (*Cortaderia selloana*)

Water hyacinth (*Eichhornia crassipes*)

Pampas grass covers the rivers and result in the death of fish.

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- Ex. the Rose-ringed parakeet, the yellow-bellied slider, the Siberian chipmunk



Rose-ringed parakeet (*Psittacula kramera*) Yellow-bellied slider (*Trachemys scripta*) Siberian chipmunk (*Tamias sibiricus*)

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Common carp (*Cyprinus carpio*)



Red swamp crayfish (*Procambarus clarkii*)

They were introduced for eating. The rivers in Portugal are full of carp.

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Common carp (*Cyprinus carpio*)



Red swamp crayfish (*Procambarus clarkii*)

- to be farmed for their fur (the racoon), or to be used as an agent for bio control in agriculture (the harlequin ladybird).



Raccoon (*Procyon lotor*)



Harlequin ladybird (*Harmonia axyridis*)

- Other alien species were unintentionally introduced through horticultural plants (the Spanish slug) or in products imported from distant origins (the yellow-legged hornet).

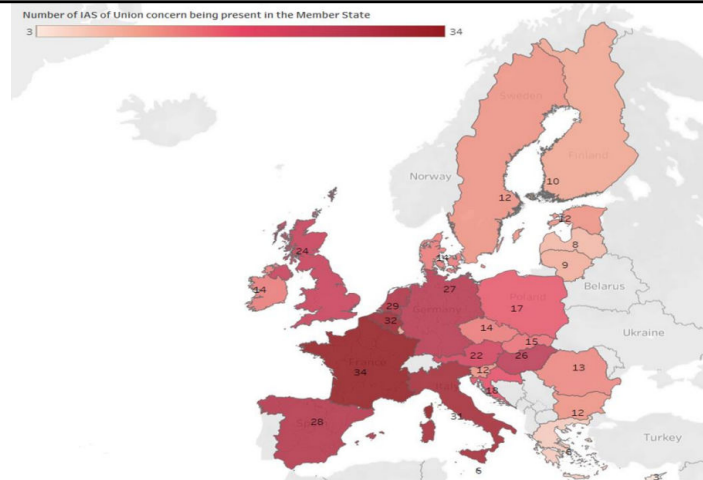


Spanish slug (*Arion vulgaris*)



Yellow-legged hornet (*Vespa velutina nigrithorax*)

Alien invasive species in the EU



invasive alien species are strictly regulated

88

animal species of Union concern

47

plant species of Union concern

41

Different levels of concern. Portugal, for example, did not report on them.

► **B**

COMMISSION IMPLEMENTING REGULATION (EU) 2016/1141

of 13 July 2016

adopting a list of invasive alien species of Union concern pursuant to Regulation (EU) No 1143/2014 of the European Parliament and of the Council

(OJ L 189, 14.7.2016, p. 4)

Amended by:

					Official Journal		
					No	page	date
► <u>M1</u>	Commission Implementing Regulation (EU) 2017/1263 of 12 July 2017				L 182	37	13.7.2017
► <u>M2</u>	Commission Implementing Regulation (EU) 2019/1262 of 25 July 2019				L 199	1	26.7.2019
► <u>M3</u>	Commission Implementing Regulation (EU) 2022/1203 of 12 July 2022				L 186	10	13.7.2022

The north Atlantic sea is full of fish that come from tropical and subtropical regions. They move north because of the rise of water temperatures. These big fish are a threat to other fish.

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Does not apply to:

species that change their natural range without human intervention (ex. changing ecological conditions and climate change),
species covered by other specific regulation, such as genetically modified organisms, micro-organisms manufactured or
imported for use in plant protection products or for use in biocidal products etc.

Amended by:

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This is the list of species that are considered as invasive.

**REGULATION (EU) No 1143/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 22 October 2014
on the prevention and management of the introduction and spread of invasive alien species**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Prevention of spreading of alien invasive species

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- These activities are prohibited even within "contained holding" (confined in enclosed facilities from where escape or spread is not possible).

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- For animal species they should be spared any avoidable pain, distress or suffering, without compromising the effectiveness of the management measures.

Shooting with guns, chemical eradication and other means can be used.
Suffering of animal species must be avoided.

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- notified other Member States and the Commission where there is a significant risk of spreading, (where appropriate, jointly agreed management measures shall be adopted).

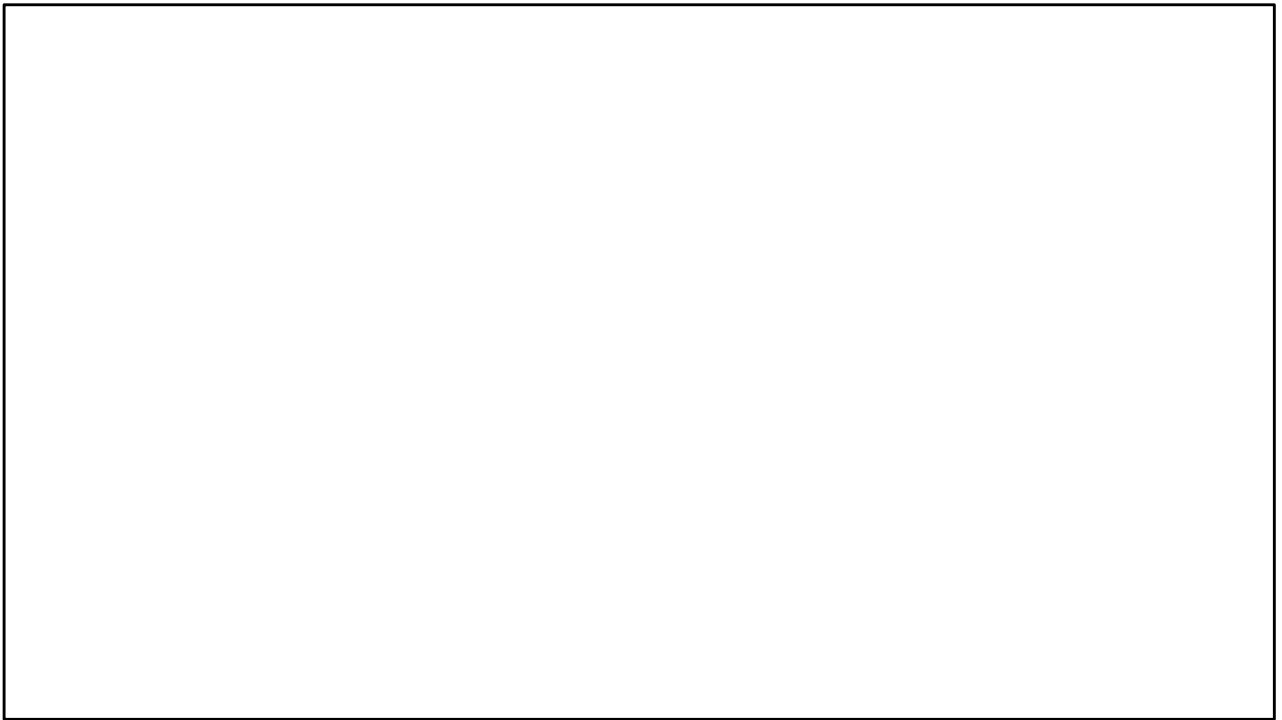
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- **Adopt appropriate restoration measures to assist the recovery of an ecosystem that has been degraded, damaged, or destroyed by invasive alien species of Union concern.**

After eradication the habitats and species must be restored.

Exceptions

- A) Research activities
- B) Scientific production for medicinal use for the benefit of human health
- Other activities may be permitted subject to authorization by the Commission, justified by reasons of compelling public interest, including those of a social or economic nature.

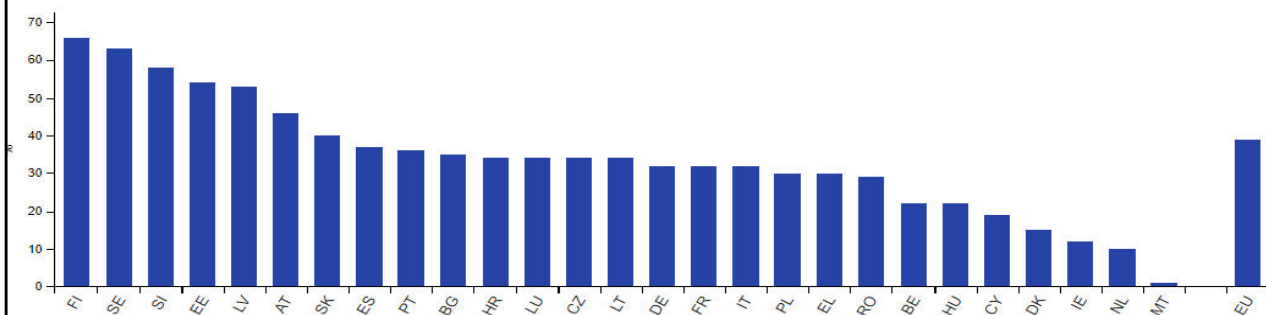




Forest ecosystems represent a very large percentage of EU terrestrial ecosystems.

Forest ecosystems

Forests are the most extensive land-based ecosystem type.
Forests represent ~ 39% of the total land area in the Eu in average.



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- Biodiversity support, (megafauna, microbiodiversity, avifauna, pollinators).
- Role in science and education, recreation and mental wellbeing
- Cultural identity of a country or region.

There is a market for the different materials that the forest provides. Renovation of soils can only happen only if humans do not clean the forest. Cultural ecosystem services are very different among communities. They are non-extractive benefits. They are very much connected to the identity of communities.



Brussels, 16.7.2021
COM(2021) 572 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

New EU Forest Strategy for 2030

{SWD(2021) 651 final} - {SWD(2021) 652 final}

It is surprising that the EU does not have a Regulation or a Directive.

Member States fought against the adoption of such secondary legislation. There is a strategy adopted in 2021 and is valid until 2030.

New EU Forest Strategy for 2030

Measures for strengthening forest protection and restoration.

Measures to improve the monitoring and effective decentralised planning.

Measures to ensure resilient forest ecosystems

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Measures to enhance sustainable forest management,
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Measures to boost the non-wood forest economy (including ecotourism).

Measures for innovation and release of new materials and products to replace fossil-based counterparts.

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Measures to enable forests to deliver on their multifunctional role.

Properly managed forests can support the shift to a circular and bio-based economy.

Funghi now have a great market. An example of this is truffles.

EU Biodiversity Strategy for 2030: “Bringing nature back into our lives”

Roadmap for the implementation of the pledge to plant at least 3 billion additional trees by 2030



Principle:
planting and growing the right tree in the right place and for the right purpose.

This is repeated in the Nature Restoration Regulation. This has been criticised by ENGOS, planting trees cannot be indiscriminate.

Indirect forest protection

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- The import and acquisition by European consumers of forest related products obtained using unsustainable practices in third countries in other regions in the world, is another cause of deforestation world wide.
- The European region must contribute to the protection and sustainable management of forests worldwide.



This is an important aspect. In Europe we consume many wood products which destroys the forest without us being conscious.

EUDR: Deforestation-free products regulation: Regulation 2023/1115 of 31 May 2023

New legal framework to reduce the European forest consumption footprint. Regulation on the placing on the Union market of certain commodities and products associated with deforestation and forest degradation.



Examples of products: cattle, cocoa, coffee, rubber, palm oil, soy and wood. This is why in 2023 the Regulation was adopted for Deforestation-free products. This makes the EU have an extra-territorial effect.

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Applies to:

Products or commodities like cattle, cocoa, coffee, palm oil, rubber, soya and wood must demonstrate that are deforestation-free, produced in line with the relevant legislation in the country of production



Producers are obliged to demonstrate due diligence:

Documents and data which demonstrate that the relevant products comply with the legislation of the country of production on:

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- environmental protection;
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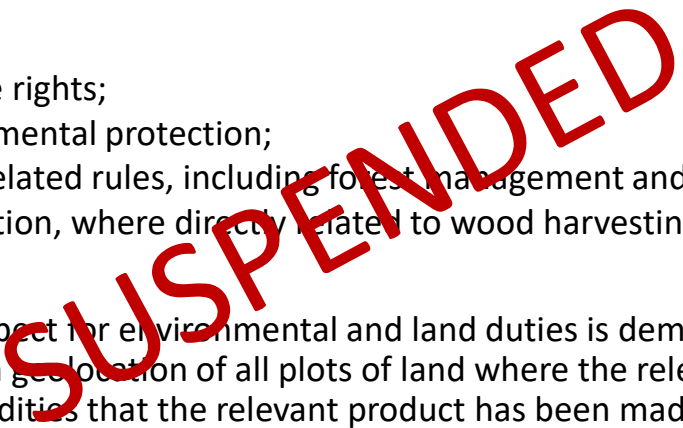
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This Regulation was accused as being neo-colonial and has been suspended.





It is a Regulation that was adopted last June. We have seen the proposal being watered down during the negotiations. The political pressure from farmers mellowed the ambitions. The obligations are softer than intended.



2024/1991

29.7.2024

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Obligations for any type of ecosystems.

CHAPTER II

RESTORATION TARGETS AND OBLIGATIONS

- Article 4 Restoration of terrestrial, coastal and freshwater ecosystems
- Article 5 Restoration of marine ecosystems
- Article 6 Energy from renewable sources
- Article 7 National defence
- Article 8 Restoration of urban ecosystems
- Article 9 Restoration of the natural connectivity of rivers and natural functions of the related floodplains
- Article 10 Restoration of pollinator populations
- Article 11 Restoration of agricultural ecosystems
- Article 12 Restoration of forest ecosystems
- Article 13 Planting three billion additional trees

CHAPTER III NATIONAL RESTORATION PLANS

- Article 14 Preparation of the national restoration plans
- Article 15 Content of the national restoration plan
- Article 16 Submission of the draft national restoration plan
- Article 17 Assessment of the national restoration plan
- Article 18 Coordination of restoration measures in marine ecosystems
- Article 19 Review of the national restoration plan

CHAPTER IV MONITORING AND REPORTING

- Article 20 Monitoring
- Article 21 Reporting
- CHAPTER V DELEGATED AND IMPLEMENTING ACTS
- Article 22 Amendment of Annexes
- Article 23 Exercise of the delegation
- Article 24 Committee procedure
- CHAPTER VI FINAL PROVISIONS
- Article 25 Amendment to Regulation (EU) 2022/869
- Article 26 Review
- Article 27 Temporary suspension
- Article 28 Entry into force

Which are the main tasks of the MS?

- **From 18/08/2024 onwards:**
- ensure no net loss in the total national area of urban green space and of urban tree canopy cover in urban ecosystem areas (art 8/1)
- determine and map urban ecosystem areas as referred to in Article 8 for all national cities and towns and suburbs (art 14/4)
- monitor the conditions, areas, indicators and trends mentioned in article 20.

- **Until 19/08/2025** – develop complementary methodology to monitor high-diversity landscape such as buffer strips, hedgerows, individual or groups of trees, tree rows, field margins, patches, ditches, streams, small wetlands, terraces, cairns, stonewalls, small ponds and cultural features. (art 14/7)

- **Until 01/09/2026** – draft the national restoration plans (NRP) including (art 16):
 - the identification of the diversity of situations in various regions related to social, economic and cultural requirements, regional and local characteristics and population density;
 - the specific situation of the Union's outermost regions, such as their remoteness, insularity, small size, difficult topography and climate, as well as their rich biodiversity and the associated costs for protecting and restoring their ecosystems
- **Until 01/09/2027** – publish the National Restoration Plan (art 17/ and 17/6)

- **After the publication of the National Restoration Plan** – measures to prevent significant deterioration of areas where the terrestrial, coastal and freshwater habitat types occur and which are in good condition or are necessary to meet the restoration targets (art. 4/13, art 5/10, (art 15/3 h)

This is an ongoing obligation. Member States are moving and trying to present their plans by 2026.

- **After any restoration measures** - ensure the continuous improvement in the condition of the habitats (natural and species).(art 4/11 art 5/9)
- Put in place a system of compensatory measures whenever significant deterioration occurs (art 15/3 g) i)
- **Until 2030** - restore 30% (art 4/1)
- **Until 2040** - restore 60% (art 4/1)
- **Until 2050** - restore 90% (art 4/1)
- **Until 30/06/2032** - Revise NRP
- **Until 30/06/2042** – Revise NRP



Jurisprudance

The role of the national courts in the effectiveness of nature protection law

The national courts may be asked:

- to judge the correct application of nature conservation law,
- to appreciate the transposition the European directives,
- to check the designation of Natura 2000 sites in the national territory (adequate number of sites, suitable area covered, consideration of ecological corridors),
- to scrutinize the nature protection objectives defined at the national level,
- to assess the suitability of the nature protection areas and management strategies,
- to overlook the adoption of appropriate measures to attain a good conservation status for sites and species,
- to examine the duty to monitor spaces and species,
- to investigate the supervision of activities likely to have an impact on the sites or the species,
- to control the exercise of the sanctioning function when illegal activities occur.

Judicial review may also include

prior assessment of potentially disturbing projects,
granting of derogations to the protection regime (namely when imperative reasons of overriding public interest are adduced to justify the prevalence of non-ecological interests over nature conservation or restoration interests)

The duty to refer pending cases to the European Court of Justice

- First of all, where a national court or tribunal considers that European law is necessary to decide a pending case, in principle, any question of interpretation or validity which may arise, entails an obligation to refer it to the European Court of Justice.
- Secondly, when the decisions of the national court or tribunal are not appealable under national law, there is also a duty to refer to the ECJ any doubts that may arise. This is clearly stated in §3 of article 267 of the Treaty on the Functioning of the EU.
- Thirdly, where the validity of a European act is challenged before a national European Court, the national judge must also refer the case to the ECJ.
- Foto-Frost v Hauptzollamt Lübeck-Ost (Case 314/85, Judgment of the Court of 22 October 1987 (national courts have no jurisdiction to declare that acts of community institutions are invalid).

Exceptions to the duty to refer to the ECJ

- However, there are three cases where any national court, including Supreme Courts, is exempt from referring to the ECJ, and can thus decide autonomously. The European Court of Justice clarified the exceptions in the Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health (Case 283/81, Judgment of the Court of 6 October 1982, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61981CJ0283>).
- The first exception, is when the formulation of the European Union norm is so obvious, even taking into account different language versions, that it leaves no reasonable doubt. The national court may therefore declare that no further clarification is required, and decide the case.
- The second exception, is when the interpretation of community law raised before the national Court, by the parties or by the prosecutor, is not relevant because it can in no way affect the outcome of the pending case.
- The last exception is the existence of European case-law on the matter. In fact, where previous decisions of the Court have already dealt with the point of law in question, and the questions raised in the national court are materially identical with a question decided by the European Court of Justice in a similar case, there is no need to ask for another preliminary ruling.
- In any of the previous cases, the national judge is totally free to decide, nevertheless, to refer the case to the European Court of Justice, but is not obliged to do so.

- When applying either European norms or national norms transposing or implementing them, national Courts, administrations and decision makers, shall meticulously analyse and take into account the abundant jurisprudence of the European Court of Justice.

