

# A Race to Protect Europe's Natural Heritage

## WWF European Snapshot Report on the Status of Implementation of the Habitats Directive

### GERMANY

Score: 13/30

I. Legal Aspects of Implementation			Score: 3/9
<p><b>Transposition:</b> To what extent has the Habitats Directive been transposed into national or regional law?</p>			
Good/complete transposition  3	Some gaps remaining  2	Key/major gaps remaining  1	Failure to transpose  0
<p>Whereas the Habitats Directive has been transposed into national law fairly well, <b>it almost completely lacks transposition into regional law. This is a significant gap, since the German constitution places nature conservation within the responsibility of the 16 states (Länder).</b> It is thus almost solely a regional matter. Only a small number of issues may be fully regulated on a nation-wide basis by national law, and major portions of the Habitats Directive are not among them. This means that, to put the Habitats Directive into full effect, transposition into state law is crucial.</p> <p><b>Major gaps remain especially in the transposition of Articles 6, 10 16 into regional law. Several states have not even attempted to improve their laws for nature protection (Naturschutzgesetz).</b> According to the Habitats Directive's requirements, not a single state has done so in an adequate way. In some cases, the states tried to take legal measures short of altering their regional laws (legal instruments of <i>Richtlinie</i> or <i>Erlass</i>), which is an appropriate way to cope with some details, but definitely not the whole Directive. Thus, for the majority of states transposition remains to be completed.</p>			
<p><b>Complaints in Progress at the European level:</b> How significant are current Commission complaints in progress against your Member State?</p>			
No outstanding complaints  3	Some complaints not yet dealt with  2	Significant complaints not yet dealt with  1	Decisions of the ECJ not yet dealt with  0
<p>In April 1998 the legal procedure initiated by the Commission against Germany was sent to the ECJ following Germany's failure to provide a complete (or even nearly complete) list of sites. There has been no formal decision upon the application so far (it is expected for the 2<sup>nd</sup> half of 2001). The list of sites transmitted to the Commission has substantially improved since 1998 but can nevertheless still be considered incomplete.</p> <p>In February 2001 the Commission issued a reasoned opinion against Germany (with reference to the state of Nordrhein-Westfalen) concerning the lack of protection for habitats of the hamster (<i>Cricetus cricetus</i>).</p> <p>Several NGOs have passed serious complaints to the Commission mainly regarding the incompleteness and (in some cases) faultiness of the lists of sites compiled by the German states. Since the national list for Germany has not been completed and sent to the Commission, there has been no decision on this matter.</p>			

<b>Member State Response to Complaints:</b> How adequate do you consider your Member State's response to Commission complaints to be?			
Good response at stage of Letter of formal notice 3	Response before case was referral to the ECJ 2	<b>Response only after ECJ case decided</b> 1	No response 0
The response to the Commission's complaints has so far been very slow. Even today, 3 years after Germany was taken to the ECJ for not transmitting a complete list of sites, the list is still not complete. It is uncertain (but improbable) that they will be completed before the case has been decided.			
<b>II. Protecting Habitats and Species</b>			<b>Score: 6/12</b>
<b>Natura 2000:</b> How adequate is the list of proposed Natura 2000 sites for the protection of habitats and species?			
coherent national network 3	more than 50 % sufficient 2	<b>less than 50 % sufficient</b> 1	no list submitted 0
<p>As Germany has, to date, not been able to provide a complete list of sites, a final judgement is not possible. Most German states, however, consider their lists to be complete. Taking this into account and considering what the remaining states have signalled as "still to come", one can deduce that quality and coherence of lists is largely low. There are distinct differences between the separate states though. Rural states with large natural and semi-natural areas (Schleswig-Holstein, Mecklenburg-Vorpommern) have included less than 5% of their land area in the lists, which obviously does not meet with the Habitats Directive's demands. Some states are even below that (eg Sachsen: 3,5%). Other states are situated near or well over 10% (Sachsen-Anhalt, Brandenburg).</p> <p>Most states have included less than half of the shadow list sites into their final lists. Several have not even reached one third.</p> <p><i>In many cases economic reasons were openly or less openly given as a motive to omit areas from the lists. The same is true for several areas along planned motorways, especially the A20 in northern Germany. Many large woods do not appear in the lists because land with specific ownership was to be "saved" from NATURA 2000 for political reasons (e.g. in Thüringen, Hessen or Baden-Württemberg). The Haseldorfer Marsch (Schleswig-Holstein) was not included because it is to be used as a compensation area for the destruction of the Mühlenberger Loch area in Hamburg.</i></p>			
<b>Natura 2000:</b> How does your Member State score on the putting in place of management measures? (Article 6)			
All of the above measures have been adequately addressed 3	Some of the measures have been adequately addressed 2	<b>Very few measures are being addressed or are in place</b> 1	Measures are non-existent 0
<p>As almost all of the sites on the lists already have protection status (often nature reserve = <i>Naturschutzgebiet</i>), there are also management plans existing for some of them. This is a minority though, which further diminishes if one considers that few of the plans are up to date. Experience shows that only a small number of the measures prescribed in the plans is actually carried out.</p> <p>Funding sources for the large number of necessary management plans are still largely uncertain, depending on the state. Funding of measures currently is usually only possible in the course of special projects (often co-funded by the LIFE program). A consistent concept for the funding of measures has not been an issue in any of the states.</p> <p>Environmental impact assessment procedures are present in great variety, with procedures varying between different <i>Länders</i> and even at <i>Kreis</i> (county) level. Although, many of these procedures do not allow an adequate assessment of the impacts on Natura 2000 sites, for example, due to the fact that the</p>			

remote effects of projects are not being taken into account.			
<b>Protection of species beyond Natura 2000: How adequate are non-site based measures for the protection of species?</b> (Article 12, 13, 14 and 16)			
All of the requirements have been adequately addressed 3	<b>Some of the of the requirements have been adequately addressed</b> 2	Very few of the requirements are being addressed or are in place 1	Efforts to address the requirements are non-existent 0
<p>There have long been regulations in Germany for the protection of species and measures which are close to what the Habitat Directive demands. The administrative practice in this respect is satisfactory. <b>Threats to specific species resulting from agricultural land use, road construction and other "land developments" are however largely ignored and often not adequately dealt with.</b></p> <p>Monitoring measures are scarce and are often made only on a state-wide basis. <b>There also does not often appear to be a real strategy: monitoring measures are often executed not for a specific need for conservation, but for scientific interest. There is not enough funding to meet the Habitat Directive's requirements.</b></p>			
<b>Complementary measures: Is your Member State giving adequate attention to complementary measures, such as for research, planning and species reintroduction?</b> (Articles 10, 11, 18 and 22)			
Good effort to implement complementary measures 3	<b>Mixed effort to implement complementary measures</b> 2	Poor effort to implement complementary measures 1	No effort to implement complementary measures 0
<p><b>Quite a lot of research is undertaken</b> in and about Natura 2000 areas, and the problem is often not the lack of research, but the lack of transposition of the results into practical measures and site management.</p> <p><b>Integration into planning processes is still fairly poor</b> for areas relating to the Habitats Directive, but it will surely improve, as the planning authorities become more familiar with the Directive. As most states have only recently completed their lists there has so far not been much chance to include the sites in plans or regional programs. With the existence of approved lists from the Commission (which will probably still take a few years) this is most likely to further improve.</p> <p>Reintroduction of species is not a top issue in Germany and is mostly upheld by hunters or anglers for many species. There are a few projects, mostly dealing with birds or mammals that are managed by conservationists.</p>			
<b>III. Putting Plans into Practice</b>			<b>Score: 4/9</b>
<b>Finance: Is your government devoting adequate human and financial resources to implementation of the Directive?</b>			
Significant additional resources dedicated to implementation of the Directive 3	Some additional resources dedicated 2	<b>Very few additional resources dedicated</b> 1	No additional resources dedicated 0
This again depends very much on the state. A few states dedicate (sparse) funds for additional personnel in the authorities or external staff. Most states either do not plan to dedicate any additional resources or they have not decided to yet.			

<b>Information and Awareness Raising:</b> <i>Is your government doing enough to provide information and raise awareness about Natura 2000 and biodiversity conservation?</i>			
Good information and awareness raising activities 3	Some good activities 2	<b>Few information and awareness raising activities</b> 1	No information and awareness raising activities 0
<p>Raising of general public awareness for NATURA 2000 was poor, as was the level of comprehensive information for the wider public. There is not much variation between the states in this respect, <b>but between the sectoral authorities the situation can be different – authorities for environment and nature conservation often put a lot of effort into promoting the Habitats Directive and its ideas.</b> While comprehensive and attractive web-based activities are scarce, there are some very good publications from some states (e.g. Baden-Württemberg or Thüringen). Public information and discussion of the designated areas has been very intense in most states. Site maps and data can mostly only be accessed at the higher authorities, it is generally possible but can, in some cases, probably be quite tedious.</p> <p><b>Authorities for economy or agriculture were, on the other hand, very much opposed to much of the Natura 2000 network and played up the potential dangers for economic prosperity. This was often the opinion used by the states governments, and speeches and press releases repeatedly emphasised that the states restricted their site lists to the absolute minimum and that they did not actually want to promote Natura 2000, but were “forced” by the EU to do so.</b> The information provided by the state governments and concerning the impacts of the Habitats Directive usually did not go into any depth, so the overall information to the public was poor. The character of the information was mostly only that of a warning sign and that is therefore what the public grasped onto.</p>			
<b>Stakeholder Participation:</b> <i>Is your government doing enough to involve stakeholders and the general public in the Natura 2000 process?</i>			
Significant amount of effort to consult stakeholders + public 3	<b>Good efforts to consult stakeholders + public</b> 2	Limited efforts of consult stakeholders + public 1	No consultations with stakeholders + public 0
<p>Consultation with landowners and stakeholders in Natura 2000 areas was usually fairly good. However, more consultation was expected than normally carried out, so the process has still been criticised a lot. But in fact the consultations played a prominent part in the selection of sites, often too prominent in the NGOs' view, given the fact that only scientific criteria should be regarded relevant in the initial site selection process.</p> <p>Formal consultations with NGOs were not satisfactory in all cases. Consultations in the process of developing management plans vary greatly from area to area. The better the funding, usually the better the consultation.</p>			
<b>IV. Political Will</b>			
<i>In your opinion, has there been a change in political will or momentum in your Member State around implementation of the Directive? Describe the current political climate surrounding the Directive if you can.</i>			
<p><b>The Habitats Directive is usually seen as a serious obstacle for economic development and prosperity. Most of the public do not realise the opportunities presented by (or even the need for) the Directive instead focussing on (often imaginary) dangers.</b> The same is true for many authorities. Political lobbying by major groups of land users has led to this unsatisfactory situation.</p> <p>The Habitats Directive was a top issue in political discussions during 1999 and 2000 and has now, as most states have completed their habitat lists, moved somewhat into the background. <b>Although intensely discussed, the knowledge of the general public about details and actual implications is poor (even among landowners).</b></p>			

The overall political climate *against* the Habitats Directive has not substantially changed, but as the issue has moved away from intense political discussion it has had a chance to cool down a little. In-depth discussions and accurate public information are now easier to obtain than a year ago.

## V. Conclusions and Recommendations

Key points and problems in Germany to be considered:

- 1) unsatisfactory public acceptance of the whole Natura 2000 network remains
- 2) deficient and often incomplete lists of habitats
- 3) lack of proper funding

While 1) has to be dealt with mostly on a national level, 2) probably *requires strong and long-lasting actions of the Commission against Germany to induce a substantial improvement*. 3) is a *matter where the EU has a lot of steering capacity if one considers the possibilities of co-funding*. This requires more funds to be available in the future - even then Nature conservation would still be a minor account in the EU's budget. If left solely to the national level, the improvements will only be insignificant or the necessary funding of Natura 2000 will be taken away from other fields of nature conservation.

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