

Evidence Gathering Questionnaire for the Fitness Check of the Nature Directives

Evidence provided by WWF EPO

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QUESTIONNAIRE

A. General Information

Please answer ALL questions in this table

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Type of organisations you represent: EU authority or agency / Member State authority or agency / business or industry / educational or scientific institute / nature conservation charity / recreation / individual expert / other (please specify).	Environmental NGO
Sector represented: environment / water / agriculture / forestry / fisheries / transport / energy / extractive industry / industry / housing and other buildings / recreation & tourism / science & education / other (please specify)	Environment
Additional comments:	

Effectiveness

This section focuses on assessing the extent to which the objectives of the Birds Directive and Habitats Directive have been met, and any significant factors which may have contributed to or inhibited progress towards meeting those objectives. By 'objectives', we refer not only to the strategic objectives, but also to other specific or operational objectives required under other articles of both Directives (as set out in Annex I to this questionnaire).

'Factors contributing to or inhibiting progress' can relate to the Nature Directives themselves (e.g. the clarity of definitions) or be external factors such as lack of political will, resource limitations, lack of cooperation of other actors, lack of scientific knowledge, or other external factors (e.g. see those listed in the above intervention logic).

We are particularly keen to learn of evidence that is not included in the Member State implementation reports¹.

¹ Habitats Directive Reports: http://bd.eionet.europa.eu/activities/Reporting/Article_17/Reports_2013/
Birds Directive Reports: http://bd.eionet.europa.eu/activities/Reporting/Article_12/Reports_2013/

S.1.1 What progress have Member States made over time towards achieving the objectives set out in the Directives and related policy documents?

Answer:

It has been shown that the *Natura 2000 sites are highly effective* in minimizing the number of endangered species of concern to European conservation² (related to overall objectives of both Directives). Also in relation to the strategic objective of the birds directive, *scientific evidence*³ shows that the Birds Directive has contributed significantly to the protection of those species considered to be at most risk and in need of most urgent protection and has made a significant difference in protecting many of Europe's birds from further decline. Four aspects of this result were noted in this paper:

- The most threatened species are progressing better:
Before being given special protection on Annex I of the Directive, this group of the EU's most threatened species was doing significantly worse than non-Annex I species. However, once these species were put on Annex I, and were subject to conservation measures associated with Annex I (e.g. they can be the focus of EU Species Action Plans and can receive specific EU LIFE funding), these species did better than non-Annex I birds.
- The Birds Directive was more successful than non-EU conservation measures:
Outside the EU, where the Birds Directive does not apply, Annex I species did no better than birds that were not listed on Annex I. Following implementation of the Birds Directive, Annex I species did better inside the EU than outside the EU.
- Bird populations take time –more than ten years– to recover:
It is shown that the longer a bird spends on Annex I of the Birds Directive, the more likely it is to show recovery. On average it takes over ten years of policy measures before improvements in whole populations are detectible (more recent scientific evidence related with the IUCN Red List of species shows that the average time for species status to improve by one Red List category is 16 years⁴).
- EU protected areas are directly helping European birds:
On average, the more land is designated as an EU-protected area (in particular as an SPA), the more likely bird populations are to improve. Annex I species respond nearly twice as well as the average due to specialized conservation measures targeted at them.

Furthermore, the preliminary results from the article 17 of the HD monitoring report included in the upcoming State of the Nature Report 2015⁵ show some slight improvement of the conservation status of habitats and species of community interest, although limited. The EU's 2010 Biodiversity Baseline⁶ also indicates that progress is being made in some areas (eg the establishment of Natura 2000 has progressed well in the terrestrial environment, with nearly 18% of EU land designated).

First examples of increasing populations of species protected by the EU Nature Directives are numerous. In 2012, the Aquatic warbler came back to the Polish Ciesacin mire, part of the Polesie SPA, as a result of the improved status of the habitats as a result of the actions of a LIFE project carried out the two previous years⁷. The number of Great Bustards has been increasing in some Member States due to positive conservation measures, including the purchase, restoration and

² Gruber, B., Evans, D., Henle, K. et al., 2012. "Mind the gap!" – How well does Natura 2000 cover species of European interest? *Nature Conservation*. 3: 45–63.

³ Donald, P. F., Sanderson, F. J., Burfield, I. J., Bierman, S. M., Gregory, R. D., & Waliczky, Z. (2007). International conservation policy delivers benefits for birds in Europe. *Science*, 317(5839), 810-813.

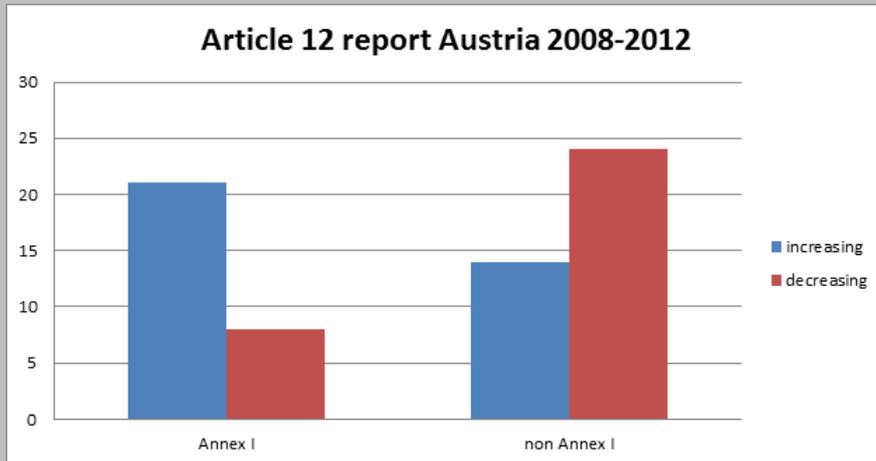
⁴ http://iucn.org/about/work/programmes/gpap_home/?19027/Protected-areas-being-short-changed

⁵ <http://www.minambiente.it/pagina/presentations>

⁶ Available here: <http://www.eea.europa.eu/publications/eu-2010-biodiversity-baseline/>.

⁷ For more information, please contact Piotr Nieznanski from WWF Poland (pniecznanski@wwf.pl).

management of steppe habitats in Hungary, the conversion of overhead powerlines to underground cables in Austria, agri-environment measures for low-intensity farming in Spain or a reintroduction project in England.⁸ Other population success stories include the Dalmatian Pelican, the Imperial Eagle and Zino’s Petrel, whose populations have increased by at least 20%.⁹ The chart below shows for example the improvement of the populations of bird species included in the Annex I of the Birds Directive compared to other endangered birds (own elaboration, based on Austrian Article 12 report data¹⁰):



Most of the populations’ of large carnivores in Europe also show a positive trend, with some populations increasing substantially¹¹.

Habitats have benefitted from the protection from Natura 2000 as well. A specific example from Spain indicates how several hectares of Posidonia meadow were saved from destruction in 2002, owing to enforcement of the HD provisions.¹²

There is a *large number of good practices and examples showing the effectiveness of the Nature Directives for the protection of biodiversity*, which can be found at the European Commission’s Good practices in Management of Natura 2000 website¹³, at the Natura 2000 Networking Programme website¹⁴, at the Natura 2000 Awards website¹⁵ and at the LIFE funding website¹⁶. The 2013 publication “Wildlife Comeback in Europe: The recovery of selected mammal and bird species” also includes a number of examples of species recovery in Europe, where the role of conservation efforts such as the Birds and Habitats Directives is emphasised.¹⁷

With respect to the specific and operational objectives of the Nature Directives, the evidence shows a more varied picture among Member States, with some aspects of the Directives enjoying a better implementation results (eg Natura 2000 designation). These can also be considered as specific implementation measures (like the identification and designation of the Natura 2000 sites, or the establishment of management measures), where the responsible authorities plays an important role in ensuring results – in this respect, the answer to this question should be cross-checked with the answer to question S.1.2, where expectations in relation with the legal requirements are analysed (ie progress in the implementation of specific objectives/measures).

⁸ http://assets.panda.org/downloads/wwf_natura2000_final_kpl.pdf

⁹ http://assets.panda.org/downloads/wwf_natura2000_final_kpl.pdf

¹⁰ http://www.salzburg.gv.at/art12-bericht_vsrl.pdf

¹¹ http://ec.europa.eu/environment/nature/conservation/species/carnivores/conservation_status.htm

¹² <http://www.wwf.es/?25820/nocampomanes>

¹³ <http://ec.europa.eu/environment/nature/natura2000/management/gp/index.html>

¹⁴ <http://www.natura.org/sites.html>

¹⁵ http://ec.europa.eu/environment/nature/natura2000/awards/application-2014/index_en.htm

¹⁶ <http://ec.europa.eu/environment/life/bestprojects/index.htm>

¹⁷ <http://www.rewildingeurope.com/assets/uploads/News/Wildlife-Comeback-in-Europe/Wildlife-Comeback-in-Europe-the-recovery-of-selected-mammal-and-bird-species.pdf>

S.1.2- Is this progress in line with initial expectations?

Answer:

European Commission guidance has clarified that *Member States “must clearly show progress in achieving favourable conservation status”* for protected habitats and species¹⁸. The EU 2010 Biodiversity Target was missed¹⁹, but Member States have recognised that protected areas and ecological networks are a cornerstone of efforts to preserve biodiversity, and called for full implementation of the Nature Directives²⁰. The EU biodiversity strategy "Our life insurance, our natural capital: an EU biodiversity strategy to 2020" includes a specific target (target 1) referring to the improvement of conservation status of habitat types and species (Habitats Directive) and the status of bird populations (Birds Directive)²¹. Most recently, in the 7th EAP (Decision No 1386/2013/EU) the MS and the EP agreed on the need for ‘stepping up the implementation of the EU Biodiversity Strategy without delay, in order to meet its targets’ (Annex, paragraph 28(i)); this includes the implementation of BHDs.

If we correlate *initial expectations with the legal requirements established in the Directives*, it is important to note that the implementation of key provisions of the EU Nature Directives has been significantly delayed by Member States in a very important number of cases (eg the identification and selection of the Natura 2000 sites or even more so the development and implementation of management measures). In particular, by 2001 practically every deadline referred to Natura 2000 in the Habitats Directive was missed by most if not all “old” Member States²² (as the lists of SCIs should have been established within six years of the notification of the Directive²³). Implementation of the legal obligations to designate SCIs as SACs and establish the necessary conservation measures is also failing, leading the Commission to launch legal procedures against MS with a clear implementation deficit²⁴.

Progress in implementation could be subdivided in 5 phases, roughly in chronological order. This allows the identification of issues specific to every phase of the implementation cycle. It also highlights the fact that potential shortcomings of earlier phases (e.g. transposition) could hinder implementation (relevance, efficiency) of the later ones. These phases are:

- 1) *Transposition into national legislation*. All directives must be transposed into national law. The Commission tracks transposition²⁵ and, at first sight, there are no major shortcomings currently. However, delayed transposition was a significant problem at earlier times. Like all legal texts, Directive 92/43 and the transposing acts require constant interpretation: a wide range of actors – including the Commission, the European Court of Justice and national courts, and national administrations are engaged in interpretative activities. In particular, the European Court of Justice’s contribution affects crucially the overall “regulatory fitness” of any EC law. Inappropriate transposition and delays in the adoption of necessary measures have led several countries to the ECJ²⁶. Even today however, the transposition of the Directives is not complete in some countries. For example, in Romania annexes on species have not been transposed correctly, resulting in some species (e.g. *Strix uralensis*) not being listed in the national instrument.

¹⁸ <http://ec.europa.eu/environment/nature/natura2000/management/docs/FAQ-WFD%20final.pdf> - page 15.

¹⁹ <http://data.consilium.europa.eu/doc/document/ST-13991-2010-INIT/en/pdf>

²⁰ <http://data.consilium.europa.eu/doc/document/ST-7536-2010-INIT/en/pdf>

²¹ <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

²² <http://awsassets.panda.org/downloads/raceprotect.pdf>

²³ See article 4.3 of the Habitats Directive.

²⁴ CGBN information documents of March 2014, agenda item 2.1, and of March 2015, agenda item 2 (INFO DOC 2.1).

²⁵ Cf. EUR-Lex (previous version), National provisions communicated by the member states concerning Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, available at [<http://old.eu-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:71992L0043:EN:NOT>]. The list is incomplete; for example for Greece some recent national implementing measures have not been included (as for January 2015).

²⁶ European Communities, 2006 - NATURE AND BIODIVERSITY CASES RULING OF THE EUROPEAN COURT OF JUSTICE, http://ec.europa.eu/environment/nature/info/pubs/docs/others/ecj_rulings_en.pdf

2) *Site selection/designation*. The Habitats directive envisages a site selection and designation process²⁷. The completion of this process is a prerequisite for the full implementation of the directive, including the central provision of article 6.4. Since the selection of marine sites is a process still underway, the evaluation of the site selection/designation process needs to concentrate on the terrestrial sites. In this respect, it needs to be reminded that the completion of the selection process and the formal adoption of the Sites of Community Importance list were delayed significantly across Europe. However currently, based on the most recently published Natura Barometer (Natura Newsletter, January 2015), the terrestrial Natura 2000 network can be considered largely complete. Only in few countries, as is the case of Cyprus, Slovakia, Latvia, Poland, the Czech Republic, Portugal and Austria significant gaps remain. Problems remain in designation of SACs; while there has been a significant overall progress there appears to be a clear delay in fulfilling the legal obligations on SAC designation and setting conservation objectives and establishment of conservation measures in several Member States, years after the legal deadline.²⁸ If we take the example of Greece we can see that almost all SCIs have been designated legally as SACs under the provisions of a national biodiversity law adopted in 2011 - nonetheless, no SAC has conservation objectives, which renders the designation as SAC inadequate. Similar is the case in Spain and Italy, where although only a small percentage of the SCIs have been designated as SACs, the designation has been without the appropriate administrative or contractual measures, or with significant deficiencies in the establishment of conservation objectives and measures. Other compliance issues are noticeable; for example in Romania, forest managers asked for the site ROSCI0342 Padurea Targu Mures to be cancelled from being designated, which was approved by a national court; this is not in line with the Habitats Directive.

3) *National implementation*. Member States must undertake certain legislative or administrative actions, as stated in Article 6 of the Habitats Directive. Significant issues and delays beset national implementation. In many Member States, such as Greece, Spain, Italy and Romania only few sites have sufficient, if any, management measures for Natura 2000 established. In Romania, minimum management measures have been defined by the administrators for most of the Natura 2000 that have designated administrators; but it should be noted that around 200 of the country's sites have no such administrator. In Spain, the designated SACs and SPAs that have a management plan include management measures for the sites: however, these management measures are in general very ambiguous and not focused enough on the achievement of a favourable conservation status. And in any case, only 9% of the Spanish Natura 2000 sites has a management plan. In terms of the implementation of the Appropriate Assessment (AA – article 6.3 of the Habitats Directive), significant variation is found across Member States. While in some countries, e.g. Austria, the process seems sufficient, in others, such as Spain, the AA process for Natura 2000 is not correctly implemented: on the one hand, there is very often unlawful and abusive use of the determination of imperative reasons of overriding public interest for the approval of plans and projects with significant impacts for Natura 2000 sites; and on the other hand, in some cases the project is approved and developed without even carrying out the assessment required under Article 6.3 of the HD. Example from Spain exemplifies the problems mentioned: the construction of an airport in a Natura 2000 site (Special Protection Area) was approved in the region of Ciudad Real despite the significant impacts affecting the site. Nowadays, this airport is closed because of lack of financial viability and demand.²⁹

The level of resources available in each Member State varies, but is generally quite limited. In Spain, the Ministry of the Environment has very limited human and financial resources to oversee the adequate implementation of the Directives. The same can be said about the Autonomous Communities that are responsible for the management of the sites. There is no allocated budget for Natura 2000. In Greece, national funds are minimal - linked to the contribution of the country's Green Fund to management bodies, which are mostly financed by EU funds. In general most funds

²⁷ Cf. Art. 4-5 and Annex III Directive 92/43.

²⁸ CGBN, *op. cit.*

²⁹ <http://www.wwf.es/?32140/WWF-alerta-de-los-riesgos-de-los-bancos-de-hbitat-para-el-medio-ambiente>
<http://www.ecologistasenaccion.org/spip.php?article12379>

are allocated to the areas with management bodies. Limited other funds (eg. rural development or fisheries) are used.

- 4) *Enforcement*. Even if steps 1) – 3) have been impeccably executed, enforcement remains critical. It should be noted that while the European Commission can be considered to have a relative supportive role in the implementation (via guidelines, clarifications, emphasis on Natura 2000 integration in EU funds etc) and enforcement (esp. through the infringement process) of the Directive, it is noted that recently this has been less so (the Commission seems to be less inclined to start infringements), esp. as the EU pilot process is preferred to that of an infringement process. In several Member States, e.g. in Greece and Spain, the European Commission has had a supportive role in the implementation and enforcement of the Directive – also considering the cases in which both environmental NGOs and individual citizens have played a role, including those ones which have been referred some to the European Court of Justice (in such case “complaints” to the EC plays an important role), like the case of the Highway M-501 in Madrid.³⁰ Enforcement by the Commission thus shows itself as being of essence for the proper implementation of the Directives.

³⁰ <http://www.wwf.es/?4461/>

S.1.3 - When will the main objectives be fully attained?

Answer:

The available information from the upcoming State of the Nature report shows that for some species and habitats the objectives have already been attained, as 16% of the habitats and 23% of the species of community interest are in favourable conservation status³¹ (FCS). However, from this same source we can also see that 30% of these habitats are in unfavourable conservation status and declining, while 21% of species are in unfavourable conservation status and declining. To *fulfil the goals set up by the EU Biodiversity Strategy to 2020*, 34% of the habitats and 26% of the species should either have reached FCS or shown a significant improvement in their status by 2020. Similarly for birds, the aim is for 80% of bird species to be either secure or improving their conservation status by 2020. While the absence of a specific deadline in the Habitats Directive for achieving FCS does not exempt Member States from improving status over time (as the Habitats Directive is very clear in stipulating that Member States need to restore species and habitats to FCS where they are not³²), having such a time-bound quantified target in the Biodiversity Strategy should assist in speeding up implementation. Moreover, in the 7th EAP MS clearly recognised the need for stepping up the implementation of the EU 2020 Biodiversity Strategy, which includes BHDs. The full attainment of the overall objectives will very much depend on improved and more ambitious implementation of the Directives and concerted enforcement action by the Commission.

As mentioned also in the answer to the question C.9, the EU Biodiversity Strategy to 2020 also pays particular attention to ensuring the effective management of Natura 2000 sites, calling for the completion of the network, the provision of adequate financing measures, the establishment and timely implementation of site management plans (if need be) and the further integration of species and habitat management requirements into key land and water policies, the promotion and sharing of experience, good practice and cross-border collaboration, and for increased cooperation with key sectors and stakeholder groups to improve the enforcement. All these actions are to be achieved before 2020 (in particular some of them soon before, like the completion of the marine Natura 2000 network by 2012, which again has suffered delays, and is actually not yet completed).

Some actions (e.g. designation in marine environment and effective management measures to secure habitat and species maintenance and restoration) have not been carried out yet^{33,34}, despite the legal deadline being passed for some years. The implementation of these actions is mainly the responsibility of the national authorities. And any further delay in the implementation of these actions will only delay more the achievement of the overall goals.

Moreover, *measures needed to avoid deterioration of the targeted natural elements must be implemented as soon as the sites are classified as SPA under the Birds Directive or formally adopted by the Commission as a Site of Community importance (SCI) under the Habitats Directive*. In particular, Member States cannot authorise interventions that may pose the risk of seriously compromising the ecological characteristics of an SCI. This is particularly the case when an intervention poses the risk of either significantly reducing the area of a site, the loss of priority species, or the destruction of the site or its representative characteristics (“Bund Naturschutz in Bayern eV³⁵”).

From the *international commitments* perspective, keeping in mind the important role of the implementation of the Birds and Habitats Directives for the implementation of the Aichi targets (in the framework of the Convention on Biological Diversity), a renewed political will, strong cooperation between EU and national levels, substantial increase of resources and support of all stakeholders for the full implementation of the EU nature directives will be crucial to reach those targets, to which EU

³¹ [Presentation by EC at the Nature Directors Meeting in Rome in November 2014.](#)

³² See Article 4(4) Habitats Directive.

³³ http://ec.europa.eu/environment/nature/natura2000/marine/index_en.htm

³⁴ http://www.ieep.eu/assets/277/Article_12_report.pdf

³⁵ Case C-244/05 (European Court of Justice).

and Member states have committed to already 5 years ago. The deadline of most of these targets is 2020.³⁶

There is still not yet detailed information about the *integration of biodiversity and Natura 2000 in the national operational programmes* for the use of the EU main funding lines (including ERDF, EARDF, EMFF) during the 2014-2020 period, but results from some first discussions at national level suggests that this integration will be far from ideal³⁷. This would also delay the implementation of the EU Nature Directives.

It should be recognised however, that the creation of the *Natura 2000 network has been a major achievement from which to start to develop adequate conservation in the EU*. For example in Italy, Mairoano et al suggest that the Italian Natura 2000 network, although it does not cover the entire range of vertebrate biodiversity, it does represent, together with existing protected areas, an important component on which to build future conservation efforts in Italy.³⁸

³⁶ <http://www.cbd.int/sp/targets/>

³⁷ <http://www.financing-natura2000.eu/events/>

³⁸ Mairoano, L., 2007. Contribution of the Natura 2000 Network to Biodiversity Conservation in Italy. Conservation Biology Volume 21, No. 6, 1433–1444.

S.2 – What is the contribution of the Directives towards ensuring biodiversity? In particular to what extent are they contributing to achieving the EU Biodiversity Strategy* Objectives and Targets?

Answer:

The contribution of the EU Nature Directives to biodiversity conservation is crucial: as the last WWF Living Planet Report shows, biodiversity loss is a fact, and it is growing exponentially³⁹. *The EU Nature Directives are one of the few instruments to limit this trend at the EU level, and the only ones targeting directly nature conservation. Their existence and full implementation are essential for the survival of habitats and species, not only the ones protected by the Directives, but also those which more generally can benefit from the related conservation measures.* And there is scientific evidence which shows that the EU Nature Directives are already delivering for nature conservation, as it has already been mentioned in the answer to question S.1.1. The European Parliament⁴⁰ and EU Member States⁴¹ have recognised that the Birds and Habitats Directives are crucial EU efforts to conserve biological diversity.

As nature knows no borders, the coordinated approach provided by the EU Nature Directives for the 28 EU Member States offers a helpful base for protection of e.g. migratory species. This common approach to biodiversity conservation in the different EU countries also helps to avoid that conservation efforts by one Member State are not undermined by another Member State contradictory action. And there is scientific evidence that the conservation measures provided by the Directives work not only for the species they were designed for, but also for the broader biodiversity⁴² (eg see answer to question R.2).

In relation to the *EU Biodiversity Strategy to 2020*, first of all the currently expected mid-term review of the strategy (during the upcoming months) should provide a good evidence of the role of the Directives in the implementation of the strategy. The answer to the question *C.9* provides a more detailed insight to the contribution of the Nature Directives to the implementation of the targets of the EU Biodiversity Strategy.

At national level, the implementation of the Nature Directives has meant the protection of biodiversity beyond the target habitats and species. For example, in Romania, the requirements of the Habitats Directive regarding the appropriate assessment (AA) of plans or projects had a positive contribution for biodiversity within different strategic documents promoting economic development (not limited necessarily only to species and habitats covered by BHDs). Several examples of Romanian national strategic documents that were positively influenced by the directive are:

- The National Energy Strategy: the Environmental permit included restrictive conditions regarding the construction of certain energy developments inside and in the neighbourhood of Natura 2000 sites;
- The National Strategy for Flood Protection: the strategy included a prioritisation of intervention measures, that put on the first places the non-structural measures and green infrastructure;
- Romania General Transport Master Plan (see also answer to question C.4 & C.5): the AA study included a preliminary identification of Natura 2000 sites potentially significantly affected by the implementation of the proposed transport projects. The study included avoidance and mitigation measures and monitoring requirements. The focus was on avoidance

³⁹ http://wwf.panda.org/about_our_earth/all_publications/living_planet_report/

⁴⁰ http://ec.europa.eu/environment/nature/biodiversity/comm2006/pdf/EP_resolution_april2012.pdf

⁴¹ <http://data.consilium.europa.eu/doc/document/ST-7536-2010-INIT/en/pdf>

⁴² V. Pellissier et al. Assessing the Natura 2000 network with a common breeding birds survey, *Animal Conservation* 16 (2013) 566–574; <http://onlinelibrary.wiley.com/doi/10.1111/acv.12030/abstract>.

measures for the sites that may be significantly affected and where the intersection of the sites cannot be avoided, on avoidance of sensitive areas within the sites. For example, for one of the Master Plan scenarios (the development scenario) the assessment identified that a number of 11 Sites of Community Importance (SCI) may be significantly affected by the implementation of proposed projects (indicative routes), representing 2.9% of the total number of designated SCIs in Romania. Following these findings, the AA recommended rerouting for all projects which may generate significant impact and also a set of mitigation measures for all the projects identified to have moderate impact on Natura 2000 sites;

- The Large Infrastructure Operational Programme: during the AA and Strategic Environmental Assessments (SEA) procedures it was decided to exclude small hydroelectric power plants from financing, due to the problems they have created inside Natura 2000 sites, and to put accent on non-structural measures and green infrastructure for floods prevention. The AA study and the Environmental report include avoidance and mitigation measures related to Natura 2000 sites for all domains financed by the relevant Operational programme (transport, waste management, wastewater management, floods prevention, energy).

S.3 – Which main factors (e.g. implementation by Member States, action by stakeholders) have contributed to or stood in the way of achieving the Directive’s objectives?

Answer:

As a starting point, a number of contributing (positive) factors for the achievement of the objectives can be identified from a literature review:

- *The introduction of a (co financing) funding scheme to integrate nature conservation into key EU funds⁴³ can be considered as positive* for the implementation of the Directives: such opportunities are enormous but their use depends largely on decisions by national authorities while developing the national operational programmes (and of course the LIFE funding).⁴⁴ For example, in France the influence of the European Commission and the powerful incentive of financial reparation are important explanatory variables in understanding the successful inclusion of civil society actors in the process of constructing the Natura 2000 network.⁴⁵
- The *publication of guidance documents from the European Commission⁴⁶, as well as legal action against Member States* for inadequate implementation⁴⁷ has been also helpful for the achievement of the goals of the Directives.
- It has *enhanced the implementation of international commitments* on sustainable development e.g. Convention on Biological Diversity.⁴⁸
- Already in the year 2000, the Nature Directives were considered to have had a “strong *impact on modernising and improving national legislation* over the last 10 years”.⁴⁹ It has also meant an *increase of scientific knowledge*⁵⁰.
- The *Natura 2000 network can support the regional economic development*, although it cannot generate it on its own.⁵¹
- The implementation of the *Nature Directives have also helped to promote dialogue among stakeholders positively*, providing discussion platforms and channels which would likely have not happened otherwise, eg through the European Commission’s Coordination Group for Biodiversity and Nature, Expert Group on Natura 2000 Management or Large Carnivores Platform – and it has also triggered alliances of different stakeholders supporting nature conservation, like the Renewables Grid Initiative⁵².

⁴³ Kati, V. et al, 2014. The Challenge of Implementing the European Network of Protected Areas Natura 2000. Conservation Biology, Volume 00, No .0, 1–1.

⁴⁴ See the [New Guidance Handbook on financing Natura 2000](#).

⁴⁵ McCaluey, D. 2008. Sustainable Development and the ‘Governance Challenge’: the French Experience with Natura 2000. European Environment. Eur. Env. 18, 152–167 (2008).

Published online in Wiley InterScience (www.interscience.wiley.com) DOI: 10.1002/eet.478

⁴⁶ http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm

⁴⁷ http://ec.europa.eu/environment/nature/legislation/caselaw/index_en.htm

⁴⁸ Grodzińska-Jurczak M. i Cent J, (2011), Expansion of Nature Conservation Areas: Problems with Natura 2000 Implementation in Poland? Environmental Management 47, 11-27.

⁴⁹ Julien B., Lammertz M., Barbier J., Jen S., Ballesteros M., de Bovis C., Krott, M. (2000) Voicing Interests and Concerns: NATURA 2000: An ecological network in conflict with people. Forest Policy and Economics, 357-366.

⁵⁰ Kati V., Hovardas T., Dieterich M., Ibsch P., Mihok B., Selva N. (2014) The Challenge of Implementing the European Network of Protected Areas Natura 2000, Conservation Biology: Paper submitted August 9, 2013; revised manuscript accepted November 5, 2014.

⁵¹ Getzner, M & Jungmeier, M., 2002. Conservation policy and the regional economy: the regional economic impact of Natura 2000 conservation sites in Austria. J. Nat. Conserv. 10, 25–34 (2002).

⁵² http://renewables-grid.eu/uploads/media/RGI_Flyer_Implementing_EGD_2nd_Edition.pdf

Also some factors can be identified as standing in the way of a proper implementation of the Nature Directives, again from a literature review:

- a *misunderstanding or improper interpretation* of some provisions of the Directives (therefore the EC related guidance is always very welcome, as mentioned above), including:
 - A misunderstanding in the interpretation of the Natura 2000 objectives and principles.⁵³
 - A too legalistic interpretation of Natura 2000, including some difficulties in interpreting some conservation and legal terms of the Habitats Directive such as ‘significant effects’, ‘appropriate assessment’, ‘imperative reasons of overriding public interest’.⁵⁴
 - “At the enlarged EU level /.../ the goals, general principles and the implementation of the nature conservation policy have become more complex and multi-level, eventually resulting in top-down governance”.⁵⁵
 - Lack of concrete progress regarding regional and financial policy (development of management plans, directives and frameworks, lack of public funds).⁵⁶
- a *lack of political will or unhelpful political contexts*:
 - Lack of political will at local and national levels for Natura 2000 implementation.⁵⁷
 - Lack of financial resources, including insufficient allocation by Member States of financial resources and staff for the implementation of this Directive within the legally binding schedule^{58,59}, a lack of suitable financial system and insufficient fiscal instruments for implementing Natura 2000^{60,61}, or issues with private land like infringing basic property rights and a lack of (attractive) financial compensation⁶², or the omission of sufficient compensation program for the owners of Natura 2000 land⁶³.
 - Special political characteristics such as absence of conservation policy history in Greece⁶⁴, or post-socialistic governance type, or other political / governance challenges in nature conservation (such as the weak history of participatory governance, and a lack of responsibility for the coordination of resources)⁶⁵.
 - A highly politicized and centralized policy processes with top-down, command-and-control approach in some countries.⁶⁶
 - A lack of state capacities for Natura 2000 management authorities (resources, skills).^{67,68,69}

⁵³ McCaluey, D. 2008. Sustainable Development and the ‘Governance Challenge’: the French Experience with Natura 2000. European Environment. Eur. Env. 18, 152–167 (2008).

⁵⁴ Beunen, R., 2006. European Nature Conservation Legislation and Spatial Planning: For Better or for Worse? Journal of Environmental Planning and Management, Vol. 49, No. 4, 605–619, July 2006.

⁵⁵ Grodzińska-Jurczak M. & Cent J, (2011), Expansion of Nature Conservation Areas: Problems with Natura 2000 Implementation in Poland? Environmental Management 47, 11-27.

⁵⁶ Getzner, M & Jungmeier, M., 2002. Conservation policy and the regional economy: the regional economic impact of Natura 2000 conservation sites in Austria. J. Nat. Conserv. 10, 25–34 (2002).

⁵⁷ Kati, V. et al, 2014. The Challenge of Implementing the European Network of Protected Areas Natura 2000. Conservation Biology, Volume 00, No .0, 1–1.

⁵⁸ Julien B., Lammertz M., Barbier J., Jen S., Ballesteros M., de Bovis C., Krott, M. (2000) Voicing Interests and Concerns: NATURA 2000: An ecological network in conflict with people. Forest Policy and Economics, 357-366.

⁵⁹ <http://www.ieep.eu/publications/2011/03/financing-natura-2000>

⁶⁰ IUCN, 2005. Implementation of Natura 2000 in New EU Member States of Central Europe Assessment Report, (2005) The World Conservation Union – IUCN and Foundation IUCN Poland (IUCN Programme Office for Central Europe) Warsaw, May 2005.

⁶¹ WWF, 2006. Natura 2000 in Europe. An NGO assessment, WWF, Budapest, Hungary, 92 pp

⁶² Hiedanpaa, J., (2002). European – wide conservation versus local well-being: the reception of the Natura 2000 reserve network in Karvia, SW – Finland. Landscape and Urban Planning 61, 113–123.

⁶³ Grodzińska-Jurczak M. i Cent J, (2011), Expansion of Nature Conservation Areas: Problems with Natura 2000 Implementation in Poland? Environmental Management 47, 11-27.

⁶⁴ Apostolopoulou E, Pantis JD (2009) Conceptual gaps in the national strategy for the implementation of the European Natura 2000 conservation policy in Greece. Biological Conservation 142: 221-237.

⁶⁵ Klavankova-Oravska T, Chobotova V, IlonaBanaszek (2009) From Government to governance for biodiversity: the perspective of central and eastern European transition countries. Environmental Planning and Governance 19:186–196.

⁶⁶ Apostolopoulou E, Pantis JD (2009) Conceptual gaps in the national strategy for the implementation of the European Natura 2000 conservation policy in Greece. Biological Conservation 142: 221-237.

⁶⁷ Apostolopoulou E, Pantis JD (2009) Conceptual gaps in the national strategy for the implementation of the European Natura 2000 conservation policy in Greece. Biological Conservation 142: 221-237.

⁶⁸ WWF, 2006. Natura 2000 in Europe. An NGO assessment, WWF, Budapest, Hungary, 92 pp.

- an *inadequate communication with stakeholders*:
 - The Habitats Directive was sometimes criticised as too strict and too ambiguous.⁷⁰ However, this seems to be primarily an implementation issue.
 - “Local landowners, civic groups or others who were affected by site designation could not see in Natura 2000 any economic or social interests. Their exclusion during the designation process increased the overall frustration.”⁷¹
 - Insufficient knowledge and information over conservation objectives, protected species and legal requirements led to poor decision making and lawsuits. Many plans and projects were delayed or annulled through Natura 2000 legislation.^{72,73}
 - No tradition of the public participation or legal regulations for participatory approaches; and a lack of knowledge and false opinion regarding the beliefs of other groups.⁷⁴
 - Lack of public participation, insufficient involvement of relevant bodies, limited consultations with local governments decision-makers and especially with private land owners lack of, or unclear communication strategies; in some cases an absence of public participation (“local knowledge was never seriously considered”).⁷⁵
 - Lack of background knowledge of local stakeholder, which prevented well informed policy decisions – including a negative attitude of local people toward Natura 2000.⁷⁶

Moreover, *the European Court of Justice judgements related to nature conservation* can also help identify some of the main factors which have affected the achievement the objectives of the Directives during each phase of implementing (see Annex 3).

⁶⁹ Kati, V. et al, 2014. The Challenge of Implementing the European Network of Protected Areas Natura 2000. Conservation Biology, Volume 00, No .0, 1–1.

⁷⁰ Beunen, R., 2006. European Nature Conservation Legislation and Spatial Planning: For Better or for Worse? Journal of Environmental Planning and Management, Vol. 49, No. 4, 605–619, July 2006.

“On the one hand, this nature conservation legislation can be interpreted and applied very strictly, thus frustrating all plans and projects. On the other hand, the legislation offers space for interpretation, laying it open to the accusation that it is too vague.”

⁷¹ Klavankova-Oravska T, Chobotova V, IlonaBanaszek (2009) From Government to governance for biodiversity: the perspective of central and eastern European transition countries. Environmental Planning and Governance 19:186–196.

⁷² Julien B., Lammertz M., Barbier J., Jen S., Ballesteros M., de Bovis C., Krott, M. (2000) Voicing Interests and Concerns: NATURA 2000: An ecological network in conflict with people. Forest Policy and Economics, 357-366.

⁷³ Beunen, R., 2006. European Nature Conservation Legislation and Spatial Planning: For Better or for Worse? Journal of Environmental Planning and Management, Vol. 49, No. 4, 605–619, July 2006.

⁷⁴ Grodzińska-Jurczak M. i Cent J, (2011), Expansion of Nature Conservation Areas: Problems with Natura 2000 Implementation in Poland? Environmental Management 47, 11-27.

⁷⁵ Apostolopoulou E, Pantis JD (2009) Conceptual gaps in the national strategy for the implementation of the European Natura 2000 conservation policy in Greece. Biological Conservation 142: 221-237.

⁷⁶ Kati, V. et al, 2014. The Challenge of Implementing the European Network of Protected Areas Natura 2000. Conservation Biology, Volume 00, No .0, 1–1.

S.4 - Have the Directives led to any other significant changes both positive and negative?

Answer:

The directives have helped to build a wide conservation policy at European level by establishing obligations for all Member States. These directives have also boosted significant changes in several areas. We can classify these into two groups:

1. Additional ecological changes

Ecological corridors implementation

The Habitats Directive left open the possibility for Member States to establish ecological corridors allowing movement of biotic factors between two areas and preventing habitat fragmentation due to economic development. For example, following scientific and NGOs advice, France decided to develop on its territory management tools named “*trame verte et bleue*” (blue-green infrastructure).⁷⁷ These tools are formally mentioned in several pieces of national legislations since 2009, such as the environmental, building, local government, rural and forestry laws. Specifically, they are included within the “regional ecological coherence schemes” which contribute to ensuring a sustainable land use and a suitable living environment. Beyond the conservation objectives of these blue-green infrastructures, they have socio-economic benefits as they help to preserve some essential resources and services (such as raw materials, pollination, water purification, flood prevention). Furthermore, this offers prospects for maintaining, or even creating jobs in rural or peri-urban areas (diversification of farm activities, ecological engineering such as renaturation projects).

Species’ protection extension

Both Directives protect species taking into account their habitats. In some cases, Member States have decided to extend this model to protect other species not covered by the directives. This voluntary approach has led to extension of the effective scope of these legislations. For example, again in France, when adopting 72 national action plans in 2011 it was decided to apply this model of protection to some species not in the Annexes of the Directives. Before these national action plans arising from the Directives, the national law (1976) only provided a binary system based on authorisation/prohibition of species destruction, so there was no action or restoration plan. Examples from France include:

- Inclusion of species close to the ones identified as of European interest, such as loggerhead shrike; (*Lanius collurio* listed by the birds directive, protection extended by national actions plans to *Lanius excubitor* etc.);
- A voluntary extension of the scope of the Directives indirectly enlarging its territorial application: the leatherback sea turtle (*Dermochelys coriacea*) is listed as a species of European interest in metropolitan France (Atlantic Coast). France has decided to implement its action plan beyond the metropolitan area by applying it in French Guiana (an outermost region).

2. Societal changes

Both directives have enabled some Member States (such as France or Greece) to achieve a genuine cultural change on conservation and management approaches. They also allowed them to deeply change their legal thinking and environmental policies.

A cultural change

For a long time, many European countries analysed the environmental problems with a regulatory and centralist approach. Both directives have helped to reverse the thinking. For example, in France, the EU Nature Directives have led to:

- A (more) participatory approach: these directives brought together at the same table many stakeholders (NGOs, politicians, hunters, farmers, foresters etc.) who were not used to talk to each

⁷⁷ <http://www.trameverteetbleue.fr>

other or were in a deep conflicting situation. The Natura 2000 network has helped ease recurrent blockages and laid the foundations of a participative approach in the environmental field (designation of sites at national level and management plan at local scale).

- A bottom-up approach: management structures within the Natura 2000 network have considerable autonomy. This helps to identify local problems to solve and to improve the information collected by the central authority that coordinates the whole initiative.

Legal and policy changes

- The holistic, participatory and bottom-up approach introduced by the EU Nature Directives has been crucial to the development of major national legislations in Member States. This is for example the case in France: before the EU Nature Directives, the French Environmental Law was mainly “regulatory” (authorisation/prohibition). There was little space left for adjusting to local specificities and for the emergence of original initiatives in conservation. It is interesting to observe that the development of a new approach was not made at the cost of the regulatory one: on the contrary, in France the objective is to double the area protected by a “regulatory” approach in parallel to the development of the Natura 2000 network (before the Habitats Directive, 1% of French territory was under strict protected status, and today the objective is to reach 2%, while the Natura 2000 network covers 15% of the national territory). Moreover, the EU Nature Directives and their implementation using also the second pillar of the CAP brought the mentioned new approach in the French farmers’ world. Having Natura 2000 within pillar 2 allowed for some environmental considerations in the CAP (along with some other measures of pillar 2). Nevertheless, it is important to highlight that huge progresses can still be made, eg for a better support through the CAP to farmers and landowners managing Natura 2000 sites.⁷⁸

⁷⁸ For more information on the French case, please contact Isabelle Laudon from WWF France (ilaudon@wwf.fr).

Efficiency

Efficiency is essentially a comparison between inputs used in a certain activity and produced outputs. The central question asked here is whether the costs involved in the implementation of the EU nature legislation are reasonable and in proportion to the results achieved (benefits). Both 'costs' and 'benefits' can be monetary and/or non-monetary. A typology of the costs and benefits resulting from the implementation of the Directives is given in Annex II to this questionnaire. In your answers, please describe the nature, value and overall significance of the costs and benefits arising from the implementation of the Directive, supported by evidence.

Y.1 - What are their costs and benefits (monetary and non-monetary)?

Answer:

The *costs* of implementation of Natura 2000 have been analysed by the European Commission in 2 occasions, offering very similar figures in both exercises (€6,1 bn in 2004⁷⁹ and €5,8 bn in 2011⁸⁰). This includes all relevant costs (one-off and recurrent costs). This figure can surely be further refined (see also the answer to question Y.3, eg in relation with methodologies).

In relation with the *benefits* that the implementation of the Nature Directives can provide, a related EC report includes some *key economic figures at European level* (eg €200-300 bn, estimated benefits that flow yearly from Natura 2000), as well as other socio-economic relevant figures (job creation, etc)⁸¹.

Further *non-monetary benefits* for Member States can be mentioned, like the expansion of the national protected area network that Natura 2000 has meant, and the fact that Member States can now claim to belong to the global forerunners for biodiversity conservation. There is also a close interlink between human health and biodiversity, as well as their respective activities and policies: in this sense it is acknowledged that the conservation of biodiversity can benefit human health, mainly by maintaining ecosystem services and by maintaining options for the future.⁸²

Numerous examples of socio-economic benefits provided by Natura 2000 can be found at a Member State level (see also more relevant examples on socio-economic benefits in the answer to question R.4):

- The ongoing Italian project “Making Public Goods Provision the Core Business of Natura 2000” (LIFE+11 ENV/IT/000168, CUP B81H12000580004)⁸³ is producing very specific information on benefits from Natura 2000 (including concrete figures like eg exact € per year from hunting or from mushrooms in a specific Natura 2000 site). First provisional data is not publicly available yet, but it can be requested.
- In Poland the Natura 2000 site Barycz Valley is an essential part of the migratory patterns of birds. In order to protect the area, a strategy of integrating nature with growth was introduced. As a result, a system was developed promoting eco-friendly, natural value-based products and services from the region (‘Barycz Valley Recommends’). Currently, approx. 70 entities use this sign. The Local Action Group (LAG) of the LEADER programme in the area manages the brand and intensively supports its promotion. Based on the same area and with the same mission, the LAG became also the Fisheries Local Action Group (FLAG; Operational programme Fish), thus increasing the generation of funds and development based on the Natura 2000 area: therefore it is also a good example how funds generated have contributed to regional economic growth, based on the Natura 2000 area.⁸⁴
- Another unique example of the synergy of nature conservation and development is the Oder Lands Riparian Zones also in Poland, in Lower Silesia. Here a Partnership Group of non-governmental organizations and local governments was formed in order to work together for sustainable development and conservation in the region. The actions of the Partnership included development of tourism and rural areas, stimulation of local activity and enterprise, education, acquisition of skills and conservation work, which resulted in the implementation of different regional initiatives with a total value of approximately PLN 23 million. As part of the conservation work 600 ha of

⁷⁹ http://ec.europa.eu/environment/nature/natura2000/financing/com_2004_en.htm

⁸⁰ http://ec.europa.eu/environment/nature/natura2000/financing/docs/natura2000_costs_benefits.pdf

⁸¹ http://ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018_LR_Final1.pdf

⁸² Secretariat of the Convention on Biological Diversity and the World Health Organization, 2015. Connecting Global Priorities: Biodiversity and Human Health: Summary of the State of Knowledge Review.

⁸³ <http://www.lifemgn-serviziecosistemici.eu/IT/docu/Pages/documgn.aspx>

⁸⁴ For more information, please contact Piotr Nieznanski from WWF Poland (pnieznanski@wwf.pl).

floodplain will be reconnected to river regime and restored.⁸⁵

- In Romania the Lacu Sarat farm is also a good example, how sustainable business can work near protected area. The farm is located next to the Balta Mica a Braile wetland Natura 2000 site and represents the main contributor to the local budget. Ensuring jobs and income for the population of the surrounding villages, the ecosystem of the wetland is not subjected for heavy transformations anymore. Since the establishment of the company in 2001, it has not been identified any pressure on the neighbouring protected area and economic and ecological sustainability is ensured.⁸⁶
- In Hungary, Romania and Bulgaria, the restoration of 2.236 square kilometers of floodplains along the Lower Danube would cost 50 million euros, whereas the flood protection, water purification and tourism benefits would reach 112 million euros.⁸⁷
- In Austria the Upper Drau is a European protected area since 2011. The river is home among others, to a largest grey alder riparian forest of Austria, 19 native fish species and over 140 species of birds. In the frame of a LIFE Project 10 river kilometres were revitalised, 100 wetland water bodies were created and approximately 100 hectares of riparian forest were secured. As a result of the conservation work, downriver towns formerly endangered by flooding became locally protected.⁸⁸
- In Austria, the Tyrolean river Lech Natura 2000 site, with its huge banks of gravel and broad zones of lowland riparian forest, is probably the last river in the northern Alps which has some kind of natural state. The river had an increasing pressure from human activities in the past, which resulted in narrowing the riverbed in several sections. Between 2001 and 2006 a LIFE project took place aiming to the conservation and restoration of the near-natural dynamic river habitats and the improvement of flood protection. This project has provided the impetus for a range of cooperation measures between various partners on issues such as flood protection, revitalisation and tourism. A birdwatching tower was constructed to encourage a positive drive for environmentally sustainable tourism, and an information centre was opened as a starting point for excursions and events to raise awareness. In 2005 the Tyrolean Lech Valley Nature Park was established.⁸⁹

⁸⁵ For more information, please contact Piotr Nieznanski from WWF Poland (pnieznanski@wwf.pl).

⁸⁶ For more information, please contact Diana Cosmoiu from WWF Danube Carpathian Programme (dcosmoiu@wwfdcp.ro).

⁸⁷ <http://www.ieep.eu/work-areas/agriculture-and-land-management/2011/01/valuing-and-conserving-ecosystem-services-a-scoping-case-study-in-the-danube-basin>

⁸⁸ For more information, please contact Christian Pichler from WWF Austria (christian.pichler@wwf.at).

⁸⁹ For more information, please contact Christian Pichler from WWF Austria (christian.pichler@wwf.at).

Y.2 - Are availability and access to funding a constraint or support?

Answer:

Access to funding is a clear constraint for the implementation of Natura 2000: it is estimated that only 9-19% of the funding needs of Natura 2000 were covered by EU funds during the previous funding period.⁹⁰ The current EAFRD, the ERDF and the EMFF include a number of measures for funding of Natura 2000 within their provisions (see the EC Guidance Handbook for financing Natura 2000 shows)⁹¹: however *it is up to the Member States to use this EU funding opportunities or not*. There is not yet an estimation of how much of Natura 2000 needs will the EU funds cover during the current period (2014-2020), but it can be expected that there will still be an important gap.

The only dedicated EU fund for environment, including nature protection, is LIFE. Although it is very limited, it has shown its effectiveness. A good example from Spain is the Iberian lynx, an endangered species in a recovery process thanks to the protection of its habitat and the development of several Life projects⁹². The EU LIFE funding line has shown an important number of successes in conservation in Europe⁹³: this shows that when there are funds available, there are clear results and the impact of the legislation increases. Moreover, these projects usually are developed in remote rural areas, that otherwise would not have a reason to request for such funds.

Where EU funds other than LIFE have been used adequately, there have been positive results. For example, in Poland the Biebrza Valley, owing to the possibilities resulting from Natura 2000 within the framework of the Agri-Environmental Programmes, peatlands were mowed on an operational scale and the central basin was renaturalised (elimination of the problem of peat land drying caused by the old drainage system).⁹⁴ And in Hungary, the project “Elaboration of Natura 2000 management plans from the European Agriculture and Rural Development Funds” supported the development of 244 plans for Natura 2000 sites (half of the overall Hungarian SCIs). On the negative side, there was a huge bureaucracy connected to this project: it consumed 1/3 of the budget and caused huge extra work from the nature conservation part and farmers.⁹⁵

In some cases, relevant socio-economic stakeholders are eager to get more EU funds to ensure the conservation benefits from Natura 2000. For example, a regional hunter organization in the region of Navarra (in the North of Spain) currently supports the use of Rural Development Funds for biodiversity and Natura 2000. They ask the administration in charge of the regional Rural Development Programme programming to prioritise measures aimed at biodiversity conservation such as agri-environmental measures, payments for organic farming and Natura 2000 funding. This hunter organization considers that the use of Rural Development Funds for nature conservation is key for the conservation of steppe habitat and in particular steppe birds. Above all, they find that funding for Natura 2000 and organic farming should be prioritised in the Rural Development Program of Navarra to guarantee the recovery of the cereal steppes of Navarra and the habitat and species that live there.⁹⁶

In terms of *national funds available for conservation, these are generally limited*. For example, in Greece these national funds are limited to the Natura sites that are included in the management bodies of national protected areas. As a result implementation of the directive is very slow, leading to further problems of implementation.⁹⁷ Another example is Hungary, where there is a special leasing practice

⁹⁰ <http://www.ieep.eu/publications/2011/03/financing-natura-2000>

⁹¹ http://ec.europa.eu/environment/nature/natura2000/financing/index_en.htm

⁹² http://wwf.panda.org/about_our_earth/species/profiles/mammals/iberian_lynx/

⁹³ <http://ec.europa.eu/environment/life/>

⁹⁴ For more information, please contact Piotr Nieznanski from WWF Poland (pnieznanski@wwf.pl).

⁹⁵ <http://wwf.hu/natura2000-tervek>

<http://natura.2000.hu/hu/hirek/natura-2000-fenntartasi-tervek-kiskunsagi-nemzeti-park-igazgatosag-mukodesi-teruleten>

For more information, please contact Laurice Ereifej from the WWF Danube Carpathian Programme (laurice.ereifej@wwf.hu).

⁹⁶ <http://www.club-caza.com/actualidad/actualver.asp?nn=4584>

⁹⁷ For more information, please contact Ioli Christopoulou from WWF Greece (i.christopoulou@wwf.gr).

of state owned land, including protected land - this land leasing practice passes state land to entrepreneurs under very favourable lease conditions, taking it from local people. And the driving force behind is the CAP direct payments (1st pillar), sometimes topped with 2nd pillar payments too.⁹⁸

⁹⁸ <http://www.greenfo.hu/hirek/2014/07/25/angyan-jozsef-vi-jelentese-a-foldmutyikrol>

Article in English:

<http://budapestbeacon.com/public-policy/jozsef-angyan-fidesz-oligarchs-to-get-lions-share-of-state-land-agricultural-subsidies/>

Further information at:

<http://www.greenfo.hu/uploads/dokumentumtar/angyan-jozsef-vi-jelentese-a-foldrol.docx>

<http://nol.hu/velemeney/korlatlan-osztogatas-veszelyben-a-vedett-termeszeti-1504805>

http://kielegyenafold.hu/angyan_jelentesek.php). He's a professor at Szent István University

http://www.kti.szie.hu/index.php?option=com_content&task=view&id=294&Itemid=776

Y.3 - If there are significant cost differences between Member States, what is causing them?

Answer:

There are obvious differences in terms of *surface covered by Natura 2000* (which is related with the EU relevance of the nature present in each Member State), *costs of living differences*, *pressures over the habitats and species* and others. Such differences finally have an impact on the costs of implementing the EU Nature Directives in each EU Member State.

The cost estimate from the European Commission from 2010⁹⁹ shows significant differences in the costs of implementation of the Natura 2000 network in different Member States. It is important to remember that such costs estimates were done individually by each Member State, by request of the European Commission. Therefore, each Member State decided how to carry out such exercise and there was no harmonised methodology. On the one hand, *different strategies for the management of the Natura 2000 network can be identified*, eg Cyprus costs for land purchase are very high (over 60% of the overall costs), while other countries consider that they need no budget for purchasing land (eg Denmark, Malta, Poland). And on the other hand, the *methodologies used can be - and surely are - different*.

We are particularly familiar with the *methodology used in Luxemburg, as WWF Germany participated* in its development.¹⁰⁰ The methodology used proved to be very useful if the data availability is guaranteed. In this case, there was a countrywide biotope mapping, and there were also a number of national investments to restore habitats available, which helped to make realistic cost estimates. The key challenges in estimating the costs could be summarized as follows:

- estimating the real needed costs of restoring or keeping of a certain habitat status: the practical approach usually applies the existing expenditures for biodiversity on staff and certain projects, and upscales them to the level of areas.
- what are the right measures for protection: in some cases it can be land purchase, in others infrastructures to restore habitats. It is important to evaluate the most common ways of conservation work needed in a given country (as there might be in some cases eg only the need to educate and raise awareness amongst residents to keep an intact habitat, while in other cases eg there needs to be a large investment to restore and rebuild a destroyed riverbed).
- what is the way to manage biodiversity: in some countries doing nothing while ensuring alternative income sources for people depending on the natural resources provided by the sites might be the right approach; whereas in many, especially western countries, large scale restoration work is needed.

For future similar exercises harmonisation of methodologies, and a close technical follow up by international experts, would be needed to get an adequate picture of the differences and understand them in detail.

⁹⁹ http://ec.europa.eu/environment/nature/natura2000/financing/docs/natura2000_costs_benefits.pdf

¹⁰⁰ For more information, please contact Peter Torkler (peter.torkler@baltcf.org), responsible for this project at the time.

Y.4 - Can any costs be identified (especially regarding compliance) that are out of proportion with the benefits achieved? In particular, are the costs of compliance proportionate to the benefits brought by the Directives?

Answer:

According to our knowledge, no: considering the huge benefits of nature conservation, and in particular of Natura 2000, compared with the estimated costs (see answer to question Y.1), we could not find any “out of proportion” costs. As also the former Commissioner for Environment Janez Potocnik recently emphasised any disproportionate burden namely brings also disproportionately greater benefits.¹⁰¹ A recent report addresses the myth that Green Regulations can jeopardize businesses competitiveness and economic growth, stating that the benefits of such regulations are often important and severely underestimated.¹⁰²

It is also very important to keep in mind the “intrinsic value” of nature – i.e. value of nature for itself and by itself (e.g. value of ecosystem for the species within the ecosystem), which cannot be quantified, but also cannot be omitted. And even this value can be considered from certain perspective as of anthropocentric nature, as we *humans depend on biodiversity for our survival*.¹⁰³

¹⁰¹http://www.natura2000.gov.si/index.php?id=87&tx_ttnews%5Btt_news%5D=491&cHash=62164118939a8f442f585694fc b76e93

¹⁰²<http://www.lse.ac.uk/GranthamInstitute/news/new-report-exposes-myth-that-green-regulations-inflict-major-harm-on-business-competitiveness-and-economic-growth/>

¹⁰³http://ec.europa.eu/environment/nature/info/pubs/docs/brochures/biodiversity_tips/en.pdf

Y.5 - Can good practices, particularly in terms of cost-effective implementation, be identified?

Answer:

Cost-effective implementation good practices are abundant. *For example, early planning* has been identified as a good practice that supports a better implementation of the Nature Directives, while saving extra costs. For example, in Austria the experience with ASFINAG (public corporation responsible for the maintenance and development of Austrian motorways) showed that introducing environmental considerations (including Natura 2000) at early stages of the planning process could prevent delays and changes of planning which could otherwise cost millions of euros.¹⁰⁴ Again in Austria, the use of wind power in the neighbouring provinces Lower Austria and Burgenland shows how the different approaches to planning can result in unnecessary long proceedings (Lower Austria did not publish any delineation of suitable areas which would be in line with the Nature Directives, which ended up in planning errors and delays; in contrast, Burgenland elaborated a zoning and consistently used it, which allowed both the rapid development of wind power and the increase of the Great Bustard on the *Parndorfer Platte*; recently, Lower Austria followed this approach and also created a zoning).¹⁰⁵ Also in Austria, the floodplains of Morava and Dyje Natura 2000 site are among the most species-rich river basins in the country. Up to 40 000 visitors are visiting this region per year, which means the largest regional source of income. The value added effects of these visits are estimated in 680 000 EUR (bandwidth: 513 000-792 000 EUR) a year. The corresponding employment effects are approximately 12 person-years (range: 9.15 to 14.09 person-years).¹⁰⁶

The *Natura 2000 Awards applications* from the past year (2014) are a good source of information for cases where cost-effectiveness has been relevant. A recent study concluded that good ratings of applicants to these Natura 2000 Awards were often good examples of project planning and implementation¹⁰⁷. This can surely also be expected for the current 2015 applications¹⁰⁸.

The example of the Billund airport in Denmark also shows how an efficient use of the provisions of the EU legislation can help to ensure a cost-efficient implementation, resulting in *positive effects for nature and society*. The take-off and landings of planes were a huge problem for local residents, therefore the airport authorities decided to apply for construction of a new runway. But this new runway would significantly affect an old growth forest. However, the assessment revealed that a similar noise reduction could just as well be achieved by changing the take off procedure (leaving as soon as possible, and turning 30 degrees right at above 150 m above ground). So the assessment saved the airport authorities €40 mill as well as protecting the old growth forest.¹⁰⁹

A study was recently carried out on methodology to support the process of selecting and prioritising cost-effective measures for river restoration with a view to reaching a good status of a water body. The researchers suggest an approach to restore a ‘coordinated network of smaller river sections’ (instead of the entire river) ‘in order to provide habitats for reproduction and allow migrating species to pass through. The idea is that, given the correct configuration, the network should ensure the ecological integrity of rivers in the wider area. This approach also has the advantage of being cheaper, and more practical, than restoring entire rivers’.¹¹⁰ This is not only an example of *cost-effectiveness in*

¹⁰⁴ http://wwf.panda.org/what_we_do/where_we_work/black_sea_basin/danube_carpathian/news/?uNewsID=116860

¹⁰⁵ WWF Austria, 2014. Burgenland - a Best Practice example for a sustainable development of wind power in Austria? Information paper.

¹⁰⁶ Anonymus, (2012): Regionalwirtschaftliche Effekte eines Schutzgebiets March-Thaya-Auen. - WWF Studien, Broschüren und sonstige Druckmedien 16_2012: 1-17; <http://www.landesmuseum.at/datenbanken/digilit/?litnr=41772>.

¹⁰⁷ See the “Environmental Benchmarking Report” at: http://news.adelphi.de/link.php?link=01_02_04_8B_4

¹⁰⁸ http://ec.europa.eu/environment/nature/natura2000/awards/application-2015/index_en.htm

¹⁰⁹ <http://ec.europa.eu/environment/eia/eia-billund-airport.htm>

¹¹⁰ Klauer, B., Schiller, J., & Bathe, F. (2014). Concept for cost effective improvement of river morphology in the context of the European Water Framework Directive. *Journal of Environmental Planning and Management* (November), 1–17. DOI:10.1080/09640568.2014.969833;

implementing 2 different pieces of EU legislation, but also of coherence between the Nature Directives and the Water Framework Directive (therefore also relevant for the question C.2).

Y.6 - What are likely to be the costs of non-implementation of legislation?

Answer:

Apart from the *loss of credentials / reputation* on biodiversity conservation at a national / regional and international level, the non-implementation of the Nature Directives can result in *direct consequences to the habitats and species* of community interest as well as wider biodiversity and ecosystem services. In monetary terms, in 2006, COWI estimated the costs of non implementing the EU environmental acquis for biodiversity / nature in *around €50 bn per year*¹¹¹.

Furthermore, *non-implementation can lead to furthering of administrative burden, potential fines, legal uncertainty, social reactions etc, which also have a cost*. In particular, the fact that currently in most Member States conservation objectives have not yet been defined, management plans have not been approved etc. means that it is difficult to assess projects – hence more and additional studies are requested, delays are common, etc. Similarly, EU funds (e.g. rural development funds) cannot easily be absorbed since the clear objectives of each site are not defined etc. In the end, the cost of non-implementation leads to less efficiency, weaker effectiveness and in the end non-compliance with the directives.

Non-implementation can cause *planning errors and unnecessary delays*, which at the very end mean an extra cost for the developer. The Austrian examples mentioned in the answer to the previous question (Y.5, in respect of early planning of wind farms and of highways) show this fact clearly. The Via Baltica motorway case from Poland also reflects the extra costs of non-adequate implementation of the Nature Directives: after years of discussions about the originally planned route through the Natura 2000 site Rospuda Valley – which would have meant its destruction –, a decision was taken to re-route the motorway in 2009.¹¹² Should this decision have been taken earlier, the savings in time and resources would have been huge.¹¹³

¹¹¹ http://ec.europa.eu/environment/enveco/economics_policy/pdf/report_sept2011.pdf

¹¹² <http://pr.euractiv.com/pr/baltica-rospuda-valley-finally-saved-destruction-birdlife-international-welcomes-today-s-88798>

¹¹³ http://bankwatch.org/documents/Rospuda_valley_road_alternatives.jpg

Y.7 - Taking account of the objectives and benefits of the directives, is there evidence that they have caused unnecessary administrative burden?

Answer:

The Birds and Habitats Directives have not caused any unnecessary administrative burden. The European Commission High Level Group on Administrative Burdens estimated the administrative burden stemming from the priority area Environment in less than 1% of the estimated total administrative burden (however, businesses perceive the burden to be much higher in this area; this is partly due to confusion with compliance costs in the environmental area and to the high visibility of certain requirements).¹¹⁴ It is also interesting to note the case of the UK, where prior to the 2012 English Review of the Habitats Directive, there was a common view that the Habitats Directive placed large costs on UK businesses and represented a barrier to growth. The Review found that in most cases, problems do not arise as a result of objections on Habitats Regulation grounds¹¹⁵. It was actually shown that the few cases where potential delays, uncertainty or additional costs arose were very well publicised, which unnecessarily damaged the image of the Habitats Directive¹¹⁶.

¹¹⁴ http://ec.europa.eu/smart-regulation/refit/admin_burden/docs/08-10web_ce-brocuttingredtape_en.pdf

¹¹⁵ Defra (2012). Report of the Habitats and Wild Birds Directives Implementation Review, available here: <https://www.gov.uk/government/publications/report-of-the-habitats-and-wild-birds-directives-implementation-review>

¹¹⁶ *Ibid.*

Y.8 - Is the knowledge base sufficient and available to allow for efficient implementation?

Answer:

In general in Europe the knowledge base is higher than in other areas of the world, in relation with the status and trends of most of the endangered or relevant species, particularly for vertebrates and more specifically for birds. The knowledge should certainly improve particularly on invertebrates or in some specific groups, like amphibians or small mammals. Regarding the habitats, the new technology (GIS systems and equivalent) strongly developed in the last years have permitted a strong development of different platforms that lead to good knowledge and allow for good monitoring of landscapes and habitats. The role of science and having a good knowledge base in the implementation of the Birds and Habitats Directives has been acknowledged as crucial¹¹⁷.

And in any case, the lack of sufficient or available knowledge for biodiversity should not prevent us from action, in line also with preventive and precautionary principles. Rather we have to proceed with the available knowledge – in a realm of optimal ignorance – allowing for further adjustment, improvement, or in other words for a dynamic and adaptive management, based on iterative processes and continuous monitoring. The EU Treaty provides the principles that must guide EU environmental policy: appropriate principles to look at and guide implementation of the two directives are both the prevention and the precautionary principles.

A clear area where there is an important gap of knowledge are the marine habitats and species, where the designation process proceeds slowly, in some cases because of this reason. But it is also true that sometimes the scarce specific financial instruments for biodiversity have been properly used to increase the knowledge and advance in the designation (example LIFE + INDEMARES that has got the necessary scientific information to create 10 new marine natura 2000 protected areas)¹¹⁸.

Another important issue where lack of sufficient knowledge can be a problem for the correct implementation of the Directives is the application of concept of Favourable Conservation Status. The overall objective of the Habitats Directive is the maintenance or restoration of natural habitats and populations of wild species of Community interest at a favourable conservation status (FCS). However, there are important difficulties in establishing a conservation status baseline (lack of data on historical changes in habitat and species distributions), considering favourable conservation status in a biogeographical context, organising comprehensive species and habitat monitoring networks at both national and European scales, habitat identification issues, and difficulties in the study of habitat-specific structures and functions and scaling problems. While many organizations and country agencies have, over the years, made a number of attempts to address the issue of how to apply the concept of favourable conservation status, definitive conclusions have not yet been reached. The application of this concept requires a technical agreement in most of the cases to establish the boundaries of each process and the scope of the approach. In any case, provisions of the Habitats Directive provide some basic instructions to establish the adequate basis, to apply management measures and evaluate trends with most of the species. Thanks to this concept we can make a basic evaluation of the results achieved. The existing European Commission's monitoring and reporting working group has helped to advance in this discussion, which is still ongoing.

The lack of knowledge has created and still creates a number of challenges in the implementation of the Birds and Habitats Directives at Member State level. For example, many conflicts in the Netherlands in relation to the implementation of the appropriate assessment of the Habitats Directive were caused by a lack of knowledge and information about the occurrence of species. Careful decision-making about nature conservation goals requires adequate information about the occurrence

¹¹⁷ Louette, G., 2015. Implementing the Habitats Directive: How science can support decision making. Journal for Nature Conservation 23 (2015) 27–34

¹¹⁸ <http://indemares.es>

of specific species in the area. In order to assess the effects of activities on the population of a certain species, one needs detailed information about this population and its dynamics.¹¹⁹

Unfortunately, *today, biodiversity is often destroyed by ignorance*: in France, more than two thirds of terrestrial species are not scientifically localized and 10% of remarkable habitats are poorly understood¹²⁰.

It is also important to note that there has been quite some research directly related with Natura 2000 with a stronger emphasis on ecological research and less on 'social and policy' issues. There is therefore still the need and room to advance in the knowledge about Natura 2000, including a better social-ecological understanding of it.¹²¹

In any case, in relation with implementation of the EU Nature Directives, the lack of knowledge should not be considered and obstacle mainly for two reasons:

- Firstly the designation process for the terrestrial part of Natura 2000 has been initiated, developed and completed in certain cases more than a decade ago with very satisfactory results, even with the gaps of knowledge existing at the time. Currently most of these gaps have been fulfilled although it still persists for some specific elements (particularly marine habitats and species). In some cases the lack of designation is more a result of a lack of political will or the existence of some kind of interests, than a consequence of the lack of scientific knowledge (example is the lack of designation of the SCI in the Canary Islands because the potential interest in the oil prospections¹²²).
- And secondly the legislation favours the implementation of research (see article 18 of the Habitats Directive) and permits the inclusion of monitoring and research activities in the management plans, in order to fulfil the gaps of knowledge and to encourage the designation of new areas or the enlargement of the existing ones, in order to adjust the sites to the new discoveries. Actually an important reason for the lack of knowledge is related to the lack of monitoring of the species and habitats due to the scarce resources invested in the monitoring. Also the lack of will/capacity of administrations when they have to fulfil the obligatory reporting is the reason that a lot of species are reported with unknown conservation status in the Article 17 reports, which makes it more difficult to assess the contribution of Natura 2000 to the improvement of biodiversity and to assess the negative impacts of other policies on different species and habitats.

¹¹⁹ Beunen, R., 2006. European Nature Conservation Legislation and Spatial Planning: For Better or for Worse? Journal of Environmental Planning and Management, Vol. 49, No. 4, 605–619, July 2006.

¹²⁰ La source de ces chiffres est le DP du MEDDE de mars 2014, page 2 paragraphe "connaissance":

"en France, plus des deux tiers des espèces terrestres ne sont pas scientifiquement localisées (1) et 10 % des habitats remarquables sont mal connus (2)"

Le DP donne comme source pour ces chiffres:

(1) <http://indicateurs-biodiversite.naturefrance.fr/indicateurs/niveau-de-connaissance-de-la-repartition-des-especes-metropolitaines>

(2) <http://indicateurs-biodiversite.naturefrance.fr/indicateurs/niveau-de-connaissance-des-habitats-remarquables> (lien qui ne fonctionne plus mais le cache google permet tout de même d'y accéder:

http://webcache.googleusercontent.com/search?q=cache:8xeXnioSoesJ:indicateurs-biodiversite.naturefrance.fr/indicateurs/niveau-de-meconnaissance-des-habitats-remarquables+&cd=1&hl=en&ct=clnk&gl=fr&lr=lang_en|lang_fr)

¹²¹ Popescu VD, Rozyłowicz L, Niculae IM, Cucu AL, Hartel T (2014) Species, Habitats, Society: An Evaluation of Research Supporting EU's Natura 2000 Network. PLoS ONE 9(11): e113648. doi:10.1371/journal.pone.0113648; <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0113648>

¹²² <http://www.icndiario.com/2014/12/10/canarias-el-tribunal-superior-no-suspende-las-prospecciones-de-petroleo-de-repsol/>

Relevance

Relevance concerns the extent to which the objectives of the nature Directives are consistent with the needs of species and habitats of EU conservation concern. The question of relevance relates to whether the objectives of the legislation are still necessary and appropriate; whether action at EU level is still necessary in light of the challenges identified and whether the objectives and requirements set out in the EU nature legislation are still valid.

R.1 - Are the key problems facing species and habitats addressed by the EU nature legislation?

Answer:

The EU Nature Directives are one of the most important tools for tackling main problems faced by EU species and habitats. The legal protection framework they provide as well as on-site implementation mechanisms are crucial contributions for biodiversity conservation. As it has been mentioned before (see answers to questions S.1.1 & S.2), there is evidence that the Directives are already being effective for biodiversity. An example is the recovery of large carnivores in Europe's in modern human-dominated landscapes (where they have been suffering from problems like habitat loss, persecution by humans and loss of prey), after a historical reduction in abundance and their distribution: species like the brown bear, the grey wolf, Eurasian lynx and wolverine, have shown the capacity to survive in human-dominated landscapes. The reasons for the success of large carnivores in Europe range from coordinated legislation shared by many European countries like the Habitat Directive to context-specific management practices and institutional arrangements¹²³. All in all, the problems these species are facing have been overcome.

The assessment on conservation status made by the EU Member States and the assessment of the risk of extinction of species – red lists – carried out by the IUCN show that **habitat loss and change, pollution, over-exploitation, invasive alien species and climate change** are the main pressures driving biodiversity loss.¹²⁴

Land use and land cover change directly threaten biodiversity through habitat modifications, causing species losses due to both habitat loss and fragmentation¹²⁵. Changes in habitat and species composition strongly alter ecosystem functioning and the related services provided by natural ecosystems¹²⁶. And in this context, protected *Natura 2000 areas are fundamental tools for conservation of natural and traditional areas in intensive landscapes*. In a recent study, where a land cover change was assessed throughout Spain over 20 years (1987–2006), differences in the direction and intensity of land use changes within different protection categories were quantified, it a lower intensity of anthropization processes has been observed in protected areas, increasing the persistence of natural and farming areas, key habitats for species conservation. The highest persistence of natural areas corresponds to nationally designated Protected Areas, while in Natura 2000 they found the highest persistence of agriculture areas¹²⁷.

EU Nature Directives have also proven useful to deal with some challenges related with the invasive species, although this 'new' threat has not adequately been addressed by the Directives. The new EU regulation on Invasive Alien Species should however address the remaining gaps and contribute to the achievement of the objectives of the Birds and Habitats Directives.¹²⁸ In Spain several projects (like LIFE 10 NAT/ES/000582 INVASEP) have been developed in the framework of the BHDs

¹²³ Guillaume Chapron et al. Science 346, 1517 (2014).

http://ec.europa.eu/environment/integration/research/newsalert/pdf/large_carnivores_making_comeback_in_Europe_407na1_en.pdf

<http://www.sciencemag.org/content/346/6216/1517>

<http://www.theguardian.com/environment/2014/dec/18/brown-bears-wolves-and-lynx-numbers-rising-in-europe>

¹²⁴ Romao, C. That added value of the Habitats Directive: Is biodiversity better protect since the Directive entered into force? Chapter in the book "The Habitats Directive in its EU Environmental Law Context - European Nature's Best Hope?" (Born, C.H. et al editors, 2014).

¹²⁵ Fahrig, L. (2003). Effects of habitat fragmentation on biodiversity. Ann. Rev. Ecol. Evol. Syst. 34, 487–515.

EEA, 2015. The European Environment, State and Outlook 2015: synthesis report, EEA, Copenhagen.

¹²⁶ Laliberté, E. & Tylianakis, J. M., 2012. Cascading effects of long-term land-use changes on plant traits and ecosystem functioning. Ecology, 93(1), 2012, pp. 145–155.

Mace G. M. et al, 2012. Population and geographic range dynamics: implications for conservation planning. Phil. Trans. R. Soc. B (2010) 365, 3743–3751.

¹²⁷ Martínez – Fernández et al, 2014 – please contact Gema Rodríguez from WWF Spain to get this publication (grodriquez@wwf.es)

¹²⁸ http://ec.europa.eu/environment/nature/invasivealien/index_en.htm

implementation to stop the impacts of those species on native habitats and species.

Climate change has both direct and indirect impacts on species and ecosystems¹²⁹. Direct impacts on species include e.g., changes of plant and animal life cycle events, and co-dependencies across and between species may change. Other impacts of climate change for species are indirect, through changes in the abiotic conditions of habitats: these include, changes in the ground or surface water tables or increased erosion. As a result of climate change, the area where species find suitable climate conditions may change. Therefore, *the designation and management of Natura 2000 has been crucial to improve connectivity* by development and protection of stepping-stones and corridors. Moreover, Natura 2000 sites are usually considered as core areas for national connectivity networks. In this context, it is also important to mention that the Habitat Directive refers to the need of working on a large scale perspective in order to guarantee the coherence of the network and to guarantee the conservation of its basic elements (like natural corridors or stepping zones in the migratory process). This aspect included in article 10 of the Habitats Directive is a crucial one, which should be developed and requires a stronger implementation in order to avoid the creation of isolated protected areas (similarly also Art 4.4 of the Birds directive).

Article 6(3) of the Habitats Directive, as it does not define the list of the potential problems or issues affecting habitats and species, but rather focuses on any plan or project in general which could affect the Natura 2000 sites, offers a flexible and modern way to deal with key problems faced by species and habitats.

As Carlos Romao concludes his chapter in the book ‘The Habitats Directive in its EU Environmental Law Context - European Nature’s Best Hope?’: *the Habitats Directive, as environmental policy in the European Union, has contributed to substantial improvements – and prevented further degradation*, although the challenges remain¹³⁰. Moreover, the new EEA report on the state of environment, clearly states that ‘conserving and managing /Natura 2000/ and other nationally-designated areas (and enhancing their coherence through developing green infrastructure, such as wildlife corridors) is a critical step to protect Europe’s biodiversity.¹³¹

¹²⁹ Berry, P.M., Paterson J., Cabeza M. *et al.* (2008) Adaptation and mitigation measures and their impacts on biodiversity. MACIS. Minimisation of and Adaptation to Climate change Impacts on Biodiversity. 316.

Sajwaj et al. 2009 ; http://www.ieep.eu/assets/1376/Sajwajetal2011_ClimateChangeRenewablesNatura2000_Task_2a.pdf

¹³⁰ Romao, C. That added value of the Habitats Directive: Is biodiversity better protect since the Directive entered into force? Chapter in the book “The Habitats Directive in its EU Environmental Law Context - European Nature’s Best Hope?” (Born, C.H. et al editors, 2014).

¹³¹ EEA (2015) The European Environment, State and Outlook 2015: synthesis report, EEA, Copenhagen.

R.2 - Have the Directives been adapted to technical and scientific progress?

Answer:

The *Annexes of the Birds and Habitats directive have been adapted on several occasions, mostly owing to the successive enlargements of the European Union.*^{132,133} The Manual of European Union Habitats has also been updated several times over the years, following the enlargement processes, as well as the scientific progress.¹³⁴

It should be noted that provisions for amending the Annexes (Articles 15 BD and 19 HD) refer to the consideration of ‘necessity’ of Annexes’ adaptation, implying that adaptation should be carried out *only* if needed to reach the objectives of the Directives. The Commission would thus need to rather explore the ‘necessity’ for adaptation and potential impacts of any adaptation, in line with the principles of good law making, some of them outlined below.

The question that needs to be asked before any decision is taken on the adaptation of annexes is whether they together with other EU environmental legislation *provide the needed protection for EU biodiversity in general and for endangered habitats and species in particular*, and whether the adaptation, taking into account the legislative processes in the EU could potentially lead to lowering of the current state of conservation and undermine the achievement of Nature Directives’ objectives, EU biodiversity targets as well as global (and regional) targets. As one group of scientists, despite recognising a mismatch between some species in the Annexes and their Red List status in the EU, pointed out, changes to Annexes now would ‘divert attention and resources; from the needed conservation action and ‘risk being counterproductive’¹³⁵.

Furthermore, to ensure and consolidate long-term environmental progress¹³⁶, conditions for making EU law resistant to political changes and pressures need to be created; this might require introduction of procedures which make the law more difficult to amend (as for example in the case of HDs, as decided by the legislator at that time). This *longevity of policy can have very positive environmental outcomes*, like in the case of the Nature Directives, which have achieved important conservation successes in Europe¹³⁷. This might not be the case in other environmental fields, where frequent changes are needed and the need for regular review is already build into the legislation itself (eg reviewing the list of priority substances in water). Again, any ideas for changes to Nature Directive’s Annexes need to be assessed against this background.

Any consideration of whether annexes are up to date therefore must take into account these considerations, as well as explore what is the scale of the problem (ie of some species or habitats not being currently listed) and what are the likely economic, social and environmental impacts of potential amendments (as inferred from the Commission’s Impact Assessment Guidelines (SEC(2009) 92)).

Concretely, our own analysis indicates that there is *scientific evidence that the conservation measures provided by the Directives work not only for the species they were designed for, but also for the broader biodiversity*¹³⁸. Moreover, *at national level, the implementation of the Nature Directives has*

¹³² http://ec.europa.eu/environment/nature/legislation/birdsdirective/index_en.htm

¹³³ http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm

¹³⁴ http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm

¹³⁵ <http://www.researchgate.net/publication/236680375> Not the right time to amend the Annexes of the European Habitats Directive

¹³⁶ “Average time for species status to improve by one Red List category is 16 years.” <http://www.sciencedirect.com/science/article/pii/S0006320714003565>

¹³⁷ IEEP (2013) Report on the influence of EU Policies on the Environment. Available here: http://www.ieep.eu/assets/1230/Final_Report_-_Influence_of_EU_Policies_on_the_Environment.pdf

¹³⁸ V. Pellissier et al. 2013. Assessing the Natura 2000 network with a common breeding birds survey, Animal Conservation 16 (2013) 566–574,

<http://onlinelibrary.wiley.com/doi/10.1111/acv.12030/abstract>; Pellissier V., Schmucki R., F., Jiguet,

led to the protection of biodiversity beyond the target habitats and species (see answers to questions S.2 – Romanian example, and to S.1.1 – Austrian example). The approach to biodiversity conservation adopted by the Nature Directives addressing designation of areas for both species and habitats allows, depending on the management measures put in place (eg. in the case of invertebrates such management measures would require maintenance of intact mosaics of microhabitat elements), for spill-over protection of a variety of groups of organisms.

Protection of non-listed species and habitats can also be provided through the implementation of legislation in other policy areas, such as the WFD and MSFD, which BHDs are coherent with and complementary to (see answers C.2, C.3 & C.8). For example the classification of good ecological status requires considerations of biological elements, which include also aquatic flora and fauna (cf Annex V WFD). According to WFD *all* quality elements need to comply with the criteria for good status in order for a water body as a whole to be qualified as such ('one-out-all-out' principle) (cf Annex V section 1.4.2 and 1.4.3). This implies that, if one biological quality element is failing due to an impact, the MS needs to address it.

As regards the marine environment (which is sometimes mentioned as the area where there might be a mismatch), it should be recognised that although the Annexes of the Habitats Directive do not include a number of marine habitats and species (the offshore and deep water marine environment are mentioned), the *provisions of the Habitats Directive help protect marine species and habitats as well as the wider ecosystem, through the connectivity of sites provided by the Natura 2000 network and through the spill-over effects of marine reserves*, also in relation to commercial fish stocks and other non-targeted species.¹³⁹ Moreover, biodiversity is the first of the MSFD's Good Environmental Status (GES) descriptors, applying to species, habitats and ecosystems. Consequently, the MSFD requires the quality and occurrence of habitats and the distribution and abundance of species to be maintained and improved. The full implementation of MSFD, including the adoption by 2015 of ambitious programmes of measures designed to achieve or maintain GES, should thus help ensure that Natura 2000 sites are not compromised and marine environment in general preserved and protected, including by addressing degradation outside of protected sites such as Natura 2000. It should be recognised as well that regional conventions provide a complementary approach: 'Regional Seas Conventions (RSCs) – HELCOM, BARCON, OSPAR, and Bucharest Convention – have adopted more comprehensive lists of species and habitats in need of protection and a number of Member States, e.g. Germany and the UK, have amended existing nature legislation or introduced new legislation to enable MPAs to be designated for these habitats and species.'¹⁴⁰

As regards climate change, which was not as prominent at the time of the development of the Birds and Habitats Directives, it is recognised that networks of protected areas (such as Natura 2000) act *as stepping-stones of suitable breeding conditions and facilitating range changes, with many species remaining protected across protected areas networks as a whole*,¹⁴¹ this can include species not listed in the Directives' Annexes. Evidence also exists that appropriate management of protected areas may be able to slow climate-related declines and facilitate species range expansions,¹⁴² including of those covered by the Annexes.

R., Julliard, J., Touroult, Richard D., and D. Evans, 2014. The impact of Natura 2000 on non-target species, assessment using volunteer-based biodiversity monitoring. ETC/BD report for the EEA.

¹³⁹ <http://www.sciencedirect.com/science/article/pii/S0006320708001584>

¹⁴⁰ Priorities for MSFD programmes of measures Joint NGO paper – updated with additional chapters, October 2014, <http://www.seas-at-risk.org/Images/NGO%20priorities%20for%20PoM%20-%20%20with%20additional%20chapters%20-%20FINAL%2017%20October%202014.pdf>.

¹⁴¹ Thomas, C. D. & Gillingham, P. K. The performance of Protected Areas for biodiversity under climate change. *In press*.

¹⁴² *Ibid.*; Thomas, C. D. et al, 2012. Protected areas facilitate species' range expansions. PNAS (<http://www.pnas.org/content/109/35/14063>).

R.3 How relevant are the Directives to achieving sustainable development?

Answer:

The EU Nature Directives directly address one of the three pillars of sustainable development: the environmental one. Moreover, the *Habitats Directive is intended to contribute also to other two pillars of the sustainable development, as stipulated also in one of its recitals:*

“Whereas, the main aim of this Directive being to promote the maintenance of biodiversity, taking account of economic, social, cultural and regional requirements, this Directive makes a contribution to the general objective of sustainable development; whereas the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities”.

The Habitats Directive complements the Birds Directive for certain species of flora and fauna, and thus introduces the spirit of sustainable development also in the implementation of the Birds Directive, despite the fact that sustainable development is not explicitly mentioned therein¹⁴³. Sustainable development is also enshrined in the TFEU (cf Art 11 TFEU).

The two directives set the foundation for the nature conservation component of the environmental pillar of sustainable development. At the same time, they *do not exclude human activities, but allow and recognise the need for development*, however also setting limits and restrictions based on ecological criteria, necessary to ensure the needs of future generations via biodiversity conservation. The Article 2 of the Habitats Directive explicitly states that “measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.”

The Nature Directives have already proved to deliver benefits beyond the environmental protection scope, in particular socio-economic benefits, including employment¹⁴⁴ and health benefits¹⁴⁵. For example, the Port of Antwerp has ensured further expansion of economic activity to go hand in hand with the conservation of the Natura 2000 sites in the area¹⁴⁶. IUCN recognises Natura 2000 as being a ‘local experiment of sustainable development’, because the it ‘gives local stakeholders the opportunity to experience the principle of sustainable development at a local scale: managing the natural area to maintain natural habitats and species, while also maintaining ecosystem services that provide benefits for the human population’¹⁴⁷

Natura 2000 has introduced a very different type of nature conservation to that of the traditional approach of regulation and prohibitions in an attempt to “reconcile nature conservation with features of sustainable development”¹⁴⁸. Furthermore, it is considered as being of practical importance for the implementation of a sustainable development strategy, “mainly due to its firm legal basis (including the possibility of national decisions to be revised by the European Commission), the scale of this undertaking and the principles of the nature conservation system itself”¹⁴⁹.

The answer to the question Y.1 includes a number of examples of socio-economic benefits deriving from the implementation of the Birds and Habitats Directives in addition to their conservation benefits, exemplifying that the Directives are very relevant for promotion of sustainable development,

¹⁴³ Recital of the HD: “Whereas a general system of protection is required for certain species of flora and fauna to complement Directive 79/409/EEC”.

¹⁴⁴ http://ec.europa.eu/environment/nature/natura2000/financing/docs/natura2000_costs_benefits.pdf

¹⁴⁵ http://www.rspb.org.uk/Images/wellbeing_tcm9-148929.pdf

¹⁴⁶ <http://www.portofantwerp.com/nl/node/6716>

¹⁴⁷ http://cmsdata.iucn.org/downloads/training_guidelines_for_involving_csos_from_see_in_implementation_of_eu_nature_relate.pdf

¹⁴⁸ Grodzińska-Jurczak M. i Cent J, (2011), Expansion of Nature Conservation Areas: Problems with Natura 2000 Implementation in Poland? Environmental Management 47, 11-27.

¹⁴⁹ *Ibid.*

as they address all of its three pillars.

R.4 - How relevant is EU nature legislation to EU citizens and what is their level of support for it?

Answer:

Many European citizens are passionate about protecting biodiversity. According to European opinion poll (Eurobarometer survey) from 2013¹⁵⁰, nearly two-thirds of EU citizens agree that the EU should increase the areas where nature is protected in Europe, while nine out of ten agree that halting biodiversity loss is important for our quality of life. Also two thirds of respondents think that biodiversity loss at a global level is a very serious problem and the interviewed people generally think that biodiversity will have an impact on them or their children.

The level of support for nature conservation in Europe in general is very high among citizens, while they are fairly evenly split on how informed they are about what biodiversity means and about biodiversity loss. Slightly less than half of them feel informed. This represents an approximately 10% increase in the proportion of citizens who feel informed across the EU compared with previous surveys¹⁵¹.

The level of support for biodiversity and the need for more information is well reflected in some Member States. In Romania more than two-thirds of people living in Natura 2000 would like to receive more information about the protected species, (based on a sociological study conducted in Romanian's Natura 2000 sites in 2012¹⁵²). Half of them are for the conservation of protected species and more than half of the interviewed people support the conservation of the protected areas where protected species live.

A good communication approach plays a crucial role about the acceptance of Natura 2000 in Europe. The main reasons behind conflict situations are mostly poor dissemination of information, confusion about the compensation measures, lack of transparency in the preparatory phases or significant differences between EU and national governance and implementation. These challenges can lead to extreme conflicts such as the hunger strike of Finnish landowners a decade ago¹⁵³, or the negative media campaign against natura 2000 in Bulgaria at the time of their accession to the EU. In the Netherlands, as a result of confusing communication, just a few journalists were able to distinguish between the EU directives as such and their implementation, or between the implementation of the EU directives and nature conservation in general.¹⁵⁴

On the other hand, when management measures and socioeconomic benefits are clear for people, there is an increasing interest in designation of sites as Natura 2000, as the experience shows:

- In Spain, in the heart of an intensive agricultural zone, watermelon producers have currently requested the regional government to designate their fields as protected areas of Natura 2000 network. Being surrounded by Natura 2000 sites like wetlands (El Fondo d'Elx-Crevillent) and salt flats (Lagunas de Santa Pola ES000012) provides them with better soils and biodiversity that prevent the crops from plagues and quality irrigation water. Therefore, their product has more added value and recognition in the markets and they can sell it for a higher price than conventional watermelons (they have developed a specific label for their watermelons "Carrizales").¹⁵⁵

¹⁵⁰ http://ec.europa.eu/public_opinion/flash/fl_379_sum_en.pdf

¹⁵¹ http://ec.europa.eu/environment/archives/barometer/pdf/flash_eurobarometer_2007_biodiversity_summary.pdf

¹⁵² For more information, please contact Diana Cosmoiu from the WWF Danube Carpathian Programme (dcosmoiu@wwfdcp.ro).

¹⁵³ Hiedanpää, J. (2002) European-wide conservation versus local well-being: the reception of the Natura 2000. Reserve Network in Kaarvia, SW-Finland, Landscape & Urban Planning, 61, pp. 113–123.

¹⁵⁴ Beunen, R. et al, 2013. Performing failure in conservation policy: The implementation of European Union directives in the Netherlands. Land Use Policy 31 (2013) 280-288.

¹⁵⁵ <http://www.asociacionanse.org/regantes-y-grupos-conservacionistas/20131024>

- In Spain, recently a municipality has asked to include part of its territory in Natura 2000: being quite close to Madrid, this municipality has experienced a high growth in the property market in the recent past decades. Nowadays, representatives from the city council are willing to receive the international recognition for their natural values and foster a sustainable growth of tourism and other socioeconomic activities in their territories.¹⁵⁶
- The added value of Natura 2000 has been discovered and used also in the area covered by the Barycz Valley Network in Poland. The inhabitants use the Natura 2000 network for a wide-scale free promotion of the region, development of environmentally friendly tourism, agri-tourism and development of a local label.¹⁵⁷
- Also in Bulgaria in 2007, many local people expressed their support for Natura 2000 sites in their area, including the town of Assenovgrad in the Rhodope Mountains, the village of Skrino for the Skrino Gorge site and the town of Zemen for the Zemen Gorge site. That year, WWF and NGO partners delivered a petition with 50,000 signatures that called for urgent action to stop illegal construction in protected areas in a number of areas on the Black Sea coast and in the mountains.¹⁵⁸
- In Spain there was an important public mobilisation against the hydrological plan in 2001, which would have a strong negative impact on some Natura 2000 sites.¹⁵⁹ The Ebro river transfer – the most destructive project within the plan – was finally cancelled in 2004.¹⁶⁰

It is important to highlight in respect of the public support, that some issues which might cause potential conflicts can be solved if dealt with adequately, ensuring discussions and close cooperation with stakeholders. For example, in Saxony (Germany) the issues that the expansion of the wolf population could raise with livestock herders and hunters have been successfully tackled by a project run by WWF, which has resulted in the establishment of a trustful work basis with hunting associations and agencies, as well a strengthened livestock protection, which was achieved together with several stakeholders from the agricultural sector.¹⁶¹

Finally, in terms of involvement of the citizens in the implementation of the Nature Directives, sending information to the EU institutions (eg complaints to the European Commission, or petitions to the European Parliament) has been a regular practice of NGOs and citizens, often bringing along changes in implementation practices. For example in 2012 Romania was among the top 5 countries in terms of absolute number of petitions sent by citizens to the EP, and many issues raised relate to breaches of environmental standards and nature protection.¹⁶²

¹⁵⁶ http://www.azuqueca.es/actualidad/noticias/detalle-de-noticia/actualidad/azuqueca-inicia-el-proceso-para-incorporarse-a-la-red-natura-2000/?no_cache=1

¹⁵⁷ Kluvánková-Oravská, T. 2009. From Government to Governance for Biodiversity: The Perspective of Central and Eastern European Transition Countries. *Environmental Policy and Governance* 19, 186–196 (2009).

¹⁵⁸ <http://wwf.panda.org/?94480/Bulgarian-government-slashes-Natura-2000-areas-for-investors>

¹⁵⁹ http://wwf.panda.org/about_our_earth/about_freshwater/freshwater_news/?2350/WWF-supports-protest-against-Spanish-hydrological-plan

¹⁶⁰ <http://mediterranean.panda.org/?12582/Ebro-transfer-cancellation-sets-new-standard-for-water-management-worldwide>

¹⁶¹ For more information, please contact Janosch Arnold from WWF Germany (Janosch.Arnold@wwf.de).

¹⁶² <http://www.protectia-consumatorilor.ro/petitiile-cetatenilor-ue-probleme-sociale-drepturi-civile-si-mediul/>
<http://www.europarl.europa.eu/aboutparliament/en/00533cec74/Petitions.html>

R.5 - What are citizens' expectations for the role of the EU in nature protection?

Answer:

According to the *EU Barometer of 2013 two thirds of Europeans agree that the EU should increase the areas where nature is protected in Europe*. Moreover, since 2007 there is a growing agreement among European citizens that it is important to halt biodiversity loss. Currently six in ten Europeans think that our well-being and quality of life depends on nature and biodiversity, while more than eight out of ten Europeans agree that it is important to halt biodiversity loss because biodiversity is indispensable for the production of goods such as food, fuel and medicines. Considering EU subsidies to sectors like agriculture and fisheries, 63% of the interviewed people agree that the public support needs to take account of biodiversity. Also, six in ten Europeans fully agree that the EU should promote research into the impact of biodiversity loss and that the EU should allocate more financial resources to nature protection in Europe. More than half of respondents also agree that the EU should create financial rewards for farmers or fishermen for nature conservation.¹⁶³

In relation to the expectations of EU citizens as regards European Commission, the experience is that a strong position and standing of the EC towards Member States when it comes to the implementation of the Nature Directives, helps to bring changes in practice (eg Via Baltica case in Poland). On numerous occasions, citizens see the EC action as the “last chance” against a negative potential development at national or local level. Environmental NGOs have been particularly active in preparing and sending information to EU institutions aiming to improve the implementation of the EU Nature Directives. In particular, the preparation of complaints has been a regular activity of these NGOs, also trying to be relevant and useful to the European Commission in its task as the Guardian of the Treaty (including the potential initiation of infringement procedures).¹⁶⁴ For example, national environmental NGOs participate actively in the regular meetings initiated by the EC to follow up cases at national level.

¹⁶³ http://ec.europa.eu/public_opinion/flash/fl_379_en.pdf

¹⁶⁴ <http://www.eeb.org/?LinkServID=6B65ACCB-9111-61B3-F781025D6CFDEE3C&showMeta=0>

Coherence

Evaluating the coherence of legislation, policies and strategies means assessing if they are logical and consistent, internally (i.e. within a single Directive), with each other (i.e. between both Directives), and with other policies and legislation. Here we are looking for evidence regarding how far and in what ways the Directives are complementary and whether there are significant contradictions or conflicts that stand in the way of their effective implementation or which prevent the achievement of their objectives.

C.1 – To what extent are the objectives set up by the Directives coherent with each other?

Answer:

The Birds and Habitats Directive are fully coherent with each other – please refer to the report by Carol Day (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK.¹⁶⁵

¹⁶⁵ Day, C (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK

C.2 – To what extent are the Directives satisfactorily integrated and coherent with other EU environmental law e.g. EIA, SEA?

C.3 - Is the scope for policy integration with other policy objectives (e.g. water, floods, marine, and climate change) fully exploited?

C.8 - Are there overlaps, gaps and/or inconsistencies that significantly hamper the achievements of the objectives?

WWF CONSIDERS IT TO BE MORE LOGICAL TO ANSWER THE QUESTIONS C.1 & C.2 and C8 TOGETHER, FOR EACH EVALUATED LEGISLATIVE ACT OR POLICY AREA AS THEY ARE INTERRELATED. THIS WILL HOPEFULLY FACILITATE ALSO THE WORK OF THE EUROPEAN COMMISSION AND OF THE CONSULTANTS IN ANALYSING THE PROVIDED INFORMATION.

THE SAME APPROACH IS APPLIED FOR C.4 & C.5 (SECTORAL POLICIES).

Answer:

Strategic environmental assessment of policy plans and programmes 2001/42/EC Directive (SEA)

C.1 – The provisions of Article 6.3 of the Habitats Directive drafted in 1992 were very modern for the time and referred already not only to projects but also to “plans”. The SEA Directive is a procedural instrument with a broader scope than the Nature Directives. The environmental assessment it provides for is complementary and supportive to the provisions for appropriate assessment under Article 6.3 of the Habitats Directive. The SEA Directive includes direct references to the Habitats Directive ensuring coherence between the environmental assessment it requires and the appropriate assessment of the Habitats Directive. However as the SEA Directive was adopted in 2001 with a deadline for transposition of July 2004 and transposition done in all Member States only 2009¹⁶⁶, adjustments and coordination procedures were necessary at national level to ensure national authorities had a better understanding of how best to ensure coherence and synergies at national and local level. The Commission’s interpretation guides¹⁶⁷ have been of great support to this aim. Further analysis and details on the coherence and integration of the Nature Directives with the SEA Directive are provided in the document Day (2015)¹⁶⁸.

- A positive example of how implementation of the SEAD supports the objectives of the Nature Directives and the synergies between the appropriate assessment and SEA is provided with the Romanian Transportation Master Plan.

C.3 – Article 11 (2) SEAD provides for a possibility for Members States to establish joint and coordinated procedures when obligation to undertake assessments arises simultaneously from the SEAD and other Community legislation (including the BHDs). The 2009 Commission report on the application and effectiveness of the directive indicates that “Only a few MS report the existence of guidance for coordination of the joint procedures for fulfilling the requirements governing assessments under other directives”¹⁶⁹.

¹⁶⁶ Report on the application and effectiveness of the Directive on Strategic Environmental Assessment (Directive 2001/42/EC), COM(2009) 469 final, page 1.

¹⁶⁷ “Managing Natura 2000 sites- The provisions of the Article 6 of the Habitats Directive 92/43/EEC” and “Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites – Methodological Guidance on the Provisions of Article 6(3) and 6(4) of the Habitats Directive 92/43/EEC” (November 2011)

¹⁶⁸ Day, C (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK

¹⁶⁹ Report on the application and effectiveness of the Directive on Strategic Environmental Assessment (Directive 2001/42/EC), COM(2009) 469 final, page 6.

In spite of CJEU case law (Case C-295/10) stressing the non binding nature of these provisions, it may be helpful to encourage as much as possible Member States to set up procedures for joint and coordinated procedures in line with the 2014 amendments to the EIA directive¹⁷⁰ with a view of effective simplification of implementation at national level and proper consideration of requirements for achieving Nature directive goals. For further details on these aspects please see Day 2015¹⁷¹.

C.8 - The overlaps between the SEAD and Nature Directives are necessary and useful to ensure coherence and cross referencing of the two instruments; the SEA is a complementary and supportive tool for the achievement of the Nature Directives objectives (see also section on sectoral policies/territorial planning), and the appropriate assessment to be undertaken in application of Article 6.3 Habitats Directive may be part of an SEA procedure. These overlaps therefore do not hamper the achievements of the Nature Directive, but support complementary approaches (see for example Article 5 SEAD on Environmental report). One could note the difference in the binding nature of the environmental assessment of the SEA (Article 8 “The environmental report [...] shall be taken into account”) and of the Habitats Directive appropriate assessment (strict procedure of Article 6.3 together with 6.4). This is well justified for the Nature Directives since the basis for the requirement of an appropriate assessment corresponds to very targeted conservation objectives and specific territorial areas selected at European level according to scientific criteria for their outstanding European conservation value.

The SEA Directive also includes provisions with more detailed procedures that can support positively the implementation of the Birds and Habitats Directive beyond the implementation of Article 6.3 and 6.4 of the Habitats Directive:

- Article 6 SEAD (Public participation), Article 7 SEAD (trans-border consultation between Member States);
- Article 10 SEAD (Monitoring) and Articles 4(3) and 12 Birds Directive and Articles 12(1), 12(2) and 17 Habitats Directive.

Environmental impact assessment of projects 85/337/EC Directive as codified by Directive 2011/92/EU (EIA) and amended by Directive 2014/52/EU

C.2 & C.3 – As with the SEA Directive, the provisions of the Nature Directives are coherent with those of the EIA directive (EIAD). Adopted in 1985 and amended four times, the EIAD has a broader scope of impacted factors to take into consideration and now includes better cross referencing to the Nature Directives (new Article 3 EIAD on the environmental factors that must be assessed now refers clearly to “biodiversity with particular attention to species and habitats protected under the Habitats Directive 92/43/EEC and Directive 2009/147/EC”; improvement of former Annex III¹⁷²).

Implementation of the EIAD has been challenging at national level with numerous cases of inadequate consideration or complete oversight of the Nature Directives requirements, resulting in serious and irreversible destruction of habitats, see in:

- Odelouca Dam and Iberian Lynx in Portugal,¹⁷³

¹⁷⁰ See Article 1(2)(a) of Directive 2014/52/EU amending Article 2(3) of Directive 2011/92/EU.

¹⁷¹ Day, C (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK

¹⁷² See new Annex III in Directive 2014/52/EU deleting for example former Selection Criteria 2 (c) (vi) “ areas in which the environmental standards laid down in Union legislation have already been exceeded” and replaced by “(iv) areas in which there has already been a failure to meet the environmental quality standards, laid down in Union legislation and relevant to the project, or in which it is considered that there is such a failure”.

¹⁷³ Odelouca dam (Portugal) at 23 Meeting of Bern Convention Standing Committee Meeting, possible new file, page 10 and 11.

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1326829&SecMode=1&DocId=1441094&Usage=2>

- *Conflict Areas Between the TEN-T and Nature Conservation, Case Studies, July 2003, BirdLife, CEE Bankwatch Network, FoE Europe, T&E, WWF*¹⁷⁴.
Case study: D47 motorway, Czech Republic.

With over two decades of experience in implementation, EC guidelines, improvements of the EIA Directives and increased awareness of operators for Natura 2000 areas as well as the protection of species and habitats under the Nature Directives, the next phase of implementation of both the EU Nature Directives and EIA should be steadily enhanced to effectively contribute to a high level of environment protection and halting biodiversity loss by 2020.

The reinforcement of the provisions for “coordinated or joint procedures” (new Article 2) is welcome for better coordination of implementation at national level and simplification, provided that the required procedures to ensure a high level of environment protection and achievement of the Nature Directives goals are secured.

For more details on analysis of coherence and integration between EAID Directive and Nature Directives see Day (2015)¹⁷⁵.

C.8 - The overlaps between the EIA Directive and Nature Directives are necessary and useful to ensure coherence and cross referencing of the two instruments for better coordination of procedures at national/local level. The appropriate assessment of the Habitats Directive is fully integrated in the process of the EIA directive and the broader spectrum of activities covered by the appropriate assessment (Art. 6.3 HD) (without thresholds) is essential to the conservation of the site and the overall goal of the Nature Directives (on this point see CJEU case C-392/96, *Commission v. Ireland*, paragraph 66 and C-435/09). These overlaps therefore do not hamper the achievements of the Nature Directive neither those of the EIA but support complementary approaches for a high level of environment protection.

As with the SEAD, one could note the difference in the binding nature of the Habitats Directive appropriate assessment and the environmental assessment of the EIAD¹⁷⁶. However this does not lead to incoherent implementation. The Directives are also complementary, since the Nature Directives’ scope for the requirement of an appropriate assessment corresponds to very targeted conservation objectives and specific territorial areas selected on scientific criteria for their outstanding European conservation value (the appropriate assessment of the Habitats Directive focuses on the implications of a given intervention on the protected site rather than on biodiversity or nature in general), while for the EIA assessment, there are a number of other aspects which are to be taken into consideration (population and human health, land, soil, water, air and climate etc).

Water Framework Directive 2000/60/EC

C.2 & C.3 – There are many synergies between the objectives and requirements of the Birds and Habitats Directives (BHDs) and of the Water Framework Directive (WFD) with cross-references ensuring coherence and integration. They provide a sound basis for joint objective setting, management, the consideration of derogations/ exemptions, monitoring, public engagement and reporting. For more details on areas of commonality see Day (2015)¹⁷⁷, and *Opportunities Provided by the Water Framework Directive for Nature Conservation, Final report, Countryside Council for*

¹⁷⁴ *Conflict Areas Between the TEN-T and Nature Conservation, Case Studies July 2003, BirdLife, CEE Bankwatch Network, FoE Europe, T&E, WWF* http://www.transportenvironment.org/sites/te/files/media/conflictareas_0.pdf

¹⁷⁵ Day, C (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK

¹⁷⁶ EIAD Article 8 as amended in 2014: “The results of the consultations and the information gathered pursuant to Articles 5 to 7 shall be duly taken into account in the development consent procedure”. The implications of the addition of the word “duly” remain to be seen.

¹⁷⁷ Day, C (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK.

Wales, Environmental Resources Management, March 2002¹⁷⁸.

Numerous examples have shown how the implementation of measures under the WFD have generally benefited the objectives of the nature directives and how infringements of the Nature Directives in relation to freshwater species or habitats are often also infringements of the WFD:

- “*Managing floods in Europe: The answers already exist*” 26 September 2002. <http://assets.panda.org/downloads/managingfloodingbriefingpaper.pdf>
- UK Water Capital Grants 2015, offering opportunity for grants and indicating priority catchments e also targeted at protecting Natura 2000 sites that are failing to meet EU standards because of diffused water pollution from agriculture, <https://www.gov.uk/government/publications/water-capital-grants-2015-natura-2000-catchments>
- Spanish National Hydrological Plan: see document: *Seven Reasons Why WWF Opposes the Spanish National Hydrological Plan, and Suggested Actions and Alternatives*, <http://wwf.panda.org/?2598/Seven-reasons-to-stop-the-Spanish-National-Hydrological-Plan> - And <http://geographyfieldwork.com/NationalWaterPlanWWF.htm>
- Decision of Spain Supreme Court March 2015 in relation to Doñana¹⁷⁹ - "Following a 15 year battle, Spain's Supreme Court has ruled against plans to dredge a new shipping channel in Doñana National Park. The Spanish Supreme Court agreed, ruling that the dredging would cause 'modifications or alterations' of the estuary watershed. The judges declared that this would deteriorate the natural area. In 2010, a scientific committee determined that dredging was ‘incompatible with the conservation of the Guadalquivir Estuary, and therefore, with the conservation of Doñana National Park’. Doñana is protected by almost every conservation designation, including National Park, Natural Park, Ramsar Site, Natura 2000 Site and World Heritage Site. "

C.8 - European Commission Guidance has clarified the relationship between terminology used in the Nature Directives and in the WFD¹⁸⁰. The three Directives form a joint framework for implementation in water dependent-Natura 2000 sites and the full exploitation of their potential depends on Member State coordinated and integrated approach for implementation. At a recent workshop on joint implementation of the BHDs, WFD and MSFD, MS, stakeholders and the Commission, concluded that “although there are differences in objectives and assessment, there are no objective obstacles which would prevent these directives from working together efficiently and exploit synergies’ and that ‘looking at individual obligations or articles in isolation is not helpful”, as the narrow focus leads to conflicts and prevents securing benefits from synergies.¹⁸¹ It is also acknowledged that potential conflicts that might arise in implementing these directives (only potential conflicts identified between the WFD and the BHD were linked to highly modified water bodies) can be solved on a case by case basis, “by early cooperation, negotiation and well informed choices using the flexibilities that the Directives provide”.¹⁸² Consult also Janauer *et al* (2015) ‘Synergies and Conflicts between Water Framework Directive and Natura 2000: Legal Requirements, Technical Guidance and Experiences from Practice’, in Ignar *et al* (ed.), *Wetlands and Water Framework Directive, Protection, Management and Climate Change*, The GeoPlanet: Earth and Planetary Sciences Book Series, Springer International Publishing, available under Open Access, pp 9-29 (including examples).

Floods Directive 2007/60/EC (FD) and Nature Directives

¹⁷⁸ <http://www.ermuk.com>

¹⁷⁹ http://www.wwf.eu/media_centre/?240950/Court-victory-saves-historic-Spanish-national-park

¹⁸⁰ See “Links between the Water Framework Directive (WFD 2000/60/EC) and Nature Directives Frequently Asked Questions, December 2011 <http://ec.europa.eu/environment/nature/natura2000/management/docs/FAQ-WFD%20final.pdf>).

¹⁸¹ EC (2015) Workshop on coordinated implementation of nature, biodiversity, marine and water policies (2-3 December 2014 Brussels), Summary Report (Final, 30/1/2015), p. 12.

¹⁸² *Ibid.*, p. 13.

C.2 – “The Floods Directive does not make explicit reference to the BHDs. However, Member States are under a duty to take appropriate steps to coordinate the implementation of the Floods Directive with the WFD, which has strong synergies with the BHDs. Particular emphasis is placed on opportunities for improving efficiency, information exchange and for achieving common synergies and benefits having regard to the environmental objectives laid down in Article 4 of the WFD, which contains provisions in relation to protected areas including Natura 2000 sites (See Article 9 “Floods Directive”, in Day, 2015¹⁸³).

For examples of synergies and coherence of EU nature conservation objectives with flood risk management see:

- “Central and Eastern Europe: Flooding in the Lower Danube *“Restoration and preservation of floodplains must be a key component of the EU flood risk management directive”* Dr. Christine Bratrich, WWF Danube-Carpathian Programme.¹⁸⁴
- Natural water retention measures (type of green infrastructure) provide great opportunities for reaping multiple benefits, including flood risk reduction, and habitat conservation and improvement, and for synergetic implementation of FD and BHDs.¹⁸⁵
- A recently closed project ran by WWF Hungary (with the Kiskunság National Park Directorate as a partner) included the preparation of Natura 2000 management plans for 5 sites on the Tisza floodplain and the Danube-Tisza Interfluve, to support the harmonization of WFD and N2000 in order to improve the status of water bodies.¹⁸⁶

Marine Strategy Framework Directive 2008/56/EC (MSFD)

C.2 “The purpose of the MSFD is to protect, preserve, prevent deterioration or, where practical, restore Europe’s oceans and seas where they have been adversely affected and to prevent and reduce inputs in to the marine environment. As such, both the BHDs and the MSFD aim at ensuring healthy marine ecosystems while at the same time balancing marine/nature protection with the sustainable use of natural resources. There are many synergies between the BHDs and the MSFD, including mutually supportive objectives, overlapping measures (including the identification of protected areas [or measures for non-indigenous species]), the consideration of derogations/ exceptions, monitoring, public engagement and reporting”. “All in all, the specific mechanisms of the BHDs can, and do, make an important contribution to achieving the wider objectives of the MSFD. Similarly, the MSFD can help to ensure that Natura 2000 sites are not compromised by addressing degradation outside protected sites.” Day (2015) – see full report for more details.¹⁸⁷

C.3 Although still incomplete, the work undertaken for the implementation of the Birds and Habitats Directive at sea brings an important contribution to the objectives of the MSFD. However, given the timeframe for the preparation of MSFD Programmes of Measures (PoMs) (by 2015) and the delays reported on the implementation, it is certainly too early to effectively assess if the potential of the MSFD for policy integration and synergies has been fully exploited. Reports on implementation of MSFD so far show many weaknesses: “In February 2014, the Commission published its review of the

¹⁸³ Day, C (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK

¹⁸⁴ Central and Eastern Europe: Flooding in the Lower Danube *“Restoration and preservation of floodplains must be a key component of the EU flood risk management directive”* Dr. Christine Bratrich, WWF International Danube-Carpathian Programme in “Arguments for Protection Natural Security Protected areas and hazard mitigation A research report by WWF and Equilibrium” Written by Sue Stolton, Nigel Dudley and Jonathan Randall Published 2008, WWF – World Wide Fund for Nature, http://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/natural_security_protected_areas_hazard_mitigation.pdf

¹⁸⁵ See EU (2014) EU policy document on Natural Water Retention Measures, By the drafting team of the WFD CIS Working Group Programme of Measures (WG PoM), Technical Report - 2014 – 082, Office for Official Publications of the European Communities, Luxembourg; see in particular pp 4-7.

¹⁸⁶ For more information, please contact Laurice Ereifej from the WWF Danube Carpathian Programme (laurice.ereifej@wwf.hu).

¹⁸⁷ Day, C (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK

2012 reports by Member States, as required by Article 12 of the MSFD. The ‘Article 12 report’ stated that “the EU is still very far from enjoying healthy oceans and seas. Meeting this objective by 2020, in less than seven years, implies renewed and intensified efforts and rapid and important change in the way Member States, the European Commission, Regional Seas Conventions and other relevant organisations work together”¹⁸⁸. The Commission requested the countries to integrate its ‘Article 12’ recommendations (among others related to strengthening targets and coordination) in the monitoring programmes and the PoMs, and not to postpone such improvements till the next cycle of the MSFD in 2018”¹⁸⁹.

C.8 The adoption of the MSFD and efforts for its implementation at national level will hopefully result in renewed political will and allocation of resources also for the full implementation of the Nature Directives in marine environment. These synergies should hopefully be more visible in the coming years. At the recent Workshop on coordinated implementation of nature, biodiversity, marine and water policies consensus was reached by MS and stakeholders that there is a ‘strong added value in coordinating the implementation of measures under the MSFD, WFD and BHD’.¹⁹⁰

National Emission Ceilings Directive 2001/81/EC (NECD)

C.2, C.3, C.8 – “The 2001 NECD does not make explicit reference to the BHDs. However, its principal aim is to improve the protection of human health and the environment in the Community by limiting emissions of acidifying and eutrophying pollutants and ozone precursors¹⁹¹ and there are numerous references in the Directive to the impact of acidifying and eutrophying substances on the environment, including plants and ecosystems¹⁹². Thus, while there is no overt linkage between the two texts, the reduction of atmospheric pollution and consequential impacts on the environment (including vegetation and ecology) is clearly coherent with, and helps to support, the achievement of the objectives of the BHDs.

The proposal for a revised NECD makes reference to the EU’s 7th Environmental Action Programme¹⁹³ and the long-term objective of achieving levels of air quality that do not give rise to significant negative impacts on the environment and gives a somewhat higher emphasis to the impact of air pollution on ecosystems and biodiversity¹⁹⁴.

In particular, the revised Directive enables Member States to make use of monitoring systems established under other EU instruments to monitor the adverse impacts of air pollution on water and terrestrial ecosystems¹⁹⁵, including under the WFD¹⁹⁶. EU Guidance¹⁹⁷ recommends that, wherever possible, joint monitoring under the BHDs and the WFD should be undertaken in order to save resources and to allow an assessment based on a common data set, thus enabling Member States to coordinate monitoring regimes under the BHDs, the WFD and the NECD” Day (2015) – see full report for more details.

¹⁸⁸ The European Commission’s assessment and guidance {SWD(2014) 49 final}: The first phase of implementation of the Marine Strategy Framework Directive (2008/56/EC). Report from the Commission to the Council and the European Parliament. http://ec.europa.eu/environment/marine/eu-coast-and-marinepolicy/implementation/reports_en.htm Priorities for MSFD programmes of measures.

¹⁸⁹ Priorities for MSFD programmes of measures Joint NGO paper – updated with additional chapters, October 2014, Seas at Risk and 16 other NGOs including WWF; <http://www.seas-at-risk.org/1images/NGO%20priorities%20for%20PoM%20-%20with%20additional%20chapters%20-%20FINAL%2017%20October%202014.pdf>.

¹⁹⁰ EC (2015) Workshop on coordinated implementation of nature, biodiversity, marine and water policies (2-3 December 2014 Brussels), Summary Report (Final, 30/1/2015), p. 13.

¹⁹¹ Article 1 NECD

¹⁹² Recital 5 and Article 3(d) NECD

¹⁹³ See <http://ec.europa.eu/environment/newprg/>

¹⁹⁴ Recitals 2, 7 and 18 and Article 8 revised NECD

¹⁹⁵ Annex V is set out in Annex B of this text. Alternatively, it can be accessed at: http://ec.europa.eu/environment/air/pdf/com2013_920/COM_2013_920_F1_ANNEX_EN.pdf.

¹⁹⁶ Recital 18, Article 8 and Annex V of the revised NECD

¹⁹⁷ See Links between the Water Framework Directive and Nature Directives – frequently asked questions (2011) available at: <http://ec.europa.eu/environment/nature/natura2000/management/docs/FAQ-WFD%20final.pdf>.

Climate Change (please consult also energy section)

C.2, C.3 & C.8: In relation to *climate change*, which was not as prominent at the time of developing the Birds and Habitats Directives, it is important to note the view of science on the role of the networks of protected areas: *these networks are acting as stepping-stones of suitable breeding conditions and facilitating range changes, with many species remaining protected across protected areas networks as a whole*. There is some evidence that appropriate management of protected areas may be able to slow climate-related declines and accelerate range expansions.¹⁹⁸ Considering the magnitude of Natura 2000 (18% of terrestrial EU), the latter can surely play a crucial role in the context of climate change. See Day (2015) for more details¹⁹⁹.

Environmental Liability Directive 2004/35/EC (ELD)

C.2, C.3, C.8 – See European Commission report “*Experience gained in the application of ELD biodiversity damage*”, Final Report, February 2014²⁰⁰, and Day (2015).

¹⁹⁸ Thomas, C. D. & Gillingham, P. K. The performance of Protected Areas for biodiversity under climate change. *In press*. Thomas, C. D. et al, 2012. Protected areas facilitate species' range expansions. PNAS. <http://www.pnas.org/content/109/35/14063>

¹⁹⁹ Day, C (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK.

²⁰⁰ <http://ec.europa.eu/environment/legal/liability/pdf/Milieu%20report%20-%20ELD%20Biodiversity%20Damage.pdf>

C.4 – To what extent do the Nature Directives complement or interact with other EU sectoral policies affecting land and water use at EU and Member State level (e.g. agriculture, regional and cohesion, energy, transport, research, etc.)?

C.5 - How do these policies affect positively or negatively the implementation of the EU nature legislation

C.8 - Are there overlaps, gaps and/or inconsistencies that significantly hamper the achievements of the objectives?

Answer:

CFP

C.4, C.5 & C.8 – Implementation of the Nature Directives at sea has been poor with lack of resources and lack of prioritization for the identification of marine Natura 2000 sites and conflicting CFP policy. Recent efforts and increased attention to the marine environment result for some countries in better harmonization of CFP measures with conservation requirements. Improvements could also result from the reformed CFP. See the following publications:

- Proceedings of the Morecambe Seminar 1998²⁰¹,
- *Conflicting EU Funds: Pitting Conservation against Unsustainable Development* WWF, 2006²⁰², p 54: Fisheries funds and Tuna Farming (EU Mediterranean countries),
- Proceedings of Vilm Workshop on the Application of NATURA 2000 in the Marine Environment (2001),²⁰³
- Protecting the harbour porpoise in UK seas 2 October 2012,²⁰⁴
- ‘The N2K Group, European Economic Interest Group, Overview of the Potential Interactions and Impacts of Commercial Fishing methods on Marine Habitats and Species Protected under the EU Habitats Directive’, European Commission, February,²⁰⁵
- WWF, Greenpeace and others are bringing legal action against Germany's environment ministry for failing to prevent harmful fishing practices in protected areas of the Baltic and North Seas. The 10 sites in question were designated for protection in 2007 under the EU's Natura 2000 scheme, but environmental organizations say the government has failed to put measures in place to protect wildlife there.²⁰⁶
- For an example of fruitful synergies between fisheries measures and management of three Natura 2000 site in the Netherlands, see Commission Implementing Decision of 24 September 2012 confirming measures proposed by the Netherlands for the protection of marine areas of conservation in the North Sea Coastal Zone, the Vlakte van de Raan and the Voordelta (notified under document C(2012) 6510)²⁰⁷ : the Dutch government successfully applied to the EU to introduce stepwise restrictions to bottom fishing.

²⁰¹ IMPLEMENTING THE HABITATS DIRECTIVE IN MARINE AND COASTAL AREAS Proceedings of a Seminar Held at Morecambe Bay, England 22 - 24 June 1997, European Commission, DG XI, 1998, http://www.forest-trends.org/documents/files/doc_595.pdf, pages 9 and 10.

²⁰² *Conflicting EU Funds: Pitting Conservation against Unsustainable Development* WWF, 2006, Compiled by Clare Miller, IEEP and WWF network, editors Gerald Dick, Andreas Baumüller, Stephanie Lang, Martina Flekenstein, WWF Global Programme, Wien, 72pp http://awsassets.wwf.es/downloads/eu_conflicting_funds_report.pdf.

²⁰³ Vilm Workshop on the Application of NATURA 2000 in the Marine Environment at the International Academy for Nature Conservation (INA) on the Isle of Vilm (Germany) from 27 June to 1 July 2001.

<http://www.bfn.de/fileadmin/MDB/documents/natura2000marin.pdf>

²⁰⁴ http://www.wwf.org.uk/wwf_articles.cfm?unewsid=6225

²⁰⁵ <http://ec.europa.eu/environment/nature/natura2000/marine/docs/Fisheries%20interactions.pdf>

²⁰⁶ Marine conservation goes to court <http://www.dw.de/marine-conservation-goes-to-court/a-18221614>

²⁰⁷ 2012/638/EU: Commission Implementing Decision of 24 September 2012 confirming measures proposed by the Netherlands for the protection of marine areas of conservation in the North Sea Coastal Zone, the Vlakte van de Raan and the Voordelta (notified under document C(2012) 6510);

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012D0638>.

It is now also facing increasing challenges with new foreseen developments such as deep sea mining (See WWF at European Maritime Day: Stop plundering the deep sea!²⁰⁸).

More time is needed to see the results and potential improvements resulting from the new CFP policy (2013), in particular Article 11 of the CFP Basic regulation²⁰⁹ and its forthcoming implementation measures. For more details see:

- WWF response to Commission consultation paper on the “Development of a new framework for technical measures in the reformed CFP” WWF May 2014,²¹⁰
- For an early positive development on implementation of Article 11 CFP Basic regulation: Denmark is the first Member States to make use of the provisions of Art 11 of the reformed CFP basic regulation to introduce fisheries management measures in marine N2000 sites (12 nm zone only) including consulting Member States with potential fishing interests in those areas,
- For more details on Art. 11 CFP regulation and Natura 2000, please see document of Client Earth: Simply Article 11 of the Common Fisheries Policy.²¹¹

Regional and cohesion policy

C.4 & C5 – The coherence of the regional and cohesion policy with the Nature Directives has slowly improved over the last three decades. *The history of the use of the regional and cohesion funds for nature and biodiversity shows a slow improvement in the opportunities provided by the related EU funds, although we are still far from a positive situation, especially when it comes to national implementation.*

For the first decade of implementation of the Birds Directive, the Structural Funds Regulations (1988) had no environmental conditions for funding, in spite of “evidence that projects were contributing to the deterioration of important natural areas”²¹². As from 1992 requirements in sectoral policies affecting species, land and water use were improving slowly to strengthen the integration of environmental consideration in their conception and implementation in line with the requirements of Article 130r(2.3) of the Maastricht Treaty²¹³ and Article 11 of the Treaty on the Functioning of the European Union²¹⁴. Closure of the loopholes at EU level made failure to comply at national level all the more striking and allowed NGOs to call on policy makers to take action to request cross compliance and better coherence in territorial planning²¹⁵. The total lack of coordination between the objectives of the EU Structural funds (Regulation 1988) and those of the Birds Directive/Environmental policy was partly addressed with the new rules for structural funds adopted in 1993 and amended in 1999²¹⁶. However “despite these strengthened provisions, projects supported

²⁰⁸ WWF at European Maritime Day: Stop plundering the deep sea! <http://www.wwf.eu/?221531/Europes-oceans--a-business-park>.

²⁰⁹ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ L 354 28.12.2013 p.22).

²¹⁰ WWF response to Commission consultation paper on the “Development of a new framework for technical measures in the reformed CFP” WWF May 2014, http://ec.europa.eu/dgs/maritimeaffairs_fisheries/consultations/technical-measures/contributions/documents/wwf_en.pdf.

²¹¹ Simply Article 11 of the Common Fisheries Policy, <http://www.clientearth.org/biodiversity/biodiversity-publications/simply-article-11-of-the-common-fisheries-policy-2644>.

²¹² The EU Habitats Directive : Generating Strong Responses, Project Deliverable No. D17 (March 2003), Clare Coffey and Saskia Richartz Institute for European Environmental Policy page 16, - http://www.ecologic.eu/download/projekte/850-899/890/in-depth/eu_habitats_directive.pdf.

²¹³ Article 130r(2.3) of the Treaty on the European Union signed in Maastricht on 7 February 1992, 29.07.1992 OJ C 191/1.

²¹⁴ Article 11 of the Consolidated version of the Treaty on the Functioning of the European Union, 2008 O.J. C 115/47:

“Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development.”

²¹⁵ See WWF (1997) EU Suspends Structural Funds in Landmark Decision for Nature, Press Release 18 December 1997

²¹⁶ Article 12 Regulation 1260/1999 laying down the general provisions governing the Structural Funds.

by the Funds continued to be controversial, by not always respecting agreed environmental objectives. A recurring conflict arose between the Funds and EU nature conservation legislation, with infrastructure projects contributing to the deterioration of sites suitable for inclusion within the new Natura 2000 network²¹⁷. During this time, the lack of clear specific references in the texts of the EU sectoral policies and associated funding instruments resulted in poor up take of these funds to support the implementation of the directives at national level, inadequate coordination of national authorities responsible for the different policies, oversight of cross compliance duties, and missed opportunities for synergies. This significantly hampered the achievement of the Nature Directives objectives – see report “Natura 2000 Opportunities and Obstacles, Guy Beaufof, Editor WWF Austria, WWF 1999²¹⁸. This has been prolonged and expanded with the EU Accession process. The number of cases from the accession countries in 2004 and 2007 shows that poor governance practices, lack of coordination and consultation, absence of cross compliance were still the rule whereas lessons from more than ten years of implementation in the older Members States should have been learned and effectively used to avoid repeating the same patterns and incoherent EU funding plans. Following on intense and continuous work of NGOs to expose the conflicting EU policies and to propose texts and projects for improving the Cohesion and Regional policies at European and national level, recent examples show some significant improvements in planning and cross compliance.

The current ERDF provides good opportunities for funding the needs of Natura 2000²¹⁹, but it remains to be seen how these opportunities will be used at national level during the current period 2014-2020. See also answer under C.7.

In terms of implementation, the EU regional and cohesion funds have been used both positively and negatively for nature and biodiversity. Some examples of incoherence, non-integration, gaps and inconsistencies from the past that hampered the achievements of the Nature Directives objectives, can be found eg in *Conflicting EU Funds: Pitting Conservation against Unsustainable Development* WWF, 2006²²⁰.

- Threat to the Iberian Lynx & EAGGF, ERDF, Cohesion fund (Spain) (p.48 of above mentioned publication)
- Odelouca Dam and the Monicique Natura 2000 site (Portugal) (p. 61 of above mentioned publication)
- And other cases in following sections.

However, it should be emphasised that this incoherence occurred mainly due to improper implementation of the EU acquis. Moreover, new structural funds regulations provide also more safeguards. Positive examples of improvements can be found at “SURF nature - let's improve the use of Regional Funds together” coordinated by WWF Germany: “a project of 14 partners in 10 different EU member states who have come together to enhance regional policies for the promotion and preservation of biodiversity and nature. The project is funded through Interreg IVc and aims to improve the current and future funding opportunities for nature conservation and biodiversity through the European Regional Development Fund (ERDF)”²²¹.

²¹⁷ *The EU Habitats Directive : Generating Strong Responses*, Project Deliverable No. D17 (March 2003), Clare Coffey and Saskia Richartz Institute for European Environmental Policy, page 16, http://www.ecologic.eu/download/projekte/850-899/890/in-depth/eu_habitats_directive.pdf

²¹⁸ *Natura 2000 Opportunities and Obstacles*, Guy Beaufof, Editor WWF Austria, WWF 1999, Page 12 http://assets.wwf.org.uk/downloads/natura5.pdf?_ga=1.245619010.735113151.1425472478

²¹⁹ See the new Guidance Handbook on financing Natura 2000 - http://ec.europa.eu/environment/nature/natura2000/financing/index_en.htm

²²⁰ *Conflicting EU Funds: Pitting Conservation against Unsustainable Development* WWF, 2006, Compiled by Clare Miller, IEEP and WWF network, editors Gerald Dick, Andreas Baumüller, Stephanie Lang, Martina Flekenstein, WWF Global Programme, Wien, 72pp http://awsassets.wwf.es/downloads/eu_conflicting_funds_report.pdf

²²¹ SURF nature - let's improve the use of Regional Funds together” <http://www.surf-nature.eu/>

Transport

C.4, C.5 & C.8 - As regards the implementation of EU transport and biodiversity policies one can identify several cases of incoherence and non-integration, that have in the past compromised the achievements of the Nature Directives objectives. It is important to emphasise that identified flaws of the pre-2013 period are to be subscribed to inappropriate and inadequate integration of biodiversity in transport policy often combined with poor implementation of EIA and SEA Directives. More recent cases illustrate well the fact that the Nature Directives *are not a systematic obstacle to development projects, roads, motorways* but rather promote better territorial planning, better governance and public participation to support more sustainable development. The following cases of poor compliance have been identified:

- *Conflict Areas Between the TEN-T and Nature Conservation, Case Studies (7); July 2003, BirdLife, CEE Bankwatch Network, FoE Europe, T&E, WWF.*²²²

- *TEN – T and Natura 2000: The way forward. An Assessment of the potential impact of the TEN-T priority projects and Natura 2000, May, 2008. RSPB, Birdlife, Bankwatch, T&E, EEB.*²²³ (this publication includes also some positive cases),

- *Natura 2000 in the New EU Member States, WWF June 2004*²²⁴. Each country report includes a section on “threats to sites” – for example:

- P. 59: Slovenia: highway E70 Ljubjana-Koper which cuts through the Karst regional park; highway Maribor-Murska-Sobota, affecting a large area of Mura river floodplain softwood forest and hilly country in north-east Slovenia, both a proposed SPA and pSCI and the proposed SPA Drava river;
- P. 77: Bulgaria: Stroma motorway through Kresna Gorge;

- *Conflicting EU Funds: Pitting Conservation against Unsustainable Development WWF, 2006*²²⁵:

- P 51: Brown Bears and the Egnatia Highway (Greece)
- P 57: Via Baltica and Natura 2000: TENs-Transport (Poland)
- P 59: Navigation on the Danube and Natura 2000 (TENs-Transport) (10 member states neighbouring the Danube)

However, following the completion of many destructive projects changes/safeguards have been introduced and it can be argued that environmental considerations are now reflected in the context of the transport policy, the legal basis of which is offered by Regulation 1315/2013 (“TEN-T Regulation”)²²⁶. In particular, the TEN-T Regulation states that, during infrastructure planning, Member States and other project promoters should give due consideration to the risk assessments and adaptation measures adequately improving resilience to climate change and environmental disasters (Recital 34 TEN-T Regulation). The Regulation also considers that Member States and other project promoters should carry out environmental assessments of plans and projects in order to avoid or, where avoidance is not possible, to mitigate or compensate for negative impacts on the environment, such as landscape fragmentation, soil sealing and air and water pollution as well as noise, and to protect biodiversity effectively (Recital 35 of TEN-T Regulation; see also Recital 36 which states that “The protection of the environment and of biodiversity, as well as the strategic requirements of inland

²²² *Conflict Areas Between the TEN-T and Nature Conservation, Case Studies July 2003, BirdLife, CEE Bankwatch Network, FoE Europe, T&E, WWF* http://www.transportenvironment.org/sites/te/files/media/conflictareas_0.pdf

²²³ <http://www.docin.com/p-498926000.html>

²²⁴ Pieter de Pous & Andreas Beckmann, edited by Andreas Beckmann & Sandra Jen, “*Natura 2000 in the New EU Member State*”, WWF June 2004, assets.panda.org/downloads/n2000reportweb_he2p.pdf

²²⁵ *Conflicting EU Funds: Pitting Conservation against Unsustainable Development WWF, 2006*, Compiled by Clare Miller, IEEP and WWF network, editors Gerald Dick, Andreas Baumüller, Stephanie Lang, Martina Fleckenstein, WWF Global Programme, Wien, 72pp http://awsassets.wwf.es/downloads/eu_conflicting_funds_report.pdf

²²⁶ Consolidated version of Regulation (EU) No 1315/2013 of 11.12.2013 on Union guidelines for the development of the trans-European transport network and repealing Decision No. 661/2010/EU (20.12.2013 OJ L348/1). See also Articles 170-172 TFEU.

waterway transport, should be taken into account.”). Moreover, the Article 36 of the TEN-T Regulation is very clear in requiring an integrated approach. It provides that environmental assessment of plans and projects shall be carried out in accordance with the EU environmental law, including the Habitats and Bird Directives, the EIA and SEA Directives and the Water Framework Directive.

However, serious concerns are reported about some of the projects annexed to the TEN-T Guidelines and CEF regulations, which will require a close monitoring of the development of the projects and selection of those projects for financing to ensure that implementation of the transport policy in Europe is in line with the TFEU and relevant EU legislative acts (such as the BHDs). One such project is the Danube-Bucharest Canal, which is expected to cause major impact on hydrology and consequently ecology. Shortcomings of the feasibility study and appropriate assessment of this current TEN-T project in relation to biodiversity conservation requirements, in particular those of the Birds and Habitats Directives have been identified. Also, the TEN-T Corridor Studies produced in 2014 pay little attention to reducing conflicts with the Birds and Habitats Directives. For example, the Rhine-Danube Core Network Corridor Study Final Report of December 2014 highlighted biodiversity issues only under inland waterway transport but not road, rail and airport chapters.

It is important to emphasise however, that identified challenges are to be subscribed to inappropriate implementation and inadequate integration of biodiversity in transport policy when implementing the policy. The fact that the Nature Directives are not a systematic obstacle to development projects, roads, motorways but rather promote better territorial planning, better governance and public participation to support more sustainable development is well illustrated by the following examples:

- The Romanian Transportation Master Plan 2015-2030 provides a good example of this positive development towards better policy integration and coherence and commitments to support the achievements of the nature directives while pursuing sustainable development – See ‘Romania Amends 2015-2030 Transport Plan to Protect Animals, 25 February 2015’²²⁷.
- Mitigating the negative effects of the Lugoj-Deva highway in Romania: Mitigation measures have been agreed for Lugoj-Deva highway in Romania, an important part of the Pan European Transportation TENT-T Corridor IV, funded by the European Commission, through the Cohesion Fund, and by the Romanian Government [Europe Aid/122273/D/SER/RO]. This motorway is expected to significantly improve transport and communication opportunities in the region. Unfortunately, the motorway will intersect an important habitat corridor for large carnivores and other species that move between Apuseni Mountains and South-Western Carpathians. This corridor already suffers from existing transportation infrastructure impact and land use developments, and would completely lose its function if the motorway was constructed without making provision for ecological connectivity. To protect the biodiversity capital of the region and avoid future claims for reparation of the Natura 2000 network, mitigation measures were agreed after a long process of negotiations with the planners of the motorway.

Energy

C.4, C.5 & C.8 –The promotion of energy efficiency and energy saving and the development of new and renewable forms of energy support the requirement to promote measures at the international level to combat climate change and ensure the prudent and rational utilization of natural resources. TFEU states that the Union energy policy should have ‘regard for the need to preserve and improve the environment’ (Article 194 TFEU). The development of new and renewable forms of energy and implementation of energy infrastructure policy, to allow the Union to meet its core energy objectives, should therefore be implemented with this in mind. Moreover, the various safeguards in place under the BHDs (essentially Articles 6 and 12) ensure that socio-economic and cultural considerations are

²²⁷ Romania Amends 2015-2030 Transport Plan to Protect Animals, 25 Feb. 2015.
<http://ens-newswire.com/2015/02/25/romania-amends-2015-2030-transport-plan-to-protect-animals/>.

consistently regulated throughout the territory of the EU, which should ensure that the proposals in accordance with Treaty provisions on Trans-European networks and energy to (both individually and collectively) do not undermine the achievement of the aims under the environment title of the TFEU. See also Day (2015) on coherence of BHDs with energy policy²²⁸.

New energy infrastructure policy defined by the TEN-E Regulation is important in this context (Regulation (EU) No 347/2013). The Commission has issued non-binding guidelines to support MS in defining adequate legislative and non-legislative measures to streamline the environmental assessment procedures and to ensure the coherent application of environmental assessment procedures required under EU law for PCIs (Article 7(4) TEN-E Regulation). In the guidance²²⁹ it adopted the Commission has specified that “streamlining” means improving and better coordinating environmental assessment procedures with a view to reduce unnecessary administrative burdens, creating synergies and hence speeding up the environmental process, whilst at the same time ensuring a maximum level of environmental protection through comprehensive environmental assessments, in accordance with the environmental acquis (p. 4). This guidance has a short section on the Habitats Directive, confirming that the objective of the assessment process is to consider the conservation objectives of Natura 2000 sites and the need to preserve their integrity. They follow the provisions of article 6(3) and 6(4) of the Habitats Directive. The Guidance also notes that provisions related to species protection under Article 5 of the Birds Directive and Articles 12 and 13 of the Habitats Directive must be complied with, both within and outside Natura 2000 sites. Link is also established between the appropriate assessment (AA – as in art. 6.3 of the Habitats Directive) and its relevance for national energy or grid planning. It can be inferred that preparing an AA for a national energy or grid plan offers an opportunity to consider potential cumulative biodiversity impacts that could be generated by the combined realisation of different energy infrastructure projects and to adapt the plan in order to avoid significant cumulative impacts. For more details on analysis of TEN-E provisions in relation to Article 6.4 HD see Day (2015)²³⁰.

Ensuing, the permit granting process under the TEN-E, including the early and detailed environmental reports foreseen under the TEN-E, the appropriate assessment foreseen by the Habitats Directive, as well as the provision of Article 6(4) of the Habitats Directive in combination with Article 7(8) of the TEN-E Regulation, show a good level of coordination and integration between the two policy areas (nature conservation and energy).

It should be noted however that it is problematic that the main criteria for selecting PCIs do not include their impact on the environment and already at that stage ensure that potentially damaging projects are not included on the PCI list. Moreover, much depends on the concrete implementation of TEN-E but also Treaty provisions (eg Article 194 TFE). Lack of consideration for biodiversity and climate change impacts in developing the EU’s energy infrastructure can lead to selection of problematic projects as PCIs (for more concrete comments on the choice of PCIs completing the first list of PCIs see 14 October 2013 press release²³¹). For an example of a problematic PCI see a case study on Kaunertal in “Projects of common interest? Case studies of environmentally damaging and controversial EU energy infrastructure ‘projects of common interest’ (PCIs)” (14 October, 2013).²³²

For examples of incoherence, non-integration, and inconsistencies in the development of certain energy projects that significantly hampered the achievements of the Nature Directives objectives see

- *Odelouca Dam (see section on EIAD)*

²²⁸ Day, C (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK

²²⁹ Available at: http://ec.europa.eu/energy/infrastructure/doc/assessment/20130919_pci-en-guidance.pdf

²³⁰ Day, C (2015) The "Fitness Check" of EU Nature Legislation: Legal Analysis of certain Mandate Questions, legal research for WWF-UK

²³¹ <http://www.eeb.org/index.cfm/news-events/news/eu-energy-infrastructure-plans-may-undermine-eu-climate-change-goals/>

²³² [http://www.eeb.org/tasks/sites/EEB/assets/File/PCI_case_studies_FINAL\(1\).pdf](http://www.eeb.org/tasks/sites/EEB/assets/File/PCI_case_studies_FINAL(1).pdf)

- *Natura 2000 in the New EU Member State*, WWF June 2004²³³, p. 77: Bulgaria: plans for 1000 small scale hydropowers.
- More recent developments on related cases in June 2014²³⁴: WWF appealed the decision of the regional Environmental Protection Agency to allow for the construction of small hydropower projects on the Bistra Marului, Sucu and Olteana rivers. The environmental documentation for these projects seriously violates both the national legislation and European Union directives and have been repeatedly challenged by several environmental organizations, WWF warns. The three rivers flow through Tarcu Mountains, part of the EU's protected areas network Natura 2000. The site was designated for the protection of vulnerable habitats of specific river fish and crayfish among other species.

Similarly as with transport policy however, positive examples of progress on integration and coherence demonstrate that incoherence or *conflicts are only the result of inappropriate implementation and inadequate integration of biodiversity in energy policy*, and that the Nature Directives are not a systematic obstacle to development of energy projects, but rather promote more sustainable development, public engagement, better territorial planning and better:

- Connecting Energy Protecting Nature, EEB, BirdLife, 2014²³⁵, including useful recommendations to make EU energy infrastructure policy work for climate and nature;
- Bulgaria: WWF's repowermap.org initiative: the initiative is supported by the European Union within the framework of the Intelligent Energy Europe Programme²³⁶, as an initiative to promote renewable energies and energy efficiency by creating synergies in awareness raising between various energy actors and by facilitating information exchange for the related technologies. This project was developed in Bulgaria, after the building of many bad Renewable Energy Sector projects, and more than 5 years of serious conflicts and lawsuits, WWF managed to convince the RES sector in Bulgaria that they have to be more responsible about nature protection and sustainable development²³⁷.
- "Burgenland - a Best Practice example for a sustainable development of wind power in Austria" WWF Austria 2014 (the early planning process was done with environmental NGOs involvement and lead to a controlled development and identification of clear 'no-go' areas)²³⁸.
- Development of Danube basin guidelines for sustainable hydropower developed by ICPDR with stakeholder involvement²³⁹.

Agriculture

C.4, C.5 & C.8 – "The importance of farmers for the Natura 2000 network is reflected in the fact that farmland makes up around 40% of the total area included in Natura 2000."²⁴⁰ However, the CAP is among the most impacting policy on the achievements of the objectives of the Nature Directives: "The last 50 years of agricultural intensification have been a disaster for the environment. In the rush to

²³³ Pieter de Pous & Andreas Beckmann, edited by Andreas Beckmann & Sandra Jen, *Natura 2000 in the New EU Member State*, WWF June 2004, assets.panda.org/downloads/n2000reportweb_he2p.pdf

²³⁴ http://wwf.panda.org/what_we_do/where_we_work/black_sea_basin/danube_carpathian/?222634/Small-hydropower-projects-threaten-again-virgin-river-stretches-in-the-Romanian-Carpathians

²³⁵ Connecting Energy Protecting Nature, EEB, BirdLife 2014 Authors: Ivan Scrase, Martina Mlinaric and Suzie Lukacova <http://www.eeb.org/index.cfm/library/connecting-energy-protecting-nature/>

²³⁶ Within the Intelligent Energy Europe programme, the initiative aims to gather 40000 concrete project examples for the use of renewable energies and energy efficiency and related local information, in particular in the countries Austria, Belgium, Bulgaria, Finland, France, Germany, Italy, Liechtenstein, Slovakia, and Poland.

²³⁷ http://wwf.panda.org/who_we_are/wwf_offices/bulgaria/?208593/renewable-energy--energy-efficiency-in-your-neighborhood

and http://wwf.panda.org/what_we_do/where_we_work/black_sea_basin/danube_carpathian/news/?229851/a-map-of-europe-makes-the-energy-revolution-visible-to-all

²³⁸ http://www.wwf.at/de/view/files/download/showDownload/?tool=12&feld=download&sprach_connect=2898

²³⁹ <http://www.icpdr.org/main/activities-projects/hydropower>

²⁴⁰ <http://ec.europa.eu/environment/nature/natura2000/management/docs/FARMING%20FOR%20NATURA%202000-final%20guidance.pdf> (page i)

increase productivity through greater use of fertilisers, pesticides, reduction in fallow land and wild areas as well as a drive to mechanisation, we have seen new problems appear. The European Commission itself acknowledges that food production accounts for 30% of all environmental problems. The challenges we are facing include:

- pollution and over-abstraction of water
- increased greenhouse gas emissions
- decline of farmland biodiversity
- soil erosion and depletion.²⁴¹

See *The Truth behind the CAP - WWF and other NGOs 2011*²⁴²: “Only 7% of agricultural habitat types in Natura 2000 sites are in favourable condition, compared to 21% of other – non agriculture - habitat types. Losses of grassland butterflies and other pollinators have been particularly severe. The European grassland butterfly indicator shows a decline of some 70% since 1990”.

For early analysis of CAP and impact on Nature Directive objectives see:

- section on “Environmental Effects of Olive Farming” - pages 6 to 9 in: Guy Beaufoy, *EU Policies for Olive Farming, Unsustainable on all Counts*, WWF BirdLife, June 2001, <http://www.wwf.org.uk/filelibrary/pdf/oliveoil.pdf>
- WWF calls-european-leaders-reform-cap-ahead-enlargement (25/10/2002): “WWF calls the reform of the Common Agricultural Policy a key to the long-term success of enlargement. At the same time, enlargement offers a unique opportunity to rethink the agricultural policy in Europe. WWF believes that the new policy must address the true needs of rural diversity. Therefore, WWF wants to see rural development spending become the focus of a new agricultural policy to protect wildlife habitats and social erosion in rural areas”²⁴³.
- *Conflicting EU Funds: Pitting Conservation against Unsustainable Development* WWF, 2006²⁴⁴:
 - P 45: Agricultural Subsidies and Cork Oak Ecosystems (Portugal).
 - P 64: Biodiversity and irrigation (Spain).

For the outcome of the last reform of the Common Agriculture Policy, see: “*EU agricultural reform fails on biodiversity, Extra steps by Member States are needed to protect farmed and grassland ecosystems*”²⁴⁵ - Downloaded from www.sciencemag.org on June 10, 2014.

²⁴¹ http://www.wwf.eu/campaigns/past_campaigns/wellspent_campaign/common_agricultural_policy/

²⁴² The Truth behind the CAP - WWF and other NGOs 2011,

http://d2ouvy59p0dg6k.cloudfront.net/downloads/the_truth_behind_the_cap

²⁴³ <http://www.euractiv.com/sustainability/wwf-calls-european-leaders-reform-cap-ahead-enlargement/article-111093>

²⁴⁴ *Conflicting EU Funds: Pitting Conservation against Unsustainable Development* WWF, 2006, Compiled by Clare Miller, IEEP and WWF network, editors Gerald Dick, Andreas Baumüller, Stephanie Lang, Martina Flekenstein, WWF Global Programme, Wien, 72pp, http://awsassets.wwf.es/downloads/eu_conflicting_funds_report.pdf.

²⁴⁵ By G. Pe'er* †, L. V. Dicks, P. Visconti, R. Arlettaz, A. Báldi, T. G. Benton, S. Collins, M. Dieterich, R. D. Gregory, F. Hartig, K. Henle, P. R. Hobson, D. Kleijn, R. K. Neumann, T. Robijns, J. Schmidt, A. Shwartz, W. J. Sutherland, A. Turbé, F. Wulf, A. V. Scott, *EU agricultural reform fails on biodiversity, Extra steps by Member States are needed to protect farmed and grassland ecosystems*”, Downloaded from www.sciencemag.org on June 10, 2014.

C.6- To what extent do they support the EU internal market and the creation of a level playing field for economic operators?

Answer:

The Birds and Habitats Directives provide a single set of principles and rules across all EU Member States for a selection of species and habitats protection and to comply with numerous international conventions and regional agreements to which the EU and its Member States are contracting parties. These rules and principles are not only the same across the 28 Member States but also translated and made easily accessible with support documentation provided by the European Commission and EU expert groups. This reduces to a minimum the differences between the rules of the Member States, and thus helps to create a level playing field for economic operators. It also certainly simplifies economic actors operations for international or trans boundary projects such as European transport or energy networks. It can therefore be rightly argued that the Nature Directives also support the EU internal market.

It should be noted, however, that differences between national rules in the area of environmental protection cannot be completely removed, especially since Article 193 TFEU expressly recognizes the right of Member States to adopt more stringent protective measures to protect the environment. However, according to Article 193 TFEU, such measures must be compatible with the Treaties (including the internal market provisions contained in Part Three of the TFEU), which provides an in-built mechanism to ensure that these are not inconsistent with the internal market.

C.7 – To what extent has the legal obligation of EU co-financing for Natura 2000 under Article 8 of the Habitats Directive been successfully integrated into the use of the main sectoral funds?

Answer:

At EU level evidence shows that *there have been and are good opportunities within the EU funding Regulations for financing the needs of Natura 2000*²⁴⁶. However, the *translation of these opportunities by Member States into the national and regional Operational Programmes has been limited* (only 9-19% of the estimated financial needs of Natura 2000 were covered by the EU funds during the period 2007-2013²⁴⁷). The development and use of the Prioritized Action Frameworks (PAFs)²⁴⁸ during the past 3 years has been evaluated as a positive step, and it has been considered to be helpful by a number of Member States during the recent negotiations between the EC and the Member States on the mentioned Operational Programmes.²⁴⁹ However, this voluntary approach to integrate Natura 2000 into other funding lines seems not to be sufficient to cover investment needed in Natura 2000. The lack of coherence in funding for biodiversity across major European policy instruments, as well as weak political prioritisation and lack of cooperation between sectoral Ministries in Member States, are likely to be the main factors for the low uptake of the wide range of funding opportunities for biodiversity.²⁵⁰ Both the approach chosen (integration) and the lack of use of the existing opportunities in EU funds by Member States are results of the EC's and MS' decisions on implementation.

It is unfortunate that the use of EU funds has been limited, as the *experience shows that when Member States have decided to use such opportunities, the results have been very positive*. For example, the agri-environmental schemes under the *EARDF*, if targeted towards biodiversity, can be a good source of funding for Natura 2000, supporting sustainable development in rural and remote areas. In Poland, a special system of subsidies has been introduced in the Natura 2000 areas within the framework of the agri-environmental programme (for the years 2014-2020), ensuring conservation of birds connected to grasslands. The additional benefit for farmers whose farms are located within the Natura 2000 areas is that their payments for the implementation of agri-environmental programmes are increased by 20% in comparison to the standard payments established for particular set of actions. In order to align agri-environmental actions with the objectives of conservation of the Natura 2000 areas, the agri-environmental plans for farms within the Natura 2000 areas, as well as for farms located in the reserves, national parks and landscape parks, must be supplemented with a certificate (issued by the provincial governor or the director of the park) confirming the compliance of the planned actions with the plans for conservation of these places or the assumed objectives of their conservation.²⁵¹

Also the *ERDF* national Operational Programmes have proven to be a good source of financing for Natura 2000, when the Member States have decided to do so. In Greece, the ERDF Environment and Sustainable Development Programme for the 2007-2013 period included a priority axis on Nature and Biodiversity Conservation, with €126 million allocated for it. These funds are expected to cover the needs of a number of management bodies, monitoring requirements under article 17 of the Habitats Directive and other projects.²⁵² A good example of the use of ERDF for the implementation of the Nature Directives can be found also in Poland: the Infrastructures and Environment Operational Programme 2007-2013 partly funded a project aiming to develop 406 management plans for Natura

²⁴⁶ See the New Guidance Handbook for Financing Natura 2000 at:

http://ec.europa.eu/environment/nature/natura2000/financing/index_en.htm.

²⁴⁷ <http://www.ieep.eu/publications/2011/03/financing-natura-2000>.

²⁴⁸ See more information about the PAFs at <http://www.wwf.eu/?203931/Our-Natural-Capital-A-good-investment-in-times-of-crisis>.

²⁴⁹ See results from the national workshops on financing Natura 2000 during 2013-2014 at <http://www.financing-natura2000.eu>.

²⁵⁰ http://d2ouvy59p0dg6k.cloudfront.net/downloads/ngos_changing_perspectives_nov10.pdf

²⁵¹ For more information, please contact Piotr Nieznanski from WWF Poland (pnieznanski@wwf.pl).

²⁵² http://www.surf-nature.eu/fileadmin/SURFNATURE/Publications/Natura_2000_booklet_PDF.pdf

2000 sites.²⁵³

For the period 2014-2020 the new ERDF for the first time recognises the funding for biodiversity as an investment priority that considers the support of ecosystem services and development of green infrastructure as a viable measure to support regional economic development. This turns many regional development programmes, especially in the new Member States, into one of the most important funding sources for biodiversity. Estonia for example allocated a relevant percentage of the ERDF budget for biodiversity, which is actually much more than the expected LIFE funds for Estonia in the same period²⁵⁴.

However, overall the integration and understanding of the responsible authorities to link biodiversity investment with regional development is very weak and it will be crucial that in the coming years a number of good practice pilot projects through the European Territorial Cooperation programmes are launched. These programmes allow to exchange good practice in the macro regional context of the Mediterranean, the Alps, Baltic and Danube regions, amongst others.

²⁵³ http://www.surf-nature.eu/fileadmin/SURFNATURE/Publications/Natura_2000_booklet_PDF.pdf.

²⁵⁴ For more information, please contact Peter Torkler (peter.torkler@baltcf.org).

C.9 - How do the directives complement the other actions and targets of the biodiversity strategy to reach the EU biodiversity objectives?

Answer:

The answers to the questions S.2 and R.2 already provide some information relevant for this question (evidence that the conservation measures provided by the Directives support the broader biodiversity²⁵⁵, and specific relations with the targets of the EU Biodiversity Strategy). As also mentioned in S.2, the upcoming mid-term review of the strategy should provide further evidence.

The first target of the EU's Biodiversity strategy is to halt the deterioration in the status of all species and habitats covered by EU nature legislation and to achieve a significant and measurable improvement in their status. As that target can only be achieved if the “*full and timely implementation of the BHDs*” is attained, the Strategy aims to achieve a significant and measurable improvement in the conservation status of species and habitats protected under the BHDs. Therefore, the *EU Nature Directives are the crucial tool to achieve target 1 of the EU Biodiversity Strategy* (Strategy refers to the full and adequate implementation of the Directives)²⁵⁶, as also recognized by the Council of the European Union²⁵⁷.

The EU Biodiversity Strategy pays particular attention to ensuring the effective management of Natura 2000 sites. It calls in particular for the establishment and timely implementation of site management plans – if need be – and the further integration of species and habitat management requirements into key land and water use policies wherever possible. The full list of actions to achieve target one are set out in the Annex to Communication (COM(2011) 244).

In respect of target 2 of the Strategy, the Strategy reinforces Articles 3(3) and 10 of the Habitats Directive, which encourage Member States to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora. The *Nature Directives also support resilience and connectivity in the wider countryside, being a crucial contribution to the Green Infrastructure*; for example, Natura 2000 provides natural solutions for mitigating and adapting to climate change (“Natura 2000 is the backbone of Green Infrastructure”, as recently expressed by a representative of the European Commission)²⁵⁸. Actually, protected areas have proven to be a key conservation tool in the face of climate change, enabling species to adapt to shifting range envelopes and other climate impacts²⁵⁹.

Targets three and four are concerned with ensuring the sustainability of agriculture, forestry and fisheries and target five seeks to combat invasive alien species. The attainment of FCS for species and habitats listed on the Directives is designed to be realised mainly, but not exclusively, through the Natura 2000 network of sites (covering 18% of terrestrial EU, including forest, farmland, wetlands, water bodies). Therefore *the realization of targets 2, 3, 4 and 5 of the EU Biodiversity Strategy are directly relevant to the objectives of the BHDs. As such, Strategy and the BHDs are inextricably linked and mutually supportive*. For targets three (agriculture and forestry) and four (fisheries), the Nature Directives provide a basis for integrating biodiversity considerations into the related EU policies (CAP and CFP). The EARDF and the EMFF include a number of measures for funding of Natura 2000 within their provisions (see EC Guidance Handbook for financing Natura 2000 shows)²⁶⁰ however, it is up to the Member States to use these opportunities or not.

²⁵⁵ V. Pellissier et al. Assessing the Natura 2000 network with a common breeding birds survey, *Animal Conservation* 16 (2013) 566–574, <http://onlinelibrary.wiley.com/doi/10.1111/acv.12030/abstract>.

²⁵⁶ <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

²⁵⁷ <https://www.cbd.int/doc/nbsap/EU-council-conclusions-2020-strategy.pdf>

²⁵⁸ <http://www.ceeweb.org/wp-content/uploads/2014/06/18-Stefan-Leiner.pdf>

²⁵⁹ <http://www.pnas.org/content/109/35/14063.short>

²⁶⁰ http://ec.europa.eu/environment/nature/natura2000/financing/index_en.htm

C.10: How coherent are the directives with international and global commitments on nature and biodiversity?

Answer:

The Birds and Habitats Directives are part of the implementation tool kit for numerous Conventions and Agreements to which the EU and its Member States are contracting parties to or taking part in, from the CBD to the Bern Convention, Ramsar Convention but also regional seas Agreements such as OSPAR, Barcelona Convention or HELCOM (the Baltic Regional Sea Convention).

For detailed analysis on the relations between the provisions of these instruments and the Nature Directives please see Nicolas de Sadeleer and Charles-Hubert Born, *Droit international et communautaire de la biodiversité* (Paris, Dalloz, 2004).

Habitats Directive and CBD Programme of work on protected areas

The CBD like the Birds and Habitats Directives at EU level or the Bern Convention are based on the same scientific and ecological analysis underpinning them. All these instruments pursue similar goals which remain unfortunately unchanged and even more critical 22 and 35 years later. CBD Article 1 has a broader scope since it also addresses biodiversity genetic resources.

The Habitats Directive is the fundamental instrument for the EU and its Member States to implement Articles 6, 7 and Art 8 of the CBD. In April 2002, the Parties to the CBD committed themselves to achieve by 2010 a significant reduction of the current rate of biodiversity loss at the global, regional and national levels as a contribution to poverty alleviation and to the benefit of all life on Earth. Following on the failure to reach that goal, the revised and updated Strategic Plan for Biodiversity, including the Aichi Biodiversity Targets for 2011-2020 was adopted. The Birds and Habitats Directives (BHDs) directly support at least four of the Aichi targets (including 5, 10, 11 and 12) and indirectly support at least six (6, 7, 8, 9, 14 and 15). Thus, realising the objectives of the BHDs will contribute to the achievement of at least half of the Aichi Biodiversity Targets for 2015-2020.

In 2007, WWF undertook an analysis of how Natura 2000 and the Habitats Directive meet the requirements of the Programme of Work on Protected Areas (PoWPA) of the CBD highlighting the significant contribution of the EU's biodiversity protection legal framework to the achievement of the European goal of halting biodiversity loss by 2010, as well as the contribution of these legally binding tools towards the targets of the PoWPA. However, to achieve these goals implementation remains the key challenge.²⁶¹

The goals of the 2011-2020 CBD Strategic plans cover a broader scope of issues related to biodiversity loss compared to the Birds and Habitats Directives. They are partly captured in the EU biodiversity strategy. They however require further reforms of sectoral policies in particular the CAP, EU Energy policy, or Blue Growth with a much higher degree of integration of biodiversity conservation needs in all EU policies impacting ecosystems. The lack of integration and coherence of these policies in relation with the EU and global commitments for nature protection mainly in practice have seriously and continuously hampered progress for biodiversity protection. The Birds and Habitats Directives are the backbone of EU nature conservation and they need to be supported by coherent sectoral policies with a positive impact on ecosystems and natural resources.

Bern Convention

The Habitats and Birds Directives are the direct tools for implementing the Bern Convention in the EU providing the necessary vision, coherence and coordination to address species and habitats protection across the 28 EU Member States. Contracting parties to the Bern Convention in 1996 adopted Resolution No3 (1996) deciding to set up the Emerald Network of areas of special conservation interest in which Natura 2000 will also be included. In light of the EU enlargements of the last decade,

²⁶¹ Is Europe fulfilling its CBDs obligations? WWF 2007.
http://d2ouvy59p0dg6k.cloudfront.net/downloads/16_cbd_pa_and_n2000finaldraft.pdf

it should be noted that all candidate countries were first contracting parties to the Bern Convention and as such adapted their legislation to also implement the Birds, Habitats Directive and Natura 2000 with the preparatory phase of the Emerald Network. The EU wide system for nature protection is therefore enshrined in a long and steady scientific and legal process developed in coherence with other instruments both at international and pan-European level.²⁶²

Regional Sea Conventions

For the North East Atlantic and Baltic Sea Convention, the Nature Directives help achieve the international commitments where there is an overlap in terms of marine features listed in the Annexes. For example, most marine Natura 2000 sites in the NE Atlantic are also included in the OSPAR network of MPAs. See

- HELCOM MPA and Natura 2000²⁶³,
- OSPAR MPAs and Natura 2000 in the UK,²⁶⁴
- Guidelines for the Management of Marine Protected Areas in the OSPAR Maritime Areas (Reference Number: 2003-18).²⁶⁵

In other respects the regional seas frameworks are complementary to the Directives, when it comes to marine features not listed by them. For example, an increasing number of OSPAR marine protected areas are designated e.g. for the conservation of sharks, sponge formations, coral gardens, soft bottom communities etc. The same applies to specific recommendations for the conservation and/or restoration of such threatened and/or declining species and habitats.

²⁶² <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2393707&SecMode=1&DocId=2079680&Usage=2>

²⁶³ <http://helcom.fi/action-areas/marine-protected-areas/HELCOM-MPAs-and-Natura-2000-areas/>

²⁶⁴ <http://jncc.defra.gov.uk/page-4526>

²⁶⁵ http://www.ospar.org/documents/dbase/decreecs/agreements/03-18e_mpa%20management%20guidance.doc

EU Added Value

Evaluating the EU added value means assessing the benefits/changes resulting from implementation of the EU nature legislation, which are additional to those that would have resulted from action taken at regional and/or national level. We therefore wish to establish if EU action (that would have been unlikely to take place otherwise) made a difference and if so in what way? Evidence could be presented both in terms of total changes since the Directives became applicable in a particular Member State, in changes per year, or in terms of trends.

AV.1 - What has been the EU added value of the EU nature legislation?

Answer:

Environment being an area of shared competence between the EU and Member States (Article 4 of the TFEU), and keeping in mind the subsidiarity principle (the EU shall act only if and insofar as the proposed action cannot be sufficiently achieved by Member States), *the EU action on environment is, by definition, of add value to national measures*. An EU action on biodiversity is also justified by the fact that biodiversity is a cross-cutting issue, *which should be taken into account in other policy areas covered by EU law. Moreover, nature knows no borders*, and biodiversity under protection often exists across the territory of several Member State (e.g. migratory birds or wildlife habitats that straddle national borders), which necessitates a coordinated multilateral response for its protection. If the intervention is limited to national or even regional level, it would be less effective, with the risk of different standards of protection between the various EU Member States. Finally, the *'scale of the issues tends to justify broader, EU-wide action'*.

In 2013, WWF, IEEP and others prepared a report as part of a joint response to a review of the EU/UK Balance of Competencies (2012-2014)²⁶⁶. This report discusses the impact of EU legislation and policy on the environment, including the EU Nature Directives and biodiversity²⁶⁷. It concludes that *the Birds and Habitats Directives have added a layer of protection for nature in Member States above and beyond that provided in previous national legislation* (eg in the UK it reinforced the national legislation with eg the Conservation -Natural Habitats- Regulations 1994). The mentioned UK Government's Balance of Competences Review Environment Report²⁶⁸ found that "the majority of respondents believed that EU competence has increased environmental standards in the UK and across the EU and that this has led to improved performance in addressing several environmental issues".

Further, the *LIFE fund has proven to be a very valuable tool for conservation in the EU Member States*, and has also helped to increase the leverage effect of the EU budget.²⁶⁹ LIFE, the only EU fund dedicated only to environment, supports projects contributing to the implementation of the EU Nature Directives, the integration of biodiversity into other policy areas, the assessment and monitoring of pressures on biodiversity and projects responding to those pressures.

The added value of EU action is justified also on the basis of new pressures arising from *climate change*. Natura 2000 network has proven to be crucial in this new context, especially for migrating species/populations; eg during especially hard winters. This also suggests the need to assess additional sites that currently attract internationally important populations, as potential candidates for the expansion of the Natura 2000 network.²⁷⁰

Furthermore, the EU Nature Directives have brought positive changes in national nature conservation practices, based on the EU level protection they provide. For example:

- In Greece, prior to the EU Nature Directives nature conservation, especially the establishment of protected areas was limited to international agreements (esp. the Ramsar Convention and the designation of 10 Ramsar Wetlands) and the protection provisions of the forest legislation, i.e. the establishment of 10 National Forests. The EU membership brought momentum to environmental

²⁶⁶ See <https://www.gov.uk/review-of-the-balance-of-competences>

²⁶⁷ IEEP (2013) Report on the influence of EU Policies on the Environment. Available here: http://www.ieep.eu/assets/1230/Final_Report_-_Influence_of_EU_Policies_on_the_Environment.pdf

²⁶⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284500/environment-climate-change-documents-final-report.pdf

²⁶⁹ <http://ec.europa.eu/environment/life/>

²⁷⁰ Pavón-Jordán, D. et al, 2015. Climate-driven changes in winter abundance of a migratory waterbird in relation to EU protected areas. Diversity and Distributions, (Diversity Distrib.) (2015) 1–12. <http://www.theguardian.com/environment/2015/jan/26/rare-european-duck-protected-areas-smew-drakes>

protection and the Nature Directives provided the tool to extend nature conservation efforts. As a result biodiversity conservation is now recognized as a policy priority. Greece is a country that faces a serious abandonment of the countryside, but with the Nature Directives and their approach to encourage human activity, opportunities have been offered to bring back human activities to the countryside, and through these to help the improvement of the natural environment, and biodiversity conservation in particular. One major item that increased significantly in Greece is the area under protection. Research and knowledge on species of community interest has also gained from the Directives, given that money was allocated for the studies and collection of data. This is true especially as regards habitat types, the knowledge on which was extremely limited before the establishment of the Habitats Directive. The assessment of the impacts of plans and projects has also benefitted significantly, as procedures were set for appropriate assessment. All terrestrial neighbours of Greece (with the exception of Bulgaria that entered the EU in 2007) are outside the EU territory. However, in all transboundary environmental projects that Greece is participating, the obligations from the EU Nature Directives have been taken into consideration, leading to exportation of the added value of this legislation to other non EU countries.²⁷¹

- In Poland, Natura 2000 has led to explosive progress in Polish understanding of nature - for some species the research and administration works required by Natura 2000 has changed the image of their distribution in Poland (e.g. *Vertigo* snails, *Cucujus cinnaberinus*). The planning of conservation for the Natura 2000 areas, monitoring and the developing of methodologies has also changed the methods of nature conservation planning in Poland; for example for the first time within the framework of the monitoring of nature, a second series of observations was performed on a nationwide scale that is comparable to the first one (previous monitoring activities ended with the establishment of monitoring networks while the continuation of the monitoring was not financed or conducted by anymore).²⁷²

²⁷¹ For more information, please contact Ioli Christopoulou from WWF Greece (i.christopoulou@wwf.gr).

²⁷² For more information, please contact Piotr Nieznanski from WWF Poland (pnieznanski@wwf.pl).

AV.2 - What would be the likely situation in case of there having been no EU nature legislation?

Answer:

Despite the shortcomings of implementation, mainly by national authorities, the “irreplaceability” and innovation of the Habitats Directive is evident in certain provisions, including the list of SCI’s, the enhanced protection of priority habitats, the appropriate assessment, the provisions on Annex IV species, and its ground-breaking contributions to a better management of European habitats. It is difficult to hypothesize what the situation would be in the absence of EU nature legislation, and what national measures might exist in their place. However, *it does seem doubtful whether, without the EU Nature Directives and the establishment of the so-called Natura 2000 sites, Europe would still have the world’s biggest ecological network comprising over 27000 protected sites (Birds and Habitats Directive combined), and covering around 18% of the EU landmass and 4% of marine areas.*

International commitments have also benefited from the EU Nature Directives, as the EU is using the Nature Directives as an instrument for implementing international commitments, but also *the existence of these instruments gives EU the confidence to propose broader or more ambitious commitments at international scale (eg the Aichi target 11²⁷³)*. In the absence of the Directives EU MS ability to implement international commitments or push for stricter standards at international level could be compromised.

Strong examples are available to demonstrate the ability of the EU Nature Directives to help conservation at national level that otherwise would have been difficult. One such example is the Thames Basin Heaths SPA in the UK, which demonstrates how the Habitats Regulations prompted local authority planners, Natural England, developers and NGOs to collaborate thus developing a practical response to managing urban expansion in the Thames Basin Heaths SPA, in the form of a sub-regional strategic assessment. *As such an assessment is required under the Birds Directive, it is unlikely that it would have occurred had the site not been classified as an SPA (only an SSSI designation under national legislation)*. The presence of the SPA resulted in 11 planning authorities working together to create a strategic solution, which achieves continued protection of a significant habitat whilst creating a framework for developers to work within to allow appropriate development of the area²⁷⁴.

Another case, also in the UK, is the case of Strangford Lough SPA in Northern Ireland. This case shows that the Habitats Directive has been a legislative driver enabling considerable progress in achieving the protection needed for the unique and valuable horse mussel reefs for which the SPA was designed to protect. *Again, this progress would not have been achieved under national legislation.*²⁷⁵

In France, since the year 1990, the Coussouls de Crau sites are under a cooperative management of the CEEP, a regional organization for nature conservation, and the agricultural chamber of the Bouches-du Rhône. Ecologists, naturalists and farmers are working together to give the Crau a future with a shared vision. The erosion of the particular steppe of this region (coussouls) was stopped and with Natura 2000 *any destructive intervention in the area would only be possible for imperative reasons of overriding public interest*, (compensation measures, which would be required in such case, are difficult to implement because original ‘coussouls’ cannot really be restored with irrigated ‘coussouls’). These led to a strong protection of ‘coussouls’ by Natura 2000 despite pressures from many infrastructural projects, settlements and urbanisation²⁷⁶.

²⁷³ <http://www.cbd.int/sp/targets/>

²⁷⁴ IEEP (2013) Report on the influence of EU Policies on the Environment. Available here: http://www.ieep.eu/assets/1230/Final_Report_-_Influence_of_EU_Policies_on_the_Environment.pdf

²⁷⁵ IEEP (2013) Report on the influence of EU Policies on the Environment. Available here: http://www.ieep.eu/assets/1230/Final_Report_-_Influence_of_EU_Policies_on_the_Environment.pdf

²⁷⁶ <http://inpn.mnhn.fr/site/natura2000/FR9310064>

In Poland, the unique Orawa-Nowy Targ Peatlands have not been subject to any conservation work for several decades due to ownership issues, despite repeated demands. But the Habitats Directive *made it possible for the area to be given a protection status*. This has already brought notable positive effects, such as the nationally unique example of the filling in of the ditch draining the area, which had been previously dug by a forest co-operative. The status of a Natura 2000 area also provides the guaranteed limitation of plans to extend peat extraction.²⁷⁷

It is also possible that the nature conservation movement would have developed in a completely different direction, away from actually conserving biodiversity on the ground more towards protesting and demonstrating against damaging development at national level (see eg protests against the Castor transports in Germany)²⁷⁸. The EU Nature Directives provide a framework for resolving conflicts in constructive manner. Furthermore, at the EU level, fundamental coordinated international processes like the site designation Biogeographic Seminars²⁷⁹ or the Biogeographic seminars for the management of Natura 2000 would have never occurred²⁸⁰. Also umbrella coordination structures like the European Habitats Forum²⁸¹ might not exist.

In Greece, there is a considerable doubt that there would be a network of protected sites as comprehensive as the Natura 2000 network if there would be no EU Nature Directives. Given the rich biodiversity of the country, there would certainly be many species protected, but it could be expected that these species would be more of national and not of European interest. Further on, it is doubtful that the criteria for identification of protected areas would include habitat types. Also *funding levels for biodiversity would likely be lower without the EU Nature Directives*; through the Directives an outline of actions for achieving their objectives has been drawn, thus leading to the formation of specific requests for funding.²⁸²

One can also look at MS that has recently joined the EU to assess the added value of the Directives and situation that would occur without them in place. For example, Croatia has been through a lengthy process accessing the EU (Croatia applied for EU membership in 2003, negotiating from 2005 until 2011, and became the 28th EU MS on 1 July 2013). The process was also an opportunity to improve environmental legislation according to the EU standards and environmental acquis. Croatia has benefited from *improved legislation* since most of EU requirements were adopted and enforced before becoming a full member in 2014. Another great benefit was the effect of the *access to EU funding* as regards the EU Nature Directives' species and habitats. EU funding (dedicated funds for Croatian and transboundary projects) was used to improve an inventory, management and monitoring of future Natura 2000 sites.²⁸³

<http://inpn.mnhn.fr/site/natura2000/FR9301595>

²⁷⁷ For more information, please contact Piotr Nieznanski from WWF Poland (pnieznanski@wwf.pl).

²⁷⁸ <http://www.theguardian.com/environment/gallery/2011/nov/28/anti-nuclear-protests-germany-in-pictures>

²⁷⁹ http://bd.eionet.europa.eu/activities/Natura_2000/index.html

²⁸⁰ http://ec.europa.eu/environment/nature/natura2000/seminars_en.htm

²⁸¹ <http://www.iucn.org/about/union/secretariat/offices/europe/work/?uNewsID=50>

²⁸² For more information, please contact Ioli Christopoulou from WWF Greece (i.christopoulou@wwf.gr).

²⁸³ For more info, please contact Andrea Štefan from the WWF Mediterranean Programme (astefan@wwf.panda.org).

See also: <http://www.dzpp.hr/eng/projects-financed-from-eu-funds/ipa-166.html>

Please find below some examples:

Large carnivores:

-LIFE: <http://www.dzpp.hr/projekti-iz-eu-fondova/life-iii/life-cro-wolf-zastita-i-upravljanje-vukovima-u-hrvatskoj-762.html>

<http://dinalpbear.eu/project/about-the-project/>

-Interreg IIIA: <http://www.life-vuk.hr/eng/no-content/no-content/no-content-1049.html> just in Croatia <http://www.life-vuk.hr/ris/projekti/dinaris/dinaris-1049.html>

-FP7: <http://fp7hunt.net/Portals/HUNT/Reports/Croatian-Slovenian%20Research%20Briefings.pdf>

-Natura 2000: <http://www.natura2000.hr/Home.aspx?langID=2> and

<http://www.dzpp.hr/projekti-iz-eu-fondova/life-iii/life-iii-uspostava-nacionalne-ekoloske-mreze-kao-dijela-sveeuropske-ekoloske-mreze-i-mreze-natura-2000-cro-nen-2005-769.html>

-Marine Natura 2000: <http://www.natura2000.hr/PageTemplates/PageContent.aspx?pageId=122&langID=1>

-Monitoring: <http://www.dzpp.hr/eng/projects-financed-from-eu-funds/ipa/ipa-2009-%E2%80%9Cnatura-2000-establishment-of-management-and-monitoring-man-mon%E2%80%9D-804.html>

AV. 3 - Do the issues addressed by the Directives continue to require action at EU level?

Answer:

The legal basis for both Directives is Article 192 TFEU (ex Article 175 TEC), which allows the EU to adopt measures in order to achieve the objectives referred to in Article 191 TFEU (ex Article 174 TEC). These objectives are still relevant today. Furthermore, the motivations contained in the recitals of those Directives are also still relevant, and therefore EU action is still needed. In particular, the Habitats Directives states:

“Whereas, in the European territory of the Member States, natural habitats are continuing to deteriorate and an increasing number of wild species are seriously threatened”.

This is *still fully justified, as currently European biodiversity is in decline*:

- The Habitats Directive Article 17 assessment for 2007–2012, shows that only 23% of animal and plant species and only 16% of habitat types were considered to be in a favourable conservation status.²⁸⁴
- In 2010, the EU’s 2010 Biodiversity Baseline²⁸⁵ summarised the state and trends of the different biodiversity and ecosystem components occurring in the territory of the EU. The Baseline shows that although species extinction in the EU is not occurring nearly as rapidly as in other regions and continents, the percentage of species threatened with extinction is still a matter of concern. In particular, it confirms that 25% of marine mammals and 15% of terrestrial mammals, 22% of amphibians, 21% of reptiles, 16% dragonflies, 12% of birds and 7% of butterflies are threatened with extinction at EU level.
- The new EU Biodiversity Strategy²⁸⁶ confirms that current rates of species extinction are unparalleled. Driven mainly by human activities, species are currently being lost 100 to 1,000 times faster than the natural rate: according to the FAO, 60% of the world’s ecosystems are degraded or used unsustainably; 75% of fish stocks are over-exploited or significantly depleted and 75% of the genetic diversity of agricultural crops has been lost worldwide since 1990. The Strategy confirms that the need to address biodiversity loss – including the EU’s most threatened habitats and species covered by the BHDs – is still urgently required.
- Generally, the current conservation status of Europe’s biodiversity does not offer a positive picture²⁸⁷: large EU ecological footprint vis-à-vis its bio-capacity²⁸⁸, high fragmentation rate of European territory²⁸⁹, and a large proportion of EU-protected habitat and species under a non favorable or unknown conservation status (as mentioned above)²⁹⁰, and failure of the EU to meet its 2010 goal to halt biodiversity loss²⁹¹.

²⁸⁴ EEA (2015) The European Environment, State and Outlook 2015: synthesis report, EEA, Copenhagen, p. 7.

²⁸⁵ Available here: <http://www.eea.europa.eu/publications/eu-2010-biodiversity-baseline/>.

²⁸⁶ EU Biodiversity Strategy to 2020 (COM/2011/0244), available here: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52011DC0244&from=EN>.

²⁸⁷ EEA, 2015. The European Environment, State and Outlook 2015: synthesis report, EEA, Copenhagen.

²⁸⁸ EEA (European Environmental Agency). 2011. Ecological footprint of European countries (SEBI 023)—assessment published May 2010. EEA.

²⁸⁹ EEA (European Environmental Agency), 2011. Landscape fragmentation in Europe. Joint EEA-FOEN report. EEA, Luxembourg.

²⁹⁰ Available here: <http://www.eea.europa.eu/publications/eu-2010-biodiversity-baseline/>.

²⁹¹ Kati, V. et al, 2014. The Challenge of Implementing the European Network of Protected Areas Natura 2000. Conservation Biology, Volume 00, No .0, 1–1.

Moreover *international commitments implemented in the EU through EU Nature Directives are still fully valid*, including the Bern Convention on the conservation of European wildlife and natural habitats²⁹² and the Convention on Biological Diversity²⁹³ (see question C.10). At the international level, growing concern over biodiversity loss has motivated governments, including the EU, to sign up to ever more ambitious biodiversity conservation targets²⁹⁴.

Also *public support for nature conservation is quite high in the EU*, as recent surveys have shown (see questions R.4 and R.5). The European Union citizens value and want to protect their environment; many people believe that the nature has its own intrinsic value that cannot be traded off against purely economic values. According to a 2010 Eurobarometer poll EU citizens see the conservation of biodiversity first and foremost as moral obligation rather than a means of protecting our own well-being and quality of life²⁹⁵. EU citizens might have more difficulties to understand the role of the EU in other areas (eg in determining the curve of bananas²⁹⁶), but nature conservation is easier to understand as an EU responsibility.

In light of the climate change challenges, the role of the Natura 2000 network of protected areas – currently covering the 18% of the EU terrestrial territory – can be crucial to facilitate species' range expansions²⁹⁷ and to ensure resilience of ecosystems thus allowing us to more easily adapt to climate change. Healthy ecosystems are also important for climate change mitigation (eg peatlands).

Finally, it is again important to keep in mind that *nature knows no borders*, and therefore coordinated EU action is necessary to protect it in the long term as well as to achieve the target of halting the loss of biodiversity by 2020, as agreed by EU Member States.²⁹⁸

²⁹² <http://conventions.coe.int/Treaty/en/Treaties/Html/104.htm>

²⁹³ <http://www.cbd.int/convention/articles/default.shtml?a=cbd-00>

²⁹⁴ <http://www.cbd.int/sp/targets/>

²⁹⁵ Eurobarometer (2010). Attitudes of Europeans towards the issue of biodiversity, Analytical report Wave 2 http://ec.europa.eu/public_opinion/flash/fl_290_en.pdf

²⁹⁶ <http://www.gatestoneinstitute.org/4053/eu-regulations>

²⁹⁷ Thomas et al., 2012 Protected areas facilitate species' range expansions, PNAS www.pnas.org/cgi/content/short/1210251109.

²⁹⁸ <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>.

Annex I: Relevant European Court of Justice Judgments - question S.3

Some key European Court of Justice judgments that can help to identify some of the main factors, which have affected the achievement of the objectives of the Nature Directives during each phase of the implementation:

a) *Transposition*

- Delayed transposition [C-441/03, C-131/05, C-518/04, C-259/08]
- Inappropriate transposition
 - Member States' responsibility to ensure clear and precise transposition [C-98/03(60), C-6/04(26)]. Failure to ensure a faithful transposition [C-262/85(9), C-38/99 (53), C-507/04 (92)].
 - Relevant prohibitions must be reproduced [C-339/87 (22), C-507/04 (280)]
 - General clauses are insufficient [C-6/04(15,19)]
 - Others [C-252/85 (5), C-507/04 (89)]
- Specific issues
 - The surveillance obligation must be transposed clearly [C-6/04 (65)]
 - Failure to secure a complete system of protection in the periods during which the survival of wild birds is particularly under threat [C-157/89 (14), C-435/92 (9), C-507-04(193), C-344/03(39, 60), C-60/05(34)].
 - Failure to provide sufficiently precise criteria as to the quantitative ceilings of birds [C-60/05 WWF (36) C-507-04(201)]
 - Member states should provide a legislative and regulatory framework that ensures that hunting complies with the provision of the Directive on "small numbers" and that it is carried out on the basis of strict scientific data. [C-60/05(26)] Any derogations should be consonant with the principle of legal certainty [C-60/05(33)]
 - Scientific criteria and data are binding in order to examine any derogations granted by the 79/409/EEC Directive [C-60/05(26-29)]
 - Failure because of the existence of national rules (or other legislative or regulatory measures) that delimit the protection [C-6/04(24),C-507/04(103)
 - Failure to ensure complete and effective protection of wild birds while preserving national legislation that delimits the protection of wild birds [C-252/85(15), C-507/04 (103)].

b) *Site selection/designation*

- Criteria for site selection
 - Altered the demarcation of a SPA (for economic purposes), although suitable for wild birds under the article 4 of the directive. [C-191/05]
 - Economic requirements should be suppressed when designating an SPA and defining its demarcation line [Case C-44/95 (31,42)] C-209/04(40)
 - The designation should be based only on the most up-to-date scientific data available (ornithological criteria) and never on economic requirements. [C-418/04 (39,66), C-355/90 (26)]
 - All sites meeting the ornithological criteria for the conservation of the species of the Directive, should be designated as SPA [C-418/04 (37), C-378/01(14), C-334/04 (34), C-3/96 (62)]
 - Member States' margin of discretion in choosing the most suitable territories for classification as SPAs concerns the application of ornithological criteria for identifying the most suitable territories for conservation of the species in question [C-334/04 (42), C-3/96 (61)]
 - A site should be designated as SPA even the species' population in question exhibits low numbers and high vulnerability [C-418/04 (91)]
- Time and context of the designation obligation
 - The obligation to classify FFH areas is a constant procedure, since it's not limited by the state of scientific knowledge at any given time. [C-209/04 (43,44)]
 - The designation is obligatory for each member state separately, despite the presence of other sites in other Member States, much more appropriate for the conservation of those same species [C-3/96 (58), C-418/04 (61)]
 - The designation obligation does not necessarily cease to apply if the area is no longer most suitable. [C-418/04 (83)] The member state should proof that the area is not suitable despite the protection measures taken [C-191/05 (13, 14), C-418/04 (86)]

- The obligation imposed on Member States to classify sites as SPAs cannot be avoided by the adoption of other special conservation measures [C-418/04 (38), C-3/96(55)]
- No measures undertaken for the protection of a selected area [C491/08]

c) National implementation

- o Failure to implement completely and correctly the requirements of the directive [C-6/04(24)]
- o Misinterpretation of the term “project” and “act of the 85/337/EEC” (cf. lead into a failure to properly transpose the directive [C-98/03(35,36)])
- o Misinterpretation of the term “small quantities” of article 9 par.1 [C-164/09]
- o Misinterpretation of the 85/337/EEC over the assessment of cumulative effects. A broad interpretation is suggested. [C-72/95(30,31), C-404/09 (79)]
- o A comprehensive legislative framework isn’t enough. A system of strict protection is required and the adoption of concrete and specific protection measures [C-103/00(34-39), C-183/05 (29)] and coherent and coordinated measures of a preventive nature [C-518/04 (16), C-183/05 (30)]
- o A plan or project can be authorized only after the national authorities have ascertained and there is no reasonable scientific doubt, that it will not adversely affect the integrity of the site. [C-127/02 (61), C-418/04 (243), C-304/05 (58)].
- o The assessment of any imperative reasons of overriding public interest and that of the existence of less harmful alternatives require a weighing up against the damage caused to the site by the plan or project under consideration. In addition, in order to determine the nature of any compensatory measures, the damage to the site must be precisely identified. [C-304/05 (83)].
- o If any reasonable scientific doubt remains, the competent authority should refuse authorization of the plan or project [C-304/05 (69)].
- o Assessments carried out pursuant to Directive 85/337 or Directive 2001/42 cannot replace the ‘appropriate assessment’ procedure provided of the Habitats Directive [C-418/04 (231)].

d) Enforcement

- o Protection of Natura 2000 areas includes positive measures to preserve or improve the state of the site and should not be limited to avoid external anthropogenic disturbance [C-535/07 (59), C-404/09 (135)]
- o Positive measures such as research and any work required as a basis for the protection, management and use of the population of all protected birds should be encouraged [C-418/04 (270)]
- o Failure to present an satisfactory or an alternative solution that would justify an exception provided by the directives [C-344/03 C-135/04, C-76/08]
- o Failure to present evidence that all possible alternative solutions were examined. [C-239/04]
- o Failure to present an appropriate EIA: An assessment under Article 6(3) of the Habitats Directive is regarded as appropriate only if its complete, precise, examines all aspects of the plan or project by themselves or in combination with other plans or projects, provides definitive findings and conclusions, makes use of the best scientific knowledge available, and removes all reasonable scientific doubt as to the effects of the works proposed [C-304/05(69), C-404/09 (100)].
- o EIA shouldn’t be drawn up after authorization of the projects to make up for their deficiencies [C-304/05(72), C-404/09(104)].