

## Evidence Gathering Questionnaire for the Fitness Check of the Nature Directives

### Introduction

As part of its Regulatory Fitness and Performance Programme (REFIT), the European Commission is undertaking a Fitness Check of the EU nature legislation, the Birds Directive<sup>1</sup> and the Habitats Directive<sup>2</sup> ('the Nature Directives'),<sup>3</sup> which will involve a comprehensive assessment of whether the current regulatory framework is “fit for purpose”.

Adopted in 1979, the Birds Directive relates to the conservation of all wild birds, their eggs, nests and their habitats across the EU. Its strategic objective is ‘to maintain the population of all species of wild birds in the EU at a level which corresponds to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level’.

The Habitats Directive, adopted in 1992, covers around 1000 other rare, threatened or endemic species of wild animals and plants and some 230 habitat types. These are collectively referred to as habitats and species of Community interest. The strategic objective of the Habitats Directive is "to maintain or restore natural habitats and species of Community interest at favourable conservation status, taking into account economic, social and cultural requirements and regional and local characteristics".

The Directives require Member States to take a variety of measures to achieve these objectives. These measures include the designation of protected areas for birds (Special Protection Areas) and for habitats and species of Community interest (Special Areas of Conservation), which together comprise the Natura 2000 network, and the adoption of strict systems of species protection (see objectives of the Directives in Annex I to this document).

The Fitness Check is intended to evaluate how the Nature Directives have performed in relation to the achievement of the objectives for which they were designed. In accordance with its mandate,<sup>4</sup> adopted by the European Commission in February 2014, it will assess the effectiveness, efficiency, coherence, relevance and EU added value of the Nature Directives<sup>5</sup>.

As part of this process, the European Commission has commissioned an evaluation study to support the Fitness Check. The study is tasked with gathering and analysing evidence and data held by a wide range of stakeholders.

The Questionnaire presented below is a key tool to enable you to provide this evidence.

In parallel to this questionnaire, you are invited to contribute to the initial list of published and peer-reviewed documents identified as being relevant for the Fitness Check. The list, which

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<sup>1</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7-25).

<sup>2</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7-50).

<sup>3</sup> Please note that for the purposes of this questionnaire, the terms 'EU nature legislation' and 'Nature Directives' refer to the Birds Directive and the Habitats Directive.

<sup>4</sup> [http://ec.europa.eu/smart-regulation/evaluation/docs/mandate\\_for\\_nature\\_legislation\\_en.pdf](http://ec.europa.eu/smart-regulation/evaluation/docs/mandate_for_nature_legislation_en.pdf)

<sup>5</sup> For more information see: [http://ec.europa.eu/environment/nature/legislation/fitness\\_check/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm)

will be updated at regular intervals, is structured according to the evaluation categories set out in the mandate. It can be accessed at:

[http://ec.europa.eu/environment/nature/legislation/fitness\\_check/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm)

The European Commission will also launch an online public consultation for 12 weeks from April to June 2015. You are welcome to fill in that survey as well, but please be aware that the two exercises are of a different nature. The public consultation will collect views and opinions, whereas the questionnaire presented below aims to collect evidence, meaning facts or information (such as case studies, research findings, infringement cases, case law and data) which support a point or position.

## The questionnaire

The questionnaire has been prepared in order to gather evidence-based information for the evaluation. It is being sent out to all Member States and selected key stakeholders across the EU.

Please answer all questions that you consider **relevant to the situation in your country/region/sector/area of activity, based on direct experience supported by evidence. You are not expected or obliged to answer all questions.**

Where possible, quantitative evidence should be provided. Where this is not possible, semi-quantitative or qualitative evidence would be welcome.

We would encourage you to answer in English. In your answers please specify why and how the evidence and documents provided is relevant for the specific question. For documents that are not in English, please provide in the answer to the question a brief summary in English that explains its relevance to the question.

Please **provide full reference details for all documents cited or referred to** in your answers: author / editor names and their initials, full titles, full names of journals, relevant page numbers, publishers and place of publication. If the document is available online, please add a URL link. If it is unpublished information, please supply a copy or relevant excerpt. When citing in short a document for which you have already provided full reference details, please ensure that we can distinguish between references that have the same author(s) and year of publication.

Please, make sure that the link between a question and the document related to it is clear. You may choose to provide the full reference of cited documents in footnotes or in notes numbered and linked to a reference list at the end of the questionnaire. If you send documents as attachments to the email, please give them a name that includes the number of the question(s) they are related to.

### **Deadlines for submission of the questionnaire**

We kindly ask you to fill in the questionnaire and return it by e-mail **within 5 weeks** of receiving it to: [info.NatureDirectivesFitnessCheck@milieu.be](mailto:info.NatureDirectivesFitnessCheck@milieu.be).

We appreciate that it may not be possible to provide complete answers to all the questions and collect all the evidence you may wish to provide within this timeframe. However, it is essential that we receive an initial response which is as complete as possible within 5 weeks in order to enable us comply with the tight evaluation schedule.

On the basis of the initial responses received, follow-up interviews may be organised to seek clarification or additional information if required. It may not be possible to organise such interviews for responses received after the 5 week deadline. However, you will have until the end of April to complete your final submission in response to the questionnaire. Please note that it will not be possible to take into account contributions received after that deadline.

The evidence gathered through this questionnaire will be vital to the overall process. For this reason, **if you anticipate that you will not be able to complete the questionnaire, please let us know as soon as possible.**

**Thank you in advance for your contribution.**

## QUESTIONNAIRE

### A. General Information

Please answer ALL questions in this table

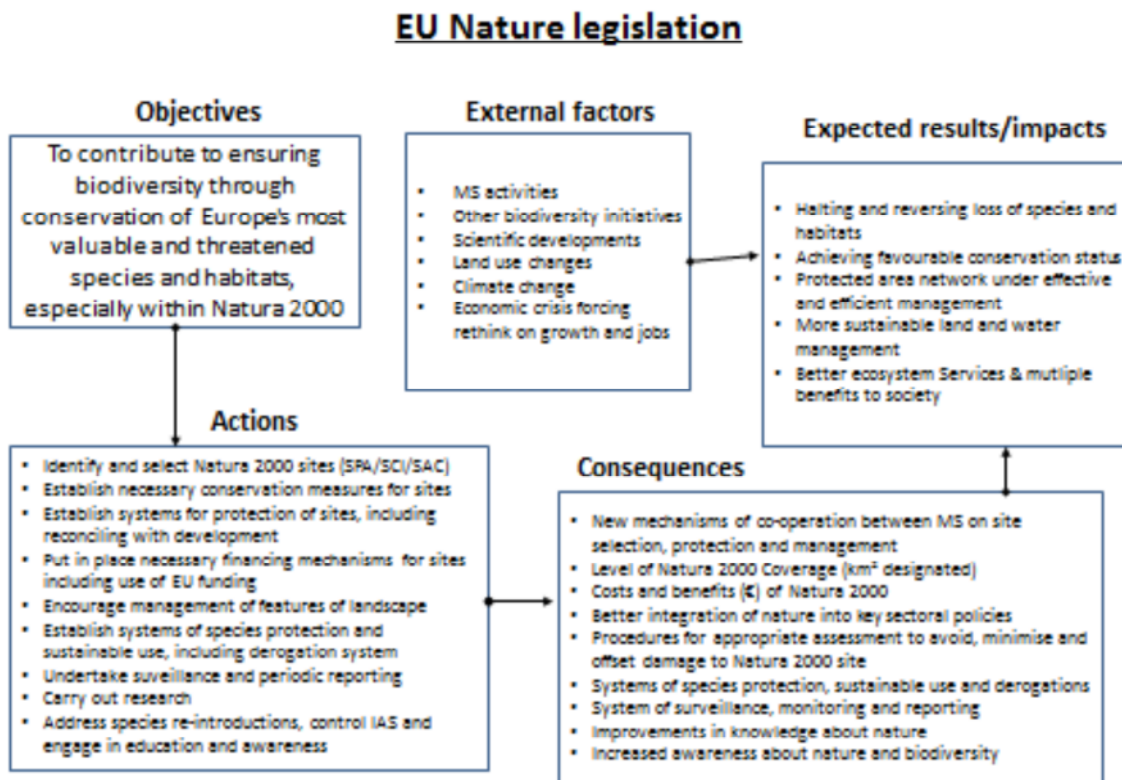
	Answer
<b>Organisation:</b>	Friends of the Earth Europe
<b>Date:</b>	13/07/2015
<b>Country (and, if applicable, region) represented:</b>	Europe
<b>Organisation(s) represented:</b>	Friends of the Earth Europe and its national member groups
<b>Name of contact for enquires (including follow-up interview if required):</b>	Friedrich Wulf
<b>Contact email address:</b>	Friedrich.Wulf@pronatura.ch
<b>Contact telephone number:</b>	++41792160206
<b>Languages spoken fluently by contact person:</b>	EN, DE, FR
<b>Language</b> for the interview if it is not possible to conduct it in English	It is possible to do it in English
<b>Type of organisations you represent:</b> 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).	nature conservation charity
<b>Sector represented:</b> environment / water / agriculture / forestry / fisheries / transport / energy / extractive industry / industry / housing and other buildings / recreation & tourism / science & education / other (please specify)	environment
<b>Additional comments:</b>	The comments and suggestions made here complement the feedback made with the involvement of our national groups and do not necessarily repeat these. We will likely add more responses until the end of April.

## B. EVALUATION / FITNESS CHECK questions

Please answer all questions that are relevant to you and for which you can provide informed insights from direct experience and/or supporting evidence.

We would kindly ask that you keep your answers as succinct as possible. They should summarise in **no more than 2 pages** any evidence relevant to a given question. More complete/detailed information, if any, should be provided in the form of references and/or web links. Definitions, explanations and examples are provided under each question to assist you in answering them.

When answering the questions, please note that the Fitness Check intends to examine the performance of the Nature Directives in relation to their stated objectives, taking into account expected results, impacts and external factors. The figure below presents the intervention logic as included in the mandate. For ease of reference, a table presenting the objectives of the Directives, differentiating between different types of objectives (strategic, specific, operational), is included in Annex I to this document.



The questions are structured around the five evaluation criteria addressed in the mandate: effectiveness = S, efficiency = Y, coherence = C, relevance = R, and EU added value = AV.

## 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 reports<sup>6</sup>.

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

*Please provide evidence on what progress has or is being made towards the achievement of the objectives set out in Annex I that are of relevance to you. Please address separately the objectives of the Birds Directive and the Habitats Directive, and specify which objective(s) you are referring to, with references to the corresponding Articles. If possible quantify the progress that is being made.*

#### Answer:

The Birds and Habitats directive **work** and produce tangible results where they implemented properly and in timely. This has unfortunately not been the case, due to slow and reluctant implementation and pressures from land use and other sectors (see S.3). Some examples:

- the birds and habitats directives have produced **the world's largest coherent network** of protected areas, see Natura 2000 barometer<sup>7</sup>
- The **area** of protected areas targeted at conserving biodiversity (excluding) has risen considerably and increased the surface of protected areas by a factor of 2 – 5 (compare CDDA w/ Natura 2000 in the EEA's publication "Protected areas in Europe - an overview"<sup>8</sup>)
- The % of species and habitats of community interest in protected areas has increased (see results of biogeographical seminars)
- While the forthcoming EU state of nature report will show only little improvement compared to the previous reporting period, this needs to be seen against the fact that **the directives still are not fully implemented on the ground**. The network is still only complete in 2 member states<sup>9</sup>, and management plans still do not exist everywhere. This obviously leads to a limited degree of proactive management of sites, and thus of measurable impact. However, the situation is continuously improving.
- The directives have led to considerable successes in protecting hunted **species**, such as the wolf. The species did not occur in Germany or Denmark in 1992; now, estimates are that there are 36 wolf packs in Germany<sup>10</sup> and 3 individuals in Denmark<sup>11</sup>. Population in Italy has also increased, so that the latter now has extended into Switzerland which now is in the process of being resettled, with the first cubs since over 100 years being born in 2012<sup>12</sup>.

<sup>6</sup> Habitats Directive Reports: [http://bd.eionet.europa.eu/activities/Reporting/Article\\_17/Reports\\_2013/](http://bd.eionet.europa.eu/activities/Reporting/Article_17/Reports_2013/)  
Birds Directive Reports:

<sup>7</sup> <http://ec.europa.eu/environment/nature/natura2000/barometer/>

<sup>8</sup> <http://www.eea.europa.eu/publications/protected-areas-in-europe-2012>

<sup>9</sup> [http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000news/nat37\\_en.pdf](http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000news/nat37_en.pdf), p.9

<sup>10</sup> <https://www.nabu.de/imperia/md/content/nabude/wolf/150310-nabu-hintergrundpapier-woelfe-in-deutschland.pdf>

<sup>11</sup> [http://en.wikipedia.org/wiki/List\\_of\\_gray\\_wolf\\_populations\\_by\\_country](http://en.wikipedia.org/wiki/List_of_gray_wolf_populations_by_country)

<sup>12</sup> <http://www.tagesanzeiger.ch/panorama/vermishtes/Das-ist-der-erste-Wolfswelpe-der-Schweiz/story/10193667>

- The directives also have a big impact in preventing the populations of species and habitats of community interest in being damaged or destroyed by (large-scale) projects requiring a permit (See examples mentioned in S4 and AV1). Sometimes the mere existence of a Natura 2000 area incentivizes project planners to change their plans – an example is the Elzwiesen area quoted at the end of this list, from which the nearby Europapark Rust, a holiday park, wanted to withdraw substantial amounts of groundwater. After learning that this area was under European protection, the holiday park’s owners decided to look for, and found, another solution<sup>13</sup>.
- **Natura 2000 habitats:** the obligation to include hay meadows in the Natura 2000 network, as reinforced at the Continental biogeographic seminar in Potsdam in 2002<sup>14</sup>, led to a general recognition of the responsibility of the *Land* for these habitat types and sparked a **comprehensive mapping of grassland habitats in Baden-Württemberg** which also included nationally protected types not on the annexes of the habitats directive (the overlap of both is 80%). As a result, both are now equally funded under the RDPs. This is a substantial improvement and co-benefit as the enforcement of the conservation of nationally protected habitats is comparatively weak<sup>15</sup>.
- According to assessments by Jürgen Vöglin (Freiburg), **Grassland habitat loss** in the Regierungsbezirk Freiburg has been **significantly reduced** as result of site designation and the described funding practices<sup>16</sup>
- **Management plans** are being drawn up and implemented in **most areas, in a participative process. In the region of Freiburg (Baden-Württemberg, Germany), Management plans are scheduled to exist for all Natura 2000 sites by 2022<sup>17</sup> - see S1.3)**
- **LIFE projects have helped to protect and restore key habitats, such as the rewetting and renaturation of peatlands<sup>18</sup> in the Hotzenwald area in SW Germany**, or the water management and conservation of the Elz meadows, one of the last habitats for the Curlew (*Numenius arquata*) in the upper Rhine plain<sup>19</sup>. In **Malta**, LIFE projects have enabled the better delimitation existing marine Sites of Community importance (SCIs) and to designate new marine areas as SCIs to form part of the Natura 2000 network<sup>20</sup>, and the protecting the habitats of EU importance composed of mature trees at Buskett along the watercourse and the banks of Wied il-Luq (Poplar Valley)<sup>21</sup>. Through Natura 2000 and LIFE, sites which would have otherwise not been protected are now protected and are receiving funds for management. Also, awareness raising for seabirds has been made possible through a LIFE project<sup>22</sup>.

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

*'Initial expectations' refer to the expectations, positive or negative, held by different stakeholders at the time the legislation transposing the Directives came into force in your country. For example, government reports and plans might provide evidence of intended timetables for the identification and designation of Natura 2000 sites. We are seeking to understand the extent to which progress made to*

<sup>13</sup> M. Ossendorf, Regierungspräsidium Freiburg, pers. Communication (see annex)

<sup>14</sup> For overview, see <http://www.regental.eu/natura.pdf>

<sup>15</sup> M. Ossendorf, Regierungspräsidium Freiburg, pers. Communication (see annex)

<sup>16</sup> M. Ossendorf, Regierungspräsidium Freiburg, pers. Communication (see annex)

<sup>17</sup> M. Ossendorf, Regierungspräsidium Freiburg, pers. Communication (see annex)

<sup>18</sup> <http://www.hotzenwald-life.de/>

<sup>19</sup>

[http://ec.europa.eu/environment/life/project/Projects/index.cfm?fuseaction=search.dspPage&n\\_proj\\_id=97&docType=pdf](http://ec.europa.eu/environment/life/project/Projects/index.cfm?fuseaction=search.dspPage&n_proj_id=97&docType=pdf)

<sup>20</sup> <http://lifebahar.org.mt/life-bahar-for-n2k/>

<sup>21</sup> <http://lifesavingbuskett.org.mt/>

<sup>22</sup> <https://maltaseabirdproject.wordpress.com/objectives/>



*date has met, exceeded, or fallen short of such expectations. If possible, in your answer please address separately each of the objectives referred to in question S1.1 for which you have provided evidence.*

**Answer:**

Certainly the expectation was that this would go quicker and according to the schedule set out in Art. 4 of the Habitat directive, but indeed implementation is going ahead. However, none of the steps foreseen in the directive has actually been concluded, which is a major explanation of why the targets have not been met as yet.

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

*On the basis of current expectations and trends, please provide evidence that indicates the likely year or range of years that the main objectives will be met. By 'main objectives' we mean the strategic objectives of the Birds Directive (as set out in its Article 2) and the Habitats Directives (in its Article 2), as well as the specific objectives set out in Annex I to this document.*

**Answer:** Progress on Natura 2000 is ongoing and step by step, the network is becoming more complete (see Natura 2000 barometer<sup>23</sup>). **National Implementation** is ongoing and in Germany, more and more management plans exist. In the Southwestern part of Baden-Württemberg (Regierungspräsidium Freiburg), which cover roughly 25% of the Land, all management plans are bound to be completed by 2022<sup>24</sup> (In Rhineland-Palatinate, Management plans are also continually being designed and adopted<sup>25</sup>). In Baden-Württemberg, a Natura 2000 regulation for the Natura 2000 areas will soon be issued. At the same time, the acceptance of Natura 2000 in the public is increasing, and collaboration with agriculture administration is also improving; the Head of the agriculture department in the RP Freiburg endorses the obligations imposed by the BHD and calls the county administrations to fulfil them<sup>26</sup>

EU-wide, RDPs had to be streamlined for the first time with the PAFs and contain biodiversity objectives; as this was the first time, the overall result was unsatisfactory (a report on this was presented by DG ENV at the March 2015 CGBN Meeting<sup>27</sup>) but we are confident this will be improved continuously.

From the time that the Natura 2000 system is in full working order, experience shows it will take another 10-20 years for species and habitats to react fully. It therefore seems unlikely that the all species and habitats will be at a favourable conservation status by 2020, as suggested in the EU overall biodiversity target. This assumption is also supported by the forthcoming state of nature report, which shows no overall progress in comparison to the previous reporting period. However, there is a good chance to have made visible progress by then and to achieve these targets fully by 2050, provided the progress made so far (also in terms of gaining acceptance) will continue and not be disrupted by changes in legislation.

## **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?**

*By 'contribution towards ensuring biodiversity', we are referring not only to the conservation of the species and habitats specifically addressed by the Directives, but also to biodiversity more broadly*

<sup>23</sup> <http://ec.europa.eu/environment/nature/natura2000/barometer/>

<sup>24</sup> Martina Ossendorf, Regierungspräsidium Freiburg, personal Communication (see annex)

<sup>25</sup> <http://www.naturschutz.rlp.de/?q=bewirtschaftungsplaene>

<sup>26</sup> Martina Ossendorf, Regierungspräsidium Freiburg, personal Communication (see annex)

<sup>27</sup> <https://circabc.europa.eu/sd/a/f7e427c0-f07d-46b8-b2b7-7ec0219f37e9/Agenda%20item%205.1,Doc%205.1%20Update%20on%20progress%20in%20relation%20to%20RDPs%20and%20OPs.pdf>



*defined: i.e. other species and habitats not targeted by the Directives; ecosystems (terrestrial and marine); and genetic diversity, both within and beyond the Natura 2000 network – in line with the EU's 2050 vision and 2020 headline target and the Targets of the EU's Biodiversity Strategy to 2020.*

\* For an overview of the EU biodiversity Strategy see:

<http://ec.europa.eu/environment/nature/info/pubs/docs/factsheets/Biod%20Strategy%20FS.pdf>

Answer: Targets 1 is directly linked to achieving FCS for a **certain percentage** of the species and habitats of the BHD as a whole while Target 3 looks at the subset of agriculture (3a) and forestry (3b) related species. With this, targets 1 and 3 are milestones towards achieving the objectives of the birds and habitats directives, which aim at achieving favourable conservation status as a whole.

Target 2 of Biodiversity 2020 aims to maintain and restore ecosystem services. Pollination by insects is a crucial service provided by nature. Research in the UK<sup>28</sup> suggests it would cost UK farmers at least £1.8bn a year to replace the crop pollination services provided for free by bees. Although additional habitat creation will be vital in the reversal of bee decline, it is also clear that SACs are playing a vital important role in maintaining different bee species and populations.

Further research has highlighted the importance of the protection granted by the Habitats and Birds Directives in maintaining bee habitat. Important habitats for bees that had a lower tier of designation (such as a national nature reserve or local wildlife site) had much more limited protection and that many such sites had been lost or damaged resulting in loss of crucial bee habitat. In particular the report raised concerns about the “proportion of both upland and lowland meadows which are not contained within any form of designated sites, leaving them vulnerable to neglect or inappropriate management”. The authors state that “By contrast, as an EU priority habitat under the Habitats Directive, Lowland heath has received strong investment in management and protection, achieving or set to achieve, all five UK Biodiversity Action Plan targets set, including expanding the total coverage and increasing the number of patches >30ha”.

In a further report<sup>29</sup> the University of Reading found that SAC sites in the UK are of crucial importance for rare bee species. For example the Sea-aster Mining Bee depends upon saltmarsh habitat which is a protected under the Habitats Directive. The Scabious Bee is confined to restricted areas of habitat including the grasslands of Salisbury Plan SAC which support relatively high numbers of the bee due to appropriate habitat and management. The UK and Ireland is home to around 50% of the global population of the Northern Colletes Bee. Pollinator scientists stress the importance of habitats in Northern Ireland for this bee and comment on the importance of most of this habitat being protected by SAC designations. However the approval of a golf course on part of the North Antrim Coast SAC highlights the imperative for strong and consistent implementation of the Nature Directives.

A recent assessment of the status of wild bees in Europe by the IUCN has stressed the importance of protected sites in helping to prevent further loss of bee species. The report found that nearly one in ten wild bee species face extinction in Europe, largely due to changing agricultural practices and increased farming intensification that have led to large-scale losses and degradation of bee habitats.

The IUCN's report found that **N2000 sites are crucial** for rare bee species even if they had not been designated on the basis of their importance to particular bee species: "The Natura 2000 network of protected areas almost covers 18% of the EU territory (IEEP 2011). **Many rare and scarce species are only found within these sites (e.g., Iserbyt 2009).** They have been lost from the wider landscapes and so protected areas provide an essential tool in conservation even if these sites were never designated based on the presence of particular bee species. The results of the Red List assessment indicate that 30 threatened species and 41 Near Threatened species were recorded in at least one protected area"<sup>30</sup>

<sup>28</sup> <http://www.foe.co.uk/sites/default/files/downloads/beesreport.pdf>

<sup>29</sup> [http://www.foe.co.uk/sites/default/files/downloads/bees\\_iconic\\_bees\\_report.pdf](http://www.foe.co.uk/sites/default/files/downloads/bees_iconic_bees_report.pdf)

<sup>30</sup> [http://ec.europa.eu/environment/nature/conservation/species/redlist/downloads/European\\_bees.pdf](http://ec.europa.eu/environment/nature/conservation/species/redlist/downloads/European_bees.pdf)

### 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?

*Please summarise evidence of the main factors that have supported or constrained progress towards achieving the objectives of the Nature Directives. As in previous questions, by 'objectives' we mean not only the strategic objectives set out in Articles 2 of both Directives, but also specific and operational objectives, as set out in Annex I to this document. Relevant factors might include, for example, resource limitations, lack of cooperation of other actors, lack of scientific knowledge, or other external factors (e.g. those listed in the above intervention logic).*

#### Answer:

- **Delayed transposition** – Many member states failed to properly transpose the Directives into national law by the due date, some only did so when taken to court by the European Commission<sup>31</sup>.
- **Inadequate funding** – Member States and the EU have failed to dedicate sufficient resources to the establishment and management of the Natura 2000 network, and the conservation of European Protected Species. A lack of mechanisms for tracking funding earmarked for biodiversity conservation under EU sectoral funds is a further problem.
- **Restricted unambitious approach to implementation** – Some Member States such as the UK have adopted a bare minimum approach to implementation, to the extent of intentionally breaching EU Nature Laws, resulting in poor outcomes for nature conservation, but also uncertainty, delay and additional cost for business.

**Slow implementation** – Most Member States failed to implement the measures set out in the Directives by the deadlines originally set. Some measures, for example the designation of Natura 2000 sites in the marine environment, have in many cases still not been completed. **Lagging behind schedule**, is a key reason for delaying the achievement of the Birds and Habitats directives. This lagging behind the schedule foreseen in para 4 of the Habitats directive is well documented by the biogeographical seminars and the final conclusions of the EC concerning completeness of the site designation process<sup>32</sup>. Similarly, letters of the EU Commission to Member states asking them designate their SPAs under the birds directive more than 20 years after its entry into force prove that site designation has not been finalized in the time foreseen<sup>33</sup> but have eventually led to remediation of the cause<sup>34</sup>.

Another issue is the **lack of governance**, as documented in the so-called IMPEL project<sup>35</sup>. **Failures in other policy areas** such as **CAP and pesticides policy** have also contributed to the slow improvement in condition of N2000 sites as evidenced in the forthcoming State of Nature report and outlined in our answer to question C5. Scientific analysis of the reformed CAP<sup>36</sup> and the EU Commission's assessment of RDPs and OPs deem it likely that this will continue to be the case.

#### UK Case Study: Unauthorised mineral extraction from Lough Neagh SPA<sup>37</sup>.

**This case highlights the need for better implementation of the Directives and for the**

<sup>31</sup> <http://awsassets.panda.org/downloads/raceprotect.pdf>

<sup>32</sup> [http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000news/nat37\\_en.pdf](http://ec.europa.eu/environment/nature/info/pubs/docs/nat2000news/nat37_en.pdf), p.9

<sup>33</sup> E.g. infringement procedure 2001/5117 Letter to Germany [http://www.watten-rat.de/files/mahnschreiben\\_10april2006.pdf](http://www.watten-rat.de/files/mahnschreiben_10april2006.pdf)

<sup>34</sup> [http://europa.eu/rapid/press-release\\_IP-09-1651\\_en.htm](http://europa.eu/rapid/press-release_IP-09-1651_en.htm)

<sup>35</sup> <http://impel.eu/wp-content/uploads/2014/02/FR-2013-17-Building-up-IMPEL-nature-conservation-capacities.pdf>

<sup>36</sup> <http://lipupedemontanatrevigiana.it/Science-2014-EU%20agricultural%20reform%20fails%20on%20biodiversity.pdf>

<sup>37</sup> <http://www.irishenvironment.com/commentary/dean-blackwood-turning-blind-eye-potential-environmental-damage-lough-neagh-special-protection-area/>

**Commission to take a more proactive role in pursuing Governments for failure to enforce the laws. It is a failure of political will not a failure of the legislation.**

Situated in the centre of Northern Ireland, Lough Neagh is the largest lake in the UK. It supports internationally important numbers of wintering whooper swans and nationally important numbers of breeding common tern and over 20,000 of a variety of species of waterfowl in winter. In the late 1980s and early 1990s Lough Neagh is recorded as hosting diving duck numbers in excess of 100,000 birds. However, by the winter of 2003/04 these populations had declined dramatically. Some of the species protected under Annex II of the Habitats Directive, and for which the lough was designated a SPA in 1998, suffered particularly badly. This included a decline of 80% of pochard (40,000 to 8,000), 71% of Goldeneye (14,000 to 4,000), 70% of tufted duck (30,000 to 9,000) and 48% of Scaup (5,000 to 2,600).

Unauthorised mineral extraction has been undertaken on a significant scale at Lough Neagh since it was designated as a SPA. It is estimated that Lough Neagh provides some 20-25% of Northern Ireland's annual sand production and has been at up to 1.7 million tonnes per annum. Yet there is no Habitat Regulations Assessment or Environmental Impact Assessment for this activity. This is not due a failure in the provisions of the Directives but because the department responsible for environmental protection in Northern Ireland has repeatedly and persistently neglected to bring this unregulated extraction activity under planning control. Answers to questions in the NI Assembly show that decisions have been taken in the past not to pursue enforcement action.

Despite officials having opened an enforcement case in March and issued warning letters between 25 September and 10 October 2014 (sixteen years after Lough Neagh became a SPA) advising the operators to cease unauthorised extraction, the unauthorised activities have continued.

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

*This question aims to assess whether the implementation of the Nature Directives has brought about any significant environmental, social or economic effects or changes that were not intended or foreseen by the Directive at the time of their approval, and whether these changes were positive, negative or neutral in terms of their contribution towards meeting the objectives of the Directives. Examples of such effects or changes might include the development of a culture of social participation in nature-related decisions as evidenced by Committees for the development of management plans or higher cooperation of departments of different ministries, etc.*

#### **Answer:**

The Natura 2000 process has led to a number of more or less unintended **co-benefits** for nature conservation and public involvement. Some examples:

- The mapping of natura 2000 habitats and species in order to identify the sites to be included in the network and subsequent monitoring has led to a much **better knowledge** of existing occurrences..
  - o One example is the **mapping of grassland in Baden-Württemberg** that covered also the nationally protected grassland habitats not covered by the BHD, which now are automatically included in targeting funding (see S. 1.1)
  - o Another example is the **discovery of** the occurrences of the **white-clawed Crayfish (*Austropotamobius pallipes*)** in the Dreisam valley, whose habitat is now systematically protected from infiltration by Neobiotic American crayfish species
- The assessment procedure under art. 6 has often led to an **optimisation of planning**, benefitting both nature and people. Two CASE studies as examples:
- 

#### **1. Hochwasserrückhaltebecken Bohrrtal – Habitats directive aligns water retention plans with people's interests:**

In the Bohrer valley south of Freiburg i.Br. in Baden-Württemberg, Germany, the city of Freiburg plans to install a water retention basin. The original plan was to build it adjacent to the built up area in the Quarter of Günterstal, which triggered substantial protest by the local people, who were shocked by the idea of living next to a 15m high dam (half of the quarter was up and about to join the protests according to the regional newspaper “Badische Zeitung”<sup>38</sup>). According to the plans, the road to the next village and to Mount Schauinsland would have had to be moved into the adjacent forest, in order to have enough space for the basin. The EIA, however, showed that the forest and its fringe was the **habitat of the dormouse (*Muscardinus avellanarius*)**, a species listed on annex IV of the habitats directive. The species impact assessment according to Art. 12-16 of the HD led to the conclusion that the dormouses’ habitat would be destroyed if the road were built as planned. In consequence, the original plans have now been changed and an alternative solution has been found: two smaller basins will be built upstream instead, on the territory of the community of Horben<sup>39</sup>. **This has several advantages:**

- a. **the road would not have to be relocated (reducing costs – this solution may well be cheaper),**
- b. **no dormice were detected there**
- c. **people are not concerned by the plans as this is much further away from the built-up area**<sup>4041</sup>.

**Thus, the Assessment according to the Habitats has produced multiple benefits for nature and people.**

In the official journal of the city of Freiburg, the liberal democrats (FDP) in the city council welcomed this solution, thanking the dormouse for helping to implement the will of the citizens<sup>42</sup>. This perception (that EU nature conservation helps to push for the people’s will) was commented a few days earlier by a cartoon in the “Badische Zeitung”(Annex, “Elefantenwaage.jpg”). Indeed the city’s planning department held onto the original plans until the dormouse was discovered. Citizens had already reproached the City and the planners of having personal interests in building the basin at the original site<sup>4344</sup>. Under the national compensation regulation (“Eingriffsregelung”), it is quite likely that the destruction would have gone ahead and offset somewhere else with unpredictable results.

2. In **Hessen** (Germany), the **motorway A 49** was planned to destroy the *Land’s* most important habitat for the **crested newt (*Triturus cristatus*)**<sup>45</sup> near Stadtallendorf. The procedure under Art. 6 (4) led to an alternative route that
  - a. Spared the newts’ habitat
  - b. Made it possible to foresee a second exit
  - c. Saved 50 Mio EUR costs<sup>46</sup>- 10.000 EUR if calculated per newt

<sup>38</sup> <http://www.badische-zeitung.de/freiburg/quenterstaeler-entsetzt-von-15-meter-hohem-damm--77059507.html>

<sup>39</sup> <http://www.badische-zeitung.de/freiburg/kleine-maus-stoppt-grossen-damm--101413897.html>

<sup>40</sup> <http://www.freiburg.de/pb/site/Freiburg/get/documents/freiburg/daten/news/amtsblatt/pdf/Amtsblatt%20Ausgabe%20643.pdf> – see p.4, top)

<sup>41</sup> [http://www.freiburg.de/pb/\\_Lde/784058.html](http://www.freiburg.de/pb/_Lde/784058.html)

<sup>42</sup> <http://www.freiburg.de/pb/site/Freiburg/get/documents/freiburg/daten/news/amtsblatt/pdf/Amtsblatt%20Ausgabe%20643.pdf>

<sup>43</sup> <http://www.badische-zeitung.de/freiburg/streit-um-hochwasserschutz-buerger-werfen-buergermeistern-gemauschel-vor--78049338.html>

<sup>44</sup> <http://www.badische-zeitung.de/leserbriefe-freiburg/das-vertrauen-in-eine-sachkundige-stadtverwaltung-ist-in-frage-gestellt--101868302.html>

<sup>45</sup> [http://www.ceeweb.org/wp-content/uploads/2013/10/Presentation-Friedrich-Wulf-CEEweb-Academy-Budapest-08102013\\_light.pdf](http://www.ceeweb.org/wp-content/uploads/2013/10/Presentation-Friedrich-Wulf-CEEweb-Academy-Budapest-08102013_light.pdf), slide 38

<sup>46</sup> Speech by Ulrike Hamann, Bündnis90/Die Grünen, in the regional Parliament of Hesse on June 24, 2010, plenary session 18/50, available for download at: [http://starweb.hessen.de/starweb/LIS/Pd\\_Eingang.htm](http://starweb.hessen.de/starweb/LIS/Pd_Eingang.htm) : “Ich erinnere an einen konkreten Fall: die A 49. Hier ersparte der Kammmolch dem Land umgerechnet 50 Millionen

**This case is strikingly similar to the previous one in terms of multiple benefits.**

## 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)?

*Based on the explanation given above, please indicate, supported by evidence, what types of costs and benefits have resulted from the implementation of the Nature Directives. Please provide evidence, quantitative where possible, of costs and benefits, describe their nature (monetary/non-monetary) and value, and who is affected and to what extent. Please distinguish between the costs and benefits arising from the Directives themselves and those arising as a result of other factors. To facilitate analysis of the answers it would be useful if costs and benefits could be addressed separately.*

#### Answer:

Conserving our natural heritage is a moral imperative and doing so is vital for the quality of life of present and future generations. The EU and its democratically legitimized representatives, in fulfilment of the CBD to which they have committed, have rightly decided to conserve nature independent of whether this should be demonstrated to be financially efficient or not.

It is not possible to quantify the total value of Natura 2000, and of biodiversity in general.

But even viewed in purely economic terms, the directives offer an outstanding cost-benefit ratio:

As we have shown in S.4 (Case files near Freiburg and in Hesse), the proper implementation of the Assessment procedure under Art. 6(3) and 6(4) has led to improved planning, saving construction costs for road building, and reducing land and resource use, while achieving the same objectives. This **resource use efficiency due to careful planning and dialogue with all people concerned is a regular outcome of the BHD** assessment procedure. Other examples:

- **runway extension at the airport of Frankfurt-Hahn**: the airport extension originally would have led to extensive clear-cutting of forests which are the only habitat of the western barbastelle (*Barbastella barbastellus*) in the *Land* of Rhineland-Palatinate, Germany. After juridical interventions by BirdLife (NABU) and FoE Germany (BUND) and a compromise<sup>47</sup>, the area to be clear cut could be reduced and supportive measures for the barbastelle were put in place, enabling the barbastelle and its habitat to persist while still enabling the extension of the runway as originally foreseen.

**Dredging of ditches in the Danube valley, Straubing (Bavaria)**<sup>48</sup>: the procedure led to a computer-calculated minimisation of the originally foreseen ditches to the necessary minimum to keep them functional, thus reducing the impact on Natura 2000 habitats and species.

Another element of increasing efficiency is by guiding where to spend CAP money from the

<sup>47</sup> <http://www.airliners.de/einigung-im-streit-um-ausbau-des-flughafens-hahn/10064>

<sup>48</sup> J. Schumacher, Nature Conservation law expert ([www.naturschutzrecht.info](http://www.naturschutzrecht.info)), pers. Communication, Fall 2 (annexed)



RDPs to the places where they are most needed through prioritised action frameworks (PAFs), restoration prioritisation frameworks (RPFs) and Natura 2000 management plans. This increases the efficiency of spendings under the CAP.

From the perspective of nature conservation, the spendings for drawing up management plans leverages substantial (co-) funding from the CAP, thus increasing efficiency for nature conservation<sup>49</sup>.

The Commission's own research<sup>50</sup> shows that full and effective implementation of the Natura 2000 network would cost an estimated amount of EUR 6 billion per year throughout the EU. At the same time the over 27,000 protected areas would return a value of up to 300 billion EUR of ecosystem services for the general public, in the form of purified water, clean air, fertile soils, CO2 storage, flood protection, tourism and health promotion.

Leading businesses in the UK<sup>51</sup> recognise the importance of protected sites:

“The UK's natural capital has intrinsic value. It also underpins our economy and our own health and wellbeing”, “Government must action the recommendations of the Biodiversity 2020 report, to protect the UK's most important wildlife sites, to keep them in good ecological condition and to meet the targets for habitat creation”.

A review of the Nature Directives in the UK<sup>52</sup> concluded that “implementation generally works well with minimal burdens while maintaining their environmental integrity”. Recommendations to help businesses related to the need for clearer guidance and clarity and consistency of evidence needs rather than changes to the legislation.

In Poland research<sup>53</sup> suggests that conserving the Białowieża Forest (Natura 2000 Site PLC 200004) by reducing timber extraction would result in economic gains. “Currently timber extraction is estimated to be worth €6 million per annum. This contrasts with a willingness to pay study on visitors to the forest, which estimated a value, which we assume to include all the recreational, amenity and existence type values, to be €4 billion”.

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

*This question focuses on the proportion of identified funding needs that has been or is being met by EU and Member State funding, respectively, the extent to which the level of available funding affects the implementation of the Directives and enables the achievement of their objectives (as set out in Annex I to this questionnaire), and the extent to which initial funding allocations for nature under EU funding instruments were used as well as any factors which may have favoured or hindered access to and use of funds. In your answer please consider whether funding constraints affect costs or create administrative burdens (eg as a result of limitations on guidance or delays in decision making).*

Answer:

The directives give access to a number of additional funds which make it possible to finance nature conservation measures that would otherwise not have been funded – e.g. through LIFE projects, see

<sup>49</sup> M. Ossendorf, Regierungspräsidium Freiburg, pers. Communication (see Annex)

<sup>50</sup> European Commission working paper "Investing in Natura 2000: Delivering benefits for nature and people" of 12.12.2011 SEC(2011) 1573 final

<sup>51</sup> <http://www.aldersgategroup.org.uk/asset/download/1331/Aldersgate%2520Manifesto.pdf>

<sup>52</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/206379/pb13959-progress-hdir.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206379/pb13959-progress-hdir.pdf)

<sup>53</sup> [http://ec.europa.eu/environment/nature/natura2000/financing/docs/bialowiaza\\_case\\_study.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/bialowiaza_case_study.pdf)

S1.1. Likewise, it is possible to fund agri-environmental measures that are in line with the needs to maintain certain agricultural habitats and species. However, these need to be targeted better, such as by results-based agri-environmental measures<sup>5455</sup> and by application of prioritised action frameworks (PAFs)<sup>56</sup>.

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

*This question seeks to understand the factors that affect the costs of implementing the Directives, whether there is evidence of significant cost differences between Member States, and the causes of these cost differences. In your answer, please describe the cost differences and the reasons for them (e.g. whether they arise from specific needs, circumstances or economic factors), supported by quantitative evidence. Do these differences lead to differences in impact? Please note that Question Y.5, below, focuses on good practices in keeping costs low. For this Question Y.3 we are interested in evidence of overall differences in implementation cost (see typology of costs in Annex II to this questionnaire) along with the reasons for them.*

Answer:

### **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?**

*Please provide any quantitative evidence you may have demonstrating that the costs of implementing the Directives exceed the benefits. Do the Directives require any measures which give rise to significant costs but which bring about little, or only moderate benefits?. If so, please explain the extent to which any imbalances are caused by the Directives themselves, or by specific approaches to implementation.*

Answer:

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

*Here we are looking for examples of where the objectives of the Directives are being met more cost-effectively in some Member States or regions than others, and the reasons for these differences. It is important to understand whether they are due to particular practices (rather than, for example, differences in needs, circumstances or economic factors) that have kept costs relatively low. We would welcome examples of differences in practices between Member States in implementing the requirements of the Directives, including initiatives designed to achieve cost-effective implementation, and evidence of whether these initiatives or practices have reduced costs in certain Member States or regions.*

Answer: In Germany, the development of management plans has improved. While the first management plans in Bavaria and Baden-Württemberg were overburdened with information and over 100 pp. in volume, the plans done now are more concise and focus more both on including stakeholders and owners as well as targeting measures. This is further improved by increasingly using the internet for communicating maps and other relevant information.

<sup>54</sup> <http://www.sciencemag.org/content/344/6188/1090.full.pdf?keytype=ref&siteid=sci&ijkey=gFx4lqwJ0DN96>

<sup>55</sup> <http://blogs.ec.europa.eu/rbaps/>

<sup>56</sup> <http://ec.europa.eu/environment/life/news/newsarchive2012/documents/n2000paf.pdf>

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

*This question seeks to gather evidence on the impacts of non-implementation of the Birds and Habitats Directives, and its associated costs, whilst assuming that some measures would be taken to conserve nature. Taking into account current national measures that do not arise directly from obligations under the Directives, please describe and, if possible, quantify, with supporting evidence, the potential impacts and associated costs of non-implementation of the Directives, for instance on: habitats and species of Community interest and wider biodiversity; ecosystem services (eg in relation to carbon sequestration, areas for recreation); and economic and social costs (eg jobs and health).*

Answer: In Northern Ireland, where the Directives are poorly implemented, Friends of the Earth is warning that there is a cost to the environment and a cost to future generations. The recent Article 17 report (as required by the Habitats Directive) to the Joint Nature Conservation Committee and the European Commission revealed that Northern Ireland has only one habitat (dystrophic lakes and ponds) out of 47 habitat types in favourable conservation condition<sup>[4]</sup>. Many populations of once common species such as Irish Hare and breeding curlew are in serious decline. Because the very things that make Northern Ireland special and attract tourism and new industries are being compromised there will be a cost to the economy and society.

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

*This question seeks to gather evidence of any unnecessary burden arising from the administrative requirements of the Directives for different stakeholders (MS authorities, businesses, landowners, non-governmental organisations, citizens). Administrative burdens are the costs to businesses and citizens of complying with information obligations resulting from legislation, and relate to information which would not be collected in the absence of the legislation. Some administrative burdens are necessary if the objectives of the legislation are to be met effectively. Unnecessary burdens are those which can be reduced without affecting the objectives. Quantitative evidence may include typical requirements in terms of human resource inputs, financial costs (such as fees and wages), delays for development and other decision-making processes, and other measures of unnecessary or disproportionate burden the administrative costs in terms of effort and time, and other inputs required, financial costs, delays and other measures of unnecessary or disproportionate burden.*

Answer:

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

*This question seeks to establish the extent to which adequate, up-to-date and reliable information required to implement the Directives efficiently is available, such as information related to the identification, designation, management and protection of Natura 2000 sites, the choice of conservation measures, the management and restoration of habitats, the ecological requirements of species and the sustainable hunting/use of species, permitting procedures, etc. Please indicate key gaps in available knowledge relating to your country and, if relevant, at biogeographical and EU levels. If possible, please provide evidence that inadequacies in the knowledge base have contributed to the costs and burdens identified in previous questions.*

Answer:

<sup>[4]</sup> The one habitat is dystrophic lakes and ponds

## 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?

*By 'key problem', we mean the main pressures and threats that species and habitats face, which are significantly widespread in terms of their incidence (geographic extent) and/or magnitude/severity. Do the Nature Directives respond adequately to these problems? Are the specific and operational objectives of the Directives suitable in light of the key problems identified? Please justify your answers with evidence.*

Answer:

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

*With this question, we are seeking to examine the implications of technical and scientific progress regarding the habitats and species that the Directive focus on. Please summarise, and provide any evidence you may have that indicates that the annexes listing habitats and species in both Nature Directives are, or are not, sufficiently updated to respond to technical and scientific progress.*

Answer: The principles embodied by the Directives and the science underpinning them are still fully relevant. Similarly, the Annexes of the two Directives do not need changes at this stage. Any "update" of the Annexes would be a distraction from the real challenges: it would have very **limited and uncertain practical benefits** (in particular since the Natura 2000 network already delivers benefits to species not currently protected by the Directives), but would be associated with **very real risks** that the uncertainty that it would create threatens the achievement of the objectives of the Directives which in turn would lead to an increase in the costs of implementation. It clearly isn't the priority right now; there are many other issues limited resources should go into that would yield concrete benefits.

- The fundamental principles of nature conservation have not changed. The Directives embody these principles.
- The annexes of the Birds and Habitats Directive have incorporated new habitats and species of community importance as a result of successive EU accessions, also ensuring adequate coverage of the Natura 2000 network in the new EU Member States.
- Both the Berne Convention<sup>57</sup> and the Birds directive<sup>58</sup> address all species and are thus flexible enough to accommodate new scientific knowledge. It is in principle possible to include other important species in the site designation process and in management. In Baden-Württemberg, grassland protection already extends to some non-annex habitat types (see responses to S 1.1 and AV.3), and in Switzerland, the Emerald site designation process will also include national priority species and habitats not listed in the annexes of the Berne Convention and its resolutions and recommendations<sup>59</sup>.
- The Natura 2000 network, which is based on the annexes, delivers a wide range of benefits for non-target species (see also question S.2). Where site protection and management is properly

<sup>57</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/104.htm>, Art. 1.1, 2, 3.1, 4.1

<sup>58</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32009L0147>, Art. 1,2,3

<sup>59</sup> Sarah Pearson Perret, Sektion Arten und Lebensräume, Bundesamt für Umwelt BAFU, pers. Communication and presentation: [http://www.bafu.admin.ch/aktionsplan-biodiversitaet/12606/13812/index.html?lang=de&download=NHZLpZeg7t,lnp6l0NTU042l2Z6ln1acy4Zn4Z2qZpnO2YUqZ26gpJCHeHx6hGym162epYbg2c\\_JkKbNoKSn6A--](http://www.bafu.admin.ch/aktionsplan-biodiversitaet/12606/13812/index.html?lang=de&download=NHZLpZeg7t,lnp6l0NTU042l2Z6ln1acy4Zn4Z2qZpnO2YUqZ26gpJCHeHx6hGym162epYbg2c_JkKbNoKSn6A--), slide 7, first bullet point

carried out, sites provide significant umbrella effect protecting also non listed species and habitats. Similarly, again where properly implemented, species protection under the Birds and Habitats Directive brings benefits to habitats hosting the listed species and to other species associated with them. Much of the problems affecting non listed species are really down to poor implementation of the Directive in their current form..

- There has been no analysis yet on how a fully complete and connected Natura 2000 network and fully implemented Birds and Habitats Directive would work for all biodiversity – any scientific literature based on the current levels of implementation is inadequate for this. Scientists have warned that amending the annexes before 2020 will also hamper coherence by diverting resources away from the achievement of the targets of the Biodiversity Strategy.
- Under the new EU LIFE regulation targeted interventions for biodiversity not on the annexes can be funded.
- Overall, it is clear that the negative impact of a change to the annexes (eg implementation delays, legal uncertainty) far outweigh any potential benefits in terms of better coverage of all threatened species.

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

*This question seeks to examine the extent to which the Directives support or hinder sustainable development, which is about ensuring that the needs of the present generation are met without compromising the ability of future generations to meet their own needs. It requires ensuring a balance between economic development, social development and environmental protection. . In your answer, please provide evidence of the impacts that implementation of the Directives has had in relation to these three 'pillars' of sustainable development.*

Answer:

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

*The aim of this question is to understand the extent to which citizens value the objectives and intended impact of the EU nature legislation. To this end, we would like to obtain information and evidence on the extent to which nature protection is a priority for citizens (e.g. in your country), including in comparison with other priorities; for example whether citizens (e.g. in your country) support the establishment and/or expansion of protected areas, the extent to which they access/use them or; the extent to which citizens are involved in any aspect of the implementation of the Directives (e.g. participation in the development of management plans of protected areas or decisions concerning the permitting of projects which have an impact on protected areas).*

*Please note that the Birds and Habitats Directives may be relevant to citizens even if they do not actually know of their existence or the existence of the Natura 2000 network.*

Answer:

Awareness of the EU Nature Directives and Natura 2000 remains very low across the Union. However it is clear that citizens regard the places and species protected by the Directives, and nature in general, as vital to their wellbeing.

A recent Eurobarometer survey on Attitudes of European Citizens Towards the Environment shows 95% of EU citizens say that protecting the environment is important to them personally, and 77% agree that European environmental legislation is necessary for protecting the environment in their country, and over half of Europeans think the EU is not doing enough to protect the environment.<sup>60</sup>

<sup>60</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_416\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_416_en.pdf)

For example, in the UK the 2013 ComRes survey showed the personal value of the environment to people in Britain, alongside their view of the UK Government's performance. Findings include:

Regarding the environment: 91% of people agree we should improve the condition of the natural environment for future generations. 85% agree the natural environment boosts their quality of life.

Regarding the environment and the economy: 83% of British adults believe the natural environment should be protected at all costs.

Citizen's concern for nature can also be demonstrated by people's willingness to take action to protect sites and species protected by the Directives:

Over 43,000 people in the Czech Republic signed a petition to protect the Šumava National Park from damaging logging.

Over 15,000 people signed a Friends of the Earth petition in the UK in favour of keeping beavers in Devon in the wild.

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

*The aim of this question is to obtain information and evidence on questions such as: whether citizens submit complaints or petitions to the EU requesting its involvement on cases regarding nature protection, whether citizens expect the EU to become more involved in promoting nature protection, or whether nature protection should be left to each individual Member State; whether citizens expect the EU to introduce laws on nature protection to be applied in all Member States equally or whether the EU should limit itself to coordinating Member States' initiatives; whether the EU should focus on laying down rules, or whether the EU should more actively promote their monitoring and enforcement in Member States.*

Answer:



## 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?

*This question focuses on coherence between objectives within each Directive, and/or between objectives of the Birds and Habitats Directives. It covers not only the strategic objectives but also the specific and operational objectives set out in Annex I to this document. Based on experience in your country/region/sector, please provide evidence of any inconsistencies between the objectives that negatively impact on the implementation of the Directives.*

Answer: On a general level, both directives are consistent with each other and mutually supportive. A practical benefit of having two types of areas (SPA/SCI) is that where these do not overlap, an impact assessment only needs to be done for either birds or for habitats/other species of community interest, alleviating administrative burden<sup>61</sup>.

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

*This question is similar to the previous question, but focuses on the extent to which the EU Nature Directives are coherent with and integrated into other EU environment legislation, and the extent to which they are mutually supportive. EU environment legislation of particular relevance to nature conservation includes the following:*

- *Strategic environmental assessment of policy plans and programmes 2001/42/EC Directive (SEA)*
- *Environmental impact assessment of projects 85/337/EC Directive as codified by Directive 2011/92/EU (EIA)*
- *Water Framework Directive 2000/60/EC, (WFD)*
- *Marine Strategy Framework Directive 2008/56/EC (MSFD)*
- *Floods Directive 2007/60/EC (FD)*
- *National Emission Ceilings Directive 2001/81/EC (NECD)*
- *Environmental Liability Directive 2004/35/EC (ELD).*

*This question considers how the main provisions and measures set out in these instruments interact with the EU nature legislation, including whether there are potential gaps or inconsistencies between these instruments and the EU nature legislation, for example whether the current permitting procedures are working in a coherent way or whether they are acting as barriers to achieve the EU Nature Directive's objectives; whether the assessments required under the different pieces of EU legislation, in particular under the EIA, are aligned or whether there are differences which result in additional administrative burden; whether any identified gaps and inconsistencies are due to the texts of the Directives or due to implementation in your/a Member State.*

Answer: The directives are fully coherent with EU legislation.

- In EIA and SEA, the Natura 2000 assessment according to Art. 6 is an integral but distinct (and important) part. Data collection can be done simultaneously, while the analysis needs a

<sup>61</sup> Regierungspräsidium Freiburg. pers. Communication, 24.4.2015

distinct treatment.

- WFD and BHD are mutually supportive, although they work at different scales (River basin/Site level).
- The Environmental liability directive addresses the unintentional impairment of a species or habitat inside and outside Natura 2000<sup>62</sup>, as opposed to the procedure in Art. 6(3) and (4) for planned impacts. They therefore complete each other.

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

*This question is linked to the previous questions as it addresses the extent to which the objectives of the Nature Directives have been integrated into or supported by the objectives of other relevant EU environment policies. However, this question focuses more on policy implementation. The other EU legislation and policies targeted in this question are the same as those referred to under question C.2, as well as climate change policy. When answering this question, please note that the scope of integration refers to the integration from the EU Nature Directives to other policies as well as to the extent in which the objectives of these other policies are supported by the implementation of the Nature Directives.*

Answer:

### **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.)?**

*In this question we are aiming at gathering evidence on whether the provisions of EU nature legislation are sufficiently taken into account and integrated in EU sectoral policies, particularly in agriculture, rural development and forestry, fisheries and aquaculture, cohesion or regional development, energy, raw materials, transport or research policies. It also addresses whether those policies support and act consistently alongside EU nature legislation objectives. Please provide specific examples which show how the Nature Directives are coherent with, or conflict with, relevant sectoral legislation or policies. Please be as precise as possible in your answers, e.g. pointing to specific articles of the legislation and how they support or contradict requirements or objectives of other legislation or policies, stating what are main reasons or factors for the lack of consistency and whether there are national mechanisms in place to monitor coherence.*

Answer:

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

*In this question, we are keen to gather evidence on whether agriculture and rural development, fisheries and aquaculture, cohesion or regional development, energy, raw materials, transport and research policies have a positive or negative impact on the achievement of the objectives of nature legislation. Please provide specific examples/cases (including infringement cases or case law), which demonstrate clear conflicts or incoherencies between sectoral policies and EU nature legislation, and/or examples showing how specific policies influence the implementation of the Nature Directives in a positive or negative way, for example in relation to Article 6 of the Habitats Directive (see Annex I to this questionnaire). Where possible, please include evidence of the main factors influencing the positive and negative effects. Please consider in your answer what ex ante and ex post evaluation procedures are applied to ensure that this coherence is implemented or supervised.*

<sup>62</sup> [http://www.bund.net/themen\\_und\\_projekte/naturschutz/naturschutzpolitik/umweltschadensgesetz/](http://www.bund.net/themen_und_projekte/naturschutz/naturschutzpolitik/umweltschadensgesetz/)

Answer: The draft **State of Nature in the EU report** from the European Environment Agency is clear in its conclusions that agriculture is a major pressure and threat on N2000 sites that needs addressing. Pressures such as agriculture and other land management practices could be detrimental to N2000 even if they take place outside of N2000 designations, including pollution from pesticides and nitrogen. In this context, it is clear that bringing N2000 sites into favourable condition in many cases will require reform and firmer implementation of other EU and MS policies for agriculture and forestry. Relevant policies include CAP, the Sustainable Use Directive (Pesticides), Water Framework Directive and Nitrates Directive. These Directives include aims to protect biodiversity but currently appear not to be implemented effectively enough to address the pressures and threats identified in the State of Nature report.

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

*This question seeks to gather evidence of the implications of the EU Nature Directives for economic operators in terms of whether they help ensure a level playing field across the EU (e.g. by introducing common standards and requirements for activities carried out in or around Natura 2000 areas or otherwise depend on natural resources protected under the Directives), predictability and legal certainty (e.g. helping to avoid that developments are blocked due to 'Not In My Backyard' type challenges), or whether they negatively affect the internal market.*

Answer:

### **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?**

*This question builds on question Y.2 on the availability and access to funding, but aims at examining whether Member States have sufficiently identified the funding needs and are availing of EU funding opportunities to meet the requirements of Article 8 of the Habitats Directive. EU co-funding for the Natura 2000 network has been made available by integrating biodiversity goals into various existing EU funds or instruments such as the European Agricultural Fund for Rural Development (EAFRD), European (Maritime and) Fisheries Fund (EFF / EMFF), Structural and Cohesion funds, LIFE and Horizon 2020. In your reply, please distinguish between different sources of funding.*

Answer:

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

*This question refers to overlaps, gaps and/or inconsistencies in the different EU law/policy instruments regarding nature protection. It therefore depends largely on the results of other questions related to the coherence of the Nature Directives with other EU law and policies. When answering this question you may want to consider whether the identified overlaps, gaps and inconsistencies hamper the achievement of the Directive's objectives (e.g. see Annex I to this questionnaire).*

Answer: In practice, at national level in Germany, there are inconsistencies between nature protection and energy objectives, caused by different levels of funding for CAP pillar 2 payments (AEMs and Natura 2000 payments) on the one hand and support for biomass production (maize) on the other. Because of the much higher funding rates for biomass/area, farmers consider the obligation to implement NATURA 2000 as a restraint. Obligations under Natura 2000 are considered as a reduction of their income and numerous cases have been reported where, illegally, Natura 2000 meadows have been converted to maize fields for biomass.)<sup>63</sup> to gain more subsidies. Although the EU 2020 target to increase energy from biomass to 20% is at the bottom of this, this may be something specific to

<sup>63</sup> Expertise of the German Sachverständigenrat für Umweltfragen:  
<https://www.bfn.de/fileadmin/MDB/documents/ina/vortraege/07-07-07-Doyle.pdf> slide 19

Germany.

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

*With this question we seek to collect evidence on ways in which the implementation of measures under the Birds and Habitats Directives that are not explicitly mentioned in the EU Biodiversity Strategy, help to achieve actions and targets of the EU Biodiversity Strategy. For example, restoration of Natura 2000 sites can significantly contribute to helping achieve the goal under Target 2 of the EU Biodiversity Strategy to restore at least 15% of degraded ecosystems.*

Answer:

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

*This question seeks to assess whether and how the EU nature legislation ensures the implementation of obligations arising from international commitments on nature and biodiversity which the EU and/or Member States have subscribed to<sup>64</sup>, and whether there are gaps or inconsistencies between the objectives and requirements of the EU nature legislation and those of relevant international commitments, including the way they are applied. For example, the Directives' coherence with international agreements which establish targets relating to nature protection and/or require the establishment of networks of protected areas.*

Answer: The directives are the key legislation to fulfil the obligations of the Berne Convention and its Emerald Network; the Group of Experts on Protected Areas and Ecological Networks of the Berne Convention recognizes the Natura 2000 network as being the EU way of implementing the Emerald network; the two networks are regarded as fully coherent<sup>65</sup>.

They are also the key tools to implement the CBD's first goal, the CBD POW on protected areas and the main instruments for achieving the Aichi targets 11 and 12<sup>66</sup>. Once they have been agreed they will also be the EU's response to the SDGs 14 and 15.

<sup>64</sup> e.g. Bern Convention; Convention on Biological Diversity; Convention for the Protection of the World Cultural and Natural Heritage; Ramsar Convention; European landscape Convention; CITES Convention; CMS (Bonn) Convention; International Convention for the protection of Birds; Agreement on the Conservation of African-Eurasian Migratory Waterbirds; Regional Sea Conventions (Baltic, North East Atlantic, Mediterranean and Black Sea).

<sup>65</sup> The Emerald Network: A Network of Areas of Special Conservation Interest for Europe, T-PVS/PA 2014(2) [http://pjp-eu.coe.int/documents/1461016/4159207/pa02e\\_2014\\_Explanatory\\_document\\_relevanttexts\\_+Emerald.pdf/56a73276-1988-4676-8f44-4e97dd433d85](http://pjp-eu.coe.int/documents/1461016/4159207/pa02e_2014_Explanatory_document_relevanttexts_+Emerald.pdf/56a73276-1988-4676-8f44-4e97dd433d85)

<sup>66</sup> <http://biodiversity.europa.eu/policy/target-1-and-related-aichi-targets>

## 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?

*When responding to this question, you may wish to consider the following issues: What was the state of play or the state of biodiversity in your country at the moment of the adoption of the Directives and/or your country's entry into the EU? To what extent is the current situation due to the EU nature legislation? In answering this question, please consider different objectives/measures set out in the Directives (eg regarding protected areas, species protection, research and knowledge, regulation of hunting, etc, including their transboundary aspects).*

Answer: The added value of the EU nature legislation is manifold:

The BHD directives require a coherent and **representative** network of protected areas for a certain list of Habitats and species across the whole EU, thus forcing every country to contribute on equal footing and ensuring the EU's biodiversity is represented evenly. In doing so, they are the key instrument for implementing the obligations of the Berne Convention<sup>67</sup> (EEA 2012: protected areas in Europe - an overview, p. 80)

The Natura 2000 network that exists today and that covers over **27,000 sites** covering an area of more than 1 Mio km<sup>2</sup>, corresponding to over 18,3% of the EU's area (<http://ec.europa.eu/environment/nature/natura2000/barometer/docs/Natura%202000%20barometer%202013.xls>) would never have been installed if the legally binding habitats directive had not been adopted and implemented. This, in turn would not have been possible without the EU Commission having controlled the site designation process through biogeographic seminars and without various infringement procedures. It has proven very helpful to have the EU (Commission, ECJ) as an authority forcing countries to implement the directives.

The Emerald network under the Berne Convention, which is very similar to Natura 2000 and differs mainly in lacking a legally binding oversight through an agreed bodies such as those mentioned, is moving ahead much slower and has up to date only designated **37 sites** altogether (see the state of the Environment report (SOER 2015), Cross-country comparison on biodiversity-protected areas<sup>68</sup>)

In most countries, the Natura 2000 site designation process has considerably increased the area of protected areas (see the SOER 2015 Cross-country comparison on biodiversity-protected areas, Fig.2; in some countries such as Ireland or Cyprus, only 2% of the country or less would be protected, compared to 13-15.5% now. The increase in area would be even more evident if CDDAs designated in the course of the Natura process would have been factored out (for example, some regions in Germany such as Northrhine-Westphalia designated their Natura 2000 also as national sites) and also if Countries such as France and Germany hadn't entered their nature parks and landscape protection areas (IUCN cat. V and VI) in the CDDA (as opposed to Switzerland who didn't).

<sup>67</sup> <http://www.eea.europa.eu/publications/protected-areas-in-europe-2012>

<sup>68</sup> <http://www.eea.europa.eu/soer-2015/countries-comparison>



As a rule, the Birds and habitats directive are much **stricter** than national legislation. This is confirmed in the EEA report on protected areas: “We conclude that Natura 2000 has both increased the total surface area of lands with protected designation, and strengthened the management of existing protected areas.” and can be illustrated by some case studies:

- In the Czech Republic’s upper Vltava river in Sumava National Park, pressure on habitats and species by excessive canoeing became a problem. National complaints did not lead to stopping this; it was only possible to restrict canoeing on the Vltava river when Czech NGOs filed a complaint to the EU Commission (**case 2007/4447**) that this was finally done<sup>69</sup>.
- Equally, the limestone quarry “Urberg” in Southwest Germany was planned to expand **by 15,6 ha, covered by Habitat type “9130” beech forest and home to 3 bat species. These would have been destroyed** under national legislation, which has no mechanism to prohibit destruction outside of protected areas. The so-called Eingriffsregelung (German Nature Conservation Act, §§ 13 and 15) call for avoiding unnecessary destruction in principle, however this is usually not looked into in detail and the next steps of the mitigation hierarchy (compensation, compensation payment) are applied, and there are no known cases where this national legislation has been able to stop a project detrimental to biodiversity.

The application of Art. 6(4) by the court (Verwaltungsgericht Freiburg) led to the denial of the expansion. The court concluded that the expected destruction of the beech forest and the quarters of 3 bat species were substantial and detrimental to the integrity of the site, and that the reasons of public interest brought forward by the Quarry owner were not overriding.

This decision was the result of a lawsuit filed by BUND - FoE Germany after the original decision (made by the Regierungspräsidium Freiburg, the competent local authority) had allowed the project to go forward, assessing that there was an overriding public interest<sup>70</sup>.

- In Bosnia, a EU accession state which now has identified its Emerald<sup>71</sup> and Natura 2000<sup>72</sup> sites, EU legislation and the need for compliance enables NGOs such as FoE Bosnia to fight more effectively for nature conservation<sup>73</sup>.
- The directives give owners and Nature conservation authorities **access to EU funding**, notably for conservation and restoration projects under the LIFE program<sup>74</sup> and Agri-environmental measures (Art. 28) as well as Natura 2000 measures under the Rural Development regulation (Art. 30) of the CAP<sup>75</sup>.

The BHD and their EU-wide standards have led to better collaboration at EU Level and better implementation of the Berne Convention. Through twinning projects (e., nature conservation authorities have helped colleagues in the new member states. Throughout Europe, authorities and NGOs use the same system and terminology and are speaking with one language<sup>76</sup>. (see also S2).

The BHD also covers the exclusive economic zone (EEZ). Plans affecting Natura 2000

<sup>69</sup> report by Czech NGO Hnutí Duha (FoE Czech Republic), attached

<sup>70</sup> <http://www.badische-zeitung.de/kreis-breisgau-hochschwarzwald/gericht-stoppt-kalksteinabbau--67952035.html>

<sup>71</sup> <http://www.fmoit.gov.ba/ba/page/41/ekoloscaronka-mrea-natura-2000>

<sup>72</sup> <http://natura2000.ba/>

<sup>73</sup> Natasa Crnkovic, President of FoE Bosnia, personal communication

<sup>74</sup> <http://ec.europa.eu/environment/life/project/Projects/index.cfm?fuseaction=home.getProjects&themeID=93>

<sup>75</sup> <http://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32013R1305>

<sup>76</sup> M. Ossendorf, Regierungspräsidium Freiburg, pers. Communication



sites cannot be challenged by NGOs here, but according to a court ruling of the ECJ, it is possible to do so under EU law. This was the case when Wind power turbines were installed in a main habitat of the harbour porpoise (*Phocoena phocoena*) in Butendiek (North Sea)<sup>77</sup>.

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

*This question builds on question AV.1. In answering it, please consider the different objectives/measures set out in the Directives (eg. whether there would be a protected network such as that achieved by Natura 2000; whether the criteria used to identify the protected areas would be different, whether funding levels would be similar to current levels in the absence of the Nature Directives; the likelihood that international and regional commitments relating to nature conservation would have been met; the extent to which nature conservation would have been integrated into other policies and legislation, etc).*

Answer:

It is highly questionable whether the EU states would, partly or as whole, implemented a similar network as the Natura 2000 one. National efforts to protect certain habitat types altogether have been undertaken, e.g. in Germany (Art. 30 BNatSchG)<sup>78</sup> and Switzerland (Art. 18 a NHG)<sup>79</sup>. However, they both are not very strong, given that financial and staff resources are limited, that a regulation such as Art. 6 (3) and 6(4) is missing, and that there is no oversight by the commission nor a possibility of.

It is altogether unlikely that all the EU added value mentioned under question AV 1 would exist.

At best the situation would be like the one in Switzerland, which currently has 6.2% areas (see 5<sup>th</sup> national report of Switzerland to the CBD<sup>80</sup>), and has a 50% funding gap for protected biotopes (WSL/Pro Natura 2010<sup>81</sup>).

In the German Land of Baden. Württemberg, only **3% instead of 17%** would be protected.

The status of nature conservation would be much weaker. The interest of Nature would always have to stand back where economic interests are concerned, the loss of species and Habitats would go ahead considerably faster. Cross-cutting issues and long-term concerns of public interest need to be pushed and safeguarded by competent authorities at high level, as decision-making processes at local level regularly tend towards short-term economic interests. Claims of a project creating jobs, however unfounded or unproven, are a killer argument against which local nature conservation authorities do not stand a chance. It is therefore essential to have standards and a supranational authority as well as a court that watch over the process.

As an example, if a lowland hay meadow (6510) in Germany is to be afforested, this would not be possible according to the EU Habitats directive, as this clearly destroys this habitat type and there is no public interest for the afforestation measure. According to national law

<sup>77</sup> J. Schumacher, attached

<sup>78</sup> Federal Nature Conservation Act –

BnatSchG, [http://www.bmub.bund.de/fileadmin/Daten\\_BMU/Download\\_PDF/Naturschutz/bnatschg\\_en\\_bf.pdf](http://www.bmub.bund.de/fileadmin/Daten_BMU/Download_PDF/Naturschutz/bnatschg_en_bf.pdf)

<sup>79</sup> Federal Act on the Protection of Nature and Cultural Heritage (NCHA), <http://www.admin.ch/opc/en/classified-compilation/19660144/index.html>

<sup>80</sup> <http://www.cbd.int/doc/world/ch/ch-nr-05-en.pdf>, p.100

<sup>81</sup> [http://www.wsl.ch/fe/wisoz/projekte/biotopschutzkosten/index\\_DE](http://www.wsl.ch/fe/wisoz/projekte/biotopschutzkosten/index_DE)

alone, this might well have been permitted, as these habitats are not per se protected and afforestation might even be considered as a use of soil for forestry purposes, profiting from the exemptions under Art. 14 (2) BNatSchG.

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

*When answering this question the main consideration is to demonstrate with evidence whether or not EU action is still required to tackle the problems addressed by the Directives. Do the identified needs or key problems faced by habitats and species in Europe require action at EU level?*

Answer: Numerous cases (such as the Vltava (CZ) and Urberg (DE) cases mentioned in AV.1) have shown that valuable habitats would have been destroyed or badly affected if the Habitats directive did not provide the necessary legal basis for NGOs and other actors to defend the Natura 2000 network against adverse effects. This option (by complaint to the EU Commission or filing a court case) needs to be applicable across the EU – if some states have weaker rules than others, this can induce an uneven playing field, with investors going to countries that allow the destruction of nature, producing more cheaply without constraints for biodiversity, and pressuring the other countries to do the same in order not to lose their companies.

The EU obliges all states to implement the directives. For administrative authorities, it makes things easier because they can point to the Commission rather than having to stand for their own actions, or than having to control themselves.

For example, in Baden-Württemberg, Germany, grassland habitats were protected in the 90's according to Art. 32 nature conservation act of Baden-Württemberg which is overseen and enforced by the County administration<sup>82</sup>. Nevertheless, it didn't sue for actions that are in contradiction to nature conservation interests, as it would have to be the county administration who would have to sue themselves, albeit it would be the nature conservation department that sues the agriculture department. Since Natura 2000 has entered into force, the superordinate Land and the Regierungspräsidium<sup>83</sup> look after the keeping of standards and control the subordinate county administration which can "blame" Land and Regierungspräsidium. These, in turn, can refer back to the EU in saying they have to do this, which strengthens their position. As the overlap between nationally protected grasslands and those of the EU habitats directive is very high, grassland habitats protection is now much better enforced than previously<sup>84</sup>. Without ongoing enforcement of the EU level, it is quite possible that enforcement would get worse and the system might revert to the previous situation, without proper enforcement.

<sup>82</sup> Art. 72 (1) Naturschutzgesetz, see [http://www.landesrecht-bw.de/jportal/portal/t/cm2/page/bsbawueprod.psml/action/portlets.jw.MainAction?p1=2a&eventSubmit\\_doNavigate=searchInSubtreeTOC&showdoccase=1&doc.hl=0&doc.id=jlr-NatSchGBW2005pP72&doc.part=S&toc.poskey=#focuspoint](http://www.landesrecht-bw.de/jportal/portal/t/cm2/page/bsbawueprod.psml/action/portlets.jw.MainAction?p1=2a&eventSubmit_doNavigate=searchInSubtreeTOC&showdoccase=1&doc.hl=0&doc.id=jlr-NatSchGBW2005pP72&doc.part=S&toc.poskey=#focuspoint)

<sup>83</sup> Art. 72 (3) Nr. 2, see previous link

<sup>84</sup> M. Ossendorf, Regierungspräsidium Freiburg, pers. Communication

## Annex 1: Objectives of the Directives

<b>Overall objective</b>	To contribute to ensuring biodiversity through conservation of Europe's most valuable and threatened habitats and species, especially within Natura 2000	
	<b>Birds Directive</b>	<b>Habitats Directive</b>
<b>Strategic Objectives</b>	Art. 2: Maintain the population of all species of naturally occurring wild birds in the EU at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level.	Art 2: Maintain or restore natural habitats and species of Community interest at a favourable conservation status (FCS), taking into account economic, social and cultural requirements and regional and local characteristics.
<b>Specific Objectives</b>	Art. 3: Preserve, maintain or re-establish a sufficient diversity and area of habitats' for birds, primarily by creating protected areas, managing habitats both inside and outside protected areas, re-establishing destroyed biotopes and creating new ones. Art. 5: Establish a general system of protection for all birds. Art. 7: Ensure hunting does not jeopardize conservation efforts and complies with the principles of wise use and ecologically balanced control of the species concerned.	Art 4: Establish Natura 2000 – a coherent network of special areas of conservation (SACs) hosting habitats listed in Annex I) and habitats of species listed in Annex II), sufficient to achieve their FCS across their natural range, and SPAs designated under the Birds Directive. Art. 6: Ensure SCIs and SACs are subject to site management and protection. Art 10: Maintain/develop major landscape features important for fauna and flora Art. 12-13: ensure strict protection of species listed in Annex IV. Art. 14: ensure the taking of species listed in Annex V is in accordance with the maintenance of FCS. Art. 22: Consider the desirability of reintroducing species listed in Annex IV that are native to their territory.
<b>Measures/ Operations objectives</b>	<p><b>Site Protection system</b></p> <p>Art. 4: 4(1): Designate Special Protection Areas (SPAs) for threatened species listed in Annex I and for regularly occurring migratory species not listed in Annex I, with a particular attention to the protection of wetlands and particularly to wetlands of international importance. 4(3): Ensure that SPAs form a coherent whole. 4(4): [Obligations under Art 6(2), (3) and (4) of Habitats Directive replaced obligations under first sentence of 4(4)]. Outside SPAs, strive to avoid pollution or deterioration of habitats.</p> <p><b>Species protection system</b></p> <p>Art. 5 (a-e): Prohibit certain actions relating to the taking, killing and deliberate significant disturbance of wild birds, particularly during the breeding and rearing periods. Art. 6: Prohibit the sale of wild birds except of species listed in Annex III/A and, subject to consultation with the Commission, those listed in Annex III/B.</p>	<p><b>Site Protection system</b></p> <p>Arts. 4 &amp; 5: Select Sites of Community Importance (SCIs) and SACs, in relation to scientific criteria in Annex III. Art. 6(1): Establish necessary conservation measures for SACs. Art. 6(2): [Take appropriate steps to?] Avoid the deterioration of habitats and significant disturbance of species in Natura 2000 sites.</p> <p><b>Plans or projects</b></p> <p>Art. 6(3/4): Ensure, through an 'appropriate assessment' of all plans or projects likely to have a significant effect on a Natura 2000 site, that those adversely affecting the integrity of the site are prohibited unless there are imperative reasons of overriding public interest. Art. 6(4): When plans or projects adversely affecting the integrity of a site are nevertheless carried out for overriding reasons, ensure that all compensatory measures necessary are taken to ensure the overall coherence of Natura 2000.</p> <p><b>Financing</b></p> <p>Art. 8: Identify required financing to achieve favourable conservation status of</p>

	<p>Art. 7: Regulate hunting of species listed in Annex II and prohibit hunting in the breeding and rearing seasons and, in the case of migratory birds, on their return to breeding grounds.</p> <p>Art. 8: Prohibit the use of all means of large-scale or non-selective capture or killing of birds, or methods capable of causing the local disappearance of species, especially those listed in Annex IV.</p> <p>Art. 9: Provide for a system of derogation from protection of species provisions under specified conditions</p> <p><b>Research</b> Art. 10: Encourage research into relevant subjects, especially those listed in Annex V.</p> <p><b>Non-native species</b> Art. 11: Ensure introductions of non-native species do not prejudice local flora and fauna.</p> <p><b>Reporting</b> Art. 12: report each 3 years on implementation</p>	<p>priority habitats and species, for the Commission to review and adopt a framework of aid measures.</p> <p><b>Landscape features</b> Art. 10: Where necessary, encourage the management of landscape features to improve the ecological coherence of the Natura 2000 network.</p> <p><b>Surveillance</b> Art. 11: Undertake surveillance of the conservation status of habitats and species of Community interest.</p> <p><b>Species protection system</b> Art. 12 &amp; 13: Establish systems of strict protection for animal species and plant species of Annex IV prohibiting specified activities. Art. 14: Take measures to ensure that taking/ exploitation Annex V species is compatible with their maintenance at FCS Art. 15: Prohibit indiscriminate means of capture/killing as listed in Annex VI. Art. 16: Provide for a system of derogation from protection of species provisions under specified conditions</p> <p><b>Reporting</b> Art. 17: report on implementation each 6 years, including on conservation measures for sites and results of surveillance.</p> <p><b>Research</b> Art. 18: undertake research to support the objectives of the Directive.</p> <p><b>Non-native species</b> Art. 22: ensure that introductions of non-native species do not prejudice native habitats and species.</p>
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## Annex 2: Typology of cost and benefits

This annex sets out a typology of costs and benefits resulting from implementation of the Nature Directives in the EU, which need to be considered in the evaluation.

### Typology of Costs

The evaluation will consider costs which result directly and indirectly from the Directives, including both monetary costs (i.e. involving direct investments and expenditures) and non-monetary costs (involving additional time inputs, permitting delays, uncertainty and missed opportunities).

It will include both the **compliance costs** of the legislation, and any **opportunity costs** resulting from missed or delayed opportunities for development or other activities. Compliance costs can be further divided into **administrative costs** and **costs of habitat and species management**. Examples of each of these types of costs are set out in Table 1.

Administrative costs refer to the costs of providing information, in its broadest sense (i.e. including costs of permitting, reporting, consultation and assessment). When considering administrative costs, an important distinction must be made between information that would be collected by businesses and citizens even in the absence of the legislation and information that would not be collected without the legal provisions. The costs induced by the latter are called **administrative burdens**.

Evidence of these costs will include:

- **Monetary estimates** of investments required and recurrent expenditures on equipment, materials, wages, fees and other goods and services; and
- **Non-monetary estimates** of administrative time inputs, delays, missed opportunities and other factors affecting costs.

### Typology of benefits

The evaluation will collect evidence on the direct and indirect benefits derived from EU nature legislation, which include benefits for biodiversity and for the delivery of ecosystem services, and the resultant effects on human well-being and the economy.

The **ecosystem services** framework provides a structured framework for categorising, assessing, quantifying and valuing the benefits of natural environmental policies for people. However, it is also widely recognised that biodiversity has **intrinsic value** and that the Directives aim to protect habitats and species not just for their benefits to people, but because we have a moral duty to do so. In addition, consideration of benefits needs to take account of the **economic impacts** of implementation of the legislation, including effects on jobs and output resulting from management activities as well as the effects associated with ecosystem services (such as tourism).

A typology of benefits is given in Table 2. Assessment of the benefits of the Directives for biodiversity is a major element in the evaluation of their effectiveness. Effects on ecosystem services will be assessed in both:

- **Biophysical terms** – e.g. effects on flood risk, number of households provided with clean water, number of visitors to Natura 2000 sites etc.; and
- **Monetary terms** – e.g. reduced cost of water treatment and flood defences, value of recreational visits, willingness to pay for conservation benefits.

Evidence of economic impacts will include estimates of expenditures by visitors to Natura 2000 sites, employment in the creation and management of the Natura 2000 network, and resultant effects on gross value added in local and national economies.

**Typology of costs resulting from the Nature Directives**

Type of costs	Examples
<b>Administrative costs</b>	<ul style="list-style-type: none"> <li>• Site designation, including scientific studies, administration, consultation etc.</li> <li>• Establishing and running of management bodies</li> <li>• Preparation and review of management plans</li> <li>• Public communication and consultation</li> <li>• Spatial planning</li> <li>• Development casework, including time and fees involved in applications, permitting and development casework affecting habitats and species, including conducting appropriate assessments</li> <li>• Time and fees involved in compliance with species protection measures, including derogations</li> <li>• Research</li> <li>• Investigations and enforcement</li> </ul>
<b>Habitat and species management costs</b>	<p><b>Investment costs:</b></p> <ul style="list-style-type: none"> <li>• Land purchase</li> <li>• Compensation for development rights</li> <li>• Infrastructure for the improvement/restoration of habitat and species</li> <li>• Other infrastructure, e.g. for public access, interpretation works, observatories etc.</li> </ul> <p><b>Recurrent costs - habitat and species management and monitoring:</b></p> <ul style="list-style-type: none"> <li>• Conservation management measures– maintenance and improvement of favourable conservation status for habitats and species</li> <li>• Implementation of management schemes and agreements with owners and managers of land or water</li> <li>• Annual compensation payments</li> <li>• Monitoring and surveillance</li> <li>• Maintenance of infrastructure for public access, interpretation etc.</li> <li>• Risk management (fire prevention and control, flooding etc.)</li> </ul>
<b>Opportunity costs</b>	<ul style="list-style-type: none"> <li>• Foregone development opportunities resulting from site and species protection, including any potential effects on output and employment</li> <li>• Delays in development resulting from site and species protection, and any potential effects on output and employment</li> <li>• Restrictions on other activities (e.g. recreation, hunting) resulting from species and site protection measures</li> </ul>



### Typology of Benefits

Type of benefit	Examples
<b>Benefits for species and habitats</b>	Extent and conservation status of <b>habitats</b> Population, range and conservation status of <b>species</b>
<b>Ecosystem services</b>	Effects of Directives on extent and value (using a range of physical and monetary indicators) of: <ul style="list-style-type: none"> <li>• <b>Provisioning services</b> – food, fibre, energy, genetic resources, fresh water, medicines, and ornamental resources.</li> <li>• <b>Regulating services</b> – regulation of water quality and flows, climate, air quality, waste, erosion, natural hazards, pests and diseases, pollination.</li> <li>• <b>Cultural services</b> – recreation, tourism, education/ science, aesthetic, spiritual and existence values, cultural heritage and sense of place.</li> <li>• <b>Supporting services</b> – soil formation, nutrient cycling, and primary production.</li> </ul>
<b>Economic impacts</b>	Effects of management and ecosystem service delivery on local and national economies, measured as far as possible in terms of: <ul style="list-style-type: none"> <li>• <b>Employment</b> – including in one-off and recurring conservation management actions, as well as jobs provided by tourism and other ecosystem services (measured in full time equivalents);</li> <li>• <b>Expenditure</b> – including expenditures by visitors as well as money spent on conservation actions;</li> <li>• <b>Business revenues</b> – including effects on a range of land management, natural resource, local product and tourism businesses;</li> <li>• <b>Local and regional development</b> – including any effects on investment, regeneration and economic development; and</li> <li>• <b>Gross Value Added</b> – the additional wages, profits and rents resulting from the above.</li> </ul>