



European Network of Heads of Nature Conservation Agencies (ENCA). ENCA is an informal network which fosters exchange of information and collaboration amongst its partners, identifies future challenges and offers information and advice to decision-makers in the field of nature conservation and landscape protection.

ENCA brings together scientific evidence and knowledge of practical application together with experiences in administration and policy advice in the context of biodiversity and ecosystem goods and services. More details can be found at www.encanetwork.eu.

ENCA Doc 3/2015
November 2015

ENCA Statement on the EC Nature Directives Fitness Check

Background

The European Heads of Nature Conservation Agencies network (ENCA) is an informal, high level decision making network established to allow exchange of views on nature conservation across Europe, both within and outside the EU. The network currently has 20 member organisations. All have scientific and technical expertise, extensive knowledge of policy at global, European and national levels on nature conservation and participate in the implementation of either the EC Nature Directives or the Emerald network under the Bern Convention. All ENCA members are working towards achieving the EU Biodiversity Strategy 2020 targets and the Aichi targets of the Convention on Biological Diversity.

At the most recent ENCA meeting (5-7 October 2015, Helsinki, Finland) ENCA presented its report which considered the evidence submitted through the consultation on the EU Nature Legislation Fitness Check. The evidence indicates that overall the Nature Directives in their present form have proved an effective instrument for achieving nature conservation and protection. However, the evidence also suggests that there is scope to improve the effectiveness, efficiency and pace of implementation of Nature Directives, at the same time contributing to a clear, stable and predictable regulatory framework supporting growth and jobs.

As a network ENCA has:

- Access to data held by nature conservation agencies across Europe;
- Expertise in the application of the Articles of the Directives at Member State level and how they have been transposed into national law and implemented; and
- Good knowledge of the wider framework for nature conservation in EU Member States and accession and candidate countries within which the Nature Directives and/or the Bern Convention are applied.

Thus, ENCA has a considerable body of experience from across Europe to provide a sound evidence base and best practice for informing the future steps on the EC Birds and Habitat Directives Fitness Check. Drawing on this collective knowledge ENCA recommends that the most significant improvements to implementation will be achieved by focusing on four core areas: 1) improving guidance; 2) enhancing cooperation at all levels; 3) better use of funding mechanisms for biodiversity and Natura 2000, including avoiding the negative impacts on biodiversity from the use of EU funding instruments such as CAP, CFP, etc, and 4) building capacity in skills and experience.

In this Statement we highlight the issues, provide some potential solutions and outline how ENCA may contribute.

In depth information and case studies to support the responses below are provided in the Report on the EC Nature Directives Fitness Check: supplementary information and case studies (Annex).

1. Improving Guidance on the Directives, in particular Articles 6 & 12 of the Habitats Directive and Article 5 of the Birds Directive

1.1 Article 6 Guidance (Habitats Directive)

Issue: There is considerable discretion over the most appropriate measures Member States should take to fulfil Directive obligations, especially in terms of application of assessments, derogations and designations. This discretionary element is often open to challenge and points to the need for further interpretative guidance to reduce delays in implementation. We recognise that there is guidance on interpreting the Articles of the Directives, some of which has been recently updated. However, the results of the Commission consultation have highlighted gaps in the guidance, which if addressed, would aid swifter and more cost effective implementation. The requirements of Article 6 seem to be a particular problem and are the focus of our response.

Response: ENCA can provide technical assistance to the Commission in drafting revised Article 6 guidance to address ambiguities in interpretation and definition of terminology. Examples include:

- Article 6(1) and 6(2): better definition of the interpretation and application of *favourable conservation status* at a range of scales;
- Article 6(3): some legal clarification regarding the issue of hierarchies of Habitat Regulation Appraisals through consenting procedures was established in ECJ case C-6/04. Guidance on how to implement this, especially for large and/or complex cases is required; and
- Article 6(4): improved guidance on alternative solutions and on IROPI (imperative reasons of overriding public interest).

1.2 Guidance on offences and derogations

Issue: The focus of the Birds and Habitats Directives is on the safeguarding of populations of species. However, implementation of Article 12 of the Habitats Directive and Article 5 of the Birds Directive has an emphasis on protecting individuals. This emphasis can impose unnecessary constraints on activities that are not actually having an impact on the delivery of the objectives of the Nature Directives.

Response: ENCA has extensive experience of improving the efficiency and effectiveness of implementation of species protection under the Nature Directives and would be pleased to support the Commission in compiling revised guidance, in particular to:

- Encourage Member States to apply protection that focuses on the impact of activities on a species' local population status (pursuant to Article 2, Habitats Directive) rather than the impact on individuals (unless the species is so rare that each individual is significant to the total population);
- Advise Member States where to look for recent technological developments that facilitate new approaches to assessing species status, including modelling and surveillance, for example eDNA;
- Help describe when species can be considered to be either at Favourable Conservation Status or meeting Article 2 populations (for birds).

2. Effective co-operation across sectors and stakeholders and between Member States

Issue: Effective implementation of EU legislation on nature often requires co-operation between different sectors, stakeholders and among countries. Conflicts can arise through poor communication and lack of information sharing, experience, and skills or knowledge at various scales.

Response: To improve co-operation and communication between stakeholders, Member States and European institutions, ENCA proposes the following:

- Apply programmes to facilitate exchange of experience and cooperation between stakeholders, institutions and Member States and with the administrations of Beneficiary countries (new member states, or accession and candidate countries) with a Member State, such as through Twinning programmes or multi-lateral approaches to the EU Nature Directives. Croatia's stakeholder approach to the conservation and management of wolves and Germany's system of quality criteria for monitoring wolf and lynx, are both examples of the development of institutional capacity to implement EC legislation on nature conservation;
- Enhance cooperation between DG Environment, DG Agriculture and DG Maritime Affairs and Fisheries in order to improve the implementation of CAP or CFP and the EU Nature Directives;
- Integrate the views of the European Court of Justice into future guidance documents; and
- Optimise the implementation of EU nature legislation in order to facilitate the application of nature-based solutions by different sectors.

3. Financing

Issue: Member States are primarily responsible for financing biodiversity and Natura 2000. Financial support is available from the EU through the European Structural and Investment Funds¹ (ESIF) and more limited support available through LIFE. However, overall there is insufficient funding to fully implement the Nature Directives across Member States. This is in part due to a failure in the implementation of the integration model for funding nature conservation. At a strategic level, insufficient attention is given to ensuring that the necessary funding will be in place and that each fund is making an appropriate contribution to meet the needs of biodiversity and Natura 2000. At a project level, proposals may not take sufficient account of the specific objectives of the Funds so that they are clearly compatible with EU Regulations and, can be identified as priorities.

Response: The establishment, effective management and restoration of sites in the Natura 2000 network, as well as the conservation of species and habitats beyond Natura 2000, require sufficient funding. The integration model should be capable of delivering the required funding. Better implementation of the approach would enable EU funds and regulations to deliver the necessary measures. ENCA would welcome an approach to:

¹ A grouping of five shared management funds with common rules. The Funds are: European Agricultural Fund for Rural development; European Regional Development Fund; European Social Fund; European Maritime and Fisheries Fund; Cohesion Fund.

- Better align the needs of biodiversity and Natura 2000 with the strategic priorities, for example within the Partnership agreement agreed for the European Structural and Investment funds at European and national level;
- Better engage the nature conservation sector in the development of the strategic priorities for the European funds and in the development of the Operational Programmes to secure better outcomes for nature conservation from EU Programmes;
- Support the delivery of nature conservation measures within the Operational Programmes, for example by establishing installing 'cross-sectoral' groups to support integrated delivery and to identify, and reduce or avoid, any negative impacts of sectoral funding decisions. For example, the effects of CAP on biodiversity and Natura 2000 implementation;
- Improve the understanding of best practice to support a reduction in the administrative burden associated with the use of the funds and, to support the use of the flexibilities within the funding instruments to support Natura 2000 and biodiversity management.
- Develop methods to enable streamlined and cost-effective evaluation of the effects of operational programme measures on Natura 2000 and species conservation which are transparent to the public;
- Make better use of the funding streams so that they deliver on a range of MSFD, WFD, CFP and domestic targets. Such an approach would not only lead to broad biodiversity gains in the wider marine environment but, through synergies and efficiency gains, it is likely to result in the more rapid achievement of both Favourable Conservation Status (Habitats Directive) and Good Environmental Status (MSFD); and
- For appropriate Natura 2000 management, the role of land owners and land managers is crucial: simply, without them, the management is less effective. Therefore, they should be provided with finances enough to consider the Natura 2000 management as their advantage and a profit.

4. Capacity Building

Issue: The effective implementation of the EU Nature Directives requires skilled and experienced personnel, particularly for tasks such as adaptive management of protected areas and species, assessment of environmental impacts of plans and projects on Natura 2000 sites, and reporting on the conservation status of habitats and species. Although there is no real evidence concerning level of capacity and competence required for proper implementation, stakeholders often referred to a lack of capacity in their responses to the evidence based questionnaire. This is a particular problem in relation to conservation in marine-offshore waters, where expertise is limited and the experts are dispersed across Europe.

Response: To improve institutional and individual capacity to enable better implementation of the EU Nature Directives ENCA supports the:

- Development of a set of professional standards for protected area management at the European level, based on current initiatives/best practice examples, such as the BfN funded Eastern European Capacity Building project implemented by ProPark and the IUCNs Strategic Framework for Protected Area Capacity Development 2015-2025;
- Assessment of the capacity and training needs for the other most relevant areas of expertise in implementing the Nature Directives and support appropriate actions; and
- Introduction of better minimum quality and qualification standards for appropriate assessments in all Member States.

Offshore nature conservation work is expensive to develop and may initially cost substantially more than in the terrestrial environment. European funding aiming to bring together expertise at a European level, rather than work carried out at Member State level, would help reduce costs and improve implementation.

From a marine perspective there are problems in applying for traditional sources of core funding for the management of Natura 2000 – this is supported with only 4.5% of LIFE funds being allocated to projects with a marine element per year². It can be difficult to prepare compelling bids that fit the eligibility criteria for LIFE funding, which focus on conservation measures, when the primary conservation need in marine is for survey effort, especially prior to and following designation, to inform management decisions, and to subsequently report and monitor. Other co-financing mechanisms, such as EFF need to be enhanced to enable funding for marine conservation.

ENCA's contribution

ENCA hopes that the Commission takes this submission into consideration in its next steps for the Nature Directives Fitness Check. ENCA would like to work more with the European Commission to find solutions in the core areas outlined in this summary document and would welcome further discussion to achieve this.

In a wider context the Nature Directives make an important contribution to achieving the EU Biodiversity Strategy and Aichi Biodiversity Targets and there is a need for better integration of the Directives with existing and emerging policies and practices. Of particular interest are those associated with climate change, primary industry, fisheries, agriculture, water management, planning and development, sustainable production and consumption patterns and a growing awareness of the wider public benefits of nature and natural capital.

ENCA has 5 expert Interest Groups covering Climate Change, GMOs, Ecosystem Services, Land Use Change and Monitoring and Assessment. The attention of these groups could be focused on some of the issues arising from the Fitness Check and integration of wider policies. In particular ENCA can offer the following advice or services:

- Better defining the ecological needs of species and habitats (e.g. helping to set favourable reference values);
- Identifying effective ecosystem-based solutions to climate change adaptation and disaster risk reduction and better resource use policies and integration of biodiversity issues; and
- Supporting effective adaptive management to enhance conservation status with best practice, knowledge transfer and capacity building.

The wider European membership of ENCA is also very beneficial. Outside the EU there has been, and continues to be, a close co-operation between accession, candidate countries, new member states and longer-standing member states to advance biodiversity protection and nature conservation, for example in biodiversity hot-spot areas, such as part of the Balkan Peninsula. There is also close co-operation with the Council of Europe, to streamline provisions of the Bern Convention with the EU Nature Directives, with the resulting Emerald Network being an important extension of Natura 2000.

² Barratt, L et al (2014) Marine Thematic Report; The future of Europe's seas – contribution of the LIFE programme to protecting and improving the marine environment



The Natura 2000 network maintains the most valuable and unique parts of the natural and landscape heritage of the EU and safeguards ecosystems, providing human well-being with key services, life-supporting processes and functions and economic profits. It is also a backbone of the Green Infrastructure in the EU and of the Pan-European Ecological Network across the pan-European region.

This ENCA Statement is endorsed by the following ENCA members:

Bundesamt für Naturschutz
Croatian Agency for the Environment and Nature
Federal Office of the Environment, Switzerland
Institute for Nature Conservation of Serbia
Institute of the Republic of Slovenia for Nature Conservation
Metsähallitus, Parks and Wildlife Finland
National Institute for Environmental Protection and Research, Italy
Nature Conservation Agency of the Czech Republic
The State Service for Protected Areas, Lithuania
PBL Netherlands Environmental Assessment Agency
Scottish Natural Heritage
Umweltbundesamt – Austrian Environment Agency

And ENCA observer members:

Atelier technique des espaces naturels, ATEN, France
Israel Nature and Parks Authority