Evidence Gathering Questionnaire for the Fitness Check of the Nature Directives

QUESTIONNAIRE

A. General Information

Please answer ALL questions in this table

	Answer
Organisation:	**Umweltdachverband**
Date:	25.03.2015
Country (and, if applicable, region) **represented:**	Austria
Organisation(s) represented:	WWF, Umweltdachverband
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Languages spoken fluently by contact person:	German, French, English
Language for the interview if it is not possible to conduct it in English	
Type of organisations you represent: EU authority or agency / Member State authority or agency / business or industry / educational or scientific institute / nature conservation charity / recreation / individual expert / other (please specify).	NGO
Sector represented: environment / water / agriculture / forestry / fisheries / transport / energy / extractive industry / industry / housing and other buildings / recreation & tourism / science & education / other (please specify)	Environment
Additional comments:	We provided some complement of answers for the part “EU added value” on 30.04.2015

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[1].

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.

Conclusion

The progress made towards achieving the strategic objectives set up in the nature conservation legislation is overall poor. The progress realised in achieving specific objectives and measures/operations objectives is either poor, or has just been met recently. In those areas, where specific measures have been taken as early as Austria's accession to the EU, e.g. in regard to the conservation of rare species covered by the Annex I of the Birds Directive and Annex II of the Habitats Directive, considerable progress has been made. This shows that a successful implementation of the EU nature conservation legislation is possible in principle.

Evidence

1. Strategic objectives

The objective, consisting in conserving the populations of all bird species at an adequate level or reaching such a level, has not been met. From the 234 indigenous breeding bird species in Austria included in the current Red List (Frühauf 2005), 8,7% have become extinct, 13,6% are threatened with extinction, 5,8% are strongly endangered and 8,3% are endangered. The objectives pertaining to the favourable conservation status of habitat types and species, as set up in Annex I and II of the Habitats Directive, have been reached to an even much lesser extent. The conservation status of respectively 42% and 43,4% of the species and habitat types is deemed "unfavourable bad" (U2) and "unfavourable inadequate" (U1)[1].

Some progress has yet been made in some subfields. The Article 12 report (Dvorak & Ranner 2014) shows that out of the 54 breeding bird species of the Annex I, which are present in Austria, only 8 witness a negative population trend, whereas 34 have remained stable and 21 record a positive development. The state of conservation of 8 species of the Annex II of the Habitats Directive could also be improved in comparison to the

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

last Article-17 report: One from U2 to FV (*Gomphus flavipes*), two from U2 to U1+ (*Artemisia pancicii*, *Lutra lutra* alpine region), one from U2 to U2+ (*Dracocephalum austriacum*), one from U1 to FV (*Ophiogomphus cecilia* continental region), two from U1+ to FV(*Myosotis rehsteineri*, *Lutra lutra* continental region) and two from U1 to U1+ (*Saga pedo* continental region, *Castor fiber* alpine region).

2. Specific objectives

Art. 3 BD: a sufficient diversity and habitat size for all wild birds have not been provided. A large part of the country's territory currently record negative developments: the monitoring of the breeding bird species found in Austria between 1998 and 2013 indicates that the two-thirds of the species witness a recoil in their population. Meanwhile, the Farmland Bird Index for Austria has decreased almost linearly by 25% (Teufelbauer 2014).

Art. 4 BD: The protected areas for birds (SPAs Austria) are designated adequately.

Art. 4 & 6 (1) und 6 (2) HD: The designation of FFH sites remains incomplete and concerns at least 12 habitat types and 29 species in the alpine biogeographical region as well as 14 habitat types and 43 species in the continental biogeographical regions in Austria respectively (European Commission 2013). An infringement procedure against Austria has been launched in 2013.

Art. 4 (4) HD: Regulation for Natura 2000 sites (SAC und SPA): Austria has hitherto registered 218 Natura 2000 areas at the European Commission and legally designated 88% of them (i.e. 192 areas) (Status: January 2014, Heilingbrunner et al. 2014). Out of these 218 Natura 2000 sites, 169 have been nominated under the Habitats Directive and 49 solely under the Birds Directive. 22 of the areas nominated under the Habitats (and partly the Birds) Directive as well as 4 of them exclusively nominated under the Birds Directive have not been enacted yet. Only one area, nominated under the Habitats Directive, still lies under the 6-year obligation of designation; As for the other 21 areas, they mostly entered the Community list more than nine years ago (Heilingbrunner et al. 2014).

Art. 5 BD und Art. 7 BD, Art. 12-14 HD: The species protection provisions have been transposed by the nine federal states in a different and overall unsatisfactory manner (Mauerhofer 2011).

- Aspects related to the conservation of species have not been adequately taken into account. An assessment of these aspects has been omitted in cases where it would have been necessary.
- Many bird species, which are not huntable (in Austria) according to the Annex II of the Birds Directive, are included in the regulations related to hunt instead of those dealing with nature protection. This creates room for exceptions allowing the chasing of non-huntable species, consented without the involvement of nature protection authorities.
- The fishing laws of one federated state allow the displacement, catching and killing of protected species, without proper reference to the exemptions provided by the Birds and Habitats Directives.

3. Measures / Operations objectives

Site protection system:

The SPA network, after substantial delays, is now largely completed. In Mai 2013, four of all birds protection areas were legally designated (Heilingbrunner et al. 2014). The last designations have been completed since then, or they are at least in the process of planning. There are, however, substantial loophole in the SCI network (Europäische Kommission 2013, Heilingbrunner et al. 2014).

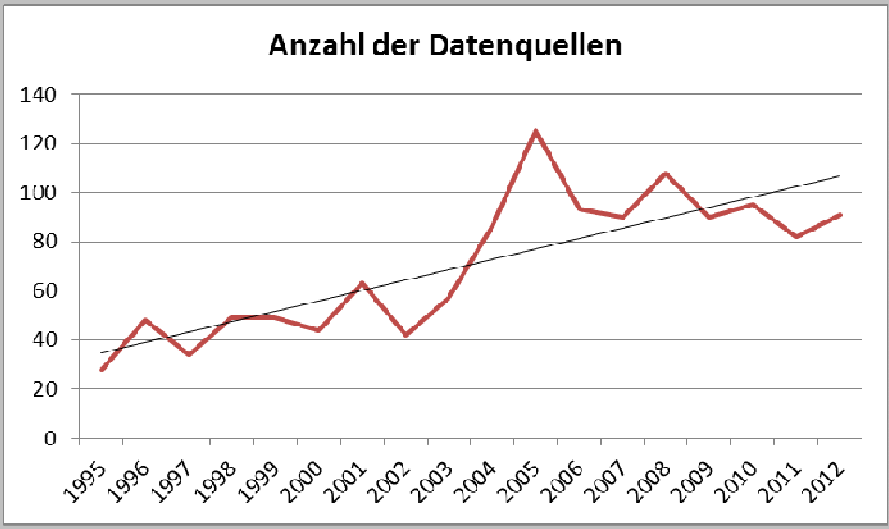
Art. 6 (3, 4) Plans or projects:

Between 2010 and 2015, according to the UVE database of the Ministry of Environment[2], there was one Nature Impact Assessment (NIA) in 19 Environmental Impact Assessments (EIAs) and no NIA in 4 EIAs, despite a need therefore. Over the same period, 163 EIAs have been recorded in the database of the Umweltbundesamt. So, NIAs have only been issued in 11% of the EIAs.

[2] http://www.umweltbundesamt.at/umweltsituation/uvpsup/uvpoesterreich1/uvpdatenbank/uvp_online/

Art. 18 HD Research and surveillance*:*

The scientific research on the Habitats Directive has been continuously on the increase since the accession of Austria to the EU. Studies have focused, inter alia, on the ecological assets covered by the Habitats Directives; they have been examined in the framework of both Article 17 reports and used as database. Between 1995 and 2012, their number has risen from approx. 40 to about 100 pieces per year (particularly project reports, academic works and specialized articles). Between 1995 and 2012, 1239 data sources have been compiled, most of them in the framework of project reports (743, i.e. 60%), the leaders of which are often entrusted by nature protection authorities with the implementation of the Habitats Directive.[3]



Number of data sources

However, compared to other EU MS, the lack of knowledge in and outside the Natura 2000 network is alarming, as it could be highlighted during the biogeographical seminar on designation sufficiency in Vienna the 17-18th of March (eg incomplete art 17 distribution maps, scientific reserve for numerous species, etc.).

Species protection system:

The provisions of the fishing laws of several federal states do not ensure compliance with art. 22 b) (Mauerhofer 2011).

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 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.

Conclusion

The progress is by no means in line with the initial expectations. Globally, Austria failed to implement the EU's nature conservation legislation (cf. the numerous EU-Pilots, the infringement procedures and the ECJ rulings on single cases). This failure is documented by court rulings concerning bundled cases, respectively, with regard to (1) the implementation of species protection under the Birds Directive (C-507/04), (2) the implementation of species

[3] Oral notice, Umweltbundesamt 14.3.2015

protection (and further aspects) under the Habitats Directive (C-508/04) and (3) the designation of the SPAs according to the Birds Directive (C-535/07). An infringement procedure concerning the designation of the pSCIs according to the Habitats Directive is pending (INF 2013/4077).

Evidence

In the course of its EU accession process, Austria did not request any extensions of time limits for the implementation of the provisions of the Birds and Habitats Directives. The "initial expectations" of the competent authorities and policy makers are then clearly documented, namely: the implementation of the provisions in national law and the designation of areas, in accordance with the deadlines defined in the time line of the Directives. The European Commission had obviously the same expectations (European Commission 2013).

For the Birds Directive, this commitment implied the implementation of the EU provisions into national law and the designation of protected areas by 1.1.1995. No SPA, however, was designated by Austria by that date. And even afterwards, the designation process was carried out so slowly, that the European Commission finally had to initiate an infringement procedure against Austria (INF 99/2115). The solution, which Austria and the European Commission subsequently agreed on, could only be implemented very slowly by some federal states. This eventually lead to the conviction of Austria by the European Court of Justice (C-535/07). In May 2013, the designation of four of these areas was still not legally applicable (Heilingbrunner et al. 2014).

The situation in the nomination and regulation of pSCIs is similar: In 1996, the European Commission initiated an infringement procedure against Austria (INF 1996/2089) due to its lack of nominees regarding the Sites of Community Importance.

The case (C-110/08) was withdrawn by the Commission for strategic reasons. But a new infringement procedure (INF 2013/4077) was launched. In its letter of formal notice from 30.5.2013 (European Commission 2013), the European Commission pointed out that Austria was obliged to report to the Commission its proposal for Sites of Community Importance nominees by 1.1.1998.

Between 1999 and 2007, Austria sent twelve times further suggestions for SCIs. But the lists of proposals it submitted were at no time deemed satisfactory. The Commission did not consider that Austria had presented an exhaustive list according to Article 4 (1) of the Habitats Directive (European Commission 2013). At the end of 2014, 20 new sites have been designated. On March 17.-18th, the sufficiency of almost 100 features has been discussed in the frame of a bilateral seminar. Austria has to designate some 70 new sites till the end of 2015, if not the infringement procedure might go on. Austria also lags behind as regards the legal regulation of the designated sites. Out of 169 areas in the continental and alpine region, which had been included in the Community list, 21 were not regulated in a legally applicable manner, even after the end of the designation time period of six years (Heilingbrunner et al. 2013).

In the field of species protection, Austria was condemned by the ECJ because of various violations of the Birds Directive. The legislations of different federal states were found to contravene Community law (C-507/04). In a parallel proceeding, Austria was convicted for violating the Articles 1 e), g) and i), 6 (1) and (2), 12 and 13, as 16 (1) and 22 (b) of the Habitats Directive (C-508/04).

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:

Can only be answered by responsible authorities

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 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

Conclusion

Even though the implementation of the Directives in Austria is highly deficient, there are already significant positive effects on target species. Moreover, non target species of the Directives, which at the same time should be targeted under the EU Biodiversity Strategy for scientific reasons, are covered to a high degree by the Natura 2000 network. These effects show the potential capacity of a full implementation of the Directives not only for ensuring a favourable conservation status of species and habitats of Community interest but for the conservation of biodiversity in general.

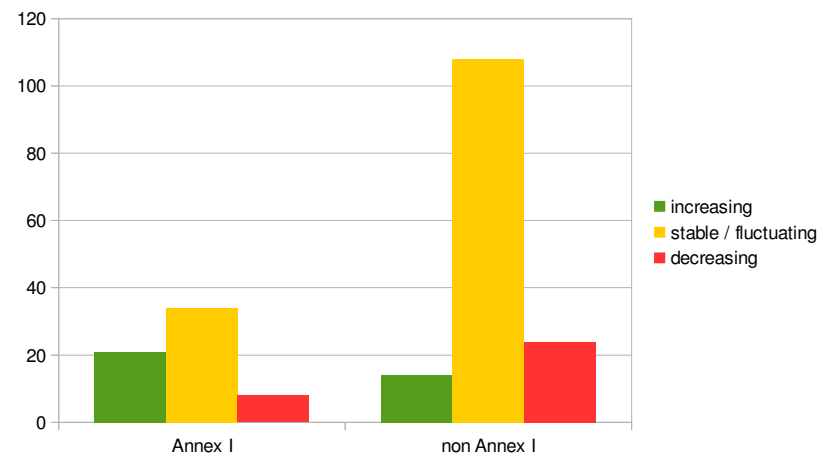
Evidence

Although the implementation of EU nature protection directives in Austria is far behind schedule (see question S.1.2), significant progress in some areas can already be registered.

Example S.2-1

In Austria, the populations of the breeding bird species listed in the Annex I of the Birds Directive developed much more favourably than those of the other Austrian breeding bird species (see the following figure, based on the data from Dvorak & Ranner 2014).

In particular, the share of the species with a positive population trend outweighs those with a negative trend, whereas this ratio is the reverse for the other species. This is due to the fact that specific conservation projects are already being implemented for a large part of Annex I species (Dvorak & Ranner 2014).



The positive development of the populations of several Annex II species from Habitats Directive can be directly attributed to the implementation of conservation measures (ELLMAUER 2015):

Species	Change in status		Reason
	Alpine Region	Continental Region	
Artemisia pancicii	–	Improvement (U2 → U1+)	Successful LIFE-project (Habitat management, ex situ-reproduction and reintroduction)
Dracocephalum austriacum	Improvement (U2 → U2+)	-	Ex-situ and in-situ conservation measures
Myosotis rehsteineri	Improvement (U1+ → FV)	–	Successful LIFE-project (restoration of shores, improvement of the water quality of the Constance Lake, ex- situ reproduction and reintroduction)
Saga pedo	Stable	Improvement (U1 → U1+)	Successful LIFE-projects (management of dry and semi-dry grasslands)
Ophiogomphus cecilia	Stable	Improvement (U1 → FV)	Improvement of water body structure through restoration measures
Gomphus flavipes	–	Improvement (U2 → FV)	Improvement of water body structure through restoration measures
Castor fiber	Improvement (U1 → U1+)	Stable	Expansion since reintroduction in the 1970s through full protection from hunting
Lutra lutra	Improvement (U2 → U1+)	Improvement (U1+ → FV)	Decrease of environmental toxins and full protection from hunting

Target 2: Maintain and restore ecosystems and their service

Austria is engaged in the protection of natural habitats on flowing watercourses and in the protection of bogs through 49 LIFE nature projects so far, with a total budget of EUR 159 million. Several individual projects focussed on the protection of special animal species such as bearded vulture, brown bear, great bustard or Danube salmon.

Target 3: Increase the contribution of agriculture and forestry to maintaining and enhancing biodiversity:

Nature protection and conservation measures, such as late mowing, prohibition of fertilization, restoration of wet meadows, have been taken in the field of agriculture since 1995 in Austria (Austrian Agri-environmental Programm "ÖPUL"). These measures, in total, have received a financial support of EUR 532 million between 1995 and 2013 and 66.000 ha of valuable land have been therewith protected every year (2007 – 2013, Green Report 2014 table 5.2.16). The measures have already been evaluated several times; in Natura 2000 sites, they

were found to be the key to achieve the conservation objectives of habitat types (SUSKE, 2009).

Target 6: Help avert global biodiversity loss

The positive effect of the Natura 2000 network on species, which are not target species of the EU nature conservation directives, can be estimated, based on the unpublished original data of the species conservation concept from Lower Austria (Bieringer & Wanninger 2011). This concept, building on the targets of the Convention on Biological Diversity, identifies out of 5.500 animal and plant species those for which the federated state of Lower Austria has an increased responsibility in the light of the preservation global biodiversity. These, in particular, include endemic and sub-endemic species, species with disjoint occurrence, species found in isolated areas and species currently endangered in Lower Austria. Out of those 315 species in total, 258 are not species of Community interest; i.e. they are not considered in the Natura 2000 site selection. And yet, 69,4% of the species listed neither in the Birds nor in the Habitats Directive, have relevant occurrences in Natura 2000 areas; in fact, the Natura 2000 network covers at least 34.9% of these species and about 60% of their populations.. These high numbers are even more significant, given that the Natura 2000 network had not even been fully established at that time (European Commission 2013).

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).

Conclusion

Austria has not recognized "nature protection" as an essential issue during the preparation for joining the EU. The legal implementation was carried out in an unprofessional way, and the devolution of competences at the level of the 9 federal states, plus the lack of federal jurisdiction, resulted in the making of at least 36 state laws. The implementation processes in nine federal states left room for mistakes. Austrian NGOs and the European Commission had to step in to correct these mistakes (39 infringement proceedings against Austria). The lack of access for Austrian's NGOs to national courts made the involvement of the European Commission necessary.

The efforts made in the implementation of EU funding programmes (LIFE, EAFRD) and the exemplary good collaboration between the federal republic and the provincial governments on the one side and the NGOs and the agricultural markets on the other side, have played a key role to support the positive effects of the Directives in this area.

Evidence

The most important factor explaining the insufficient and belated transposition of the EU's Nature Directives in Austria is the federal organisation of nature protection in the country. Nature protection, in Austria, is managed by the nine federal states. The federal republic has neither legislative nor administrative (e.g. coordination) competences in that area. The European nature protection law is covered by 36 different federal state legislations (on conservation, spatial planning, hunting and fishing). The coordination between the federal states is undertaken by working groups and a so-called "Verbindungsstelle". The latter, however, is devoid of competence and can only act as moderator. For instance, when the European Commission requests a single unified response from the Austrian authorities responsible for nature protection, then the nine federal states shall first find an agreement verbally or in writing and take a unanimous decision. The mere organisational tasks for

the *preparation* of such a response to the European Commission by the authorities responsible for nature protection generally require 1 to 2 months. The federal system in nature protection matters was no obstacle to the management of natural monuments and smaller national conservation areas, since these did not imply much communication between the federal states. But the implementation of European laws on nature protection by this obsolescent structure calls for difficult adaptations.

In spite of the large needs for coordination entailed by the European nature protection agendas, the councils of the federal states responsible politically for that matter only meet once a year to agree on cross-state issues. The technical and legal expertise of the political decision-makers is very unprofessional and regularly leads to acute conflicts with EU law. Furthermore, political interferences in administrative processes and in the designation of protected areas remain very high. Since its accession to the European Union, Austria has been confronted to 39 legal proceedings from the EU. Most of the complaints so far have been directly referred to the European Commission, due to the lack of legal capabilities and for political reasons.

Data transparency issues, likewise, have not been addressed in a satisfactory manner. In th various federal states, it remains impossible until now to get plot-by-plot information, whether online or in the department in charge, on the types of habitat in which protected species live and on their occurrence.

The most serious consequence of this unprofessionalism so far is the unsatisfying situation of the still uncompleted process of site designation by the Habitats Directive (European Commission 2013). This shortcoming is a source of significant distrust and legal uncertainty among land managers and in the economy.

The positive effects of the Directives follow to some extent the successful implementation in Austria of the EU's funding programmes. The professionalism of NGOs, as applicants, has been pivotal to ensure the extremely successful implementation of LIFE projects (EUR 159 million, 49 LIFE projects). The by far most important programme for Austria in nature protection matters, conducted under the leadership of the Ministry of Agriculture and Environment (BMLFUW), is the European Agricultural Fund for Rural Development (EAFRD). About 20.000 farms partake every year in its nature protection measures and a total of EUR 535 million has been paid from 1995 to 2013 to farmers in that area (see Grüner Bericht 2014, table 5.2.16). Since 1995, the programme actively associates the authorities in charge of nature protection and the NGOs in the deliberations pertaining to the conception of the programme and its evaluation. This can be considered as a key factor for the positive developments in this field. Besides, the cooperation between nature protection authorities and Austrian agricultural market operators "Agrarmarkt Austria" (AMA), responsible for the execution of the programme "Rural Development", works in Austria in an exemplary manner. Important technical problems, which could block the pursuit of good ideas in this programme, can be resolved thereby directly and in good time.

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.

Conclusion

The implementation of the Directives has had beneficial effects with regards to the federal organisation of the State of Austria, through the standardisation of state law, the harmonisation of standards for project approvals ("level playing field" for economic players in Austria) and the forceful emphasis it put on inter-provincial cooperation (e.g. Art. 17 reports). Both Directives, as well as the need they imply for coordinating national strategies, acted as driving forces in the unfolding of these positive developments.

Evidence

The federal organisation of nature protection in Austria has been an obstacle to the development of experience in coordinating processes in that area; has led to a very hesitant knowledge building in the field of European nature protection law; and has caused major issues, due to the recurrent interference of political players in most federal states.

It should be underlined, however, that the urgent need for adopting a coordinated, legally correct approach has forcibly led to improvements in the procedures. For instance, the Ministry of Transport, Innovation and Technology has this year completed its own directive on species conservation assessments in infrastructure projects (RVS). Before, there was also the elaboration of a nationwide study on the state of preservation of all habitat and species of European interest well as the drafting of Article 17 reports, which all led to increased technical cooperation between the federal states.

Following the ECJ rulings and its severe consequences, against which political influence has been exerted in Austria and the European Commission, though with no success, the legislations of the European Union are now more respected and taken more seriously. The pressure exerted by economic operators in favour of more legal certainty rose after the (prior) decisions of the authorities, in various cases, failed to build confidence.

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.

Conclusion

Many individual examples show that Natura 2000 can have both economic and social positive effects. This is particularly true when regional stakeholders are actively involved and support regional products in collaboration with nature protection authorities, business representatives and land users. A general conclusion, valid for *all Natura 2000 areas*, cannot be made though. A first draft statistical analysis of key socio-economic indicators of areas located within and outside the Natura 2000 network shows that Natura 2000 is *not a perceivable obstacle* to the regions' economic development.

Evidence

Several examples tend to indicate that Natura 2000 is directly or indirectly linked to social or economic benefits. The positive regional economic effects of Natura 2000, especially in terms of value creation and employment, however, depend on specific factors such as the allocation of resources in the administration, the provision of institutional support and the commercialization – above all through local enterprises – of regional products. They reflect the regional economic concept designed by each region (Getzner 2003).

Example Y1-1:

In the programming period 2007-2013, Austria carried out 1.026 nature protection projects. According to the project leaders, 25% of these projectscontributed to improve agricultural revenues, e.g. by establishing landscape preservation associations or supporting the joint development of products certificated by nature parks (e.g. grass-fed cattle from the Wienerwald Biosphere Reserve). Such products provide farmers with sustainable revenues (Pinterits 2014: 74).

Example Y1-2:

Natura 2000 can also support small-scaled tourism: The results of a project for the protection of graylings in the Lafnitz river have been integrated as cornerstone in a programme for the development of soft tourism in South Burgenland (Pinterits 2014: 45). Conservation projects are a chance for tourism, especially in far-flung regions. The Natura 2000 site and national park Hohe Tauern, with about 30.000 visitors annually, is the main reason why people spend their holidays in the region. It therewith has a decisive impact on the economic situation in the region – e.g. the tourist accommodations record a continuous increase in the number of overnight stays.

Example Y1-3:

Model calculations for four regions indicate that in three of them, the establishment of a protected area had a minor, up to significant, positive impact on value creation and employment (Getzner, 2003).

Modelled region (the regions are Natura 2000 areas)	Regional value creation in €	Employment effect in persons/year
Waldviertel	100.000-300.000	3-14
Verwall	1 million	> 27
Karwendel	3,3 millions	86

Example Y1-4:

In the framework of this questionnaire, a rough statistical analysis examining the share of negative, neutral and positive perceptions of the Natura 2000's contribution to the employment situation in the three sectors of the economy has been carried out[4]. The first results indicate that, although there is no significant difference between areas situated within and outside the network, the economy of some regions within Natura 2000 did gain impetus. The difference in the primary (agriculture/forestry) and tertiary sectors (services), given the repartition of the labour force, is small between municipalities with a large proportion of Natura 2000 areas and municipalities with only a few of them or none at all. In the secondary sector (industry), the difference is a little bit higher.

All in all, these first findings indicate that Natura 2000 is *no perceivable obstacle* to the regions' economic development.

Proportion of Natura 2000 areas by municipality	Percentage of employment in the primary sector	In the secondary sector	In the tertiary sector
Less than 50%	18,07	26,97	54,96
51- 80 %	19,09	21,36	59,55
More than 80%	20,31	19,58	60,11

In five Natura 2000 sites (Karwendel, Wienerwald Thermenregion, Neusiedler See Nordöstliches Leithagebirge, Totes Gebirge with Altauseer See, parts of southeast Hügellandes in Steiermark, including Höll and Grabenlandbäche), the municipalities located within Natura 2000 areas performed just as well as those across Natura 2000 sites' boundaries. Natura 2000 has not been found to have any positive or negative impact on the number of tourist facilities, overnight stays or 4- and 5-star hotels. The share of the labour force employed in the tertiary sector is predominant in 4 of the analysed regions (out of 5) and the proportion of the labour force employed in the secondary sector is a little bit lower, with the exception of one region.

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).

[4] Source: Statistik Austria

Conclusion

The main EU funding opportunities (EAFRD, LIFE) are moderately to very well available in Austria for the implementation of Natura 2000 measures. The success of the EU's nature conservation directives and their positive impact on biodiversity are very closely linked to the success of the implementation of nature conservation measures in these two EU funds (see also question p. 3). On the other hand, ERDF was and remains hardly available to nature conservation measures in Austria –except for the transnational projects (Interreg).

Evidence

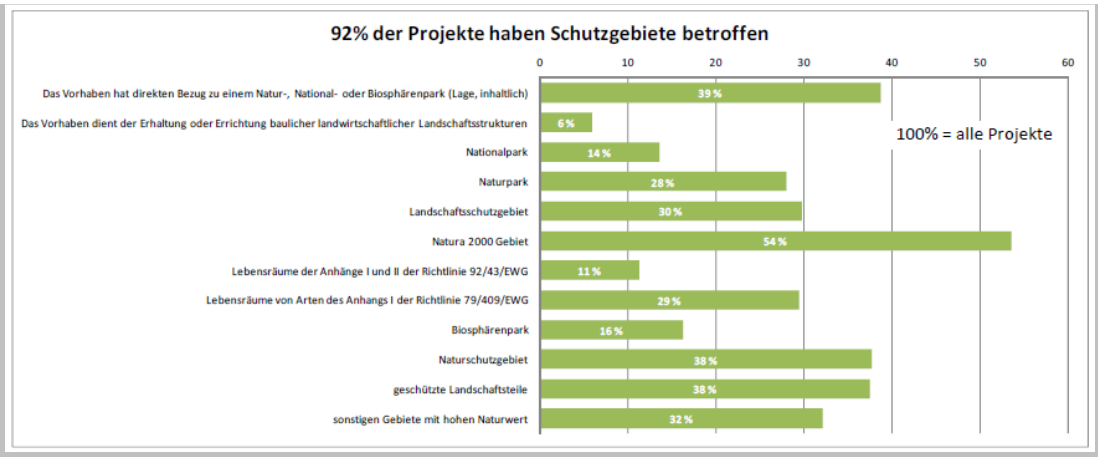
EAFRD

From 2007 to 2013, Austria has particularly successfully implemented the EAFRD measure M323a (Conservation and improvement of rural heritage in the field of nature protection). The aim was to preserve and develop high-value resources in terms of nature conservation, and to safeguard the regional character of the cultural landscape, particularly of habitats and species that are protected by Directives 79/409/EEC and 92/43/EEC. Projects with the following aim were funded through the Measure 323a:

Gegenstand	Kurztitel	Förderbare Inhalte
14.2.1	**Naturschutzpläne, Studien und Untersuchungen**	**Bewirtschaftungs- und Naturschutzpläne** für Land- oder Forstwirte, **Landschaftspflegepläne, Managementpläne** für Natura 2000 Gebiete oder andere geschützte Gebiete (Landschaftsschutzgebiete, Natur- und Biosphärenparks); **Entwicklungskonzepte sowie Studien und Untersuchungen**, einschließlich sonstiger Grundlagenarbeiten zur Erhaltung und Entwicklung wertvoller Strukturen und Lebensräume.
14.2.2	**Biotopschutz- und Entwicklungsprojekte**	**Biotopschutz- und Entwicklungsprojekte** inkl. Renaturierungen wertvoller Feuchtlebensräume, sowie die Herstellung und Erhaltung von Landschaftsstrukturen inkl. Trockenmauern, insbesondere zur Erhaltung und Entwicklung von Lebensräumen und Arten, die durch die Richtlinien 79/409/EWG und 92/43/EWG geschützt sind, einschließlich Kosten für den Grunderwerb
14.2.3	**Schutzgebietsmanagement und Betreuung von Schutzgebieten**	**Schutzgebietsmanagement und Betreuung** für Natura 2000 Gebiete oder andere geschützte Gebiete (Landschaftsschutzgebiete, Natur- und Biosphärenparks)
14.2.4	**Infrastrukturmaßnahmen für Erholung und Wissensvermittlung in Schutzgebieten**	**Infrastrukturmaßnahmen** für die landschaftsgebundene Erholung und Wissensvermittlung in Natura 2000 Gebieten, Natur-, Biosphären- und Nationalparks und sonstigen Gebieten mit hohem Naturwert, wie insbesondere BesucherInnenleitsysteme
14.2.5	**Bewusstseinsbildung im Naturschutz**	**Bewusstseinsbildende Veranstaltungen und Materialien**, wie insbesondere Tagungen, Exkursionen, geführte Wanderungen, Konzeption und Herstellung von Naturlehrpfaden und Broschüren, sowie sonstige Infrastrukturen zur Sensibilisierung und Bewusstseinsbildung der Bevölkerung für Naturschutzthemen

Source: Pinterits et al. 2014: 12

In the programming period 2007-2013, 1026 projects were implemented through this measure, with a total funding of EUR 75 million (cf. Pinterits et al. 2014: 13). Out of the projects funded in the programming period 2007-2013, 54% concerned a Natura 2000 area; 29% concerned habitats and species covered by the Annex I of the Directive 79/409/EEC; and 11% concerned habitats covered by the Annexes I and II of the Directive 92/43/EEC (see the following figure; cf. Pinterits et al. 2014: 19).



Source: Pinterits et al. 2014:19

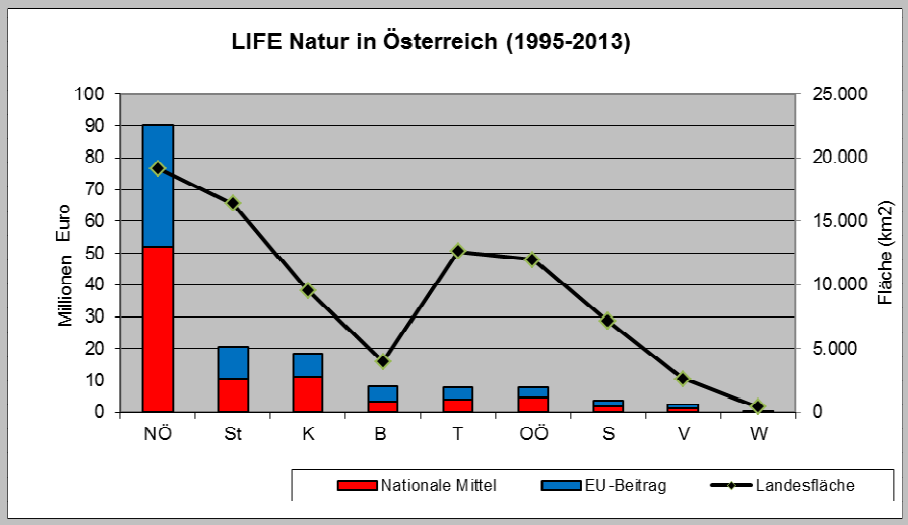
According to the project leaders, approx. 80% of the projects funded have directly contributed to the conservation of habitats and species. Each of the projects funded through M323a has indirectly contributed to the conservation of habitats and species (cf. Pinterits 2014: 26).

26% of the projects were designed as a contribution to the development of specific biotopes and habitats, and required the purchase of land. These constitute a base for the conservation or the upgrading of ecologically valuable habitats or the resettlement of rare or endangered species or species of European interest (cf. Pinterits 2014: 71). Implementations in the EAFRD have been weak for forests in comparison.

LIFE

Since its accession to the EU in 1995, Austria has carried out 49 nature conservation projects under LIFE, with a total funding of EUR 159 million. EUR 70 million (44%) were co-financed by the EU; EUR 89 million (56%) stemmed from national funds.

The majority of the LIFE-funded projects were devoted to the conservation of natural habitats in rivers and forests. About one-fifth of the projects was devoted to the protection of bogs. Several individual projects focused on the protection of particular species such as the Bearded Vulture, the Brown Bear, the Great Bustard or the Danube Salmon. The good cooperation between the various stakeholders involved, whether in nature conservation, agriculture, forestry, hydraulic engineering, torrent and avalanche control, fisheries or tourism, significantly contributed to the success of these projects.



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.

Conclusion

Many member states had higher implementation costs, in the framework of PHARE, but they could thereby build up awareness and knowledge among their authorities and the citizens and also improve the availability of data. Austria would have certainly needed a comparable approach in the first 10 years (e.g. Twinning projects).

Evidence

One of the most important cause for the weak transposition of the Directives in Austria was the lack of awareness and knowledge regarding European law. The poor availability of data concerning the occurrence of habitat types or animal species also impeded – and continues to impede – the process.

Awareness and knowledge-building as well as habitat mapping were important components of many PHARE projects in the new member states. These promoted the exchange of valuable experience between member states, which proved very helpful to the process of transposing EU law. EU-funded Twinning projects with other countries would have helped considerably Austria bridge these lacunae.

In Austria after 20 years of EU membership, only 19 % of the citizens know what Natura 2000 is, compared to 45 % in Bulgaria 8 years after having joined the EU (Eurobarometer 379, http://ec.europa.eu/public_opinion/flash/fl_379_en.pdf).

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.

No.

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.

Conclusion

The early involvement of nature conservation experts in the planning process leads to better project solutions. It preserves from cost-intensive planning failures and broadens the horizon of alternatives. This also leads to easier and more constructive negotiations between ecologists and project designers.

Evidence

Example Y5.1

In contrast to most of the other Austrian federal states, in which windmill-powered plants projects are analysed on an individual basis, Burgenland has seized the opportunity to carry out an in-depth examination of nature conservation concerns at an early stage as part of a larger-scale plan. The collective interests of nature conservation, thereby, could be harmonized with those related to the exploitation of sustainable energy. The best and least suitable areas for windmill-powered plants were defined in the framework of a regional concept for spatial planning, in an attempt to conciliate the wind farms' operators' need for planning security and the environmentalists' concerns regarding, in particular, the respect of the Birds Directive. This consensual approach enabled Burgenland to reach numerical self-sufficiency in electricity production, just 11 years after the first regional framework had been set up (WWF Austria o.D.). Over the same period, the stock of globally endangered bird species like the Imperial Eagle (*Aquila heliaca*) and the Great Bustard (*Otis tarda*), which had to be protected in the first place through wind farms exclusion zones, has grown satisfactorily (Dvorak & Ranner 2014).

The advantages of the Burgenland's approach are (WWF Austria o.D.):

- higher planning security for investors
- time and cost savings for the authorities and the project applicants
- better acceptance in the population

Example Y5.2

In Vorarlberg, a highway (S18) is planned to run through a Natura 2000 area (Lauteracher Ried, Unteres Rheintal). After delays caused by ECJ's proceedings 15 years ago in the region's planning because of the lack of designation of a bird conservation area, the federal state of Vorarlberg did not want to risk another impediment. This time, the environmental compatibility of the route was evaluated before the beginning of the official project planning. The first result was also negative, since the projected road would have entailed a significant damage to the Natura 2000 area. Its pursuit, in its initial condition, would have led to cost-intensive delays. The authorities in charge then asked experts to analyze all the ecological or technical issues previously identified and to propose alternative solutions. The discussions considered changes in the position of motorway junctions and radiia and the building of new tunnels as possible solutions, and also considered the costs and feasibility of these measures.

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).

Conclusion:

The non-implementation of the legislations is a source of legal uncertainty and leads to delays in

procedures, which in the case of larger projects may entail additional costs totaling several million Euros.

Evidence:

The weak transposition of the Directives in Austria, in many projects, is a source of legal uncertainty. The planning and assessment of infrastructure projects require reliable knowledge as regards the official boundaries of legally designated Natura 2000 sites, the precise localization of the species and habitats of European interest as well as the conservation objectives set up for the area.

Delays in larger projects can generate additional expenses of considerable amounts. In addition to inflation-related costs (entailing higher costs for the whole project), delays entail extra costs for changing the plan, re-working the basics of alternative plans and possibly major replacements. For those projects budgeted over EUR 1 million, such extra costs can be a strain on the means available.

Example Y6.1

The planning and construction of the Highway S18 in Vorarlberg are in the projecting phase since 1995 owing to the lack of designation of a SPA. The detailed cost estimates in 2014 have shown that a 10-year delay in the construction would entail an extra EUR 139 million in inflation costs only (construction costs at the state of operation in 2015: EUR 497 million; construction costs at the state of operation in 2025: EUR 636 million). This sum does not include the additional costs stemming from changes in the designation of protected areas.

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.

Conclusion

The administrative requirements of the Directives have not caused any unnecessary burden to the administration, the non-governmental organizations, the citizens and the investors. The new requirements for the protection of biodiversity, of course, imply some administrative work, as it is the case with any new regulation. In Nature Impact Assessments matters, there are a number of examples showing how the procedure, especially the screening, can be designed in a short and un-administrative way. In agricultural matters, the requirements set up by the Directives have been incorporated into the existing administrative system and have not brought about any disproportionate additional burden.

Evidence

Some federal states in Austria have advanced an innovative way to meet the administrative needs for appropriate screening (in relation to Nature Impact Assessments) in a simple and citizen-friendly manner. Pre-tests clarifying whether the Nature Impact Assessment is needed for a plan or a project can be carried out in a few weeks. In some federated states, the result is communicated to the investors in form of an official note or a legally valid letter of the provincial government.

Example Y.7-1

The federal state of Lower Austria developed in 2002 a screening datasheet, in which the investors had to indicate all the implications their project could potentially have for the Natura 2000 targeted areas. Instead of extensive irrelevant technical project documentation, the investors were asked to focus on the potential effects of the project, which they had to clearly summarize for the attention of the administration. This procedure resulted in short evaluation phases (4 weeks on average, with 9-10 days for the evaluation by the experts and the rest of the time due to the completion of deficient datasheets, to mailing time [hardcopy] and administration). At that time, a trained team of evaluators existed in Lower Austria. The team was composed of technical experts (e.g. herpetologists, ornithologists, vegetation ecologists), who, putting heads together, could provide technical advice in a relatively quick manner. 52 % of all proposals could be granted without further impact assessment, since adverse effects on the integrity of the respective site could be excluded without doubt. In 2006, the service was unfortunately suspended for political reasons.

Beside the administrative requirements for appropriate assessments, numerous requirements exist, especially in the field of agriculture, which imply agro-political changes. They concern in particular the Cross-compliance and Greening of Pillar 1 and the framework conditions of the Rural Development in the pillar 2. But the requirements of the EU Nature Directives in this area have been incorporated into the comprehensive bureaucratic system already existing for the agriculture and have not led to additional unnecessary expenses (e.g. technical inspectors, in addition to vetting ground water and hygiene, also control the fulfillment of the requirements of the Habitats and Birds Directives).

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.

Conclusion

The state of knowledge of the relevant stakeholders on the EU Nature Directives is still relatively low in Austria. However, there are differences between representatives of the administration and stakeholders, with generally lower, albeit very heterogeneous, level of knowledge, and the NGOs with a considerably higher level of knowledge. Several "big stakeholders" such as the investors or the lobbyists are also well-informed about the nature conservation requirements of the Community law.

Evidence

The state of knowledge and the exchange of experiences between the members of the administration in charge of nature conservation are very low in Austria. Nature impact assessments or screenings are conducted by officers from the district headquarters or from the office of the provincial government. Approx. 300 technical experts are currently involved in Austria, directly or indirectly, in one dimension of the Nature Directives or another. The domain has not been entrusted to a handful of experts and remains the competency of the broader federal organisation. Since the accession of Austria to the EU, there has not been, however, a single nation-wide training for experts, and there has not been cross-border exchanges either to improve the elaboration and edition process of expert reports or other position statements. Currently, the level of expertise in the field strongly depends on the personal involvement of the individual experts. There are several experts very committed to the topic (approx. 10% Austria-wide) and numerous officials with medium or low level of knowledge. Each of the nine Austrian federal states has a competent authority for Natura 2000 and a main official in charge. The nine officials in charge have a high level of knowledge and meet on regular basis for coordination. This knowledge is insufficiently passed to other levels. The evolution of the level of knowledge of the investors/project

leaders/stakeholders is contrastingly higher. The major investors in the field have an especially high interest for understanding the EU Nature Directives.

The basic idea is simple: long and costly lawsuits should be avoided. The ASFINAG has published a guide for "Natura 2000 and species conservation"(SUSKE 2011). It is a 170-page document consisting in the position statements presented in a clearly understandable manner for relevant planning topics and offering practical support. Moreover, a person only responsible for Natura 2000-related matters has been employed last year.

The Austrian Ministry for Transport, Innovation and Technology gives binding directives on a regular basis for national roads, highways and railways, which describe, inter alia, how planning processes must be designed in order to sufficiently take into account Natura 2000 and EU species protection requirements (*z.B. RVS 04.03.13*). Topics such as the definition of a significant nuisance for a population or a Natura 2000 area are addressed in a way the users – the project planning offices and infrastructure evaluation authorities – are able to clearly understand.

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.

Conclusion

The key problems facing species and habitats are adequately addressed by the EU nature conservation legislation, since (1) 81,6 % of the relevant threats and pressures to the habitats and species of Community interest in Austria can in principle be regulated by the legislation and (2) the EU nature conservation legislation, in particular, is independent from the type of threats or pressures exerted, for it is effect-based rather than pressure-based.

Evidence

1. "key problems"

The key problems have been analysed on the basis of the study on the conditions and factors for achieving a favourable conservation status of the habitats and species of community interest in Austria (Ellmauer 2005). This comprehensive compilation lists the most relevant endangerment factors in terms of incidence and severity for each species and each habitat type in Austria.

The majority of the species is affected by far by threat factors, which can generally be controlled through the permit requirements (article 6 (3) of the Habitats Directive) or by the species protection provisions (article 5 of the Birds Directive and article 12 of the Habitats Directive): 73.7 % of species and habitat types are affected by changes in the agricultural and forestry use, 61.9% by the establishment (or use) of infrastructures and 50.8% by hunting, fishing and other forms of human use (e.g. disturbance through recreational use).

On the other hand, the influence of factors, which cannot (only) be controlled by the EU nature conservation legislation, is relatively low: for 27.1% of the species and habitat types, the threat factors cited relate to air pollution, water pollution and climate change and are therefore partially or mainly subject to the influence of other policies. 14.8% of the species and habitats are threatened by other species, particularly by invasive alien species (the influence of which can generally be at least reduced by appropriate management). Not a single object of protection is subject exclusively to threat factors that in principle cannot be influenced by the EU nature conservation legislation. Even the habitat type 8340 – permanent glaciers is not only threatened by climate change, but also – and often much more directly – through tourism development. Overall, 81.6% of the main threats and pressures can be controlled by the EU nature legislation alone; only 18.4% of them require at least the participation of further policies. These findings strikingly contrast with figures in policy papers taken without comparable analysis: in the Austrian Biodiversity Strategy 2020+ (Stejskal-Tiefenbach et al. 2014), climate change and the spread of invasive alien species are listed in the first place as essential threats to biodiversity. The influence of these factors on biodiversity is obviously overestimated, whereas the influence of factors that are directly within the control of nature conservation legislations is significantly underestimated.

2. "addressed by the EU nature legislation"

The rules of intervention in Natura 2000 areas and the provisions regarding the protection of species are not bound to risk factors, but to their prospective effects. In the directives, there is no list presenting the types of

projects or threats; independently of the specific factors, there are applicable criteria like compatibility with the conservation objectives set up for an area (article 6 (3) of the Habitats Directive) or damage to or destruction of reproduction and resting places (article 12 (1) of the Habitats Directive). The provisions, then, are flexible and applicable to a wide spectrum of threats and pressures, inasmuch as these can be handled through instructions, prescriptions or active management.

In its ruling of the case C-98/03, the European Court of Justice has explicitly highlighted the meaningfulness of this effect-related approach in comparison with provisions based on specific risk factors (p 68: „In particular, it does not appear that the prohibition on using pesticides, where it is foreseeable that it will produce seriously harmful effects on the balance of nature, is as clear, precise and strict as the prohibition on the deterioration of breeding sites or resting places of protected animals (...)".). At the same time, the ECJ's Advocate General has repeatedly rebuffed national rules, which considered a certain type of projects from the outset as non-damaging for the environment or excluded them from the case-by-case assessment process (C-98/03, p 41 und 43-44; C-256/98, p 39; C-6/04, p 47; C-241/08, p 55 und 57-62; C-538/09, p 43 und 56).

Another key to success for the EU's Nature Directives is the irrelevance of the place where nuisances arise. While other legal frameworks set different threshold values to emission limits, in residential or industrial areas for instance, the only criteria applicable in the Nature Directives is the effect these emissions have in Natura 2000 areas and their impact on protected species.

The ECJ has emphasised, inter alia, the principle, that only the impact on the species and habitat of European interest should be evaluated, irrespective of the source of the nuisance when considering the limits of the protected area (see the decision for case C-98/03 (p 32: "(...) In its definition of measures to be subject to an assessment of the implications, the Directive does not distinguish between measures taken outside or inside a protected site".).

The applicability and effectiveness of the EU Nature Directives are therefore to a large extent independent from concrete threats and pressures as well as from their place of occurrence. They can be better uphold and also respond to the latest developments in scientific knowledge without being first subject to legal adaptations. The provisions of the Nature Directives exemplify in this sense what simple and effective regulations should look like. They do not convey an overload of concrete specifications, which would require being constantly updated and adapted.

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.

Conclusion

The Annexes have been sufficiently adapted to technical and scientific progress to serve their purpose. Due to the checks and balances provided by the consideration of habitats and species, and of species of different taxonomic groups, the system as a whole is buffered against minor gaps in the Annexes. To this date at least in Austria the effects of insufficient implementation of the Directives are much more relevant than the possible effects of gaps in the Annexes. However the quality of the adaptations in the course of the enlargement of the EU depends on the proposals provided by the respective joining Member States. Future adaptations may need more guidance by the European Commission. Moreover, more regular taxonomic revisions of the Annexes of the Birds and Habitas Directives are needed to avoid confusion of stakeholders without sufficient taxonomic expertise.

Evidence

The adaptation of the Annexes to technical and scientific progress should be composed of following aspects:

1. *Adaptation to the enlarged reference area with accession of new Member States*

The Annexes have been complemented throughout the enlargement of the EU. This form of adaptation of the Directives is hence well established. Today Annex I of the Birds Directive, e.g., lists 193 species and sub-species

compared to only 74 in the original version of 1979, focussing on the then much smaller EC. There obviously has been considerable adaptation following the enlargement of the EU. However, the EU strongly relies on the respective competence of the accessing States, as they suggest new species and habitats to be protected. As shown in a comparison of the number of Annex–species in different Member States (Cardoso 2012), this process has obviously been designed in variable quality by the individual States. A stronger role of the European Commission is therefore desirable in the course of future accessions of new Member States.

2. *Adaptation to the new taxonomical state of knowledge*

Since scientific names of species are continuously subjected to adaptation to the current state of knowledge, a taxonomical revision of the Annexes in bigger intervals would make sense. For example, „Myotis blythii" is listed in the Annex II of the Habitats Directive. New findings show that this species is found only in India, whereas the European populations, previously attributed to M. blythii (and which should be protected by the Habitats Directive), are actually a separate species, M. oxygnathus (Spitzenberger 2001). Therefore, the name Myotis blythii should be replaced by Myotis oxygnathus in the Annex II. There are several similar cases. There is no doubt that professionals know which taxa are meant by the name in the directives, so that errors, for example in site designation, can be excluded. However, in the communication with stakeholders who do not have taxonomic expertise, it can lead to confusion if for example a species listed in Directives and standard data forms do not appear in the current checklists and Red Lists of a country.

3. *Adaptation to the current state of knowledge concerning the degree of endangerment of the species and habitat types*

There has been some adaptation independent from the accession of new Member States. For instance, Corn Crake (Crex crex) has been added to Annex I in 1987, and Great Cormorant (Phalacrocorax carbo) has been deleted from Annex I of the Birds Directive in 1997, because its populations had shown a strongly positive development in Europe (http://ec.europa.eu/environment/nature/cormorants/faq.htm). However, obvious deficits can be seen when comparing the Annex I species with the last version of the List of SPEC published by BirdLife International (BirdLife International 2004): For example, populations of meadow birds such as Northern Lapwing (Vanellus vanellus), Eurasian Curlew (Numenius arquata), Common Redshank (Tringa totanus) and Black-tailed Godwit (Limosa limosa) have dramatically decreased and are therefore listed in categories SPEC 2 or 3, but have still not been included in the Annex I of the Birds Directive. In general, the EU-wide decline of farmland birds would justify a revision and an extension of Annex I of the Birds Directive based on the revision. The situation is similar for the species listed in Annex II of the Habitats Directive: Many species which today are endangered in the EU according to the respective European Red Lists of Vascular Plants (Bilz et al. 2011), Freshwater Fishes (Freyhof & Brooks 2011) and Butterflies (Swaay et al. 2010) are not listed in Annex II or IV of the Habitats Directive.

However, the relevance of these deficits is limited for several reasons: (1) According to Art. 4 (2) of the Birds Directive, SPAs have to be established not only for the bird species listed in Annex I but also for migratory bird species. (2) In many cases the habitats of endangered species are already covered by either habitat types or by the habitats of Annex-species (see example of the Lower Austrian species conservation concept referred to under S.2). (3) The completion of the Natura 2000 network seems to be more urgent than the revision of the Annexes. In Austria the network is still incomplete (Europäische Kommission 2013).

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 nature 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.

Conclusions

The Directives, together with the established support instruments, make an important contribution to sustainable development. Many instances testify that the protection of the natural heritage could be conciliated with the interests of the land-users, and that this nexus promotes innovation in the regions. Protected areas also offer the possibility to develop under their name a quality seal for regional product-branding and therewith support local sales.

Evidence

In the programming period 2007-2013, Austria carried out 1.026 nature protection projects with total funding of EUR 75 million following the measure 323a (Pinterits et al. 2014: 13). 25% of these projects, according to their applicants, made a contribution to improving agricultural revenues, e.g. by establishing landscape preservation associations or jointly developing products from nature parks or reserves of the biosphere with certificate (e.g. grass-fed cattle from the Biosphärenpark Wienerwald or the Biosphärenparksteige with products from the Lungau Region). Such products provide farmers with sustainable revenues.

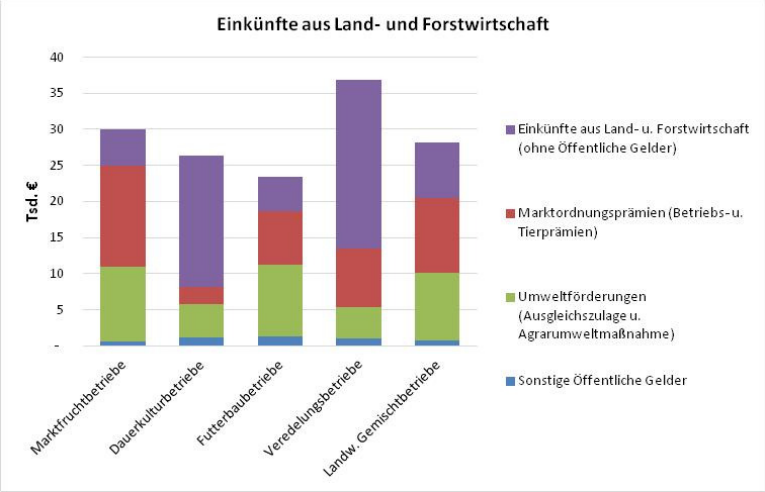
Examples R.3. -1: (Suske 2012)

- The farm Sinkovics in the Natura 2000 site „Auwiesen Zickenbachtal“, Burgenland. Every year, the meat of approx. 60 oxen grazing in the site is put on the regional market at retail and through catering.
- The farm Sparr in Biosphere reserve Großes Walsertal. 40% of the revenues of the firm are produced by renting guestrooms. The guests come above all because of the wild nature and beautiful orchid-covered meadows. The firm draws further revenues from guided tours and beekeeping training seminars for vacationers.
- The farm Angster in Nature park Leiser Berge. 25 % of the firm’s revenues are yielded by the direct marketing of wild fruit products as “nature park speciality”.
- The farm Löschenkohl in the Natura 2000 site „Mannsberg – Boden“. 50% of the firm’s revenues are yielded by the marketing of bio-hay products and 25% by the sale of bio-meat (Netzwerk Land 2012).

In 90% of the cases, the project promoters consider that their endeavour contributes to advance knowledge and develop competences in nature conservation matters. Through the projects, the personnel is trained (e.g. National park Ranger Hohe Tauern), seminars are organised for municipalities (Biodiversity in your Community) and other formations are offered, e.g. in nature watching. Projects aiming at the protection and development of biotopes also have indirect effects. For instance, the revitalisation of particular areas creates new opportunities for external guides to organise nature tours, which can also be offered to schools (Pinterits 2014: 50).

The valuable areas, furthermore, are very important for the redistribution of funding in economically weaker regions: the size of HNV farmland in Austria lies, depending on the stringency of the delimitation criteria, between 288.000 ha (delimitation through stringent criteria) and 1,14 million ha (delimitation through more general criteria). These valuable areas include a large part of the habitat types and encompass the living space of many birds and species of European interest. They consist of extensively used meadows and pastures, especially species-rich grasslands (hay meadows and pastures used once or twice) and alpine meadows and high pastures. There are also extensively used agricultural crop lands, little fertilised and on which little if no pesticide is used (Umweltbundesamt 2011).

HNV farmlands are located in economically weaker regions, like for instance mountain areas or remote rural areas, i.e. where an economically profitable agriculture can hardly grow, given the unfavourable natural conditions. Such regions harbour *forage grower farms* and *mixed agricultural holdings* yielding revenues close to minimum incomes. For them, nature conservation programmes understandingly play a particularly important role (Suske 2014).



The supporting measures of the ÖPUL "nature protection", "mowing of steep hillsides", "management of mountain meadows" as well as "relinquishment of silage" benefit above all to HNV farmland areas. The volume of the aid conveyed by these measures amounted between 1995 and 2013 to approx. EUR 1,6 billion (Grüner Bericht 2014, table 5.2.16). Measures supporting environment protection have thereby indirectly contributed to support regions exposed to economical weaknesses.

Example R.3 - 2

The existing state road B17, characterised by heavy traffic originating from gravel extraction areas and commercial areas as well as by a generally high traffic load due to regional commuting traffic, goes through the centre of two neighbouring villages. A bypass was declared a high priority project by the Lower Austrian traffic planning authorities.

Even before the technical road planning began, it was agreed at political level to establish a particular bypass route, which conflicted with nature conservation priorities. The political authorities tried to circumvent a Natura 2000 designation in order to facilitate the construction of the road. Following a complaint by Austrian NGOs, the European Commission initiated an infringement procedure (INF 99/5005), which resulted in the designation of the Natura 2000 site „Steinfeld".

The derogation procedure, according to article 6 (4) of the Habitats Directive, resulted in the adoption of an alternative solution. Compared to the original bypass route, the alternative solution selected by the planning team, according to Grössinger (2005) implied

- reducing the costs for compensating companies (loss of gravel extraction and waste deposit volumes) by about EUR 7,1 million;
- reducing the impact on habitats and species of Community interest by about 50 % and thus reducing the costs for the acquisition of land for compensation measures by about EUR 4,2 million;
- minimizing the noise load in settlement areas neighbouring the bypass route by 5-6 dB.

In comparison with the original solution, the much more stringent planning process required by Article 6 (4) of the Habitats Directive helped to ensure that (1) the needs of the present generation are met (derogation granted, noise load reduced) (2) without compromising the ability of future generations to meet their own needs (reduced loss of gravel extraction and waste deposit areas, reduced financial burden) while (3) considerably reducing the impact of the project on habitats and species of Community interest.

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.

Conclusion

EU nature legislation is highly relevant to Austrian citizens since it urges the authorities to respect the public high consideration for nature and conservation. While nature seems to be the core value of Austrian citizens, compliance with EU nature legislations by Austrian authorities has been poor (S.1.1, S.1.2). Opinion polls invariably identify nature and the beauty of Austrian landscapes as those features most citizens are proud of and identify with. This expression of opinion is backed by a relatively high level of knowledge on biodiversity and the threats to it, as well as by taking political action. On the other hand, information status on EU nature legislation is not very high, though above average and rapidly increasing during the last years.

Evidence

Opinion polls conducted both by quality papers (http://derstandard.at/1350259333391/52-Prozent-Oesterreich-steht-besser-da-als-uebriges-Europa) and tabloids (http://www.oe24.at/oesterreich/chronik/Umfrage-Worauf-die-Oesterreicher-stolz-sind/162742879) identified nature (or the beauty of Austrian landscapes) as the one features in Austria, which most Austrian citizens were proud of: 85 and 83 %, respectively. Arts and artists received 42 % (and 50 %), sports and athletes 39 % (and 37 %). At the bottom of the list, the citizens praise the least the international reputation of their politicians (with only 1 % and 3 % of approval).

Flash Eurobarometer 379 (http://ec.europa.eu/public_opinion/flash/fl_379_en.pdf) shows that Austrian citizens are the more likely to know the term biodiversity (80 %) and to feel informed about biodiversity loss (61 %) than all other EU citizens. Austrian citizens' support for the view of biodiversity loss as a very serious problem (74 %) is second only to that of respondents in Portugal. 96 % of Austrian respondents identify intensive farming, deforestation and over-fishing as threats to biodiversity.

Austrian citizens are highly prepared to take political action for the conservation of nature: The most noteworthy example is the occupation of the Hainburger Au in 1984 when parts of the alluvial forests of the Danube floodplain was occupied by demonstrators in order to (successfully) prevent the construction of a hydro-electric power plant (http://en.wikipedia.org/wiki/Occupation_of_the_Hainburger_Au).

Given the high regard for nature and the good knowledge base on biodiversity, the Natura 2000 network is yet not very well known in Austria (Eurobarometer 379). There may be several reasons:

- The term "Natura 2000 site" is not used as an official category of nature reserves. Most Austrian provinces use instead the term „European protected area".
- Some of the most prominent Natura 2000 areas have also been declared national parks. This trademark seems to be more attractive for tourism.
- The process of site designation is no success story, with an ECJ ruling against Austria concerning the SPAs and a pending infringement procedure concerning pSCIs. Authorities and politicians, therefore, are not likely to draw attention to the network.

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.

Conclusion:

Since the role of the EU and the role of Austrian authorities are not yet well understood by most citizens, at the moment only a minority of citizens would be able to make an informed decision on these questions. However, leaving nature protection to each individual member state would obviously not meet the expectations of Austrian citizens for the protection of nature in general (see R.4): Austria has ratified the Bern Convention in 1983 but has taken very little action prior to its EU accession in 1995. Even after joining the EU, the Austrian authorities failed to fulfil the obligations deriving from the EU nature legislation (see S.1.1, S.1.2). Consequently, 66 % of Austrian respondents think that the government is not doing enough to protect the environment (Special Eurobaromenter 416).

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.

Conclusion

The objectives set up by the Directives are fully coherent. This could be expected since both Directives have been adopted with the aim of implementing the same international legal instrument (the Bern Convention) into Community law. The objectives, from the strategic objectives down to the specific and operational objectives, are based on and in line with the provisions of the Bern Convention.

Evidence

While the structure of the two Directives is not strictly parallel, giving an impression of inconsistencies at first glance, it appears in fact that clear, similar and sometimes even identical formulations of the references to all the essential targets of the Bern Convention can be found in both the Birds Directive and the Habitats Directive. The only serious difference, i.e. the regulation of interventions in the protected areas, has been resolved already by article 7 of the Habitats Directive, which regulates the application of article 6 (3) and (4) also for SPAs.

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.

Conclusion

The Directives are adequately integrated in the policies relevant to Austria (SEA, EIA, WFD) and they are given consideration in the process of transposition. There is so far no appreciable conflict of goals at policy level. At projects' level, there are recurrent conflicts of objectives, which, however, can often be harmonized as the individual processes move forwards. The developments in the field of "renewable energy", which could increasingly affect valuable habitats in the transposition, is seen as very sensitive and disharmonious.

Evidence

The Directives are integrated parts of the SEA, EIA and WFD. Owing to the federal organisation of nature protection in Austria, the transposition is complicated, but it is not related to any appreciable conflict of goals at policy level. At the level of individual projects, conflict of goals may understandingly arise; they are addressed in the course of the proceedings, depending on the technical and legal possibilities available.

Problems arising at the projects' level are bound to proliferate in the field of "renewable energy". Therein, smaller projects and changes in use in individual areas are prevalent, which do not fall under SEA, EIA or any other appropriate assessment procedure. These areas, which were unproductive so far but ecologically very valuable, like wet meadows and alluvial forests, will become likely targets in the transformation of lands into areas devoted to the fast-growing of raw materials.

Conflicts of goals are also more frequent in the field of power plant construction. The installation of new power plants entails a series of changes in water flow dynamics, in the relationship between the body of water and the floodplains and the groundwater conditions. To ensure nearer to nature and more natural flowing waters, these areas should be protected from such nuisances. Watercourse areas, hitherto unused, natural to the greatest possible extent and flowing freely, should be saved from the construction of further power plants.

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:

Please see answers of our European ombrella organisation EEB

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.

Conclusion

The Directives are used by other programmes' individual evaluations (especially in agricultural and rural development). Depending on the results of the evaluations, they also influence directly the measures taken in other policy fields.

Evidence

The Rural Development Programme (EAFRD) plays in Austria a central role in realising the objectives set up by the Directives. That is why its impact on the habitats and species covered by the Directives is regularly assessed. The results are taken into account in the preparation of the new programmes.

Example C.4-1:

An assessment study conducted in the framework of the measure of the ÖPUL "Ecopoint Lower Austria" [Ökopunkte Niederösterreich] found that the Annexe I habitat types 6210, 6230, 6410 and 6520 are used three times or even more frequently. These habitat types yet tolerate two-times uses at most, in order to ensure a favorable status of conservation. The whole scholarly literature considers that a more frequent use, combined with the more intensive use of fertilisers, is due to have negative implications, possibly leading to the destruction of those habitats, and that these effects, once arising, can hardly be reversed. The assessment then concluded that the areas cultivated in line with the ÖPUL requirements are exposed a high risk of substantially impairing the Natura 2000 conservation objectives through overly frequent exploitation (Wanninger 2013: 135f).

This circumstance has been taken into account in the preparation of the new Austrian programme for the development of rural areas 2014-2020. The participation in ÖPUL measures (which concern approx. 70% of the farms in Austria) is henceforth premised on the following conditions, in relation to the implementation of the Habitats and Birds Directives:

"Any enterprise entering an agro-environmental commitment shall respect the conditions defined in reference to habitats and species of Community interest in relation to the transposition of the Directives 92/43/EEC (Habitats Directive) und 79/409/EEC (Birds Directive). Areas characterized by habitat types 6170, 7230, 6260, 1530, 2340, 6210, 6230, 6410, 6520, 5130, 6240, 6250, 6130, 6440, 6510 shall be exploited at least once, but may be mown twice at most. Grazing is only allowed to the extent that it fits the requirements of the corresponding habitat types. The conservation status of these habitat types shall be ensured or improved by such ecologically adequate management measures. This measure aims at particularly supporting the cultivation methods envisioned in management plans and contributes essentially to diminish the intensification of cultivation, detrimental to areas with Annexe features. The requirement shall ensure that the enterprises supported in the framework the agri.environmental measures take no action on subareas that may conflict with the objectives of Natura 2000. This commitment has no implication for the premiums calculated for each operation type, although in case of infringements, the premiums shall be reduced accordingly. The obligation is only applicable to the areas registered by the competent authorities at the level of the federal state and marked in GIS of the paying agency AMA (see BMLFUW 2014: 4).

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.

Answer:

Please see answers of our European ombrella organisation EEB

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:

Conclusion

For the authorities and stakeholders used to apply the Birds and Habitats Directives throughout the EU, the beneficial implications of the EU's nature legislation in ensuring a level playing field for economic operators may now be taken for granted. It should be recalled, however, that avoiding economic and competition-related distortions was one of the reasons why the Habitats Directive was adopted in the first place. A survey of the nature conservation legislation of the nine Austrian federal states prior to Austria's accession to the EU reveals a proliferation of divergent measures. Only with the implementation by Austria of the EU's nature protection legislation did it become possible to create nature conservation planning tools and guidance, both for the authorities and the stakeholders, applicable to the whole of Austria.

Evidence

One has to bear in mind that one of the reasons for which the Council adopted the Habitats Directive was "to avoid the adoption by the Member States of divergent measures likely to bring about economic and competition distortions in the common market" (EEC Fourth Environmental Action Programme, Official Journal of the European Communities No. C 328).

The nature conservation legislation of the nine Austrian federal states prior to Austria's accession to the EU was a classic example of an uncontrolled growth of legislation. It represented a major obstacle for companies to operating in several federal states. This is described in detail by Tiefenbach (1998) and can be summarised as follows:

- The regulation applying to projects that were subject to authorisation was different across the federal states, in terms of plans as well as possible thresholds. The impact-based criteria of both the Birds and the Habitats Directives contrast therein with their clear and unified elements (see Question R.1)
- While there was no provision for the general protection of certain habitats in Lower Austria, wetlands and alluvial forests were protected in Burgenland, watercourses and its banks were protected in Upper Austria and Styria, aquatic habitats were protected in Tyrol, the Alpine ecosystems and glaciers were protected in Carinthia and Salzburg, and all these habitats plus the nutrient-poor grasslands were protected in Vorarlberg. The content and spatial delineation of these habitats were often unclear. No doubt that the exhaustive lists of habitats of community interest provided by the Annex I of the Habitats Directive, completed by the Interpretation Manual of European Commission (European Commission 2007b), now provide a fully transparent basis for planning in comparison with those days.
- In nature protection areas in Burgenland and Carinthia, any intervention and entering were prohibited.

Lower Austria, Upper Austria, Salzburg and Vienna prohibited any intervention, whereas in Styria any damaging intervention was prohibited. In Vorarlberg and Tyrol, only certain measures were prohibited. By contrast, the intervention regulation in Natura 2000 areas is uniform not only within Austria, but all over the EU.

- The accession of Austria to the EU and its adoption of the "*acquis communautaire"* made it possible for the authorities and the investors (Suske et al. 2011) to develop Austria-wide uniform planning assistance in nature conservation matters.

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.

Conclusion

The integration of the Habitats Directive in other EU funds, notwithstanding a few exceptions, has been successful. The European Agricultural Fund for Rural Development (with the exception of funds for forestry measures) and LIFE are central funds for the implementation of conservation measures. An exception is found in the structural funds, where the integration of the Habitats Directive, being only possible through transnational projects, was given very little consideration.

Evidence

EAFRD
a*) Agro-environmental measures (ÖPUL)*

From 1995 to 2013, EUR 532 million have funded nature protection measures such as late mowing, abandonment of fertilisers, special measures in bird protection areas (cf. Green Report 2014, table 5.2.16).

b) Projects funding

In Austria, there are comprehensive funding opportunities available since 2000 for the planning and implementation of small and large projects, according to Article 33 (2000 – 2007) or Article 57 (2007 – 2013). In the programming period 2000-2006, the funding of projects amounted to EUR 22 million, according to Article 33 "landscapes protection" (cf. Green Report 2007, table 5.1.21b and Green Report 2014, table 5.2.9a). In the programming period 2007-2013, EUR 75 million were funded through Article 554 (Measure 323a: "Conservation and improvement of rural heritage in the field of nature protection").

LIFE

Since its EU accession in 1995, Austria has implemented 49 nature protection projects under LIFE, with a total funding volume of EUR 159 million.

EUR 70 million (44%) were co-financed by the EU and EUR 89 million (56%) stemmed from national funds.

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:

Conclusion

The small differences in content between the two Directives were no impediment to achieving the objectives of the legislation in Austria.

Evidence

Both directives are designed similarly in their systematics as well as in the key areas of their content and they are per se consistent with one another. The extremely important Article 6 (3) and (4) of the Habitats Directive applies identically for the Birds Directive and therefore precludes by itself any inconsistency in good practices matters. There are differences in good practices, however, in the area of species protection. Article 5 of the Birds Directive is not entirely consistent with Article 12 of the Habitats Directive, and the regulations on derogations of the Article 9 of the Birds Directive are not in keeping with those of the Art. 16 of the Habitats Directive. The differences are yet partly harmonised by the Article 12 - Guidelines of the European Commission. These differences, all in all, cannot be identified as a credible factor likely to block or impede the achievement of the Directives' objectives in Austria.

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:

Please see answers of our European ombrella organisation EEB

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[5]*, 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:

Please see answers of our European ombrella organisation EEB

[5] 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).

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.

For the 3 last questions relative to the EU Added Value of the Birds and Habitats Directives, we oriented ourselves to the answers of our ombrella organisation in Brussels, the European Environmental Büro and submitted complements of answer especially for Austria on 30.04.2015

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).

Conclusion

Although Austria ratified the Bern Convention as early as 1983, it had not been implemented in the nature legislation of the Austrian federal states prior to the EU accession in 1995. Austrian nature legislation considerably differed between the nine federal states and stakeholders had to cope with a multitude of incoherent provisions. An added value of the EU nature legislation has been that Austria adapted to international standards, which resulted in nature legislation being both more effective and easier to observe by stakeholders.

Added values of the EU nature legislation are clear criteria for the delineation of protected sites and provisions for an effective protection, resulting in a larger area of protected sites and a better quality of site protection. Another added value is the better protection of species of Community interest, resulting in positive population trends for a number of bird species of Annex I of the Birds Directive and several animal and plant species of Annex II of the Habitats Directive.

Further positive effects of the EU nature legislation in Austria are (1) an increase in scientific research (see S.1.1), (2) a better coordination between agricultural and forestry policy on the one hand and nature conservation policy on the other hand (see S.2), (3) a better funding of nature conservation due to EU co-financing (see Y.2), (4) building up a nature conservation knowledge base by stakeholders (see Y.8) and (5) to bring in line the level of nature protection in Austria with the high regard of Austrian citizens for nature and nature conservation (R.4).

Evidence

1. *nature legislation:*

Nature legislation in the nine Austrian federal states was incoherent before Austria joined the EU. There were different provisions with regard to impact assessment and project permits, to the protection of certain habitats and species, and to the activities prohibited in nature reserves (Tiefenbach 1988; for more details see answer to question C.6). None of the federal states had fully implemented the Bern Convention, although in Austria ratification and entry into force took place in 1983.

After the adaptation of Austrian federal nature legislation to the EU Nature Directives the situation has considerably improved. The most relevant provisions are now more or less the

same in all federal states, and the Bern Convention can be considered to be fully implemented. Nature legislation is now more effective (see examples in the answers to questions S.2 and AV.2) and provides a better level playing field for stakeholders (see answer to question C.6).

2. *site protection:*

Through Natura 2000, a new surface of 3000 km² has been classified under nature protection. This brought an increase of 3,6% of the surface of protected areas. Furthermore, 4600 km² under a weak protection category (landscape protected areas), were protected strongly through Natura 2000. Compared to 1995, the surface of protected areas (incl Natura 2000) has increased from 22% to 27% (Ellmauer 2005b). Due to the actual designation phase (infringement procedure), this figure will still increase till the end of 2015.

1. *species protection:*

The answer to question S.2 provides evidence for more positive population trends of bird species of Annex I Birds Directive compared to other bird species, and for positive trends of a number of species of Annex II Habitats Directive.

Answer EEB:

The adoption of the Birds and Habitat Directives at EU level have resulted in a **more consistent and effective approach to Nature Conservation across all European Members States** and higher levels of nature conservation in a whole range of Member States than would otherwise have existed, requiring that effective rules for nature conservation be introduced and implemented in order to comply with the BHD.

For businesses operating across EU MS this has reduced uncertainty and the administrative efforts required to comply with nature conservation rules in different MS.

In terms of benefits to biodiversity, one relatively striking and **concrete example is the effect of the Birds Directive on hunting**, in particular of migratory birds. Practices and methods used are very different today than they were at the time the Birds Directive was introduced. There is still a lot of illegal activity but when compared to the time when a lot of activity was legal the effect of the Directive is spectacular – both in terms of changing habits and in positive effects for specific bird populations which suffered much at the time (storks, flamingos, birds of prey, etc.). It is quite clear that these developments wouldn't have happened in the absence of the Birds Directive as in a range of cases the EU had to take countries to court in order for them to fully implement the Directives. It is clear that in particular the requirement for **Appropriate assessment** and requirements clarified through ECJ rulings have helped conserve valuable nature where it would otherwise have been lost and helped protect sites which would otherwise have further deteriorated.

The difference is particularly clear when looking at the situation in more recent Member States – comparing the situation before their joining the Union and after: both area covered by protected areas, stringency of the protection and number of species protected nationally. In order to comply with the EU environmental acquis and more specifically the BHD, new Member States had to **designate a number of sites that previously did not benefit from any level of protection. Clearly, Natura 2000 has expanded the protected area network across Europe and delivered synergies enhancing the results of nature conservation efforts of individual countries compared to a situation with very disparate approaches to nature conservation across different countries**.

In addition, a number of **transnational projects and cooperation eg at biogeographic level** have been established which probably would not have emerged without the common framework provided by the Nature Directives.

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).

Evidence

Exemple AV.2.1 – The Stone Curlew (Burhinus oedicnemus) in Austria:

The Stone Curlew is listed in Annex I of the Birds Directive and is critically endangered in Austria according to the Austrian Red List (Frühauf 2005). There are only two breeding sites in Austria, both designated as SPAs. However, during the last 10 years in both breeding areas new roads have been constructed or are being planned. In order to maximize distances to neighboring villages the bypass routes in both cases were intended to lead through the centers of the local Stone Curlew breeding areas. Austrian nature legislation would have allowed building these specific routes and only would have required to implement compensatory measures (which in fact could not have fully worked due to the loss of too much of the available habitat).

EU nature legislation, however, required the authorities to search for alternative solutions. In one case, an alternative bypass route has already been constructed which has reduced the Stone Curlew habitat loss by about 85 % compared to the original bypass route (Bieringer & Plutzar 2005). This considerable reduction of impact made it possible to design effective compensatory measures. In the second case, the EIA is pending, but special care has been given to assess potential impacts on Stone Curlew habitat.

It is highly probable that without EU nature legislation road construction in both breeding areas would have resulted in the extinction of the species in Austria (though not instantly, owing to the long life and high breeding site fidelity of the Stone Curlew). EU nature legislation made it possible to reconcile road construction and the protection of a sensitive bird species due to higher standards regarding the search for alternative solutions.

Answer EEB:

Without the Nature Directives the **state of many of the species and habitats protected through the Directives would be much worse in many countries** (see previous question: less protected areas, less restrictions (e.g. on hunting) etc.). Many **important comebacks of species would not have happened**, etc. Comparison with conservation situation inside the EU with any country to the south and east is striking, as described above. Indeed, in some cases, this holds even in comparison with highly developed and generally environmentally minded countries such as Switzerland and Norway. A striking case is the spectacular comeback of predators in the alps. Wolves are successfully recolonizing France, Italy and Slovenia and Bears are expanding in Slovenia and Italy while recolonization of Switzerland is being prevented by systematic persecution.

In the absence of EU nature legislation, it is likely that **uncoordinated nature conservation efforts** would have continued at national level across the EU (including the selection of sites, conservation measures, monitoring of conservation status). Evidence suggests that these approaches had not been effective prior to the adoption of the Birds and Habitats Directives, and the **absence of any international coordination would make it even harder for countries to achieving the goal of halting the loss of biodiversity**. Evidence from the UK shows that prior to the adoption of the

Habitats Directive almost a quarter of nationally designated sites in England were being damaged annually.[6]

Inconsistency of nature protection rules across EU 28 would have undermined the achievement of the single market for specific sectors whose activities affecting land and water use and increased the administrative costs associated with having to comply with very different nature conservation regimes across different countries.[7]

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?

Conclusion

Austria has still not fully implemented the Bern Convention ans the Birds and Habitats Directives (see answer to question S.1.2). To achieve this goal, Austria will need further guidance and intervention by the European Commission. But even after full legal implementation in all member states several important functions of action at EU level will remain:

(1) The monitoring of the conservation status of habitats and species of Community interest as well as the adaptation of the Annexes to the technical and scientific progress cannot be done by a piecemeal approach. The benefit that can be obtained for European natural heritage by a cross-border approach would not be possible without the coordination of knowledge and effort at the EU level.

(2) The involvement of the European Commission with plan and project permits under the derogation procedure of Art 6 Habitats Directive is a safeguard not only against damages to nature but also against deviations from standards required to maintain a level playing field for all stakeholders in the EU. Some long term positive effects of the nature legislation especially with regard to sustainable development (see answer to question R.3) can only be achieved when shortsighted political decisions are overcome by the involvement of a competent authority at EU level.

(3) More generally the possibility for citizens and NGOs to appeal to an authority at EU level is indispensible in order to achieve and maintain a high standard of implementation of EU nature legislation in the member states.

(4) The quality of conservation projects considerably benefits from the competition between the best ideas and concepts that takes place when funding is at least partly done at EU rather than national level.

Answer EEB:

Yes, EU action is more than ever required. **Sustainable development cannot be achieved if the European project focuses narrowly on economic integration**, leaving it to Member States to address social and environmental challenges in particular when many of those challenges would be aggravated by an increased economic integration that fails to consider environmental and social aspects. With an increasingly integrated European economy it is more and more clear that actions taken by one Member State affects the situation in other Member States. This has always been true for

[6] http://www.parliament.uk/briefing-papers/rp94-90.pdf

[7] http://www.bis.gov.uk/files/file44583.pdf

the environment and is probably even truer today than it was at the time the Directives were adopted. Nature knows no borders – this calls for a common European framework to conserve and enhance it.

Since the nature Directives were adopted knowledge about the many ecosystem services that nature delivers and the tremendous value nature generates to the economy has made the **economic case for nature conservation ever more compelling** (**see question Y.1 re: economic benefits**).

At the international level, **growing concern over biodiversity loss** has spurred governments, including the EU, to sign up to **ever more ambitious biodiversity conservation targets**.[8] Although the nature Directives have not yet been fully implemented, and conservation funding remains inadequate, there is **scientific evidence that EU level intervention through the Birds and Habitats Directives has proven to be effective at reducing the rate of loss of biodiversity.[9] Still, overall, the State of Europe's Nature is more critical than ever**. According to the latest results from the article 17 report of the Habitats Directive only 16% of European Habitats and 23% of species of community interest are in favourable conservation status. These are preliminary results from the "State of Nature" report expected to be published during the upcoming months. Similarly, the Pan-European Common Birds Indicator[10] shows that biodiversity loss is continuing, despite successes of Directives.

This means that the **EU should actually do more**, in particular to **close the implementation and enforcement gap**. In addition **further integration of biodiversity** in sectoral policies both at MS and EU level are required if the objectives of the BHD are to be met one day, especially in light of the **threat of climate change** which makes the need to conserve biodiversity even more pressing than before.

Protecting Europe's unique natural heritage has been at the centrepiece of the European integration project since the early days and is therefore an integral part of the European project. In 1979, the EC signed and ratified the Bern Convention on the conservation of European wildlife and natural habitats, which explicitly recognises "that wild flora and fauna constitute a natural heritage of aesthetic, scientific, cultural, recreational, economic and intrinsic value that needs to be preserved and handed on to future generations".[11] As a signatory to the Convention on Biological Diversity, the EU has confirmed that the conservation of biological diversity is a common concern of humankind.[12]

Many European citizens would not understand if the EU didn't have policies in place to address their legitimate concern over the loss of Europe's natural heritage. Public concern across the EU about the environment remains high, as does public support for EU level action to tackle environmental problems[13]. Europe is a continent that values and protects its environment; many people believe that the nature has its own intrinsic value that cannot be traded off against purely economic values. A 2010 Eurobarometer poll found that EU citizens see the conservation of biodiversity first and foremost as moral obligation rather than as a means of protecting our own well-being and quality of life.[14]

Over the years the support of business to the Nature Directives has grown to the extent that today it can be clearly stated that **most businesses also sees that there is a compelling case for EU level intervention**, not the least because of the advantages that a common set of rules brings for businesses operating across borders.[15]

[8] http://www.cbd.int/sp/targets/

[9] http://www.sciencemag.org/content/317/5839/810.abstract

[10] http://www.ebcc.info/pecbm.html

[11] http://conventions.coe.int/Treaty/en/Treaties/Html/104.htm

[12] http://www.cbd.int/convention/articles/default.shtml?a=cbd-00

[13] http://ec.europa.eu/public_opinion/archives/ebs/ebs_416_en.pdf

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

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

Annex 1: Literature

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