



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
D(2016)

Opinion

Title **DG ENV – Fitness Check of EU Nature Legislation**
(draft version of 16 March 2016)*

(A) Context

The Birds and Habitats Directives (Directive 2009/147/EC and Council Directive 92/43/EEC) are the two main pieces of EU nature legislation. The Birds Directive aims to protect all wild bird species and their habitats across the EU. The Habitats Directive introduces very similar measures, but extends its coverage to more than 1200 other rare, threatened or endemic species of wild animals and plants, collectively referred to as species of Community interest. It also protects 231 rare habitat types in their own right. This REFIT fitness check provides a comprehensive policy evaluation of the Birds and Habitats Directives. It assesses if these "Nature Directives" are fit for purpose by examining their performance against five criteria: effectiveness, efficiency, relevance, coherence and EU added value. The results will be used by the Commission to inform any future decisions relating to EU nature policy.

(B) Overall opinion

The Board considers that this fitness check, in its present form, needs to be significantly improved, in particular in relation to the following key aspects:

- (1) The conclusions should be brought out more explicitly and substantiated with relevant evidence from the analysis. Overall, the conclusion that the two Directives are fit for purpose should be better substantiated given that the conservation status of many species and habitats is still critical.**
- (2) In relation to the effectiveness, it should be clarified in the findings what has worked and what has not, and what are the identified areas for improvement. The report should specify how the reported funding shortfall has affected the effectiveness of the legislation.**
- (3) Conclusions should be drawn on efficiency, including what the related administrative burdens are and any potential for their reduction (in line with the fitness check mandate). The report should also clarify the origin and composition of the cost estimates. To the extent possible, the conclusions should give indications to what extent the scarce resources are used in the best way and for the most effective purposes.**

* Note that this opinion concerns a draft evaluation report which may differ from the one adopted

(4) The report should elaborate why updating the protected species and habitats lists is not considered to affect the continued relevance of the two Directives, and also explain the internal coherence of the Nature Directives, given that the trade-offs between nature protection and economic activities are reflected in their objectives.

(C) Main recommendations for improvements

(1) Clarify the conclusions as regards effectiveness. Given that many species and habitats are still not in favourable conservation status, the report should elaborate why the two Directives can be considered as fit for purpose. The report should be more specific on what has worked and what has not in the design and implementation of the Nature Directives. In doing so, it should indicate in the conclusions possible areas for improvement, such as marine protected areas, conservation of species and habitats outside the Natura 2000 network or use of management plans for Natura 2000 sites. It should explain how the reported funding shortfall for nature protection has affected the effectiveness of the legislation. It should explain whether the very different coverage of protected land across the EU is justified or point to different conditions and implementation strategies in the Member States.

(2) Better demonstrate the evidence on efficiency. The report should better explain the cost and benefit estimates of implementing the two Directives. In particular, it should clarify what costs are related to the establishment of Natura 2000 sites and what costs are recurring in the management of sites. In addition to agriculture, the report should elaborate on other economic activities (e.g. infrastructure projects, aquaculture, recreation) that present trade-offs with the nature protection objectives. In doing so, it should better explain the estimate of the opportunity costs and if there are other reasons for low demand for alternative use of land (high administrative burden, previous jurisprudence on case law). The report should clearly distinguish between administrative burden, administrative costs and compliance costs. It should elaborate on additional difficulties (legal uncertainty, litigations, length of procedures) and identify any potential for reducing administrative burden.

(3) Elaborate on the relevance and the coherence. The report should explain why not updating the protected species and habitats lists in the two Directives would not affect their relevance, as pointed out by some stakeholders. It should clarify why an assessment of whether individual species still require being listed under the two Directives is considered to be outside the scope of the evaluation. The report should assess the internal coherence of the Nature Directives as both of them present trade-offs between nature protection and economic, social, recreational or cultural requirements in their general objectives. It should explore if the different approaches in the two Directives (e.g. selection of sites) are justified or, on the contrary, if they could be simplified and streamlined, leading to a reduction of administrative burden. When discussing the coherence with other EU policies, the report should explain the synergies and trade-offs with the legislation on environmental impact assessment and national spatial planning systems. It should identify whether other areas than agriculture could benefit from synergies with EU funding.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the evaluation report.

(D) Procedure and presentation

The report should better present the view of the Commission's services on the findings of the external study (instead of focusing on its summary). It should be made more informative as a stand-alone document by introducing key elements of the external study such as key data/figures demonstrating the conservation status and trends of species and habitats. The report should also be made more accessible to non-specialist reader by explaining key terms and by introducing a glossary. The executive summary should present in a clear and concise way comprehensive conclusions from the evaluation.

(E) RSB scrutiny process

Reference number	2015/ENV/003
External expertise used	No
Date of RSB meeting	13 April 2016