RSPB Nature Directives European Literature Review

Introduction

The RSPB has undertaken a review of literature that we consider relevant to ‘EU and devolved administration implementation’ element of the Defra-led review of the implementation of the Birds and Habitats Directives in England.

The following compiles summaries of documents relevant to the implementation of the Birds and Habitats Directives, along with key findings and information, and where to find them. These documents come from a variety of sources, including European NGOs, the European Commission, EC-sponsored groups and Member State Governments. The RSPB can assist in the sourcing of documents if required although it should be noted that the compilation does include extracts from some BirdLife internal reports, the release of which would require the permission of the BirdLife secretariat. The documents ordered in the following sections:-

- Past Reviews of BHD Implementation by Member States and their Outcomes/Conclusions
- The State of Natura 2000 Designation
- Best Practice Examples from Member States
- Reviews of the State of the Birds and Habitats Directives Implementation

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Past reviews of BHD implementation by Member States and Their Outcomes/Conclusions

**Article 6 Habitats Directive – A comparative law study on the implementation of Art. 6 Habitats Directive in some member states – Alterra 2005**

**Summary**
This document advises the Dutch government on how best to apply the requirements of the Habitats Directive in the Netherlands. It takes examples from five EU countries with similar policy and political backgrounds: UK, France, Spain, Sweden and Hungary, which could provide solutions for problems faced in the Netherlands.

**Key Findings**
It suggests the ND government bring in an intermediary organization, similar to Natural England, or an client manager like the prefect system in France. It suggests the ND government delegate its powers more and bring in a more open and inclusive system. It highlights the potential benefits of site management planning, adequate training of decision-makers and availability of data. Suggests that integrating habitats directives requirements into one permit or piece of regulation is not the best way forward to deal with a complex set of issues, but to concentrate instead on systems to serve clients efficiently.

The findings and examples may have dated due to changes in policy in the last seven years.

**Source**
[http://content.alterra.wur.nl/Webdocs/PDFFiles/Alterrarapporten/AlterraRapport1222.1.pdf](http://content.alterra.wur.nl/Webdocs/PDFFiles/Alterrarapporten/AlterraRapport1222.1.pdf)


**Summary**
Dutch government working group review of the Directives triggered by perceived hold ups to economic projects eg business park in Heerlen (hamster) and hotel in Noordwijkerhout (sand lizard). The review focused on:
- What problems has the Netherlands encountered in implementing the Birds and Habitats Directives and to what extent are these problems specific to the Netherlands?
- What possible solutions would serve the objectives of the directives, ensure that the different social interests were weighed up properly and ultimately offer lasting opportunities?

**Key Findings**
Recommendations included improved communication between different parties, improved policy making, information and implementation, the drawing up of management plans,
drawing up codes of conduct to reduce conflicts in species protection, protocols for species surveys and permit expiry dates, better information on species distribution, streamlining consents processes and sharing information on implementation with other member states.

Source
Available electronic copy if needed.

**President Barroso Letter to Prime Minister Balkenende, October 2009**

**Summary**
Reply from President Barroso of the EC to a letter from a Dutch MEP asking for consideration of a review of the nature directives to balance environmental and business interests better.

**Key Findings**
Extracts from the letter in Annex II. Strong rebuttal of the argument that the implementation of the nature directives significantly prevent economic development, and instead they provide an effective framework to manage conflicts, and preserve valuable ecosystem services.

Source
Electronic copy can be provided if required.

**Letter from NABU/BUND, 2007**

**Summary**
Letter responding to the German Chamber of Commerce’s negative assertions on the Nature Directives.

**Key Findings**
Includes positive examples of where the Directives have been an enabler to development, including the Baden-Baden regional airport, and a flood-reservoir near Baden-Baden, and debunking the Aachen-Heerlen commercial development ‘hamster’ case.

Source
Electronic copy can be provided if required.

**Letter from Sigmar Gabriel, Minister of Environment, Germany, to various German MPs;, November 2007**

**Summary**
Letter sent in response to calls for amendments to the Nature Directive Implementation in Germany from MPs and the German Chamber of Commerce.

**Key Findings**
Extracts in Annex III. The Minister sets out that far from stopping economic development, the nature legislation has enabled it to proceed faster, by managing conflicts between economic and ecological factors. The minister sets out a number of reasons why the Directives are misperceived, mostly through poor communication and public participation. Positive examples of where the Directives have worked to enable development include the Federal Transport Plan, Muhlenberger Loch, Lakomaer Ponds and Frankfurt Airport.

**Source**
An electronic translated copy can be provided if needed

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**Green 10 Letter and Brief to Angela Merkel, January 2008**

**Summary**
Letter from Europe’s major environmental NGO’s in response to the German Bundesrat that the nature directives should be changed and merged.

**Key Findings**
Proper implementation of the Directives are the key to sustainable development. Miscommunication and lack of proper financing has lead to a situation where the directives are perceived to be a problem. However, there are no examples of the Directives themselves blocking development if they were applied adequately and in a timely fashion.

**Source**
Electronic copy available if needed.

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**The State of Natura 2000 designation**

**BirdLife Important Bird Area/ Special Protection Area Overlap Review 2010**

**Summary**
Survey of BirdLife partners in the EU, comparing terrestrial Important Bird Area networks to designated Special Protection Area networks.

**Key Findings**
The average SPA/IBA overlap in EU countries was approximately 76% (by country). In the UK, the SPA/IBA overlap was approximately 52%. At this date, eleven member states had live SPA designation infringements open with the European Commission.

Source
BirdLife – internal report.


**Summary**
EC analysis of the designated Natura 2000 network.

**Key Findings**
At time of publication, the UK had 262 terrestrial SPAs covering 12,447km², and 131 marine SPAs covering 11,420km². The UK’s terrestrial coverage was 5.1% of its land area. The average for the EU was 11.7%.

The UK had 636 terrestrial SCIs, covering 13,113 km² (terrestrial elements) and 149 Marine Sites covering 29,843 km². Percentage coverage of terrestrial elements in UK was 5.4%. The average for the EU was 13.4%.
The UK’s combined Natura 2000 (SPAs + SCIs) coverage as percentage of national area was 7.2%. The average for Member States at this point was 17.5%.

Source

Best Practice Examples from Member States

Products of EC project on Dealing with conflicts in management of Natura 2000 – best practice at local/ site level

Summary
The aim of the project was to promote best practices for achieving a good balance between potentially conflicting interests related to the use and management of Natura 2000 sites, ensuring the engagement of different groups of stakeholders (including the public) into the protection and proper management of the sites and their ecological values.

Specific objectives of the project were:
- to assess causes of conflicts surrounding the management and use of Natura 2000 sites;
- to identify and review examples of best practices;
- to formulate practical recommendations to avoid and resolve conflicts.
A European-wide review and five country studies (Slovenia, Czech Republic, The Netherlands, France and Sweden) were carried out to assess primary sources of conflict and the strategies that had been developed to resolve them. Also, 24 case studies of best practice regarding conflict resolution on site level from 12 countries were collected, described and analysed.

In addition, one European and three regional workshops were organised, attended by 133 participants from different groups of landowners and land users (economic sectors, NGOs, protected area administrations) to discuss their views and experiences on the management of Natura 2000 areas.

Key Findings
Outputs of the project included:

**Overview leaflet** - Given the scale, scope and ambition of the Natura 2000 network, conflicts are to be expected in its establishment and management. However, addressed in a proactive way, conflict can be managed or resolved in most cases. The challenge is how to deal effectively with ‘on-site’ conflict situations when they arise. Understanding the mechanisms and reasons of conflict is essential to finding workable solutions and developing sustainable management practices.

Left unaddressed or ignored, conflict can become a major threat, which can prevent reaching Natura 2000 objectives, be they at site, national or European level. This brochure and the project reports should be helpful to you, especially if you are affected by a conflict situation related to the management of Natura 2000 sites.

**Report on Current practices in solving multiple use issues of Natura 2000 sites: Conflict management strategies and participatory approaches** – describes potential conflicts arising from needs for multiple uses of sites, and how systems for dealing with these differ between five different member states, with examples from Sweden, the Netherlands, Slovenia and Czech Republic.

**A review of 24 Best Practice case studies** - Positive examples of conflict resolution within the directives tests from England, Scotland, Netherlands, Poland, Czech Republic, Finland and Denmark, identifies conflict management approaches and many recommendations. – see below

**Summary workshop report** – recommendations from the workshops on site governance, public participation, communication, education, scientific underpinning, sharing of experience, sectoral integration and socio-economic support.

Source
Natura 2000 Good Practice Exchange

Summary
Website that aims to build a supportive community so that social and economic goals do not conflict with the nature conservation policies addressed by the Natura 2000 network.

Key Findings
Site includes success stories at managing Natura 2000 and resources to use.

Source


Summary
This report looks at implementation of the Birds and Habitats Directives in various member states with many good practice examples.

Key Findings
Designation of sites through scientific criteria, with transparent and participative processes is best practice. By not designating sites which should be designated on scientific grounds, an authority only makes planning future developments harder. This is clearly illustrated by the example of Karlsruhe-Baden regional airport, where the airport authorities themselves tried to submit a site to the Commission so as to be able to continue with the planning process. It is only with a swift designation process that planning projects can continue according to the steps outlined in the Directive and the relevant guidance documents.

Bottom-up and participative processes for agreeing habitat management and identification of conservation measures has been successfully adopted in a number of member states. Positive examples of management planning can be seen at Papa Stour, UK and Verwall Mountains, Austria. Again, for infrastructure project planning, early and open participation of stakeholders is the key to building in the requirements arising from the directives and avoiding conflicts. Immingham Outer Harbour, UK is seen as a best practice example of this approach, leading to other similar examples at Bathside Bay, Harwich and London Gateway. Outside protected areas, extensification of farming practices or adaption of land-management practices can reduce conflicts with protected species.

Much-cited species protection cases such as the Aachen-Heerlen commercial site in North Rhine-Westphalia where European Hamsters were seen to be getting in the way of jobs are often overstated and ignore the value of these sites for nature conservation. In this case of 12,000 promised jobs from destruction of the site, 120 were delivered.
BirdLife Position Papers on Implementation of the Nature Directives

Summary
BirdLife International believes that the EU Birds and Habitats Directives are the most effective and flexible nature conservation laws in the world, as they combine a strongly scientific approach with the need to reconcile economic, social and ecological interests – they are a key to sustainable development. Many examples across the EU show how well the Directives can work for people and nature if they are properly applied.

To this end the EU BL Partnership with its extensive knowledge and experience on bird species, sites and habitats has published a range of positions and other publications assisting the implementation of the Directives.

Key Findings
The most pertinent positions are outlined below:


- BL Position paper on the approach to alternative solutions and imperative reasons of overriding public interest under Article 6(4) of the EU Habitats Directive (2010)


- Position paper on the Favourable Conservation Status of Special Protection Areas (SPAs) (2006)

- Position Statement on Wind Farms and Birds (2005)

Relevant leaflets include:

- Protection of Natura 2000 sites and economic development
– Case studies on Natura 2000 and economic development
– Case studies on species protection
  http://www.birdlife.org/eu/pdfs/NN_species_protection_2.pdf

Source
http://www.birdlife.org/eu/EU_policy/Birds_Habitats_Directives/nature_biodiversity_publications.html

<table>
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<th>IROPI and Compensation Case Review, BirdLife 2007</th>
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**Summary**
Compilation of cases involving Article 6(4) decisions known to BirdLife partners.

**Key Findings**
There are several positive examples of cases involving IROPI and compensation, including the Saltholm SPA on the Oresund Link, Denmark, and the Enns Valley golf course, in Austria. The report describes 35 cases where development projects were able to proceed after meeting the requirements of Article 6(4).

Source
BirdLife Internal Report

|-------------------------------------------------------------------------------------------------------------------------------|

**Summary**
Review of issues with implementation of appropriate assessments found by BirdLife partners.

**Key Findings**
Positive examples of best practice include the Netherlands National Data Authority and Global Biodiversity Information Facility for information resources. Other examples include Bulgarian consultation procedures on appropriate assessments, with participation of stakeholders in decision-making committees, the Thames Basin Heaths Delivery Framework (UK), is seen as best practice in dealing with in-combination effects from many projects, and the UK Planning Inspectorate is seen as a good example of a system of independent arbitration in contentious cases.

Source
BirdLife Internal Report
**Ten-T and Natura 2000 – The Way Forward, RSPB, 2008**

**Summary**
Investigates the potential conflicts between the Ten-T network and the Natura 2000 network, suggesting how these can be avoided and outlining positive examples of best practice.

**Key Findings**
Positive examples include the German Federal Transport Infrastructure Plan, the Integrated Water Management Plan on the Belgian Scheldt, the Oresund Fixed Link (Denmark), and feasibility study of the Rail Baltica link.

**Source**

**Case Studies on Natura 2000 and Economic Development - BirdLife**

**Summary**
Case studies which demonstrate even where plans and projects do potentially affect Natura 2000, with careful planning good solutions to reconcile nature and development can be achieved.

**Key Findings**
Positive examples include at the Kresna Gorge in Bulgaria and the German Federal Transport Infrastructure Plan. Development of the UK ports industry is seen as a good example of how economic development and Natura 2000 interests have been mediated, including Harwich channel deepening, Immingham Outer Harbour, Bathside Bay Terminal, and London Gateway. These have been achieved through open and early dialogue and agreement over the scope and analysis of impact assessment, mitigation, compensation and monitoring.

**Source**

**Non Energy Extractive Industry and Natura 2000 – EC 2010**

**Summary**
Best practice guidance from the EC on how to take minerals projects through Article 6 of the Habitats Directive.

**Key Findings**
Guidance includes numerous good practice examples, including for eagle owls in stone quarries in Germany, mitigation to stop groundwater impacts on Natura 2000 sites, for protected spp (flying squirrels) in Finland and (yellow-bellied toads & great-crested newts) in Germany and successful restoration for Natura interests in France, Spain, Belgium and the UK (Dungeness and Cliffe Pools). The Nature after Minerals Project and Nature Conservation Forum seen as best practice for collaboration between industry, government and NGO stakeholders.

Source

**Inland Waterway Transport and Natura 2000 – EC final draft guidance note, 2011/12**

**Summary**
Best practice guidance from the EC on successful integration of Article 6 requirements into IWT schemes with examples from member states.

**Key Findings**
Early consideration of Habitats Directive requirements and early integration of all relevant stakeholders into the project planning process are key to success. Examples of successful integrated planning examples from the Lower Rhine, Germany, the Danube, Austria, and the Scheldt in Belgium. Maintenance dredging in the Thames estuary seen as BP for stakeholder involvement.

Source
Final Draft – unpublished, but available from EC Circa website -
http://circa.europa.eu/Public/irc/env/river_working_group/home

**Wind Energy Developments and Natura 2000 – EC 2010**

**Summary**
EC guidance document on best practice integrating Article 6 requirements into wind energy projects

**Key Findings**
Site selection, spatial planning and early and comprehensive consultation are key to avoiding conflicts. Beinn an Tuirc windfarm (Scotland, UK), considered a best practice example of mitigating impacts on protected species – in this case golden eagle. The UK’s guidelines for
assessing impacts on Natura 2000 sites from Offshore wind energy development seen as good practice on how developers should go about gathering information and analysing it for their assessments.

Source

EC Guidance document on the strict protection of animal species of Community interest under the Habitats Directive 92/43/EEC (Feb 2007)

Summary
This document is intended to ensure a common understanding of the relevant provisions among national and regional authorities, conservation bodies and other structures responsible for or involved in the implementation of the Habitats Directive. It aims to assist in devising pragmatic and flexible ways of applying the provisions and making them effective and practical, while fully respecting the legal framework. Good practice examples provided of integration of Art 12 procedures with on ongoing activities such as agriculture and forestry are provided from page 30 onwards.

Key Findings
Document discusses the overlaps between Article 6 & 12, the need for good information/monitoring, and the need for conservation measures to be appropriate/proportionate. The UK approach of integrating species protection into existing land-management activities is seen as good practice, including the comprehensive guidance for land-owners. Species protection in ongoing forestry management works well in France, which includes management plans, awareness raising and training programmes for land owners/managers. Particular examples are examined for bats in Ramboillet forest, and management of alpine wood-boring beetle in mountain regions. Other positive examples include Finnish forestry practices with flying squirrels, Lynx management plans in Latvia, managing otters in fishponds in Austria, and compensation for impacts on great-crested newts in Sweden.

Source

BL Case studies on species protection

Summary
Even for species that are strictly protected under the Birds or Habitats Directives, it is possible to reconcile economic with conservation interests – examples of such are described.
**Key Findings**
For common hamster, an oft quoted source of conflict, studies showed that from 1994, only 20 cases involved hamsters, and the project was only stopped in one case. All problematic cases quoted by opponents were due to poor implementation of the planning procedures. A study by the German environment ministry found that in over 100 cases, only four had been substantially delayed by finding hamsters or bats on the site. Nature protection measures typically cost between 2-4% of overall project costs. Siberian flying squirrel is another species often quoted as stopping development in Finland, but studies show that it has not really had any impact on forestry management, and its presence has not stopped housing or infrastructure developments.

**Source**
http://www.birdlife.org/eu/pdfs/NN_species_protection_2.pdf
Reviews of the State of the Birds & Habitats Directives Implementation

2010 - Turning or Breaking Point for Europe’s Wildlife (BirdLife 2010)

Summary
BirdLife partners from the EU 27 countries evaluated the implementation of the Birds and Habitats Directives against ten major groups of indicators

Key Findings
Of the ten indicators of implementation, two were deemed ‘highly insufficient’ and the other eight were deemed ‘inadequate’. Designation of Natura 2000 network was seen a mainly insufficient, whilst offshore this was highly insufficient. Management plan coverage was highly insufficient. Enforcement and administration of relevant national regulation was seen as insufficient, and transposition into sectoral policies and land-use planning was also seen as insufficient. See Annex I for table country overview of implementation.

Source
http://www.birdlife.org/eu/pdfs/BirdLife2010AssessmentreportFINAL.pdf


Summary
Overview of implementation in seven countries audited (France, Finland, Czech Republic, Austria, Hungary, UK & Estonia). In the UK the audit body was the National Audit Office (NAO). The scope of the audit was to examine whether and how the provisions of the European Directives, especially Article 6 of the Habitats Directive, were observed in an effective and efficient way. The audit examined three key elements – compliance, governance and funding.

Key Findings
Best practice examples identified include:- In Austria environmental ombudsmen are a party to Art 6(3)(4) procedures, and in Estonia drafting of Management Plans is obligatory under 6(1), and the process is highly participative. Transposition and implementation of the directives tracked in the different country examples, indentify some of the problems encountered. Implementation had been delayed in most countries due to an underestimate of the resources needed, and in some countries by resistance from affected constituencies. Governance issues relating to the directives vary a lot by country, depending on the circumstances. One common issue is a lack of condition monitoring on sites. On costs, national indicators should be set up to compare costs and effectiveness of different approaches to meeting the requirements of the
directives. A general conclusion of the effectiveness of the directives were that they strengthened nature conservation and provided greater stability than previous regimes.

Source
Electronic file available if needed.


Summary
European Parliament Petitions Committee review of implementation of the Habitats Directive in EU member states, with particular reference to Article 6. Case studies taken from eight member states:- Belgium, France, Germany, Poland, Spain, Sweden, UK, Romania.

Key Findings
AAs were often flawed in terms of lack of in-combination/cumulative impact assessment, and lack of proper consideration of alternative solutions. Guarantees of the independence of AAs are needed in MS legislation. The country reports suggest that national administrations are not properly balancing different interests in derogation procedures, and the precautionary principle not respected. Likewise, the requirement to seek the opinion of the EC before consenting projects with adverse effects on priority species and habitats is sometimes ignored. AA procedures should be as transparent and consultative as possible, and fully reasoned decisions made. Compensatory measures need to made before the damage is caused to the site. Guidance is needed on this element of Article 6 from the Commission.

Source

Article 17 Reporting – Habitats Directive (EC)

Summary
Various reports and information based on the six-yearly reporting from member states under Article 17 of the Habitats Directives.

Key Findings
summary of the state of implementation at the time of publication (2003-4) including EU infringements (transposition, site designation and protection and species protection).

Section on human resources states: ‘The existence of dedicated or specialist agencies to support implementation of the Directive is very variable, between Member States. The UK and its four government agencies contrasts with France which has no such agencies. On the whole, Natura 2000 and the implementation of the Habitats Directive is administered by existing members of staff, ie using existing resources for nature conservation at all levels of governance. Staff time in Spain (only a small handful of people in central and regional governments) has been devoted very largely to the process of site proposals over the past years, by necessity. This has left very little time for developing other aspects of Natura 2000 implementation. The situation in Spain is common to most other Member States.’

Summary national reports
(http://ec.europa.eu/environment/nature/knowledge/rep_habitats/docs/memberstates_summary_en.pdf) has lots of information on the approach to site designation and implementation eg conservation measures (art 6(1)), site protection, FCS and also on the species protection regimes, but hard to know how up to date (and therefore useful) this will be c8 years on.

2. Report 2001-2006 on Art 17 – Focuses on assessment of conservation status based on best available data


Species protection - Information about the species protection regimes (Arts 12&13) in each Member State (protection measures, published report and relevant species) are presented at http://bd.eionet.europa.eu/article17/chapter5 and http://eea.eionet.europa.eu/Public/irc/eionet-circle/habitats-art17report/library?l=/papers_technical/measures_protection/_EN_1.0 &a=d – potentially some of these reports could be assessed to compare regimes. Although the many reports are in national languages. Similar compilation reports are also provided for:
- Control systems (Art 12(4)) - http://eea.eionet.europa.eu/Public/irc/eionet-circle/habitats-art17report/library?l=/papers_technical/incidental_killingpdf/_EN_1.0 &a=d and
**Natura 2000 information** is available from [http://bd.eionet.europa.eu/article17/chapter6](http://bd.eionet.europa.eu/article17/chapter6), including:

- Numbers/areas of SCIs and SACs in each MS - [http://eea.eionet.europa.eu/Public/irc/eionet-circle/habitats-art17report/library?l=/papers_technical/designation_scissacspdf/_EN_1.0 &a=d](http://eea.eionet.europa.eu/Public/irc/eionet-circle/habitats-art17report/library?l=/papers_technical/designation_scissacspdf/_EN_1.0 &a=d)
- Art 6(2) measures in each country - [http://eea.eionet.europa.eu/Public/irc/eionet-circle/habitats-art17report/library?l=/papers_technical/measures_6-2pdf/_EN_1.0 &a=d](http://eea.eionet.europa.eu/Public/irc/eionet-circle/habitats-art17report/library?l=/papers_technical/measures_6-2pdf/_EN_1.0 &a=d) (languages vary)

Summaries of all the national Art 17 reports -


Format and guidelines for reporting have been agreed - [http://bd.eionet.europa.eu/article17/reference_portal](http://bd.eionet.europa.eu/article17/reference_portal) and [http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2007-2012/reporting_guidelines&vm=detailed&sb=Title](http://circa.europa.eu/Public/irc/env/monnat/library?l=/habitats_reporting/reporting_2007-2012/reporting_guidelines&vm=detailed&sb=Title) and when info is available (2013-15) it will give updated info on many of the issues we are interested in! Eg assessments of CS plus information on:
- Natura 2000 designation
- Management plans (Art 6(1))
- Measures re approval of plans and projects (Art6(4))

4. **Article 16 reporting (derogations)**

Every 2 years MS are required to report on derogations from the strict species protection provisions. The reports are available from [http://ec.europa.eu/environment/nature/knowledge/rep_habitats/index_en.htm](http://ec.europa.eu/environment/nature/knowledge/rep_habitats/index_en.htm) and the most recent one (published in July 2011) covers 2007-2008 [http://ec.europa.eu/environment/nature/knowledge/rep_habitats/docs/Habitats%20Directiv](http://ec.europa.eu/environment/nature/knowledge/rep_habitats/docs/Habitats%20Directiv)
Section 2 of this (pages 6-9) provides an overview across MSs and reports:

- ‘...none of the Member States’ derogations are in apparent conflict with the species protection measures of the Habitats Directive. In total 5,790 derogations were issued by Member States authorities within the biennial period, an average of 214 derogations per Member State. The distribution of the derogations issued by the Member States is shown in Chart 1. As evident their number varies considerably, from two derogations granted in Estonia to several hundreds in others, such as Germany and Poland. With 1,010 derogations the United Kingdom is the country that issued the highest number of derogations in the biennial.’

- ‘There is a considerable difference between the number of derogations and the number of licenses issued per derogation and sometimes a single derogation covers several licenses. The main difference between the two indicators is evident in the Spanish and British reports, where a single derogation includes up to hundreds of licenses.’

- ‘The derogations issued in the interest of protecting wild fauna and flora and conserving natural habitats (code 40) are particularly used in the United Kingdom. The activities authorized under this reason mainly address the conservation and protection of the derogated species (i.e. keeping and caring for wounded animals in rehabilitation centers, capture and following release to avoid the accidental killing, relocation of individuals).’

Source
See above

**COMMISSION STAFF WORKING DOCUMENT Accompanying document to the Commission Communication – A mid-term assessment of implementing the EC BAP {COM(2008) 864 final}**

**Summary**
This consolidated profile presents a comparative factual assessment of progress at both Community and Member States levels in the implementation of the EC Biodiversity Action Plan. It is intended to complement the information given in the Communication, providing a more detailed analysis, and presenting key comparative data underpinning the assessment.

**Key Findings**
*Target 1.1 Natura 2000 network established, safeguarded, designated and under effective conservation management by 2010, 2012 in marine* – Near completion of terrestrial Natura 2000 networks leads to a greater emphasis on the need for protection and management of sites – management plans seen by most MSs as a valuable tool to assist with this. Based on available information, at least 5,312 Natura 2000 areas have completed or agreed management plans.
Number of Natura 2000 sites in different Member States with a completed management plan (Source: response to Member State questionnaire).

Furthermore, a total of 3,250 Natura 2000 sites in the EU have management plans under development. Seventeen EU member states have indicated that they are preparing management plans for Natura 2000 sites. Three have indicated that they do not have plans under development. No information was available on this for 7 countries.

Number of Natura 2000 sites in different Member States with a management plan in preparation (Source: response to Member State questionnaire).

Summary
Compilation of reports from member states on actions to implement the Birds Directive.

Key Findings
Many examples of different initiatives that member states have taken. Further progress made toward completion of the terrestrial SPA network during this period. However, more sites need to be identified, particularly in the marine environment. Positive examples of implementation include temporarily stopping damaging activities to protected species outside of protected areas in Hungary, Codes of Conduct with industry sectors for various elements of the habitats directive in the Netherlands, and an operational plan for the management of Natura 2000 sites in Slovenia.

Source

Progress towards the European 2010 Biodiversity Target – EEA 2009

Summary
Analysis of the EU’s progress toward its 2010 biodiversity target, based on 26 agreed indicators, one of which is progress toward designation of sufficient designated areas.

Key Findings
17% of the EU land-area is now designated as Natura 2000, and 16% protected under national instruments amongst 39 countries. At the same time, 40–85% of habitats and 40–70% of species of European interest have an unfavourable conservation status.
Summary
Commission report triggered by a PQ in the European Parliament, investigating how different members states were implementing the Article 6(4) derogations.

Key Findings
42 cases were reported:

<table>
<thead>
<tr>
<th>Member State</th>
<th>No of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Portugal</td>
<td>15</td>
</tr>
<tr>
<td>Germany</td>
<td>10</td>
</tr>
<tr>
<td>Spain</td>
<td>7</td>
</tr>
<tr>
<td>Italy</td>
<td>4</td>
</tr>
<tr>
<td>Hungary</td>
<td>2</td>
</tr>
<tr>
<td>Austria</td>
<td>3</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>1</td>
</tr>
<tr>
<td>Czech Republic, Denmark, Estonia, Latvia, Lithuania,</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands, Sweden &amp; Slovakia</td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
</tr>
</tbody>
</table>

Source
The quality of information provided with MS decisions was deemed insufficient in 25% of the cases seen, and the quality of Article 6(3) assessments were often ‘vague and too general’. Article 6(4) seems have been applied correctly in the majority of cases, however, on the subject of compensation:

- mitigation and compensation measures frequently mixed.
- Commonly compensatory measures do not relate to impacts or offset their effects. In some cases they are not additional to existing BHD obligations (eg on monitoring of species, preparation of management Plans).
- In general, MS have not provided info re budget or time-frame for the compensatory measures. And there are concerns re technical feasibility of some measures eg; habitat recreation
- There are well defined compensatory measures included in some of the cases: reinforcement of prey species, restoration of habitats in existing sites and reduction of threats for species.
- Member States tend to better design compensation measures when priority habitats and species are affected and the opinion of the Commission is required.

Conclusions:-
- Member States are not following a systematic approach in the way they apply Article 6(4), subparagraph 1. The difference in the times Article 6(4) has been applied during the period 2004-2006 across the EU, suggests different criteria and understanding.
- As outlined in the Guidance document on Article 6(4), the information provided by the Member States should enable the Commission to appreciate the manner in which the conservation objectives of the site in question are pursued in the particular case. However, as stated in this report, this is not always the case.
- the Commission has faced a lack of consistency in the manner information is reported. The information presented by Member States was frequently partial, vague and insufficient. Besides, it is also remarkable the lack of understanding of the purpose of compensatory measures and the very common low quality of the measures proposed.
- Subsequently, the Commission services believe that a systematic approach for collecting the appropriate information should be discussed and agreed with Member States with a view to improve the current situation. Although the Commission had in the past design a standard format, it has been proved that not all Member States make use of it.
- Such a systematic approach should therefore facilitate a better implementation of the obligations laid down in Article 6(4) of the Habitats Directive, both first and second subparagraphs. To this end, the Commission has already considered this need in the framework of the streamlining reporting under the Nature Directives, which is at present being discussed with the Member States, and is currently working on the arrangements for establishing the adequate working format.
- It is worth noting that the information required to Member States correspond to the period 2004-2006. Later on, in 2007 the Guidance document on Article 6(4) with particular focus on compensatory measures was developed. The Commission therefore hopes that with the assistance of such guidelines, Member States will better apply this legal provision in the coming future.

- However, taking into account the information submitted by Member States, it can be also remarked that the concept of imperative reasons of overriding public interest requires further reflection. Considering that the European Court of Justice has not yet given clear indications for the interpretation of this specific concept, it is highly recommendable that the Commission and Member States start debating around this concept.

Source

**European Commission Opinions Relevant to Article 6(4) of the Habitats Directive**

**Summary**
Webpage showing all the opinions the Commission has given on plans/projects affecting priority species and habitats, as required under Article 6(4).

**Key Findings**
Seventeen EC opinions have been given in total. 11 for Germany, 2 for Spain, and 1 each for Netherlands, Sweden, France & Hungary. All but one (Trupbach Siegen, Germany) gave a positive opinion, allowing the member states to proceed with the plan/project.

Source

**EC guidance - The implementation of the Birds and Habitats Directives in estuaries and coastal zones (2011)**

**Summary**
The guidance document provides a number of recommendations and elements of good practice to enhance port development and management in or near Natura 2000 sites.

**Key Findings**
Some key recommendations are:
- The design of plans or projects should always be based on mutually beneficial strategies with a view to achieving dual goals of both Natura 2000 conservation objectives and socio-economic objectives, according to the ‘working with nature’ concept.
- Damage prevention or avoidance measures should always be preferred to compensation measures.
- Pre-assessments to evaluate the potential for impact of a plan or project on Natura 2000 sites should always be foreseen. This is necessary in order to decide whether a plan or project is likely to have significant effects on a Natura 2000 site and whether an ‘appropriate assessment’ in the sense of Article 6(3) of the Habitats Directive is required.
- Thorough and timely stakeholder consultation is always recommended in order to prevent the raising of objections during the project permitting process.
- Maintenance of ports and navigational access should be dealt with in the context of integrated management plans for the entire waterway or the affected Natura 2000 site. Capital dredging operations should be designed as a part of sustainable dredging and sediment management schemes.
- In case of any remaining minor scientific uncertainty with regard to the effects of a plan or project or the related mitigation or compensatory measures, the measures should include a pre-defined and validated scheme to monitor the actual impacts and a framework to adapt the mitigation and compensation measures to the actual impacts.’

Source

**Integrating biodiversity and nature into port development (EC, 2011)**

**Summary**
The Guidelines illustrate how nature protection concerns can be integrated into ports policy while reconciling the need for port development and nature conservation.

**Key Findings**
Conclusions stress that its as much about dialogue as the guidelines themselves:
The present Commission Staff Working Document and the Guidelines illustrate how nature protection concerns can be integrated into ports policy while reconciling the need for port development and nature conservation.

The holistic approach sought after by the Guidelines implies building partnerships between all stakeholders in order to help reaching the goals of all actors involved.

The Guidelines will contribute to increasing legal security for all stakeholders by improving the general understanding of the Nature Directives in a port and estuaries context and by explaining how their provisions can be implemented in a correct and practical way. The Commission considers the port sector as belonging to the pioneer sectors in this sense.
The practical set of recommendations will also help to implement the Nature Directives and to speed up the integrated management of Natura 2000. The application of the Guidelines will lead to more efficient planning and they will support "fast-track procedures" for port expansion, according to the Communication on strategic goals and recommendations for the EU’s maritime transport policy until 2018.27.

The development of the Guidelines has not only generated a practical guidance tool but also a new open and continuous dialogue between all parties involved in reconciling port development and biodiversity protection. The Commission will continue encouraging the continuation of this dialogue also in the future.

Source


**Summary**
Findings of a working group between EC officials and member state representatives on the correct application of Article 12 of the Habitats Directive.

**Key Findings**
The document agrees definitions of key terms such as deterioration, breeding sites and resting places as well as conditions to be met in derogation situations, and how to administer Article 12.

Source

**Greenforce – Web Resources and Documents**

**Summary**
GreenForce is the European Union network of Member States’ practitioners in both Nature Conservation and Forestry. It is an informal and voluntary network facilitating communication and sharing experience on practical implementation, compliance and enforcement of Nature conservation and Forestry laws within the Member States. Established in 2005, Greenforce is intended to be a network of practitioners concerned with implementation on the ground. One of key drivers is to improve implementation and thereby reduce the number of nature infringements.
Key Findings

Report summarising 2006 activities does have some comparative info about implementation in different MSs which may be useful:


2007 Expert meeting (Spain) focussed on Implementation of the requirements of the Habitats Directive into Forest Management Plans on Natura 2000 sites (focus in Articles 6.1, 6.3 & 6.4 HD and on practical experience) http://ec.europa.eu/environment/greenforce/200706spainmeeting.htm

2007 2nd expert meeting (UK) focussed on achieving conservation objectives on designated sites with the support and involvement of key non-statutory stakeholders http://ec.europa.eu/environment/greenforce/200709ukmeeting.htm


October 2008 Expert meeting (Netherlands) Theme: To identify similarities, differences and gaps between Environmental Enforcement (Recommendation 2001/331/EC) and Green
Enforcement and to take stock of "lessons learned" in order to come to an effective enforcement of nature legislation [http://ec.europa.eu/environment/greenforce/200810nlmeeting.htm](http://ec.europa.eu/environment/greenforce/200810nlmeeting.htm)


**Source**
See above.

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**Where There is a Will There is a Way - Snapshot Report of Natura 2000 Management (EEB, 2012)**

**Summary**
Analysis report of the information collected on the management of Natura 2000 sites in 18 EU member states. The UK did not participate, but the report provides a useful comparison with how other member states are implementing management plan frameworks.

**Key Findings**
Most member states do not yet have management plans for their sites. It is often unclear which institution has responsibility for the management of sites and the production of plans. Coverage of sites with plans varies from 0-95%. Although monitoring of sites takes place, this is not yet regular, systematic, and EU wide. European funds play an important role in enabling management planning, but funding is often a limiting factor in the member states’ programmes. Member states employing Aarhus principles to their public participation in management plan processes report fewer tensions.

**RECOMMENDATIONS FOR THE NATIONAL DECISION MAKER**

- Generic conservation objectives and measures should be replaced by site-specific, binding conservation objectives and management plans as soon as possible
- A strategic approach and clear deadlines should be applied in view of finalising the management planning process
- Higher level (national or regional) conservation objectives should be defined to counteract inconsistency and differing quality of objectives
- Management tasks have to be clearly and legally delegated to responsible organisations. Multiple ‘responsibles’ should be avoided
- All Natura 2000 sites must have a responsible managing body
- Financial and human resources of Natura 2000 management bodies have to be increased significantly
• No management plan should be approved without clear, quantitatively or qualitatively defined, site-specific conservation objectives
• Apply binding obligatory standards for management planning to ensure quality is the same overall. Invest in high quality management plans to avoid difficulties of implementation and verification in the future.
• Ensure that measures integrated in sectoral plans (e.g. forestry) really make a difference
• Include a clear monitoring framework as part of management plans or establish a national level monitoring framework for Natura 2000. Aim for high standards in monitoring.
• Improve inter-linkage among different monitoring systems.
• Upgrade existing structures (e.g. ranger service) to carry out monitoring activity or involve other sectors (foresters), site owners and users (farmers, military) in monitoring
• Make sure that in case of incorrect or missing management follow-up is ensured
• Significantly increase funding for Natura 2000 from national funding sources, in special for general management measures and monitoring but also to carry out larger restoration projects (including land purchases) and to implement landscape scale measures
• Establish clearly defined legal requirements, following Aarhus Directive on Public Participation, for public participation in management planning
• Do not wait until conflicts arise: invest in stakeholder involvement on time and provide real opportunity for stakeholders to influence the process. Do not stick to formal, inflexible processes

There are positive examples from many countries of how management plan systems are being implemented successfully.

Results
The actual progress with management plans shows great differences within Europe. Significant variation can be observed even within countries with federal system. There are also differences in the quality and content of management plans.

Sites with management plans (in percentage)

<table>
<thead>
<tr>
<th></th>
<th>2011</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>HU</td>
<td>7</td>
<td>50</td>
</tr>
<tr>
<td>EL</td>
<td>6</td>
<td>100</td>
</tr>
<tr>
<td>AT</td>
<td>5</td>
<td>60</td>
</tr>
<tr>
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<td>10</td>
</tr>
<tr>
<td>PL</td>
<td>0</td>
<td>50</td>
</tr>
<tr>
<td>FI</td>
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</tr>
<tr>
<td>CY</td>
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<td>95</td>
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<tr>
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<tr>
<td>SE</td>
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</tr>
<tr>
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<td>3</td>
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<tr>
<td>FR</td>
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<tr>
<td>BG</td>
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<tr>
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<td>100</td>
</tr>
<tr>
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<td>3</td>
<td>100</td>
</tr>
<tr>
<td>ES</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Wallonia</td>
<td>31</td>
<td>100</td>
</tr>
</tbody>
</table>

Blank cells mean no data was made available. Management plans of existing protected areas overlapping with Natura 2000 sites were not included.

Source
http://www.eeb.org/EEB/?LinkServID=5CC039F5-5056-B741-DBFACC8777CA4E16&showMeta=0 and
http://www.eeb.org/EEB/?LinkServID=6E8CF918-5056-B741-DB952504CA144F2F&showMeta=0
Annex I – Overview of Member State Implementation of the Birds and Habitats Directives, taken from *2010 - Turning or Breaking Point for Europe's Wildlife* (BirdLife 2010)
Annex II – Extracts from Barroso Letter to Balkenende, October 2009

Balance between economic and natural development

Natura 2000 does not threaten the balance between economic and natural development. Economic activities and new developments are not excluded from Natura sites. The EU Nature Directives explicitly acknowledge that human activities are part of the environment and the landscape. They establish safeguards to ensure that economic activities take due account of nature conservation objectives and that an acceptable balance between economic interests and nature protection is achieved.

There is no instance of the EU Nature Directives having prevented significant economic development in the Netherlands or in other Member State. There are numerous examples of large projects (e.g. extension of the Airbus factory in Hamburg, extension of the Rotterdam harbour) taking place within or close to Natura sites. In the Commission's experience, the systematic application of the protection regime under the Habitats Directive can actually help with the development of plans and projects since it provides a mechanism to manage potential conflicts between ecological and economic factors.

Ensuring proper management of Natura 2000 sites is also a sound economic investment in itself. Recent findings on the economic importance of protected areas - of which the Natura 2000 network constitutes the largest network worldwide - demonstrate that €32 billion invested in protected areas could secure ecosystem services worth €3.5 trillion per year (preliminary findings from the TEEB Study - The Economics of Ecosystems and Biodiversity - launched at the initiative of the European Commission and Germany in 2007).

Review of the Directives

The Directives as they stand do provide the necessary flexibility to ensure compatibility between nature protection and economic developments. The Netherlands is particularly advanced when it comes to developing such integrated development approaches. Development schemes for the Western Scheldt, the Markenmeer and IJmeer and the development plan for the Dutch large river areas provide good examples.

Across Europe, the process of designation of terrestrial sites is nearing completion and the Commission's priority is to ensure that the Natura 2000 network is effectively managed and properly resourced. We therefore do not believe that a review would be justified.

A further consideration is that economic operators benefit from a stable and predictable legislative framework. The inevitable legal uncertainty that would be caused by a review would be likely to slow down the development of existing plans and projects.
Annex III – Letter from German Environment Minister to MPs, November 2007

‘Over the past few weeks we have spoken on various occasions about the transposition of European nature conservation law in Germany. One of the reasons for this was the amendment of the Federal law on Nature Conservation [Bundesnaturschutzgesetz], which was required in accordance with a judgment of the European Court of Justice. We have since passed this amendment in the Bundestag, and I believe it turned out to be a pragmatic solution which makes no excessive demands of, in particular, agriculture and forestry.

I had promised you that I would give you some examples of how it is possible to strike a balance between economic interests and nature conservation interests.

In point of fact, to date the nature conservation Directives have not prevented any single significant economic development in Germany. On the contrary, in many ways processes were accelerated by the use of the systematic instruments available under the Habitats Directive for managing conflicts between ecological and economic factors. I will give you a few examples:

1. The Federal Transport Plan [Bundesverkehrswegeplan] of 2003 contains 2 600 projects. The compatibility of all these projects with the EU nature conservation Directives had to be checked. This happened without any fuss. From the start, 1 600 projects were able to be excluded from any further consideration because they posed no problem. 800 projects were examined in greater detail. That left approximately 350 projects which pose a very high risk to the environment and have been given a specific nature-conservation planning mandate when it comes to further planning. In this way acceptable solutions could be found very quickly, even for highly controversial and ecologically problematic measures such as the North Hamburg by-pass involving the A20 or the A33 (Tatenhauser Wald). The nature conservation Directives have helped prevent conflicts from arising in the first place by making available very early in the planning process a choice of suitable options.

2. Despite its protected status under the Habitats and Birds Directives, the Mühlenberger Loch, the only brackish water tidal flat in Germany, was able to be used for the extension of the Airbus hangar in Hamburg, a project which involved filling in approximately 30% of the tidal flat.

3. Approval was recently granted for the Lakomaer ponds area in Brandenburg, which is also protected under the Habitats Directive, to be completely excavated as part of the extension of the Cottbus Nord open-cast mining area, in order to utilise the underlying coal. It was precisely because the Directives were very carefully applied that court proceedings came to nothing.

4. The planned extension of Frankfurt Airport encroaches upon the Kelsterbacher Wald, which has protected status under the Habitats Directive, without this preventing the extension.

The decisions described here in favour of economic projects are the direct result of the balanced consideration required under European nature conservation law: Article 6 of the Habitats Directive, which applies to all Natura 2000 sites, and, in the context of species protection, Article 9 of the Birds Directive and Article 16 of the Habitats Directive, provide that nature conservation interests must come second where there are overriding factors, e.g. of an economic nature. The decision to weigh up factors and grant approval is in virtually all cases a matter for the approval authorities of the Länder, and only in exceptional cases, such as matters concerning the Federal waterways, do the authorities of the Federal government have responsibility. Therefore, the decision concerning the current project to extend the Ems Federal waterway, for example, will be taken by the North-West Waterways and Shipping Directorate, without involving the European Commission.

The involvement of the European Commission is only required in a very few cases, essentially where the economic project harms species and habitats in particular need of protection in areas with
protected status under the Habitats Directive. In Germany this has happened six times since the Habitats Directive came into force, and on only one occasion did the European Commission issue an unfavourable opinion on account of an obvious failure to follow procedures.

In my opinion there are two reasons for the negative feeling in Germany regarding the EU nature conservation Directives: firstly, it is not consistent with the traditional way of handling protected areas in Germany that the Natura 2000 areas are not sacrosanct. Exploitation is not, in itself, ruled out. This embodies the principle of sustainability contained in the Directive, whereby the ecology and economy are to be reconciled by weighing up interests in a considered manner, as the above examples illustrate. Popular statements demonising hamsters or bats as the bugbear of industrial development, unfortunately have often not been helpful in conveying this constructive mechanism of EU nature conservation law to the public.

Secondly, this negative feeling is based on the woeful way in which the Natura 2000 network was established, which featured continuous new notification rounds, seemingly from out of the blue, and the resulting legal uncertainties. This process, which went on in Germany for eight to nine years, has in many ways given the public the impression that it is a helpless victim of the Directive. Unfortunately the Länder made many errors in the start-up process.

Natura 2000 has since been completed, with a few exceptions, whereby individual Länder still additionally notify bird protection sites, so that now the focus can and should be on reconciling the economy and ecology as part of Natura 2000. It is especially important that the issues are looked at early on in the planning phase. If individual cases are looked at in detail on the ground, it is clear that the conflicts were able to be properly resolved. I therefore do not set much store by an amendment to the Directives, as was requested the week before last by some of the Länder in the Bundesrat [Upper house of the German Parliament]. After an arduous process to transpose the Directives in Germany, we would once again open up a debate which would drive an unnecessary wedge between nature conservation and exploitation, instead of breaking it down through pragmatic and dialogue-orientated implementation.'