

# Habitats Directive and Natura 2000

October 2004

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A FERN/TRN Briefing Note

## 1. Introduction

The Habitats Directive<sup>1</sup> is the EU's single most important legal tool for biodiversity conservation. A legally binding EU law adopted by the European Council in 1992, the Directive has since been transposed into the national law of the EU Member States. Central to this Directive is the creation of 'Natura 2000' – a coherent Europe-wide ecological network of sites selected on the basis of the protection that they offer to important habitats and species. Although it is yet to be completed, the Natura 2000 network already consists of 16,000 sites, comprising some 13% of the EU-15<sup>2</sup> territory.<sup>3</sup>

This briefing paper outlines the objectives, timeline and means for implementation of the Habitats Directive and Natura 2000 network. Focusing specifically on forest habitats it assesses both the effectiveness of the current plans for implementing this legislation and the potential for NGO participation in the implementation process.

## 2. Principal objectives of the Habitats Directive

Primarily, the Habitats Directive aims to “contribute towards ensuring biodiversity through the conservation of natural habitats and of the wild fauna and flora”, thus contributing to the EU's implementation of its commitments on conservation outlined in the Convention on Biological Diversity (CBD).

A central component of the Habitats Directive is the creation of the *Natura 2000* network of Special Areas of Conservation (SACs), which should include both intact areas and areas in need of restoration. Once established, the onus is on Member States to protect and restore the sites included in the network in accordance with the Directive's Article 6, which outlines the minimum conservation measures to be ensured.

Sites for *Natura 2000* can be designated as SACs *via* the Habitats Directive and/or as Special Protection Areas (SPAs) according to the Birds Directive<sup>4</sup> for sites with priority bird species.<sup>5</sup> The Birds Directive is also central to the *Natura 2000* network, specifically addressing the conservation of wild birds. It is divided into two parts: habitat conservation and species protection.

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## 3. Implementation of the Habitats Directive

### 3.1 Creating Natura 2000

The creation of the *Natura 2000* network – a combination of SACs and SPAs – involves the following steps:

- i. The SACs are designated *via* a process initiated by Member States:
  - a. First, the Member States propose Sites of Community Interest (pSCIs) in accordance with the Habitats Directive's lists of habitats and species of concern (Annex I and Annex II respectively);<sup>6</sup>
  - b. Following discussions between Member States and observing NGOs – which may suggest further changes to ensure the survival of certain priority species or habitat types – the national lists of pSCIs are then subject to the approval of the Commission;
  - c. The Commission then adopts the national pSCIs as Sites of Community Importance (SCIs);
  - d. Member States must then implement the Commission's SCI list by designating Special Areas of Conservation (SACs) based on the SCI list.
- ii. Member States also nominate a list of sites designated as Special Protection Areas (SPAs) in accordance with the Birds Directive. SPAs come into force immediately when Member States send a list of designated sites to the Commission.

Sites may be nominated as both SPAs and pSCIs.

### 3.2 Site adoption for Natura 2000

During the course of the process outlined above, SCI proposals (pSCI) made by Member States are checked by researchers and stakeholders, such as the European Habitats Forum,<sup>7</sup> in two biogeographical seminars. In the past it has been during these seminars that independent ecological assessments have forced Member

States to nominate more sites. Although these seminars have now been completed for the EU-15 Member States, the dates for these seminars for new Member States<sup>8</sup> have yet to be decided. In both cases, however, the Commission can continue discussions about the adequacy of national SCI lists bilaterally with the Member States even after the seminars. Significantly, NGOs can participate in these bilateral discussions if they are invited to do so by the Member State, and this has been the case at least in the UK. The post-seminar process varies from country to country, but the UK model of including stakeholders can be seen as best practice.

The Habitats Directive can be used as a tool for protecting a variety of European habitat types, including forests. Annex I, mentioned above, lists the "*Natural Habitat Types of Community interest whose conservation requires the designation of Special Areas of Conservation (SAC)*". The types of forest habitat included in this list are:

- Forests of Boreal Europe;
- Forests of Temperate Europe;
- Mediterranean deciduous forests;
- Mediterranean sclerophyllous forests;
- Alpine and Sub-alpine coniferous forests;
- Mediterranean mountainous coniferous forests.

Certain forest types within these categories, such as Caledonian forests, are considered 'priority habitat types'.<sup>9</sup> These forest types will automatically qualify for designation as SCIs if proposed in the pSCI lists of Member States. While it is not necessary to protect all priority habitat sites, if a key site is excluded, it is in theory possible to use Article 5 of the Habitats Directive to ensure its inclusion in the network.

It should also be noted that, under the Birds Directive, the Commission has already taken some Member States, notably the Netherlands<sup>10</sup> and Finland,<sup>11</sup> to Court to force them to protect more SPAs.

### 3.3 Management plans

Once an adequate *Natura 2000* network is established, the focus will shift to the management of the selected sites. *Natura 2000* is a conservation tool which can allow activities such as logging as long as conservation values are also safeguarded. Where forest areas are concerned, this depends on the particular site, habitat type, species and the nature of the logging. In some cases it may be advisable to remove certain tree species in order to restore a forest to its original habitat. The development of detailed management plans, although not obligatory under the Habitats Directive, can be a helpful tool to achieve biodiversity objectives.

In relation to forestry and *Natura 2000*, the Commission has drafted a series of guidelines.<sup>12</sup> Although they are not legally binding, and do not replace the associated Directives, these guidelines outline principles and best practice, and suggest funding possibilities which could potentially be used for *Natura 2000* and forestry. They also highly recommend the development of management plans. In essence, when managing *Natura 2000* sites, nature conservation values are prioritised over economic activities. The conservation status of the site, habitats and species must be maintained or improved, and the environmental quality of the site – as indicated by biodiversity and other measures – must be monitored. The guidelines further explain that if the specific forestry practices do not lead to a decline in the conservation status, then such economic activities are allowed to continue in designated *Natura 2000* sites. However, if forestry practices do have the potential to cause negative impacts, an assessment by Habitats Directive Article 6(3) is required and forest management plans must be adapted.<sup>13</sup>

Where assessing forestry in *Natura 2000* sites, or where a site is threatened by other activities, such as infrastructural development, two more general Commission manuals are helpful:

- *Managing Natura 2000 sites: The Provisions of Article 6 of the Habitats Directive 92/43/EEC*
- *Methodological Guidance on the Provisions of Article 6 (3) and (4) of the Habitats Directive 92/43/EEC.*<sup>14</sup>

### 3.4 Funding

Although Member States carry the major responsibility for funding the *Natura 2000* network within their national borders, in some cases there are possibilities for receiving EU money. The main EU financing instrument for this is the LIFE programme which is intended to fund environmental pilot projects, in order to establish best practice for larger financial instruments such as Structural Funds.<sup>15</sup> LIFE-Nature is the main fund for biodiversity, although some *Natura 2000* sites also receive money from LIFE-Environment. As a funding instrument LIFE has a much smaller financial capacity than other EU funding sources such as the Common Agricultural Policy and Structural Funds. Projects financed by LIFE are also of limited duration.

Other EU funding sources used for financing *Natura 2000* projects have included EAGGF (the European Agricultural Guidance and Guarantee Fund), ERDF (the European Regional Development Fund), LEADER+ (funding for rural development initiatives from Structural Funds) and ESF (the European Social Fund). In addition, ecological tourism is also proving a source of income for funding the management of *Natura 2000* sites.

Although the provision of “financial and technical support” for the implementation of *Natura 2000* is included in the EC’s Biodiversity Strategy,<sup>16</sup> it has not been specified exactly how this is to be provided. The consequences for *Natura 2000* are a lack of resources for research, planning and public participation in both old and new Member States. Ideally, there should be a strong new financial instrument for the environment developed for the next financing period (post-2006).

### 3.5 Timeline

While the original timeline gave a June 1995 deadline for Member States to propose national pSCI lists, and a June 2004 deadline for the completion of the *Natura 2000* network, currently only the Netherlands claims a complete national list. The Commission has completed the adoption of the national pSCI lists as SCIs only for Macaronesian (2001) and Alpine (2003) regions. The Commission is hoping to adopt the remaining SCIs in

2004, but this is seen as unrealistic by many involved. Assuming the Commission adopts all remaining SCIs in 2004 as planned, the Member States still have another six years to designate these areas as SACs, and to take the necessary measures for their protection. The date by which the *Natura 2000* network is finally established is therefore likely to be closer to 2010.

For the new Member States, national proposals on pSCIs and SPAs for *Natura 2000* should have been ready at the time of joining on 1 May 2004. Step i) c), the adoption of the pSCIs as SCIs (see section 3.1), must be completed within 3 years after the date of accession. Step i) d), the designation of SCIs as SACs must be done within 9 years after the date of accession. The protection and management of all SPAs must be implemented from the accession date onwards.

### 3.6 Implementation problems

*Delays* – Some of the delays outlined above stem from the fact that Member States have been slow to produce complete national lists of pSCIs and SPAs., such that in 1997 the Commission took legal action against nine EU countries due to missing or partial lists. In addition, lack of clarity regarding the financing of *Natura 2000* (see Section 3.4) has further contributed to the delays.

*Annexes I and II* – Although the nomination of pSCIs is based on representing the habitats and species listed in Annexes I and II of the Habitats Directive, these Annexes fail to include a number of important indicator groups for forest biodiversity – particularly mosses and lichens. This weakens the strength of the Directive to ensure that countries must include forest habitats with high biodiversity in the *Natura 2000* network. This omission is partly rectified in the new Annex I and II lists, which have been expanded to include habitats and species of relevance in the new Member States. Some

argue that this change could be used usefully to ask old Member States to now incorporate these neglected species and habitat types into their SACs. Others feel, however, that opening up the discussion to include additional habitat types in the old Member State network of SACs could equally open the door for Member States to renegotiate the exclusion of certain habitats and species (e.g. the flying squirrel), that have led to restrictions on forestry activities in certain forest areas.

*Political compromise* – Throughout the proposal and implementation of *Natura 2000* sites, political compromises between economic and environmental interests are an ever-present problem. Although many nominated sites were already nature conservation areas of some kind prior to the initiation of *Natura 2000*, the new site selection process has led to the exclusion of some buffer zones, as well as to compromises with private land and business interests. Given that the Directive clearly states that site borders should be selected on ecological grounds alone, such poor site delineations have led to many formal complaints from NGOs to the Commission, either directly or *via* national court systems. Some of these complaints have been brought before the European Court of Justice (ECJ). Yet despite these complaints, and some interest from the European Environmental Bureau's<sup>17</sup> Biodiversity Working Group and others, in compiling a report on national delineation practices, the Commission's interest in individual site delineations has been limited.

*Stepping stones and corridors* – Further debate centres on whether the final *Natura 2000* network should contain ecological 'stepping stones' and corridors, rather than just a scattering of isolated protected areas. However, while Article 10 of the Directive could be used to instigate a programme of connecting ecological corridors it lacks obligatory force.

## 4. Potential NGO action

The Habitats and Birds Directives both allow NGO input in proposing and approving sites of Community

Interest (SCIs). Key opportunities for providing input into *Natural 2000* in this way are described below:

Habitats Directive

*Nominating sites* – Influencing site selection is possible through biogeographical seminars and bilateral consultations between the Commission and Member States; here issues such as forest habitats suitable for inclusion, stepping-stones, and corridors can be proposed.

*Campaigning for corridors* – As mentioned previously, Article 10 of the Habitats Directive could be used to encourage the development of ecological corridors as part of the *Natura 2000* network. Although not obligatory under the Habitats Directive, the case for corridors could be strengthened by highlighting that other processes have stressed the importance of linking isolated sites through a network of ecological corridors. Such processes include the World Summit on Sustainable Development held in Johannesburg (2002), the Environment for Europe conference in Kiev (2003), the World Parks Conference in Durban (2003) and the CBD COP 7 (2004).

*Evaluating site delineation* – Once the *Natura 2000* network has been completed NGOs can also make evaluations of the borders of *Natura 2000* sites. A comprehensive report consolidating several concerns about site delineation would be more effective than many smaller reports regarding individual sites.

*Increasing site numbers under the Birds Directive* – A precedent has been set for adding additional sites (SPAs) to the network under the Birds Directive (e.g. the Irish case to the European Court of Justice concerning the Red Grouse C-117/00). Forest habitats with particularly threatened bird species could therefore be protected in a number of ways:

- Particular sites can be suggested to national governments, recommending SPA designation;
- Suggestions can be made directly to the Commission, suggesting a particular site for nomination. Such suggestions would need to be adequately researched to justify consideration, since there is no imperative for all sites containing important species to be protected.

*Monitoring progress* – Shadow reports timed to coincide

with reporting deadlines for Commission progress can effectively comment on the relative successes of site proposals. The Commission makes such reports every three years for the Birds Directive and every six years for the Habitats Directive.<sup>18</sup>

*Improving forest management plans* – NGOs can act as watchdogs against inadequate management plans and encourage public participation in *Natura 2000* in the following ways:

- Participating in the elaboration of national and regional management plan strategies; this can be initiated by liaising with relevant authorities;
- Developing projects designed to exchange knowledge of *Natura 2000*, and other ecological information, with local environmental group members. This can encourage active participation in the development of local management plans;
- Submitting critical reports and formal complaints to the Commission regarding cases of poor management practices (based on Article 6 of the Habitats Directive);
- Developing proposals for guidelines on best practice; moreover, civil society organisations can be active in spreading such practices from country to country;
- Elaborating proposals for national and regional guidelines for forestry and forestry practices in and around *Natura 2000* sites;
- Developing proposals for management plans, e.g. restoration of a particular forest site.

*Proposing projects eligible for LIFE funding* – An example of such a project could be a restoration project of a particular forest habitat or the creation of an ecological corridor, involving three Member States with the same, or similar, habitat types or forest species.

*Evaluating Natura 2000 forest species and habitats protection* – Under Article 17 of the Habitats Directive,

## Habitats Directive

Member States are required to make progress reports to the Commission. The next report will cover the 2000–2007 period. During the drafting period of this report (2006–2007), NGOs can submit shadow reports, and/or make proposals to the relevant ministers of Member States.

*New Member States* – Most of the new Member States

have sent their proposed *Natura 2000* sites to the Commission already, and the first biogeographical seminars are expected to start taking place in 2005. It is therefore critical to ensure information exchange and training between NGOs in old and new Member States, as regards both the *Natura 2000* process, and how to participate effectively in environmental decision-making at EU level.

## 5. Summary

The Habitats Directive and the associated development of the *Natura 2000* Network is a positive step in EU policy towards the protection of forest habitats and biodiversity. It provides a valuable legal tool for NGOs wishing to improve the quality and quantity of forest habitat protection in the EU. *Natura 2000* represents an important initiative towards establishing new conserva-

tion areas selected on ecological grounds alone. Nevertheless, as the list of implementation problems shows, the *Natura 2000* network is far from perfect and there is room for much greater NGO participation – especially with the forthcoming expansion of the *Natura 2000* network to include sites in the new Member States.

## Notes

<sup>1</sup> Directive 92/43/EC on *Conservation of Natural Habitats and of Wild Fauna and Flora*, OJ L 206/7, 22.7.92. Available at: <http://europa.eu.int/comm/environment/nature/habdir.htm>

<sup>2</sup> There are currently no data for the EU-25

<sup>3</sup> See the *Natura 2000 barometer* for up-to-date statistics on the number of SPA (*Birds Directive*) and SAC (*Habitats Directive*) sites at: [http://europa.eu.int/comm/environment/nature/nature\\_conservation/useful\\_info/barometer/barometer.htm](http://europa.eu.int/comm/environment/nature/nature_conservation/useful_info/barometer/barometer.htm)

<sup>4</sup> *Natura 2000* has two central components: the *Habitats Directive* and the *Birds Directive*. The *Birds Directive*, (Directive 79/409/EC on the *Conservation of Wild Birds*; OJ L 103, 25.4.79) is available at: <http://europa.eu.int/comm/environment/nature/legis.htm>

<sup>5</sup> Although the *Birds Directive* was originally based on wetlands habitats, forest bird species can also form the basis for areas being designated as SACs, thus ensuring the protection of forest habitats.

<sup>6</sup> The *Habitats Directive Annex I* list can be found at: <http://europa.eu.int/comm/environment/nature/hab-an1en.htm>. *Annex II* can be found at: <http://europa.eu.int/comm/environment/nature/hab-an2en.htm>

<sup>7</sup> The European Habitat Forum is a loose network of international NGOs involved in the conservation, rehabilitation and sustainable use of species, habitats and landscapes throughout Europe. See: <http://www.ceeweb.org/a4euhabforum/>

<sup>8</sup> Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

<sup>9</sup> Priority habitat types are habitats which are in danger of disappearing.

<sup>10</sup> Case number C-3/96

<sup>11</sup> Case number C-240/00

<sup>12</sup> *Natura 2000 and the Forests – Challenges and Opportunities*. Available at: <http://www.europa.eu.int/comm/environment/nature/docum.htm>

<sup>13</sup> The development of management plans is overseen by Member States. Finland, for example, has developed national guidelines for forestry in *Natura 2000* areas.

<sup>14</sup> These Commission manuals are available at: <http://www.europa.eu.int/comm/environment/nature/natura.htm>

<sup>15</sup> The main objective of the Structural Funds for rural development is the improvement of economic, social and ecological structures of rural areas, especially in the fields of agriculture and forestry. See: European Community (2003) *Natura 2000 and the Forests – Challenges and opportunities: interpretation guide*

<sup>16</sup> EC Biodiversity Strategy. See: <http://europa.eu.int/comm/environment/docum/9842en.pdf>

<sup>17</sup> The European Environmental Bureau (EEB) is a Brussels-based body that co-ordinates the input of environmental NGOs. They have a working group focused on biodiversity.

<sup>18</sup> A composite report from the Commission on the implementation of the Directive 92/43/EEC on the *Conservation of Natural Habitats and of Wild Fauna and Flora*, for the period 1994–2000, can be found at: [http://europa.eu.int/comm/environment/nature/nature\\_conservation/monitor\\_indic\\_reporting/reporting/habitats/index\\_en.htm](http://europa.eu.int/comm/environment/nature/nature_conservation/monitor_indic_reporting/reporting/habitats/index_en.htm)