BirdLife INTERNATIONAL BIRDLIFE EUROPE

EEB European Environmental Bureau

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# NATURE'S LAST LINE OF DEFENCE

## The EU Commission: enforcing nature protection?

### The EU Nature laws

**Europe's most precious wildlife and habitats are protected by strong legal standards** – the EU Birds and Habitats Directives.

An EU-wide review of these laws has found they are 'fit for purpose': they have successfully established the world's largest protected nature network (*Natura 2000*) and safeguards for over 1000 rare species.

**Yet while much of Europe's rare nature is safeguarded on paper, in practice it does not always receive the high levels of protection it should do.** Cases of poor enforcement outnumber the success stories where the laws have been applied effectively.

When protected nature is in trouble – whether from illegal logging, damaging projects, or intensive agriculture – **the EU Commission is often nature's last line of defence**. As the body responsible for enforcing EU nature protection laws, and referring governments to the EU's top court when the laws are flouted, the Commission is ultimately the last one standing in the way of illegal destruction.

### Last chance lost

**But sadly, too often nature's last chance is lost: we see cases getting delayed, stuck, or undermined by timidity to take action.**

Whether due to lack of resources or will, insufficient or delayed enforcement of EU nature laws can harm wildlife, and Europe's vital efforts to halt biodiversity loss by 2020. EU rule of law and good governance is also weakened, with nature destruction so often linked to crony capitalism and corruption.

Nevertheless, when prompt proactive enforcement action is taken, nature and people benefit.

**The European Commission must prioritise and speed up dealing with complaints, launch infringement actions faster, and see them through**.

READ ON

Find out more about where nature is under threat across the EU - and how well the Commission is doing at enforcing the laws that should protect nature when the alarm is raised.

A protester in Sofia, Bulgaria, January 2018, demanding protection for Pirin National Park, at threat from ski resort expansion and commercial activities.

# Protecting Białowieża ancient forest

Case study 1: Poland

**Białowieża Forest, a *Natura 2000* and UNESCO World Heritage Site in eastern Poland, is widely recognised as the best preserved old-growth forest in northern Europe, and home to Europe's largest population of bison.**

In March 2016, the Polish Environment Ministry notoriously approved plans to triple logging in Białowieża District – breaking a 2012 agreement to limit logging to save the forest's most valuable species and habitats (though allowing small-scale felling of wood for local people). The ministry cited a bark beetle outbreak as justification – despite the fact that bark beetle outbreaks and dying spruce trees are natural processes that have shaped the forest for centuries.

Seven NGOs complained to the EU Commission, which responded by launching a formal infringement procedure in June 2016. The Polish ministry ignored the Commission's concerns and began intensive logging including in areas of old growth forest that should be strictly protected according to the *Natura 2000* management plan.

**The Commission took action in July 2017 and brought Poland to the European Court of Justice** – requesting interim measures to compel Poland immediately to suspend logging, because of the risk of irreversible damage. As logging continued, the Court decided in November 2017 to impose a daily penalty of €100,000 on Poland if it continued to defy the ban. In April 2018, the court ruled that Poland violated EU law by logging in Białowieża.

Poland has now promised to abide by the ruling – although logging continues on a on a small scale, and the decisions allowing increased wood extraction and logging in the old-growth forest have not yet been cancelled. Activists who protested the logging are also facing charges.

**This example shows that decisive EU enforcement can have a positive effect, though a lot of damage has been done.**

Bison in Białowieża forest. (c) WWF Poland/Adam Ławnik

# Doñana's drying wetlands

Case study 2: Spain

**Doñana in Andalucía is one of Europe's most precious wetlands – recognised by UNESCO, Ramsar, and *Natura 2000*.** It is an important site for migratory birds and a refuge for the Iberian lynx.

Doñana's conservation is closely linked to its surroundings: the wetland depends on the maintenance of the quality and quantity of the groundwater table, connected rivers and old tidal plains.

But it faces constant threat – mainly from diversion of river water, and overuse of groundwater for agriculture. Illegal wells and thousands of hectares of illegal strawberry farms have in some areas reduced flows from the aquifer to the wetlands to just 10% of natural levels. Water pollution, fragmentation, and projects like the Guadalquivir River dredging, are also significant threats – resulting in Doñana losing important species like the marbled teal.

Currently two infringement procedures related to Doñana are active. Both are in the 'reasoned opinion' stage, but haven't been taken further since.

The first is for **planned dredging of the Guadalquivir River**. Though the Spanish Environment Ministry has committed not to authorise it, dredging is still included in the port authority's plans and in the current river basin management plan. The Commission should follow up the case closely until there is a formal decision that permanently withdraws the dredging project.

The second is for **excessive water abstraction**. The Commission's reasoned opinion was issued 1.5 years after the infringement procedure was first initiated.

Unfortunately, **there has been no known follow-up by the Commission since summer 2016** when the Spanish government replied to it – despite the fact that the situation on the ground continues: **Doñana is drying out.**

**The Commission should act strongly and bring Spain to court for failing to protect Doñana's nature.**

Sunset on Doñana. (c) Jorge Sierra/WWF

# Tearing up grasslands

Case study 3: Germany

**Much of Germany's *Natura 2000* network is made up of grasslands: lowland and mountain meadows have an important role to play in protecting biodiversity.**

However, grassland habitats are fast degrading across Germany, in both size and quality. Between 2003 and 2010 the grasslands on farm sites decreased from 5.02 to 4.78 million hectares. Regions such as Baden-Wuerttemberg saw a much greater decline (20%-30%). Further intensification of agriculture has moreover caused a noticeable deterioration of grassland habitat quality.

In April 2014 NABU filed a complaint with the EU Commission, reporting a failure to uphold Article 6(2) of the Habitats Directive (which should ensure protected natural habitats do not deteriorate).

NABU has since communicated regularly with the Commission to see if there has been progress, to offer additional evidence, and to formally ask for a status update. Yet by May 2018 NABU has still **not been made aware of any measures taken by the Commission against Germany to address the issue**.

**Beyond its claims to take implementation of the nature laws seriously, the Commission must resolutely try to find a solution with the German government to prevent further deterioration of grasslands and improve the quality and extent of meadows.** Any effective solution needs to address agricultural practices.

30 hectares of species-rich Natura 2000 grassland being ploughed up (Verden, Germany). (c) NABU

# Meadow bird decline

Case study 4: The Netherlands

**The Netherlands harbours significant populations of Europe's meadow breeding birds, such as the Black-tailed Godwit, Lapwing and Oystercatcher.**

Yet many of these species are facing rapid decline. For example, the Black-tailed Godwit has declined by 60% in recent decades, and the rate of decline is only getting worse.

The size and quality of the Netherlands' protected grassland habitats have been in serious decline – driven by intensification of agriculture – and this has been one of the main contributors to low breeding success of meadow birds.

The Netherlands has consistently failed to take action to protect meadow birds and their breeding habitats effectively. The limited measures put in place under agri-environment schemes are totally insufficient and have been largely ineffective.

In November 2016 Vogelbescherming Nederland (BirdLife Netherlands) brought a complaint to the EU Commission regarding the failure of the Netherlands to meet its obligations under the Birds Directive to protect meadow birds and their breeding habitats.

The complaint details evidence that the Netherlands is in breach of the requirement to preserve, maintain or re-establish a sufficient diversity and area of habitats for all meadow bird species.

In response, **the Commission has initiated an informal dialogue with the Dutch Government** under the EU Pilot mechanism. However, at time of writing, **a decision on whether a formal infringement procedure will be launched is still pending**.

A Black-tailed Godwit and baby in the Netherlands. (c) Vogelbescherming Nederland

# Inappropriate assessment

Case study 5: Italy

**All over Italy, plans and projects negatively affecting the integrity of *Natura 2000* protected nature sites are often approved with inadequate assessment of the impacts or without any assessment at all** – ignoring the legal requirement to carry out a so-called 'appropriate assessment' (AA) – with consequent damage to nature.

Lipu and WWF have denounced this systematic failure to implement the Habitats Directive (Article 6) in Italy. They submitted a strategic complaint and photographic evidence to the EU Commission, documenting the adverse effects of inadequate AA procedures on species and habitats across 32 Italian *Natura 2000* sites.

In July 2014 the **Commission opened an EU Pilot procedure**. Only in July 2017 did the Environment Ministry respond with a technical worktable and draft national guidelines on Appropriate Assessment.

However **so far, no concrete changes have been introduced to effectively improve the implementation** of Article 6. Indeed, some recently approved regional rules are incompatible with the law, some of the nature sites in question have been further damaged, and some projects have been newly approved without an appropriate assessment.

**The Commission needs to intervene, and binding national guidelines on appropriate assessment must be adopted across all Italian regions urgently** – backed up by (i) guaranteed public participation, (ii) skills, resources and training for relevant authorities, site managers, and law enforcement agencies, and (iii) adequate administrative and penal sanctions.

*Before* and *after*: Biviere di Lentini, Italy. (c) Lipu

# Unprotected nature

Case study 6: Austria

**Austria's bountiful nature, and diverse landscapes, habitats and species – the result of a highly varied blend of geomorphological, geological and climatic influences – remains dangerously unprotected.**

Whilst there have been some nature conservation successes (notably the return of the wolf and the stabilisation of Austria's heraldic animal the sea eagle), these are offset by a failure to finalise designating *Natura 2000* sites across Austria.

It should have completed its *Natura 2000* network by 2007. Yet in 2013 the EU Commission had identified more than 100 habitats and species lacking protection. This creates significant problems not only for maintaining and enhancing the conservation status of species and habitats that should receive legal protection, but also for a lack of planning security for all land users and stakeholders.

In May 2013, the EC launched an infringement procedure with a letter of formal notice to Austria. This resulted in an agreement to complete the designations by the end of 2016.

However, **this deadline has come and gone** – still no coordinated procedure between the relevant regional authorities to monitor protected habitats and species, nor to finish designating the most suitable *Natura 2000* sites. There are still big gaps in data quality and completeness in several regions.

**Despite the missed deadline, the Commission has not taken any further action to move the infringement process forward**. Meanwhile negotiations between the EC and the competent regional authorities have restarted, however without involving any stakeholders. A seminar with all interested parties should take place to transparently assess whether Austria's progress is sufficient to safeguard EU-protected nature.

*Natura 2000* habitat in Austria. (c) G. Egger/WWF AT

# Rampant hydropower

Case study 7: Romania

**Rivers in the Făgăraş Mountains and other *Natura 2000* sites in Romania, designated for the protection of fish, otter, cray fish, as well as alluvial forest habitat, are threatened by numerous illegal hydropower developments** – highlighting widespread management failings in the country.

In May 2015, following two official notifications from WWF a year and a half previously, the European Commission launched an infringement procedure against Romania for consistent breaches of the Habitats Directive and Water Framework Directive, due to illegal construction of small hydropower plants on different rivers in *Natura 2000* sites in the Carpathian Mountains.

However the **case has not been resolved nor progressed since May 2015's initial letter of formal notice** was sent to the Romanian Government.

The horizontal complaint was about consistent breaches, citing different small hydropower cases in Natura 2000 sites to show a **systemic failure to apply the legislation by the Romanian authorities** – even authorising and building small hydropower plants on rivers classed as of 'good' and 'very good' ecological status.

The **EU Commission should ensure Romania improves the procedures and national legislation regarding appropriate assessments**, assessments of impact on water bodies, and permits for development projects inside or nearby Natura 2000 sites.


Sambata River during hydro-power construction, 2012
(c) Transmont / WWF Romania

Damage to Dejani River from hydro-power construction
(c) Transmont / WWF Romania

# Turtle nesting beach

Case study 8: Cyprus

**Limni is a marine *Natura 2000* site and a crucial breeding ground for two iconic species of sea turtles – the Loggerhead and Green varieties – hosting a quarter of all Cyprus' Loggerhead turtle nests.** These turtles face a high risk of extinction in the wild, and are strictly protected under EU law.

Cyprus has given the go-ahead to a large multimillion-euro tourism development adjacent to the beach, comprising two golf courses, a 160-room hotel, and nearly 800 residential villas extending right up to the beachfront, which threatens the turtle nesting area.

Increased human disturbance is one factor, but the effect of light pollution near the animals' nesting sites is also problematic, as newly-hatched turtles easily become disoriented, and end up stranded on land instead of finding their way to sea.

To mitigate the threat, the Cypriot Department for Environment originally suggested a 475-metre building-free buffer zone from the beach, and the European Commission has also independently recommended this. However intense pressure from the developer has reduced this buffer zone to just 20 metres.

Following a complaint supported by Terra Cypria, Friends of the Earth Cyprus, BirdLife Cyprus and others, the EU Commission opened an infringement case and in April 2015 sent a 'reasoned opinion letter' demanding a new appropriate assessment. In August 2016, Cyprus responded with a report explaining why no changes are necessary and disregarding the recommendation for a 475m buffer zone. The EU Commission has asked for more analytical data backing this up.

**Whilst intervention from the EU Commission has so far prevented the controversial project from going ahead, NGOs are still uncertain whether the EC might instigate legal measures against Cyprus or if the project will be given the go-ahead.**

Turtle nesting, Akamas, Cyprus

# Conclusion: How can the EC buttress nature's last line of defence?

**There is a body of evidence showing that when EU nature protections are fully put into action, nature and people benefit.** But the EU Commission must be prepared to act as the ultimate 'guardian of the treaties' to properly enforce the laws when infringements occur. Only when the Commission is a reliable back-stop, can the nature laws realise their aim: *the conservation of natural habitats and of wild fauna and flora* across Europe.

In too many cases, nature that should be protected faces illegal disturbance and destruction. Failed by local or national authorities or courts, the level of protection promised in the laws is elusive.

In these types of cases, the **Commission's powers to investigate, launch infringements, and refer legal challenges to the EU Court of Justice are an indispensable last line of defence**.

Unfortunately, when complaints are lodged with the Commission, we regularly see they get **delayed, stuck, or neglected without follow-up – and Europe's nature ultimately pays the price.**

To achieve a step change in enforcement of the nature laws, the EU Commission should:

⇒ Be much more resolute in taking prompt and effective enforcement action when infringements occur – this is a case of political will;

⇒ Fully resource with staff, expertise and funding the departments responsible for enforcement, notably the implementation and support directorate and environmental enforcement unit;

⇒ Improve internal capacity to build a strong factual evidence base capable of withstanding scrutiny in court;

⇒ Speed up dealing with complaints – speed is often of the essence to halt damage before it's too late; where there are infringements, launch infringement actions faster;

⇒ See cases through – infringements should be seen to completion, to avoid them getting bogged down, which just allows impunity for violations;

⇒ Ensure that the complaints and infringement processes are more transparent;

⇒ Seek interim measures more frequently so that the ECJ can intervene to prevent damage even before a final decision is reached;

⇒ Ensure effective deterrent penalties are applied when crimes are committed, so environmental crime never profits.

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