



THE LAWS OF NATURE

What the EU should do to better protect nature in Europe

#NatureAlert



September 2016

**Thanks to the Nature Directives, threatened species
such as the brown bear, the wolf, and the lynx
are back from the brink of extinction.**



INTRODUCTION

The Birds and Habitats Directives (here referred to as 'Nature Directives') are widely recognised as the cornerstone of EU-wide efforts to halt and reverse the loss of biodiversity. The nature conservation framework they establish underpins the effective protection of rare or threatened species within the EU across their natural range, and has led to the designation of NATURA 2000, the largest network of protected areas in the world, currently covering 18% of Europe's land and 6% of its seas. Thanks to the Nature Directives, threatened species such as the brown bear, the wolf, and the lynx are back from the brink of extinction.

Although scientific evidence demonstrates the Nature Directives are effective when properly implemented, many Member States have not fully and effectively implemented their legal commitments under the Nature Directives. As a result, much of Europe's biodiversity is still in decline, and the EU risks missing its 2020 target of halting the loss of biodiversity and ecosystem services¹. Only 23% of animal and plant species and 16% of habitat types protected under the Habitats Directive have a favourable conservation status². **A crucial step towards achieving the 2020 target is therefore for the EU to fully implement the Nature Directives.**

However, this alone will not be enough, as policies that affect biodiversity in the wider landscape, such as those addressing agricultural practices and infrastructure development, also have an important role to play in addressing on-going biodiversity decline. Lack of targeted funding to secure ecological recovery remains also a major barrier³.

The European Commission is currently carrying out a Fitness Check of the EU Nature Directives to evaluate whether the Directives are "fit for purpose" or should be changed. Many Member States, the European Parliament, progressive business, NGOs and more than half a million citizens have stood up for the Nature Directives, acknowledging that a revision of these Directives would create a long period of legal uncertainty and damage the fragile recovery of species and habitats in Europe, as well as jeopardise achieving the Biodiversity Strategy towards 2020.

The Directives must not be revised; instead the focus must be on full implementation, increased funding for nature conservation, and fully addressing the drivers of biodiversity loss in the wider countryside.

¹ <http://www.eea.europa.eu/soer-2015/synthesis/report/3-naturalcapital>

² http://europa.eu/rapid/press-release_IP-15-4965_en.htm

³ <http://www.eea.europa.eu/highlights/state-of-nature-in-the>



To achieve a step change in EU conservation action the Commission and national governments should:

1. **Fully implement** the Birds and Habitats Directives, supported by required **financing**;
2. Effectively **enforce** existing EU laws affecting nature protection;

Integrate properly and coherently biodiversity across sectors:

- in *agriculture*, through

- (3) undertaking a **Fitness Check of the Common Agricultural Policy (CAP)**, and proposing a new food and farming policy for the EU that is environmentally and socially sustainable;

- (4) preparing a **Pollinators Initiative for publication and adoption**;

- (5) developing an **integrated approach to managing nitrogen**.

6. in *infrastructure development policies*, through a legal and financial framework for large scale green infrastructure projects across the **EU Trans-European Network of Green Infrastructure (TEN-G) Initiative**;

7. in *climate and energy policies*, by ensuring that new EU2030 policies include robust biodiversity safeguards, push Member States toward sound strategic planning, transition away from fossil fuels and avoid increasing the ecological footprint of the EU economy.

1 FULL AND EFFECTIVE IMPLEMENTATION OF THE EU NATURE DIRECTIVES, SUPPORTED BY SUFFICIENT FINANCING



- Member States should step up their efforts to implement the Birds and Habitats Directives fully and effectively, and complete the designation of the Natura 2000 sites, particularly in the marine environment.
- Member States must also ensure that adequate legal protection and site management measures are in place at site, national and biogeographical levels for all Natura 2000 sites. Development and implementation of management plans or other management instruments must be guided by specific conservation objectives that are set at site, national and biogeographical levels.
- Sufficient attention must be paid to activities outside of site boundaries that impact on adjacent protected sites.
- Inappropriate development or activities that may harm protected sites should not be allowed (even outside site boundaries), in line with the requirements of the Nature Directives.
- Species protection should be ensured through efficient and integrated implementation of the relevant provisions of the Birds and Habitats Directives, with the aim of achieving favourable conservation status for protected species.
- Member States must ensure that monitoring systems are in place not only to assess the status of species and habitats, and threats to nature, but also the effectiveness of measures they have taken.
- To facilitate compliance with the legal obligations of the EU Birds and Habitats Directives and the achievement of biodiversity objectives at national and EU levels, there is an urgent need to better target existing funding streams, and close funding gaps for nature conservation. The Commission and Member States should ensure that the next Multiannual Financial Framework (MFF):
 - earmarks and traces funding for biodiversity conservation in each individual EU fund, and
 - creates a dedicated funding stream to sufficiently cover biodiversity investment needs.

2 BETTER ENFORCEMENT OF EU NATURE DIRECTIVES



The evidence submitted to the Fitness Check of the Nature Directives makes it clear that **EU enforcement action has been instrumental in improving the implementation of the Nature Directives**⁴. However, more action is needed to ensure full compliance. The European Commission has a vital role to play in addressing implementation and enforcement gaps and should, in cooperation with Member States, adopt **a package of specific enforcement measures**, ranging from improved internal capacity for successful completion of infringement cases, to adopting new legal provisions on inspections and access to justice.

In its role as the guardian of the EU Treaties, the Commission should prioritise taking **prompt and effective enforcement action** when environmental infringements occur, and ensure that the **complaints and infringement** processes concerning environmental breaches are transparent. Greater capacity is needed for the Commission to build strong factual evidence capable of sustaining the scrutiny of the Court of Justice of the European Union (CJEU) once a case reaches that stage. Interim measures (injunctive relief) should be sought more frequently so that the CJEU can intervene to stop or prevent damage from potentially illegal activities before a final decision on the case is reached.

Access to justice in environmental matters, i.e. rules that allow members of the concerned public to directly challenge any violation of environmental law in courts, must be delivered across the EU.

The legal vacuum that currently exists in this area can only be remedied by the adoption of legally binding provisions ensuring access to justice at national level, preferably in the form of a horizontal Access to Justice Directive on which the Commission should start working without delay. In addition, Member States must grant access to justice to the public in all environmental matters, as required by the Aarhus Convention, even when access to justice is not explicitly stipulated in each EU legal act. Moreover, raising complaints against unlawful actions or omissions of EU institutions must become less restricted, which also requires legislative action from the EU.

Furthermore, to ensure compliance with nature legislation - and to detect any non-compliance - a much better regime of environmental inspections is needed. **The Commission should without delay propose a legally binding framework on environmental inspections**, which would:

- introduce minimum standards for environmental inspections in the Member States;
- grant the Commission inspection powers in environmental matters, allowing it to assess national inspection systems and use its own inspectors to investigate infringement cases;
- make it compulsory for Member States to cooperate with the Commission's appointed inspectors.

⁴ http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm

Modern technology also allows the European Commission to make better use of **remote sensing tools** for detecting infringements of the Directives. For example it could use earth observation tools, create platforms for citizens' monitoring, or integrate different data collection streams, providing information in a more user-friendly manner.

EU action is also needed on reducing **environmental crime** in the EU, in particular by ensuring effective deterrent penalties are applied when crimes are committed. In addition to prioritising efforts on making Member States fully compliant with the EU Environmental Crime Directive (Directive 2008/99/EC), the Commission should push for the harmonisation of a minimum level of penalties to deter against environmental offences and make explicit in the Environmental Crime Directive the possibility of imposing higher sanctions when the environmental crime occurs in the context of organised crime.

The potential of the **EU environmental liability** rules for nature conservation also needs to be unleashed. On the one hand, this would require amendments to the Environmental Liability Directive (ELD), including making all occupational activities which may damage biodiversity strictly liable. On the other hand, serious misinterpretations of the ELD by Member States must be addressed. The Commission should for example clarify and ensure that the 'significance of the damage' is determined based on the impact this would have on the conservation status at site level. 'Preventative measures' should also be interpreted and implemented by Member States in an adequate way. Moreover, enhanced application of the ELD is needed compared to current levels.

3 A FITNESS CHECK OF THE EU'S COMMON AGRICULTURAL POLICY TO TACKLE UNSUSTAINABLE FARMING



Industrial agriculture is one of the most frequently reported threats and pressures on species and habitats across EU Member States. According to the 2015 EU State of Nature⁵, the majority of species and habitats under the Nature Directives that are related to agricultural ecosystems are in unfavourable condition. The Common Agricultural Policy (CAP) guides the EU's second biggest subsidy flow amounting to €53 billion/year. Despite efforts to make farm subsidies conditional on the delivery of public goods such as nature conservation, these conditions have proven weak and limited from the start, and are poorly implemented and enforced.

If the next round of the CAP reform is to address the biodiversity crisis, a proper evaluation of the current policy framework is essential. The current piecemeal set of evaluation plans are unlikely to deliver on this need on their own.

⁵ <http://www.eea.europa.eu/publications/state-of-nature-in-the-eu>

The European Commission should therefore first carry out an in-depth evaluation of the functioning of the current CAP⁶. Such a Fitness Check would inform a revision post 2020 that could at last make the EU agricultural policy an instrument that supports the full implementation of the EU Nature Directives rather than undermining them.

The time has come to fundamentally question whether the CAP is still equipped to address the considerable challenges Europe faces with food and agriculture. Is the CAP good value for money? Does it respond to current environmental and social challenges, and define new objectives which tackle those challenges? Is the CAP coherent with other policies such as the EU Nature Directives?

As an immediate first step, the CAP should be better directed to improve the state of biodiversity in the farmed landscape by 2020, by maximising the use of the mechanisms available to increase finance and support for conservation, organic and diversified agroecological farming and short supply chains.

4 EU INITIATIVE FOR THE PROTECTION OF POLLINATORS



The EU needs a framework to protect Europe's declining bees and pollinators that are especially affected by intensive farming practices and by the growing effects of climate change. **Pollinators are a critical element of the global ecosystem, and pollination is an essential service for maintaining and promoting biodiversity;** it is critical for food production and human livelihoods and culture, and directly links wild ecosystems with agricultural production systems. An EU pollinators initiative would help target action for the protection of pollinators against unsustainable agricultural practices in the wider countryside, building on a priority identified by EU agriculture ministers. The European Parliament has already called the Commission and the Member States to come forward with such an initiative without delay. Moreover various countries have developed, or are developing national pollinators' strategies.

An effective pollinators initiative at EU level could greatly improve both environmental conditions as well as ecological connectivity of the Natura 2000 network by improving knowledge and monitoring of pollinators; improving agricultural practice; better regulating pesticides and developing non chemical alternatives; conserving threatened species and their habitats; encouraging new green infrastructure to create areas for nature; prioritising the protection for pollinators in GMO risk assessment; and reducing the risk of imported parasites and diseases.

The pollinators initiative should also make current restrictions on neonicotinoid insecticides permanent and extend them to all crops, and help ensure that bee-safe crop protection methods become the norm across the EU.

6 <http://www.greenpeace.org/eu-unit/en/Publications/2016/NGOs-call-for-EU-to-perform-Fitness-Check-of-CAP/>

5 AN INTEGRATED APPROACH TO MANAGE NITROGEN IN THE EU



Despite significant EU-wide reduction in nitrogen pollution, in particular from industrial emissions and human wastewater, reactive nitrogen remains one of the two biggest obstacles to meeting the Nature Directives' objectives. Diffuse pollution from agriculture remains a large and costly challenge, and as agreed in the EU's 7th Environment Action Programme (EAP), the EU's nutrient cycle should be managed in a more sustainable and resource-efficient way.

The Commission therefore needs to come forward with an integrated policy proposal to: ensure cost recovery from polluters of water ecosystems; improve nutrient use efficiency in production; increase the fertiliser equivalence value of animal manure; reduce the over-consumption of animal protein; reduce waste in the food chain; increase energy efficiency in particular in transport; increase the share of low-emission and renewable energy systems; ensure full compliance with the Nitrates Directive; and set stricter requirements for a significant reduction of ammonia under the National Emissions Ceilings (NEC) Directive.

6 A TEN-G INITIATIVE TO BOOST THE EU'S GREEN INFRASTRUCTURE

Changes to natural and semi-natural habitats due to man-made land use change and infrastructure development are the second largest driver of biodiversity loss in the EU. Fragmentation and loss of habitat connectivity considerably hamper the recovery of biodiversity and ecosystem services in the EU.

Large scale ecosystem restoration projects providing simultaneous benefits for various sectors and policies should help improve the status of species and habitats of EU importance and the coherence of the Natura 2000 network. The European Commission should therefore present a Trans-European Network of Green Infrastructure (TEN-G) Initiative by 2017 at the latest, as requested by the EU Council and Parliament. A legal basis for the development of the EU network of green areas can be found in Article 10 of the Habitats Directive and Article 4(4) of the Birds Directive, which need to be implemented in a more ambitious, focussed and cross-border fashion.

A new TEN-G initiative would provide a green infrastructure framework to ensure ecosystem connectivity, sustainable land use and conservation of protected species and habitats. For it to be effective it would need to be supported by EU funding (similarly to the way in which energy, transport and telecommunications networks development is currently supported by the Connecting Europe Facility).

Establishing a green infrastructure framework would require ‘**exclusion zones**’ to be integrated into national and local spatial planning tools. These would help identify the areas least suitable for development of certain types of particularly disruptive projects (eg energy and transport infrastructure) due to their negative impact on nature and the connectivity of natural areas.

7 MITIGATE NEGATIVE TRADE OFFS OF CLIMATE & ENERGY POLICIES WITH THE ENVIRONMENT



Faced with the impacts of climate change on people and nature, and in order to meet commitments to pursue efforts to hold global warming/global temperature rise to 1.5C, it is essential that Europe shifts to renewable energy and away from fossil fuels. Fossil fuel extraction causes emissions and is often directly responsible for the destruction of biodiversity and threatened species.

Robust nature conservation and environmental safeguards are needed in the EU's new 2030 energy and climate policies to ensure that mitigation measures and renewable energy and grid development are not undermining ecosystems and the services they provide, including climate adaptation. In particular the new policies should:

- include improved and transparent climate and energy planning by Member States that (i) take into consideration opportunities and constraints arising from resource availability and environmental impacts of different energy sources, (ii) are linked to strategic spatial planning and environmental assessment procedures, and (iii) consistently apply nature conservation safeguards;
- ensure that mitigation efforts (e.g. afforestation or intensification of agriculture and forestry, hydropower development) are not done at the expense of the natural environment, and
- redesign the EU policies on all bioenergy to ensure that demand is in line with sustainable supply. This would guarantee the most resource-effective and climate-friendly use of available resources and avoid undesired impacts on biodiversity.

CONTACTS

MARTINA MLINARIC

Senior Policy Officer,
Biodiversity and Water
WWF European Policy Office
+32 2 740 09 23
mmlinaric@wwf.eu
www.wwf.eu

ROBBIE BLAKE

Nature Campaigner
Friends of the Earth Europe
+32 2 893 10 17
robbie.blake@foeeurope.org
www.foeeurope.org

LEONARDO MAZZA

Senior Policy Officer
for Biodiversity and Ecosystems
European Environmental Bureau
+32 2 289 10 93
leonardo.mazza@eeb.org
www.eeb.org

ARIEL BRUNNER

Senior Head of Policy
BirdLife Europe
+32 2 238 50 92
ariel.brunner@birdlife.org
www.birdlife.org/europe-and-central-asia



23%

23% OF ANIMAL AND PLANT SPECIES
AND 16% OF THEIR HOMES
ARE IN GOOD CONSERVATION STATUS

500,000 PEOPLE CALLED ON THE
EUROPEAN COMMISSION TO SAVE EU
NATURE DIRECTIVES

500K

97%

97% OF EUROPEANS AGREE
THAT IT IS OUR MORAL OBLIGATION
TO HALT THE LOSS OF NATURE

NATURA 2000 PROVIDES BENEFITS
WORTH €200-300
BILLION PER YEAR

€ 300
bn

