



Wildlife and  
Countryside



## FINAL Joint Links Response to Fitness Check Questionnaire

This response is submitted on behalf of the Joint Links which comprises Wildlife and Countryside Link, Scottish Environment LINK, Wales Environment Link and Northern Ireland Environment Link. Each is a coalition of environmental voluntary organisations, united by their common interest in the conservation of nature and the promotion of sustainable development across the terrestrial, freshwater and marine environments.

Each Link represents its member organisations and facilitates their shared efforts in profiling environmental issues and concerns with decision makers, opinion formers, media and the public. Where appropriate, the Links also facilitate cross-border collaboration between their members and working groups on issues of UK-wide impact and concern.

The Joint Links collectively represent 224 organisations and more than 8,000,000 members across the UK.

### **This submission is supported by the following 100 members of the Joint Links;**

- Action Renewables
- Alliance Youth Works
- Amphibian and Reptile Conservation
- ARENA Network
- Badenoch & Strathspey Conservation Group
- Bat Conservation Trust
- Belfast Civic Trust
- Belfast Healthy Cities
- Belfast Hills Partnership
- Born Free Foundation
- British Ecological Society
- British Trust for Ornithology
- Broughshane Improvement Committee
- Bryson Charitable Group
- Bryson Energy
- Buglife – the Invertebrate Conservation Trust
- Bumblebee Conservation Trust
- Butterfly Conservation
- Campaign for National Parks
- Campaign for the Protection of the Countryside
- Campaign to Protect Rural England
- Carntogher Community Association
- Causeway Coast and Glens Heritage Trust

- Cavehill Conservation Campaign
- Chartered Institute of Environmental Health
- ClientEarth
- Colin Glen Trust
- Community Places
- The Conservation Volunteers
- Copeland Bird Observatory
- Council for British Archaeology
- County Armagh Wildlife Society
- Creggan Country Park
- EcoSeeds
- Environmental Investigation Agency
- Federation of City Farms and Community Gardens
- Field Studies Council
- Friends of the Earth England
- Froglife Trust (Scotland)
- Grass Roots Conservation Group
- Green Action Belfast
- Greencastle Area Residents Group
- Hebridean Whale and Dolphin Trust
- Holywell Trust
- Humane Society International/UK
- Institute of Fisheries Management
- Irish Hare Initiative
- John Muir Trust
- Keep Northern Ireland Beautiful
- The Institute for Archaeologists
- Lagan Valley Regional Park
- Landscape Institute Northern Ireland
- Lecale Conservation
- Lough Neagh Partnership
- The Mammal Society
- Marine Conservation Society
- MARINElife
- Mountaineering Ireland
- Mourne Heritage Trust
- National Trust
- National Trust for Scotland
- Natural Copeland
- North Belfast Partnership
- Northern Ireland Badger Group
- Northern Ireland Forest School Association
- The Organic Centre
- Outdoor Recreation Northern Ireland
- Peoples Trust for Endangered Species

- Positive Futures
- Plantlife
- Royal Society for the Protection of Birds
- Royal Society for the Prevention of Cruelty to Animals
- Royal Zoological Society of Scotland
- Rural Community Network
- Rural Development Council
- Salmon and Trout Association
- Scottish Badgers
- Scottish Campaign for National Parks
- Scottish Ornithologists' Club
- Scottish Wild Land Group
- Scottish Wildlife Trust
- Speedwell Trust
- Sperrins Gateway Landscape Partnership
- Supporting Communities NI
- Sustainable Northern Ireland
- Sustrans
- Talnoy Avian Care Trust
- Ulster Angling Federation
- Ulster Archaeological Society
- Ulster Architectural Heritage Society
- Ulster Federation of Rambling Clubs
- Ulster Wildlife
- Waste and Resources Action Programme
- Whale and Dolphin Conservation
- Wildlife Gardening Forum
- Wildlife Trusts Wales
- Wildfowl & Wetlands Trust
- The Wildlife Trusts
- Woodland Trust
- WWF - UK

# QUESTIONNAIRE

## A. General Information

Please answer ALL questions in this table

	Answer
<b>Organisation:</b>	<b>Joint Links</b> comprising of; Wildlife and Countryside Link, Scottish Environment Link, Wales Environment Link and Northern Ireland Environment Link.
<b>Date:</b>	25 March 2015 (Updated 29 April 2015)
<b>Country</b> (and, if applicable, region) <b>represented:</b>	UK
<b>Organisation(s) represented:</b>	This response is supported by 100 members of the Joint Links.
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<b>Languages spoken fluently by contact person:</b>	English
<b>Language</b> for the interview if it is not possible to conduct it in English	-
<b>Type of organisations you represent:</b> EU authority or agency / Member State authority or agency / business or industry / educational or scientific institute / nature conservation charity / recreation / individual expert / other (please specify).	Nature conservation charity
<b>Sector represented:</b> environment / water / agriculture / forestry / fisheries / transport / energy / extractive industry / industry / housing and other buildings / recreation & tourism / science & education / other (please specify)	Environment
<b>Additional comments:</b>	

## 1. Effectiveness

### MAIN POINT

The Directives are scientifically proven to be effective where properly implemented, **delivering demonstrable benefits for biodiversity, as well as significant social and economic benefits**. They are therefore widely recognised as the cornerstone of attempts across the EU to halt and reverse the loss of biodiversity, and their full implementation is recognised as essential if the objectives of the 7<sup>th</sup> Environmental Action Plan are to be achieved<sup>1</sup>. They have delivered demonstrable progress towards ensuring biodiversity, through the conservation of Europe's most valuable habitats and species, especially within Natura 2000. However, the failure by Member States to adequately define favourable conservation status (FCS) under the Habitats Directive and the corresponding Birds Directive Article 2 requirements limits the extent to which an absolute measure of their effectiveness can be made. Delays, and ongoing gaps in implementation, coupled with chronic under-funding, and a lack of political will to deliver on biodiversity conservation commitments, have constrained progress towards achievement of the objectives set out in the Directives. Unsustainable land management and fisheries practices promoted under EU sectoral policies have also limited progress towards EU biodiversity conservation objectives.

### S.1.1 What progress have Member States made over time towards achieving the objectives set out in the Directives and related policy documents?

*Please provide evidence on what progress has or is being made towards the achievement of the objectives set out in Annex I that are of relevance to you. Please address separately the objectives of the Birds Directive and the Habitats Directive, and specify which objective(s) you are referring to, with references to the corresponding Articles. If possible quantify the progress that is being made.*

#### Answer:

Significant progress has been made towards the achievement of the objectives of both the Habitats Directive and Birds Directive, and there is strong evidence that the measures set out in the Directives are capable of achieving the overall and strategic objectives set out in Annex I of the questionnaire. Wildlife in the UK and across Europe is in a much better place now than it would have been without the Directives, although the job is not yet complete.

In the UK biodiversity has benefitted and continues to benefit from the protection provided by the Directives, and EU funding provided to support implementation of the Directives has been instrumental in improving the status of some of our most charismatic species and habitats, e.g: stone curlew; Dartford warbler, golden plover; little tern; western Atlantic oakwoods; marsh fritillary; Restoration of Dorset heathlands, as the following information and case studies show. For example LIFE funding has been used to develop innovative ways of monitoring the population of stone-curlew<sup>2</sup> and SPA designation has driven the restoration of the Dorset heathlands<sup>3</sup>.

#### Birds Directive

##### **Overall Objective; Specific objectives BD Art 3, 4, 5; HD Art 4, 5, 6**

The scientific paper, 'International Conservation Policy Delivers Benefits for Birds in Europe' by Donald et al. (2007: *Science* 317: 810-813) shows that the Birds Directive is proving effective at improving the status of bird species across the EU, and that Natura 2000 sites are playing a key role

<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013D1386>

<sup>2</sup> <http://www.rspb.org.uk/whatwedo/projects/details.aspx?id=342233>

<sup>3</sup> <https://www.rspb.org.uk/whatwedo/projects/details/218968-dorset-heathland-project>

in this<sup>4</sup>. **This analysis is currently being repeated for the current Birds Directive reporting round and will be submitted to the Fitness Check subsequent to this initial response.** The preliminary results indicate very strong further support for a positive impact of the Directives after 2000.

The results, currently in peer review, yield strong support for the Birds Directive – Annex 1 status appears to be one of the best, quite probably the single best, predictor of bird population trends in the EU – put simply, Annex 1 species have done better than non-Annex 1 species, and this effect is more pronounced in countries that have been in the EU for longer. Annex 1 status appears to be a stronger predictor of trend than habitat association, sensitivity to climate change or migratory status.

Pellissier et al.<sup>5</sup> (2013: *Animal Conservation* 16: 566-574) showed that common species are also benefitting from the Directives, with specialist species in particular having higher population densities inside Nature 2000 sites than outside.

However, poor implementation of Birds Directive requirements (e.g. Art 3) outside of Natura 2000 is reflected in the ongoing declines in populations of many bird species. Results from the Pan European Common Bird Monitoring Scheme (PECBMS)<sup>6,7</sup> show that European birds are declining at an alarming rate, and much of this decline has been attributed to decreases in the number of farmland birds caused by agricultural intensification (Donald et al. 2001). In addition, there have been a number of well-publicised declines of very common European birds such as the House Sparrow (De Laet & Summers-Smith 2007) and Common Starling (Smith et al. 2012).

At the same time a number of the rare species have shown dramatic increases in recent years, probably due to the impacts of direct conservation action (Gregory et al. 2003; Holling et al. 2011). It has, however, remained unclear whether being common in itself is a factor affecting population trajectory. This work demonstrates for the first time how more common birds are generally declining faster than less abundant species while accounting for other factors which have been postulated as being responsible for avian population declines. This is particularly worrying as by definition the commonest birds are the most numerous and hence declines in these species have a much greater impact in terms of the ecosystem function and services which they provide.

In addition to site protection measures, the following progress has been made in relation to Birds Directive objectives and measures:

### **Species protection measures**

- Art. 5 (a-e): Prohibit certain actions relating to the taking, killing and deliberate significant disturbance of wild birds, particularly during the breeding and rearing periods.

While enforcement may be variable, transposition of Article 5 into UK law has afforded full legal protection to species previously vulnerable to persecution. This protection has undoubtedly played a role in population recoveries of species such as the buzzard and (in conjunction with reintroduction projects) the red kite. In particular, the provisions under Article 5 c have led to the near eradication of egg collecting as a conservation issue in the UK.

- Art. 6: Prohibit the sale of wild birds except of species listed in Annex III/A and, subject to consultation with the Commission, those listed in Annex III/B.

Several convictions have been achieved under legislation transposing Article 6, including high profile convictions in relation to peregrine and goshawk. The provisions under Article 6, in conjunction with custodial sentences and DNA fingerprinting techniques have led to a reduction in wild take of peregrine since the mid 1990s.

- Art. 7: Regulate hunting of species listed in Annex II and prohibit hunting in the breeding and rearing seasons and, in the case of migratory birds, on their return to breeding grounds.

These provisions have provided a mechanism for updating outdated hunting legislation in the UK. While some quarry species remain extremely out of date and more regular update is required,

<sup>4</sup> <http://www.sciencemag.org/content/317/5839/810.abstract>

<sup>5</sup> 2012: *Animal Conservation* 16: 566-574

<sup>6</sup> <http://www.ebcc.info/pecbm.html>

<sup>7</sup> <http://onlinelibrary.wiley.com/doi/10.1111/ele.12387/full>

implementation has, for example, allowed the removal of curlew from quarry lists across the UK.

- Art 9: Provide for a system of derogation from protection of species provisions under specified conditions

The derogation system provides a rigorous framework of test which must be met to allow for lethal control of otherwise protected species. This has proved effective in limiting lethal control of many species, although its application by the licensing authority is sometimes questionable (eg. Granting of small number of buzzard control licenses). In addition, it is at least debatable if the current Open General License System is compatible with the requirements under Article 9.

### Research

- Art. 10: Encourage research into relevant subjects, especially those listed in Annex V.

The driver provided by this requirement has proved extremely useful in encouraging research into long-term population trends (eg. SCARRABS surveys) and research into underlying drivers of decline. For example, the publishing of the Golden Eagle Framework report<sup>8</sup> has proved pivotal in understanding the important role of illegal persecution in preventing the species recovery and beginning the process of facilitating actions to address this.

Nevertheless, there is strong evidence that the UK has failed to fully implement this aspect of the Birds Directive. In its complaint to the European Commission in respect of the transposition and implementation of European Directive 2009/147/EC on the conservation of wild birds (codified version) in the marine environment in the United Kingdom (UK), RSPB has pointed out that the UK Governments have failed to transpose or implement Article 10 in relation to the marine environment;

The UK Governments do not have in place any effective, comprehensive programme of data acquisition to understand the status, trends and spatial distribution of seabirds at sea. Even where data on seabird populations have been collected on land (for example through national census of seabird breeding colonies) these have not been used to inform or review SPA or national protected area designation for breeding seabirds

The approach to seabird data collection in the marine environment has been patchy, with most data gathered in the period 1979 to 2006 under the European Seabirds at Sea (ESAS) programme. Since then, there has been no state-coordinated or statefunded programme for systematic survey and monitoring at sea. Most recent primary survey data has been collected as a consequence of developer-led surveys associated with impact assessment for oil, gas and windfarm development proposals. The UK Governments are therefore effectively relying on developers to identify aggregations of seabirds at sea. Such an approach to marine survey and monitoring is of course not designed to identify areas for site designation or to monitor change and is patchy and non-systematic. This situation creates unnecessary conflict with industry, and presents a barrier to investment in, and the roll out of, marine renewables and other developments.

The UK Governments have not transposed the requirements of Article 10 into domestic legislation in any country. This has significant implications for the conduct of relevant research and acquisition of the necessary data to support the identification and classification of protected areas for seabirds under Articles 3 and 4.<sup>9</sup>

### Non-native species

- Art 11: Ensure introductions of non-native species do not prejudice local flora and fauna.

A number of strategic documents and direct actions have been undertaken to tackle the threat of invasive non-native species. Notably, project LIFE05 NAT/UK/000142 aimed at the eradication of ruddy ducks in the UK to protect the globally-threatened white-headed duck and project LIFE00 NAT/UK/007073 successfully managed to control American mink to protect important birds in SPAs in the Western Isles.

<sup>8</sup> [http://www.snh.org.uk/pdfs/publications/commissioned\\_reports/193.pdf](http://www.snh.org.uk/pdfs/publications/commissioned_reports/193.pdf)

<sup>9</sup> Complaint to the European Commission in respect of the transposition and implementation of European Directive 2009/147/EC on the conservation of wild birds(codified version) in the marine environment in the United Kingdom (UK) (unpublished)

**See Annex I:** Case studies S.1.1 (i) – S.1.1 (iii)

## Habitats Directive

Gruber et al. have shown that the Natura 2000 network effectively protects species listed on Annex II of the Habitats Directive, including those that might have been neglected if site selection had been random<sup>10</sup>. Pellissier et al.<sup>11</sup> showed that some non-target butterfly species occurred in higher abundance in areas with a high coverage of Natura 2000 sites, although the pattern was not geographically consistent. A recent research paper titled ‘Rapid assessment of historic, current and future habitat quality for biodiversity around UK Natura 2000 sites’ reported that the impact of Natura 2000 sites on the wider countryside led to, ‘increases in the area, adjacency and diversity of high quality land parcels in the landscape’<sup>12</sup>.

**See Annex I:** Case studies S.1.1 (iv) – S.1.1 (v)

Across Europe, a report titled ‘Wildlife Comeback in Europe’<sup>13</sup> on the recovery of selected mammal and bird species, found that ‘wildlife comeback in Europe since the mid-20th century appears to be predominantly due to species protection and active targeted conservation (both birds and mammals), habitat management and site protection (birds) and legal protection (both).’ The Authors concluded that:

‘The case studies of wildlife comeback presented in this report seem to vindicate decades of conservation efforts in Europe. Sound legislation such as the Birds and Habitats Directives have led to better hunting regulation, species and site protection and focusing of conservation investments. They show that with sufficient resources and appropriate efforts, species can be brought back, even from the brink of extinction.’

The report includes accounts for 18 species of European mammals, and 19 species of birds.

**See Annex I:** Case studies S.1.1 (vi) – S.1.1 (vii)

## Site management and protection – SPAs (Birds Directive) and SACs (Habitats Directive)

Damaging fishing activities in inshore UK European Marine Sites (EMS: SACs and SPAs) are now being regulated or management measures are in the process of being developed. In England, this is in the form of a ‘revised approach’<sup>14</sup> to fisheries management in EMS to ensure Article 6 of the Habitats Directive is implemented. In 2013/2014 seventeen byelaws were passed to stop the most potentially damaging fishing activities within the most vulnerable 24 English European Marine Sites. Appropriate Assessments are now being undertaken in relation to other fishing activities that may significantly affect sites (see case study on effective inshore fisheries management in English European Marine Sites below)<sup>15</sup>.

In Scotland, there is now acknowledgement that damaging fishing should not occur in EMS and a first consultation on the necessary measures has taken place<sup>16</sup>, and a second one is to follow, with the intention to introduce the necessary management within the next few years.

**See Annex I:** Case studies S.1.1 (viii)

Proper application of Arts 6(3) and (4) of the Habitats Directive to plans and projects provides a ‘litmus test for sustainable development’<sup>17</sup>, preventing adverse effects on Natura 2000 where these are avoidable and unjustifiable, while ensuring that essential development with imperative reasons of

<sup>10</sup> [http://ec.europa.eu/environment/integration/research/newsalert/pdf/320na1\\_en.pdf](http://ec.europa.eu/environment/integration/research/newsalert/pdf/320na1_en.pdf)

<sup>11</sup> Pellissier V., Schmucki R., F., Jiguet, R., Julliard, J., Touroult, Richard D., and D. Evans, 2014. The impact of Natura 2000 on non-target species, assessment using volunteer-based biodiversity monitoring. ETC/BD report for the EEA.

<sup>12</sup> <http://journals.cambridge.org/action/displayAbstract?fromPage=online&aid=9546064&fileId=S0376892914000137>

<sup>13</sup> <http://www.zsl.org/sites/default/files/media/2014-02/wildlife-comeback-in-europe-the-recovery-of-selected-mammal-and-bird-species-2576.pdf>

<sup>14</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/345970/REVISED\\_APPROACH\\_Policy\\_and\\_Delivery.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345970/REVISED_APPROACH_Policy_and_Delivery.pdf);

<sup>15</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/314340/pjp.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/314340/pjp.pdf);  
<http://webarchive.nationalarchives.gov.uk/20140507202222/http://www.marinemanagement.org.uk/protecting/conservation/ems.htm>

<sup>16</sup> [http://jncc.defra.gov.uk/pdf/1089\\_Consultation%20doc.pdf](http://jncc.defra.gov.uk/pdf/1089_Consultation%20doc.pdf)

<sup>17</sup> <http://www.sd-commission.org.uk/publications.php?id=607>



overriding public interest, for which there are no less damaging alternative solutions are permitted to proceed subject to the provision of compensation to secure the integrity of the Natura 2000 network. See for example Dibden Bay (Case study 16) and Immingham Outer Harbour (Case study 29) listed in RSPB response to UK Government's Habitats Regulations Review<sup>18</sup>.

**See Annex I:** Case studies S.1.1 (ix)

### **Research (BD Art 10; HD Art 18)**

Surveillance of the conservation status of the habitats and species listed under the Habitats Directive has led to improvements in the knowledge and evidence base. Results from the latest Article 17 report show a reduction in the proportion of assessments where conservation status is unknown, from 31% to 17% for species and from 18% to 7% for habitats<sup>19</sup>. Furthermore, establishment of the Natura network has prompted research on a number of themes, including adaptation to environmental change and management strategies, further contributing to the overarching objectives of the Directives<sup>20</sup>.

The National Plant Monitoring Scheme (NPMS)<sup>21</sup> is a new habitat-based plant monitoring scheme designed by BSBI, CEH, Plantlife and JNCC. The aim is to collect data to provide an annual indication of changes in plant abundance and diversity. Plants are the foundation of habitats and ecosystems, but to date there hadn't been a good measure of changes in plant populations across the country. The results from the NPMS will feed into monitoring reports such as Article 17.

**See Annex I:** Case studies S.1.1 (x)

## **S.1.2- Is this progress in line with initial expectations?**

*'Initial expectations' refer to the expectations, positive or negative, held by different stakeholders at the time the legislation transposing the Directives came into force in your country. For example, government reports and plans might provide evidence of intended timetables for the identification and designation of Natura 2000 sites. We are seeking to understand the extent to which progress made to date has met, exceeded, or fallen short of such expectations. If possible, in your answer please address separately each of the objectives referred to in question S1.1 for which you have provided evidence.*

### **Answer:**

Stakeholders across Europe campaigned for nature conservation legislation in the expectation that this legislation would be adopted by the EU, would be implemented by Member State Governments, and would be effective at protecting Europe's wildlife. The Birds and Habitats Directive have met stakeholders expectations for effective nature conservation legislation, and despite Member State implementation failures, have delivered significant progress towards meeting stakeholders expectations for their implementation.

### **Origins**

The petition 'Save the Migratory Birds' submitted by the Dutch ecological group Stichting Mondiaal Alternatief in 1974 lies at the root of EU efforts to protect wildlife<sup>22</sup>. This petition motivated the

<sup>18</sup> [http://www.rspb.org.uk/Images/rspb2ndsubmission\\_todefrhrcasestudycommentaryandanalysis\\_tcm9-305620.pdf](http://www.rspb.org.uk/Images/rspb2ndsubmission_todefrhrcasestudycommentaryandanalysis_tcm9-305620.pdf)

<sup>19</sup> EEA, 2015, *The European environment — state and outlook 2015: synthesis report*, European Environment Agency, Copenhagen

<sup>20</sup> EEA, 2012. Protected Areas – An Overview.

<sup>21</sup> <http://www.npms.org.uk/>

<sup>22</sup> <http://www.nomos-elibrary.de/index.php?dokid=378603&page=1&v=a>

European Parliament to adopt a resolution<sup>23</sup> expressing its deep concern 'at the threat of extinction to our migratory birds;', and stated

'...that the problem of the mass slaughter of migratory birds during their passage through a State's territory must be examined as soon as possible in international law, since migratory birds should be regarded not as 'res nullius' but as 'res communis'.'

The resolution called on the Commission to adopt practical measures, including a general prohibition on the trapping of birds with nets, a shorter season for hunting migratory birds by other means, the creation of bird reserves in which hunting is generally banned, the preservation of certain species of birds and the creation of suitable breeding grounds, and the safeguarding of a healthy environment.

The European Parliament specifically noted that time was short and demanded prompt action, stressing that

'...once introduced the Community Regulations must be enforced as completely as possible by comprehensive controls and suitable penalties and follow-up action against offenders.'

In response, the EU's Second Environmental Action Programme<sup>24</sup> included the following paragraphs:

'A . Protection of wild fauna

139 . Over the last two years the Commission has investigated a number of questions concerning the protection of migratory birds and certain animal species threatened with extinction or becoming extinct . These studies have shown that the problems transcend national frontiers and that any solution requires initiatives at both international and Community level.

140 . One such measure is the proposal for a Council Directive on bird conservation which the Commission submitted to the Council on 20 December 1976. This measure is in particular response to the wishes of the European Parliament as expressed in its resolution of 21 February 1975.'

This demonstrates that expectations from the Commission, from stakeholders, and from the European Parliament around the EU's new environmental laws were that prompt action would be taken to address what was seen then, and is still seen now as a serious problem.

## Progress

However, progress with implementation of both the Birds Directive and Habitats Directive has been slower than anticipated, and remains insufficient in a number of key areas. The deadline for legal transposition of the Habitats Directive was June 1994, but no Member State met this deadline or that for proposing a set of sites (1998). Every deadline in the Directive was missed by most if not all 'old' Member States<sup>25</sup>. BirdLife Europe has compiled a Barometer setting out information on the progress of designation of Natura 2000 sites on land and at sea, **see Annex II(a & b): BirdLife Natura Barometer**.

In the UK, progress on implementation has similarly lagged behind expectations, and the UK Government has recognised that implementation is not yet complete<sup>26</sup>.

Some of the difficulties being faced by species and habitats of community interest are occurring on the land between the Natura sites. Progress towards achieving the objective to 'encourage the management of landscape features to improve the ecological coherence of the Natura 2000 network' have been disappointing, in part due to the lack of a clear action to transpose and in part due to the

<sup>23</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:1975:060:FULL&from=EN>

<sup>24</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.1977.139.01.0001.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.1977.139.01.0001.01.ENG)

<sup>25</sup> <http://awsassets.panda.org/downloads/raceprotect.pdf>

<sup>26</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)

continued intensification of agriculture.

### Public perceptions of progress

Recent Eurobarometer polls confirm that European citizens still consider environmental protection very important, and something the EU should be doing more on<sup>27</sup>. The global 'Space for Nature' poll conducted by ZSL<sup>28</sup> confirms that people worldwide want significantly more protected natural space than currently exists. The poll of more than 7,000 people from Australia, Brazil, China, India, South Africa, UK and USA shows people think that 50% of the planet's land and oceans should be protected, when in reality a mere 3% of the world's oceans and only 15% of land is currently under protection.

The report 'Wildlife Comeback in Europe'<sup>29</sup> on the recovery of selected mammal and bird species notes in particular that although the species of mammals and birds selected for this study have recovered, this is following considerable historical declines, and most have not yet recovered to pre-decline levels. This is true also for many other species in Europe which are currently showing population and range increases, and should be set against other species which are still declining.

### UK

RSPB membership figures demonstrate the surge in support for nature conservation in the lead up to the adoption of the Birds Directive. The number of members increased tenfold between 1969 and 1979, and has since doubled to over 1.1m;

1969 – 50,000 members

1979 – 507,000 members

1994 – 860,000 members

2015 – 1,100,000 members

### S.1.3 – When will the main objectives be fully attained?

*On the basis of current expectations and trends, please provide evidence that indicates the likely year or range of years that the main objectives will be met. By 'main objectives' we mean the strategic objectives of the Birds Directive (as set out in its Article 2) and the Habitats Directives (in its Article 2), as well as the specific objectives set out in Annex I to this document.*

#### Answer:

While it is possible to track progress towards key objectives, it is not possible on the basis of the available evidence to identify the year(s) when these will be achieved due to the large number of factors which will dictate future progress. To maintain bird populations and maintain or restore habitats and species of European importance at favourable conservation status (FCS), is dependent upon many natural dynamic elements further compounded by the impacts of climate change. It is unlikely that the main objectives of the Birds and Habitats Directives will be met while implementation of the measures set out in the Directives, designed to achieve these objectives, remains incomplete, inadequately funded, and is undermined by EU sectoral policies.

The EU's failure to adequately integrate biodiversity conservation into other policy areas (see answers to C4), and the low levels of human and financial resources devoted to implementation and enforcement (see answers to S3 and Y2) at Member State and EU level must all be addressed to

<sup>27</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_416\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_416_en.pdf)

<sup>28</sup> <http://www.zsl.org/conservation/news/planet%E2%80%99s-protected-areas-fall-short-of-public%E2%80%99s-expectations>

<sup>29</sup> <http://www.zsl.org/sites/default/files/media/2014-02/wildlife-comeback-in-europe-the-recovery-of-selected-mammal-and-bird-species-2576.pdf>

enable faster progress towards achievement of the objectives.

Some of these variables are within the control of the European Commission (e.g. Common Agricultural Policy (CAP) reform, LIFE, EMFF<sup>30</sup> funding), while many lie with Member States (establishing management plans, defining FCS etc.).

### **Strategic objectives BD Art 2 and HD Art 2**

The most recent Birds Directive Article 12 and Habitats Directive Article 17 Reports will show the progress made by Member States towards achievement of adequate population levels and FCS at EU level. These reports will also show where significant gaps in implementation remain, for example in the designation and management of SACs and SPAs. If Member States were to fulfil their obligations under the Directives on conservation measures and species protection and recovery, this will make a significant positive difference as to when objectives will be fully attained.

The Commission has acknowledged that funding for Natura 2000 management is highly inadequate<sup>31</sup>, with likely only 9-19% of funding needs met<sup>32,33</sup>. Addressing the lack of funding is also likely to significantly accelerate progress towards achieving the objectives set out in the Directives.

The impact on wildlife of perverse subsidies promoted under the EU's sectoral policies, including the CAP<sup>34</sup>, Common Fisheries Policy (CFP)<sup>35</sup> and Regional Policy<sup>36</sup> is well charted. While some improvements have been made to CFP, the opportunity to reform the CAP has been missed in this EU budget round, and the impacts of unsustainable farming on biodiversity<sup>37</sup> are likely to continue and intensify. Without sweeping reform of the CAP, conservation objectives under the Birds and Habitats Directives, particularly in the wider countryside, are unlikely to be met.

Experience with implementation of the Directives have also shown that while some species and habitats can recover within a few years of appropriate management being put in place, for others decades or even centuries might be needed to recover from past damage. For example research has shown that the rate of recovery of peatlands from burning may be up to 500 years<sup>38</sup>.

### **UK implementation failures**

In the UK, delays in transposition and implementation of the Directives have had a significant negative impact on progress. There remain significant barriers to achievement of the main objectives of the Birds and Habitats Directives, and to assessing progress towards these objectives, with no signs that these barriers will be addressed. Specifically;

- Identification and classification of marine SPAs in the UK remains substantially incomplete. To date no offshore sites have been classified, and while the most important seabird breeding colonies are protected, there are only 3 truly marine SPAs (in inshore waters) which between them protect just two species in a single season.
- The identification of effective management measures to secure habitat and species maintenance and restoration remains unfulfilled<sup>39</sup>. Even on land, where data are often available to inform such management objectives, the management plans for Natura sites are too often entirely generic in nature, often failing even to clarify whether the feature is in FCS at site level and is to be maintained, or in unfavourable conservation status and therefore in need of restoration. The UK Government has however commenced work in England to address the lack of clear conservation objectives for Natura 2000 sites<sup>40</sup>.

<sup>30</sup> European Marine Fisheries Fund

<sup>31</sup> [http://ec.europa.eu/environment/natura/natura2000/financing/docs/financing\\_natura2000.pdf](http://ec.europa.eu/environment/natura/natura2000/financing/docs/financing_natura2000.pdf)

<sup>32</sup> Gantioler et al. Costs and Socio-Economic Benefits associated with the Natura 2000 Network. Final report to the European Commission, DG Environment on Contract ENV.B.2/SER/2008/0038. Institute for European Environmental Policy / GHK / Ecologic, Brussels 2010

<sup>33</sup> Kettunen, M. et al. 2011 Assessment of the Natura 2000 co-financing arrangements of the EU financing instrument. A project for the European Commission – final report. Institute for European Environmental Policy (IEEP), Brussels, Belgium. 138 pp + Annexes. [http://www.ieep.eu/assets/791/Assessment\\_of\\_Natura\\_2000\\_Co-financing.pdf](http://www.ieep.eu/assets/791/Assessment_of_Natura_2000_Co-financing.pdf)

<sup>34</sup> <http://natura2000.ro/wp-content/uploads/2014/10/Report.Could.Do.Better.Natura2000.En.pdf>

<sup>35</sup> <http://www.birdlife.org/europe-and-central-asia/towards-sustainable-fisheries-policy-eu>

<sup>36</sup> [http://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/Changing\\_Perspectives\\_EU\\_budget\\_for\\_a\\_sustainable\\_future\\_engl\\_.pdf](http://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/Changing_Perspectives_EU_budget_for_a_sustainable_future_engl_.pdf)

<sup>37</sup> Pan-European Common Bird Monitoring Scheme: <http://www.ebcc.info/index.php?ID=457>

<sup>38</sup> [http://www.rspb.org.uk/Images/Peatbogs\\_and\\_carbon\\_tcm9-255200.pdf](http://www.rspb.org.uk/Images/Peatbogs_and_carbon_tcm9-255200.pdf) p217 et seq.

<sup>39</sup> [http://www.ieep.eu/assets/277/Nature\\_12\\_report.pdf](http://www.ieep.eu/assets/277/Nature_12_report.pdf)

<sup>40</sup> <http://publications.naturalengland.org.uk/publication/6734992977690624?category=3769710>

- The requirements of Article 3 of the Birds Directive were not transposed until 2012 (31 years after the relevant transposition deadline)<sup>41</sup>.
- The failure by the UK (and other) Member States to adequately define FCS under the Habitat Directive and the corresponding Birds Directive Article 2 requirements limits the extent to which progress against these objectives, and likely timescales for their attainment, can be assessed.
- UK law does not currently transpose the Birds Directive Article 7 requirement of 'wise use' and ensuring 'ecologically balanced control' of huntable species, taking into account the population of the huntable species 'in particular migratory species, with the measures resulting from Article 2'. In addition Article 7(4) requires the practice of hunting not to 'not jeopardise conservation efforts' for non-huntable species (see also under S.3).
- The failure to quickly and efficiently prescribe management measures for offshore EMS in waters fished by 3<sup>rd</sup> party States.
- For some species status assessment surveillance and monitoring has not progressed to the point where there are adequate data sets collated to enable the reliable assessment of condition. In some cases, for instance Medicinal leech and Desmoulin's whorl snail, national surveys were undertaken but have not been repeated since 2000, while the Roman snail and Lesser whirlpool ram's-horn snail have never had a national survey to establish status.
- The failure to maintain funding for essential work to save species from extinction. For instance between 2012 and 2014 funding cuts meant that the number of operational projects to conserve the White-clawed crayfish fell from 21 to 2, and neither of the remaining projects were creating ark sites – the most urgent current action required<sup>42</sup>.

**Nevertheless, there are some signs of progress, as the case studies in S1.1 testify to.**

**See Annex I:** Case studies S.1.3 (i) – S.1.3 (iii)

Despite the delays and failures outlined above, reports submitted by the UK and other Member States reveal that for some species and habitats the conservation objectives set out in the Directives have been attained. In 2006 17% of habitats and species protected under the Habitats Directive were assessed as being in FCS across the EU<sup>43</sup>. And the latest results from the imminent 'State of Nature' report are expected to confirm that 16% of European habitats and 23% of species of community interest have FCS<sup>44</sup>.

These reports will also show where significant gaps in implementation remain, for example in the designation and management of SACs. The reduction in the percentage of 'Unknown' assessments for Habitats and species also demonstrates that our knowledge of biodiversity in the EU has improved<sup>45</sup>. If Member States were to fulfil their obligations under the Directives on conservation measures and species protection and recovery, this would make a significant positive difference as to when objectives will be fully attained. The answer to S1.1 suggests that this situation would have been much worse without the Directives.

## **S.2 – What is the contribution of the Directives towards ensuring biodiversity? In particular to what extent are they contributing to achieving the EU Biodiversity Strategy\* Objectives and Targets?**

*By 'contribution towards ensuring biodiversity', we are referring not only to the conservation of the species and habitats specifically addressed by the Directives, but also to biodiversity more broadly defined: i.e. other species and habitats not targeted by the Directives; ecosystems (terrestrial and marine); and genetic diversity, both within and beyond the*

<sup>41</sup> Reg 9A: [http://www.legislation.gov.uk/ukxi/2012/1927/pdfs/ukxi\\_20121927\\_en.pdf](http://www.legislation.gov.uk/ukxi/2012/1927/pdfs/ukxi_20121927_en.pdf)

<sup>42</sup> <https://www.buglife.org.uk/sites/default/files/What%20next%20for%20WCC%20conservation%20in%20England.pdf>

<sup>43</sup> [http://ec.europa.eu/environment/nature/knowledge/rep\\_habitats/index\\_en.htm](http://ec.europa.eu/environment/nature/knowledge/rep_habitats/index_en.htm)

<sup>44</sup> Presentation by the EC at the Nature Directors Meeting in Rome in November 2014.

<sup>45</sup> <http://bd.eionet.europa.eu/activities/Reporting/Introduction>

*Natura 2000 network – in line with the EU's 2050 vision and 2020 headline target and the Targets of the EU's Biodiversity Strategy to 2020.*

\* For an overview of the EU biodiversity Strategy see:

<http://ec.europa.eu/environment/nature/info/pubs/docs/factsheets/Biod%20Strategy%20FS.pdf>

#### **Answer:**

The Directives are the cornerstone of EU efforts to conserve and restore biodiversity across Europe. As such they are critical to achieving the EU's 2020 biodiversity targets, and have a role to play in relation to the six sub-targets set out in the EU Biodiversity Strategy.

#### **International approach to nature conservation**

Nature does not respect political borders, so to be successful nature conservation must be coordinated at the international level (for example to deliver conservation measures for migratory species).

The Pan-EU approach adopted under the Birds and Habitats Directives and the EU Biodiversity Strategy establishes not only an internationally coordinated approach to nature conservation, but also supports the establishment of a level playing field in competition terms. The level playing field should ensure that no Member State can secure a short-term competitive advantage at the expense of its wildlife, while at the same time guaranteeing that conservation efforts by one Member State are not undermined by unsustainable practices elsewhere.

#### **Protected areas work**

In scientific terms, there is robust evidence that the protected areas approach adopted by the Birds and Habitats Directives works. Scientific studies have demonstrated that protected areas work and are expected to remain a critical conservation tool, even in the face of climate change. Protected areas and are especially important in enabling species to shift their range in response to changes in climate<sup>46,47,48</sup>.

A study of population trends for all wild birds in Europe since 1970<sup>49</sup> has shown a demonstrable positive impact of the Birds Directive, especially for species on Annex I. The rate of recovery of Annex I species has been significantly greater inside the EU than outside, and within the EU has been greater for Annex I species than species not listed on the Annex. The role of protected areas in this recovery is critical as the greater the area of SPAs, the stronger the recovery, especially for the rare and vulnerable species on Annex I.

#### **Delivering for EU biodiversity targets**

In this context the Nature Directives are by far the most important instrument of the EU to save biodiversity. Target 1 of the Biodiversity Strategy calls for their full implementation, and they are also essential for Targets 2-6, in varying degrees. By highlighting where Europe's most threatened habitats and many threatened species are they help target the efforts required to achieve most of the Strategy's objectives using scarce resources effectively (e.g. maintaining and restoring ecosystems, halting the loss of biodiversity and ecosystem services, combating invasive alien species, etc.). In particular the monitoring that is carried out in the context of the Directive provides valuable information that helps support implementation of the Biodiversity Strategy and assess progress towards EU and global biodiversity objectives. See also the case study on IBAs under S3.

Member States have acknowledged this in Council Conclusions on the EU Biodiversity Strategy to

<sup>46</sup> Thomas *et al.* 2012. Protected areas facilitate species' range expansions. *PNAS* 109: 14063-14068.

<sup>47</sup> Gillingham *et al.* 2015. The effectiveness of protected areas in the conservation of species with changing geographical ranges. *Biological Journal of the Linnean Society*. [http://www.researchgate.net/publication/273070259\\_The\\_effectiveness\\_of\\_protected\\_areas\\_in\\_the\\_conservation\\_of\\_species\\_with\\_changing\\_geographical\\_ranges](http://www.researchgate.net/publication/273070259_The_effectiveness_of_protected_areas_in_the_conservation_of_species_with_changing_geographical_ranges)

<sup>48</sup> Hiley *et al.* 2013. Protected Areas act as establishment centres for species colonising the United Kingdom. *Proceedings of the Royal Society of London Series B-Biological Sciences* 280 (1760):20122310. DOI: 10.1098/rspb.2012.2310

<sup>49</sup> <http://www.sciencemag.org/content/317/5839/810.abstract>

2020:

'AGREES that full implementation of the EU environment acquis, and in particular the EU Birds and Habitats Directives, is essential for the achievement of the new EU 2020 Biodiversity targets'<sup>50</sup>

Directives should also be key for delivering Target 2 (Maintain and restore ecosystems and their services), supporting resilience and connectivity in the wider countryside, although progress towards achieving ecological coherence has been disappointing.

For Target 3 (Increase the contribution of agriculture and forestry to maintaining and enhancing biodiversity), the Directives establish a framework for action and monitoring in delivering improvements in the conservation status of agricultural and forest species.

For Target 4 (Ensure the sustainable use of fisheries resources), the Directives establish a basis for the creation of marine protected areas, which have a crucial role to play in delivering sustainable fisheries through preserving vulnerable ecosystems (Action 14a), and protecting marine animal and bird species through avoiding bycatch (Action 14a). This could be achieved, for example, through better implementation of Article 12(4) in relation to bycatch and through continuing improvements in managing fishing activities in European Marine Sites. It is also important to note that Action 14b provides for the Commission and Member States to support the implementation of the Marine Strategy Framework Directive by providing financial assistance through the European Maritime and Fisheries Fund for marine protected areas including Natura 2000 sites.

For Targets 3 and 4, while the Directives have been integrated into the CAP and Marine Strategy Framework Directive, inadequate implementation by Member States has significantly limited the contribution of the Directives to protecting biodiversity in the wider countryside. The tools for delivering conservation in the wider countryside exist in the Directives, but Member States have been unwilling to use them.

The contribution made by the Birds and Habitats Directives to achieving EU biodiversity conservation objectives has been recognised by both the European Parliament<sup>51</sup> and the Member States<sup>52</sup>.

The EU Biodiversity Strategy aligns with global commitments made under the Convention on Biological Diversity (CBD) and Global Strategy for Plant Conservation. In 2014 Plantlink<sup>53</sup>, chaired by Plantlife, published a review of the progress towards the CBD 2020 Targets<sup>54</sup>. The report set out the achievements to date and importantly identifies the required actions to ensure the targets are met and biodiversity is protected.

### **Delivering for Global Biodiversity Targets**

The Directives are also key to delivering on international obligations under the Convention on Biological Diversity as well as under other Multilateral Environment Agreements, including the Bonn Convention on Migratory Species (CMS) and its various daughter agreements, the Ramsar Convention on Wetlands of International Importance, and the Bern Convention.

The Directives are specifically linked to fulfillment of Aichi Targets 1, 11 and 12<sup>55</sup>, adopted at COP 10 of the Convention on Biological Diversity in 2010.<sup>56</sup>

### **Delivering for Non-target Species**

In the EEA's recently published 'Literature Review: The ecological effectiveness of the Natura 2000 Network'<sup>57</sup> a number of case studies on the effectiveness of the Natura 2000 network for target and non-target species are included.

<sup>50</sup> <https://www.cbd.int/doc/nbsap/EU-council-conclusions-2020-strategy.pdf>

<sup>51</sup> [http://ec.europa.eu/environment/nature/biodiversity/comm2006/pdf/EP\\_resolution\\_april2012.pdf](http://ec.europa.eu/environment/nature/biodiversity/comm2006/pdf/EP_resolution_april2012.pdf)

<sup>52</sup> <http://data.consilium.europa.eu/doc/document/ST-7536-2010-INIT/en/pdf>

<sup>53</sup> <http://www.plantlife.org.uk/campaigns/plantlink/>

<sup>54</sup> [http://www.plantlife.org.uk/uploads/documents/GSPC\\_report\\_-\\_long\\_version.pdf](http://www.plantlife.org.uk/uploads/documents/GSPC_report_-_long_version.pdf)

<sup>55</sup> <http://biodiversity.europa.eu/policy/target-1-and-related-aichi-targets>

<sup>56</sup> <https://www.cbd.int/sp/targets/>

<sup>57</sup>

[http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/The\\_ecological\\_effectiveness\\_of\\_the\\_Natura\\_2000\\_Network](http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/The_ecological_effectiveness_of_the_Natura_2000_Network)

## Largely positive effect of Natura 2000 coverage on common breeding bird populations

Pellissier (2014) assessed the impact of the Natura 2000 network on 166 common breeding bird species using data gathered through volunteer-based schemes in 13 EU countries and the EU Natura 2000 database. The study found that of the investigated species, around 50% showed higher abundances with increased Natura 2000 coverage. A further 27% of the species have lower abundances with higher coverage and the remainder did not show a particular response. These findings indicate that the Natura 2000 areas designated upon the presence of targeted bird species listed in Annex I of the Birds Directive also harbour a substantial number and population of common bird species (only 16 of the species responding positively to Natura 2000 are Annex 1 species).

The most abundant bird species benefiting from the network are woodland specialists, such as the great and lesser spotted woodpeckers (*Dendrocops medius* and *Dendrocops minor*) and the Eurasian nuthatch (*Sitta europaea*). Furthermore, results indicate the potential of the Natura 2000 network to be an efficient tool to help mitigate the decline of habitat specialist bird species with a narrower ecological niche. The network also supports species with longer trophic chains that are less biologically homogeneous than the communities outside. Finally, it appears that the declining trend of farmland birds observed throughout Europe seems to be less acute within the Natura 2000 network.

Source: Pellissier (2014)<sup>58</sup>

In addition to exploring the effects of Natura 2000 sites on common breeding bird species, Pellissier (2014)<sup>59</sup> also looked at 103 butterfly species populations. While the study made use of data provided through volunteer-based schemes in six countries/regions, the authors emphasize that the following results should be considered as preliminary. According to the results, a greater number of butterfly species are more abundant in areas with a high Natura 2000 coverage. Of the examined species, 32 have higher abundances with a larger Natura 2000 coverage, 16 have lower abundances and the remaining 55 did not exhibit a particular response to the network<sup>60</sup>.

## UK

The CHAINSPAN research project funded by Defra confirms that although some species are likely to suffer as a result of climate change and others are likely to benefit, the current UK SPA network is likely to be relatively resilient to future climate change<sup>61,62</sup>. By protecting and managing many large areas of semi-natural habitats and concentrations of birds, SPAs will continue to support important populations of birds in a changing climate. Indeed the size and distribution of Natura sites makes them amongst the best places in Europe for adaptation to climate change to occur.

In the marine environment, European Marine Sites have been effectively used to protect vulnerable species and habitats from damaging fishing gears. Indeed, they can be considered to be one of the only useful measures for dealing with potentially damaging activities in our nearshore waters. Current European Marine Sites cover 23% of inshore English waters alone, and over 30% of Welsh waters. Legislation in relation to European Marine Sites protection is necessarily precautionary in the marine environment where evidence of feature presence and condition is much more difficult to obtain than for the terrestrial sites. Domestic legislation requires considerable (costly) evidence before management action is allowed.

In the UK there is evidence that national nature conservation measures in place prior to the adoption of the Birds and Habitats Directives were ineffective at halting biodiversity loss (see question AV1).

**See Annex I: Case Studies S.2 (i) and S.2 (ii)**

<sup>58</sup> Pellissier V., Schmucki R., F., Jiguet, R., Julliard, J., Tourout, Richard D., and D. Evans, 2014. The impact of Natura 2000 on non-target species, assessment using volunteer-based biodiversity monitoring. ETC/BD report for the EEA

<sup>59</sup> Pellissier, Vincent. 2014. The Impact of Natura 2000 on Non-Target Species: Assessment Using Volunteer-Based Biodiversity Monitoring. Unpublished report. European Topic Center / Biological Diversity.

<sup>60</sup>

[http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/The\\_ecological\\_effectiveness\\_of\\_the\\_Natura\\_2000\\_Network](http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/The_ecological_effectiveness_of_the_Natura_2000_Network)

<sup>61</sup> <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=2&ProjectID=16731>

<sup>62</sup> Johnston *et al.* 2013. Observed and predicted effects of climate change on species abundance in protected areas. *Nature Climate Change*. DOI: 10.1038/NCLIMATE2035



### S.3 – Which main factors (e.g. implementation by Member States, action by stakeholders) have contributed to or stood in the way of achieving the Directive’s objectives?

*Please summarise evidence of the main factors that have supported or constrained progress towards achieving the objectives of the Nature Directives. As in previous questions, by 'objectives' we mean not only the strategic objectives set out in Articles 2 of both Directives, but also specific and operational objectives, as set out in Annex I to this document. Relevant factors might include, for example, resource limitations, lack of cooperation of other actors, lack of scientific knowledge, or other external factors (e.g. those listed in the above intervention logic).*

#### **Answer:**

A range of different factors have contributed to and stood in the way of achieving the Directives' objectives.

#### **Contributory Factors**

The following factors have aided progress towards achievement of the Directives objectives in the UK and across the EU:

#### **The work of conservation NGOs operating both individually and collaboratively, both within Member States and at an EU level**

NGOs have played a crucial role in delivering projects on the ground with support from EU LIFE funding and other sources, as well as contributing scientific expertise to nature conservation.

**See Annex I:** Case Studies S.3 (i) and (ii)

#### **Public commitment to the environment**

Growing public support for nature conservation has helped drive the political debate on nature conservation, and secured commitments from national governments in the EU and across the globe to the 2010 and 2020 biodiversity conservation targets. Public concern about nature conservation has also been instrumental in calling decision-makers to account for environmentally unsustainable policies.

Action by stakeholders in the UK and in Member States across the EU, bringing specific cases to attention of European Commission and European Parliament, has helped protect individual sites and secured conservation outcomes. In the UK and across the EU the Directives have fundamentally changed dynamics of dialogue between stakeholders, supporting effective implementation of the Directives. The Sustainable Hunting Initiative<sup>63</sup> is one example of this.

In the UK, environmental awareness among the public is amply evidenced by the growing membership of conservation organisations such as the RSPB (membership has doubled since 1979 to 1.1 million in 2014) and the Wildlife Trusts (800,000 members in 2014) and support for campaigns such as the RSPB's 'Vote for Bob Campaign'<sup>64</sup>.

**See Annex I:** Case Study S.3 (iii)

#### **Business Community commitment to engaging with the Directives**

Progressive businesses that have engaged with the Directives have found them no barrier to commercial activity, and some businesses have even gone so far as to make biodiversity conservation a core element of their business activities<sup>65</sup>.

In its evidence to the 'Review of Implementation of the Birds and Habitats Directives in England' the

<sup>63</sup> [http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/index\\_en.htm](http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/index_en.htm)

<sup>64</sup> <https://www.voteforbob.co.uk/>

<sup>65</sup> <http://www.cemex.co.uk/environment-and-biodiversity.aspx>

RSPB provided an overview of the RSPB's engagement with the site protection system<sup>66</sup>, and reported that:

'We have ...noted a cycle in relation to the various industry sectors that we have worked with as they learn how to work with the Regulations. The early phase is marked by generally difficult discussions and often objection/inquiry into specific proposals, ...followed by greater understanding and smoother outcomes, as better spatial planning, location or design leads to the integration of development and natural environment objectives. ...Familiarity with the Regulations facilitates constructive outcomes, especially where a whole sector such as ports is operating largely within protected areas'.

Indeed there are a number of examples of successful cooperation between NGOs and businesses, including CEMEX<sup>67</sup>, Heidelberg Cement<sup>68</sup>, and the UK Ports Sector<sup>69</sup>. Cooperation has delivered benefits for nature conservation, and also demonstrated that responsible business not only wants to engage with the Directives, but also finds them no barrier to their business operations. Businesses that do not plan effectively for compliance, or those that seek to evade or subvert nature conservation legislation are rightly subject to challenge.

**See Annex I:** Case Studies S.3 (iv) and (v) for UK cases which illustrate this

### **Dedicated funding through the EU LIFE instrument**

The availability of dedicated funding through LIFE has been a lifeline for many species and habitats. LIFE projects have demonstrated that with even modest funding, impressive, cost-effective nature conservation can be delivered on the ground. Government and Stakeholder-led projects facilitated by the LIFE programme have been crucial for species and site conservation (e.g. for bittern and the Donana Marshes)<sup>70</sup>.

**See Annex I:** Case Studies S.3 (vi) and (vii)

### **Availability of guidance documents from the Commission and judgements from the ECJ**

Commission guidance documents and ECJ judgments together add up to a considerable volume of information on best practice, efficient implementation, and legal compliance. Rulings from the European Court of Justice<sup>71</sup>, Advocate Generals' Opinions as well as the Reasoned Opinions from the European Commission for each case<sup>72</sup> have provided greater clarity as to the application of EU environmental law. The publication of guidance documents and legal action by the Commission against Member States for non-transposition and inadequate implementation has been essential for enabling or, where necessary, compelling Member States to fulfil their commitments under the legislation.

### **Full implementation of relevant provisions, for example site designation in the terrestrial environment**

Scientific evidence shows that when fully implemented the Directives deliver excellent results for nature. This often has knock-on benefits for additional conservation action down the line.

**See Annex I:** Case Study S.3 (viii)

### **Alignment of EU environmental acquis with the objectives and procedures set out in the Directives**

Our responses to the questions in the Coherence section demonstrate that the EU has consciously sought to align the provisions of EU environmental laws with the objectives and procedures in the Birds and Habitats Directives. This has facilitated win-win situations for biodiversity conservation and other environmental objectives.

<sup>66</sup> [http://www.rspb.org.uk/Images/rspb2ndsubmissionofdefrahrrcasestudycommentaryandanalysis\\_tcm9-305620.pdf](http://www.rspb.org.uk/Images/rspb2ndsubmissionofdefrahrrcasestudycommentaryandanalysis_tcm9-305620.pdf)

<sup>67</sup> <http://www.birdlife.org/worldwide/cemex-birdlife-international-global-conservation-partnership-programme-2007-2017>

<sup>68</sup> <http://www.birdlife.org/europe-and-central-asia/partnership-heidelbergcement>

<sup>69</sup> <http://www.rspb.org.uk/news/details.aspx?id=265683>

<sup>70</sup> <http://ec.europa.eu/environment/life/project/Projects/>

<sup>71</sup> [http://ec.europa.eu/environment/nature/info/pubs/docs/others/ecj\\_rulings\\_en.pdf](http://ec.europa.eu/environment/nature/info/pubs/docs/others/ecj_rulings_en.pdf)

<sup>72</sup> [http://ec.europa.eu/environment/nature/natura2000/management/opinion\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/management/opinion_en.htm)

See Annex I: Case Study S.3 (ix)

### Constraining Factors

The UK Habitats Regulations which implement the Birds and Habitats Directives provide an essential mechanism for safeguarding vulnerable species and habitats whilst ensuring social and economic needs are met. However, progress towards achievement of the Directives objectives in the UK and across the EU has been constrained by several factors.

In the UK, despite progress, particularly with designation and site protection, there is compelling evidence that full achievement of the objectives is being severely hampered by inadequate implementation (transposition, enforcement, financing, practice) and counteracting policies and practices adopted under EU or national laws. These failures result in the Government being unable to realise the full potential of the Nature Directives to support its objectives in respect of the natural environment, in particular restoring biodiversity and putting in place a robust framework for the delivery of landscape scale conservation<sup>73</sup>. The coherence of the Natura 2000 network is reliant upon wider countryside measures including wildlife corridors etc. Implementation of these measures is far from complete.

In some instances a lack of clarity and expertise within government authorities and environmental consultancies combined with a failure of developers to engage at an early stage results in delays, expense and ineffective measures being applied. This results in the assumption that conserving biodiversity and the natural environment is a costly and arduous process with limited results. This is further exacerbated by a lack of evidence from post construction monitoring on which to base future improvements.

Recent statutory instruments (National Policy Planning Framework<sup>74</sup>) that apply nationally to the planning process have further reduced clarity. It is also often the case that breaches of the legislation that are of sufficient importance to result in a court case are not dealt with in a uniform manner reflecting the seriousness of the charges brought, resulting in law breaking being economically beneficial in some cases. Conservation policies and the legal framework are also under considerable pressure during the current period of austerity.

**The evidence and case studies (S.3 (x) – (xvii)) below have been compiled to illustrate that failings often attributed to ‘gold plating’ are in many instances a result of ineffective implementation rather than problems with the legislation.**

Indeed, government policies have weakened since the directives were transposed into national laws, but such mis-information perpetuates. Good standards of professional practice supported by well informed decision making and effective frameworks not only ensures compliance, but alleviates resource burdens and delivers meaningful conservation benefits.

A recent scientific study has confirmed that the main weaknesses of Natura 2000 as perceived by practitioners were the lack of political will from local and national governments toward effective implementation; the negative attitude of local stakeholders; the lack of background knowledge of local stakeholders, which prevented well-informed policy decisions; and the understaffing of Natura 2000 management authorities. Top suggestions to improve Natura 2000 implementation were to increase public awareness, provide environmental education to local communities, involve high-quality conservation experts, strengthen quality control of EIA studies, and establish a specific Natura 2000 fund<sup>75</sup>.

Specific implementation failures that have already been pointed out by UK NGOs to the UK Government include:

<sup>73</sup> See Dodd *et al* (in press) Protected Areas and Wildlife in Changing Landscapes: The Law and Policy Context for NGO Responses to Climate Change in the UK. *Journal of International Wildlife Law and Policy*

<http://www.tandfonline.com/doi/full/10.1080/13880292.2011.650604#abstract>

<sup>74</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)

<sup>75</sup> <http://onlinelibrary.wiley.com/doi/10.1111/cobi.12366/abstract>

## Delayed transposition

Many Member States failed to properly transpose the Directives into national law by the due date, some only did so when taken to court by the European Commission<sup>76</sup>. There is ample evidence that the UK Government has similarly failed in this respect, specific failures including (but not limited to):

Failures and delays in transposition of the habitat conservation (management, restoration and creation) measures set out in the Nature Directives to put in place an integrated framework to secure the recovery and maintenance of the UK's wildlife to favourable status. In particular:

- Delayed transposition of Article 3 of the Birds Directive (habitat conservation measures); finally transposed in 2012;
- With the exception of the classification of SPAs, failure to transpose Article 4 of the Birds Directive in respect of special conservation measures per se as part of an integrated package, and the second sentence of Article 4(4) in respect of the protection of Annex I and migratory species outside SPAs; and Article 10 of the Habitats Directive.
- Failure to transpose, in the terrestrial and inshore environment, the requirements of Article 6(2) of the Habitats Directive to take appropriate steps to avoid deterioration and disturbance of habitats and species of Community interest in SPAs and SACs (up until 2012 in the marine environment). Management measures have still not fully and adequately been put in place to ensure site integrity;
- UK law does not currently transpose the Birds Directive Article 7 requirement of 'wise use and ecologically balanced control'. EU guidance on hunting under the Birds Directive advises that this includes avoiding significant threats to efforts for the conservation of non-huntable species and the ecosystem<sup>77</sup>. Intensive management of game bird populations is a growing issue in the UK, affecting non-huntable populations through habitat damage and illegal persecution, particularly of bird of prey populations.
- Failure to set clear conservation objectives for the favourable conservation status (FCS) of species and habitats protected by the Nature Directives, including translating these to protected area level.
- In the UK, the failure to assess and define FCS for European Protected Species has necessitated a precautionary approach based on a goal of no net loss. This contrasts with the approach in Germany, Estonia, Flanders (Belgium) and France where each individual specimen does not have to be protected provided the integrity of the overall population is maintained and the local conservation status is not adversely affected<sup>78</sup>.
- Legal advice provided to Wildlife and Countryside LINK in support of its response<sup>79</sup> to the UK Government's 'Habitats Regulations Review'<sup>80</sup> confirmed that there is no specific transposition of the general obligation to 'take requisite measures to establish a system of strict protection', as set out in Articles 12(1) and 13(1) of the Habitats Directive, into UK law, and that UK law does not provide a comprehensive and ecologically sound structure to ensure the long term FCS of whales, dolphins and porpoises.
- Wildlife and Countryside LINK also highlighted the UK Government's failure to assess and define FCS for European Protected Species. This failure has necessitated a precautionary approach based on a goal of no net loss.
- Failure to implement adequate monitoring programmes for several species.

## Slow implementation

Most Member States failed to implement the measures set out in the Directives by the deadlines originally set. Some measures, for example the designation of Natura 2000 sites in the marine environment, have in many cases still not been completed. There is evidence of significant variation in

<sup>76</sup> <http://awsassets.panda.org/downloads/raceprotect.pdf>

<sup>77</sup> Para. 2.4.2.: [http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/hunting\\_guide\\_en.pdf](http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/hunting_guide_en.pdf)

<sup>78</sup> Para. 7.3: Review of Favourable Conservation Status and Birds Directive Article 2 interpretation within the European Union (NECR176), Natural England March 2015: <http://publications.naturalengland.org.uk/publication/4852573913743360>

<sup>79</sup> [http://www.wcl.org.uk/docs/link\\_response\\_to\\_nature\\_directives\\_060212.pdf](http://www.wcl.org.uk/docs/link_response_to_nature_directives_060212.pdf)

<sup>80</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)

the progress made by Member States across the EU 28 in implementing the Birds and Habitats Directives:

- The European Court of Justice has repeatedly acknowledged that BirdLife International's inventory of Important Bird Areas (IBAs) is a valid basis of reference in assessing whether Member States have classified a sufficient number and size of territories as Special Protection Areas (SPAs) under the Birds Directive, and has ruled against Member States that have failed to designate their IBAs as SPAs<sup>81</sup>. However, in eleven Member States, the overlap between terrestrial SPAs and IBAs remains below 75%, and in four below 51%, indicating that terrestrial networks of SPAs in these countries may well still be insufficient. The picture is significantly worse in the marine environment, where eleven Member States have designated less than 51% of their marine IBAs as SPAs.
- In the UK, on land, the network of SPAs and SACs is substantially complete, although site designation for a number of species is incomplete, for instance the little whirlpool ram's-horn snail and some birds, and the results of the Government approved 2001 SPA review remain largely unimplemented. At sea there are gaps in the network of SACs, but in response to Commission infringement proceedings consultations on harbour porpoise SACs are currently underway in Wales and Scotland and anticipated for England also in the near future. Some 34 years after the deadline for implementation of the Birds Directive in the UK, the SPA network at sea remains substantially incomplete, although sites for potential SPAs are due for consultation in the summer. There are just three truly marine SPAs in UK waters, which both lie in inshore waters and between them protect just two species in the non-breeding season. Maintenance extensions to breeding colonies, although agreed by Government since 2008, have yet to be classified in England and Northern Ireland (although these have been classified in Scotland and Wales). And, in common with the rest of the UK, there are to date no classified SPAs to protect the feeding areas of any of UKs internationally important breeding seabirds.

#### **Deficiencies in the knowledge of habitats and species quantity, distribution and knowledge of their conservation status**

Analysis of the 2007 UK Article 17 Report audits (*ibid*) gives us an idea where surveillance might currently be weak and might need additional targeting to be EC compliant. The main conclusion from this analysis is that, taken all together, only 33% of the assessments of European features in the UK were overtly devoid of reliance on expert opinion. The implication is that the UK as a whole could be vulnerable if assessments of conservation status in the next Article 17 Report cannot be supported by cogent scientific evidence of the size, range and population of features of Community interest.

The UK is not meeting fully its obligation to make an annual report to the Commission on implementation of Article 9 of the Birds Directive because there is currently no requirement to report action taken under the majority of general licences. Moreover, several of the general licences permit the use of cage traps and these pose a threat to non-target species, which may be contrary to Articles 5 and 8 of the Birds Directive. Decisions about licensing the lethal control of species should be set in the context of FCS (including Birds Directive Art 2 requirements which the European Commission has equated to FCS under the Habitats Directive) of those species (and in the case of control for conservation purposes, also of the species being impacted) at UK level. In our view, the failure to define FCS/Art 2 requirements at the UK level is deeply problematic.

There has been limited compliance with the Article 12 requirements to monitor the incidental capture and killing of Annex IV species, particularly in fisheries, or to implement effective conservation measures, with considerable variation between Member States. The ASCOBANS steering group for the conservation plan for the harbour porpoise in the North Sea concluded that:

‘except in a few sectors, the level of bycatch monitoring is very low and well below 1%. ...There is overall limited compliance to the Habitats Directive requirements amongst Member States with regards to monitoring and assessment of the impact of bycatch on harbour porpoise populations, and consequently implementation of

<sup>81</sup> <http://www.birdlife.org/datazone/sowb/casestudy/244>

conservation measures as required.<sup>82</sup>

This lack of monitoring likely extends to other Annex IV species incidentally bycaught in fisheries as well as other geographical areas.

Specialist woodland birds exemplify the UK's failure to comply with Article 10 of the Birds Directive as the absence of adequate research seriously hampers conservation efforts. Overall, funding remains insufficient to establish causes of decline and methods for recovery and this makes it difficult to ensure relevant provisions are included in agri-environment schemes.

### **Inadequate funding**

Member States and the EU have failed to dedicate sufficient resources to the establishment and management of the Natura 2000 network, and the conservation of European Protected Species<sup>83</sup> (see also Y.2). A lack of mechanisms for tracking funding earmarked for biodiversity conservation under EU sectoral funds is a further problem<sup>84</sup>.

In the UK while additional resources were initially made available to progress the identification and designation of sites (particularly in the marine environment), these are being reduced affecting the ability to undertake the appropriate level of surveillance and monitoring and the necessary management measures to maintain and restore to FCS.

**See Annex I:** Case Study S.3 (x)

### **Inconsistent and poor implementation and inadequate expertise**

Different Member States have adopted significantly different approaches to the interpretation and implementation of elements of the Directives. Some Member States have adopted a bare minimum approach to implementation (see **The False Economy of Inadequate Implementation** under Y5), to the extent of intentionally breaching EU Nature Laws, resulting in poor outcomes for nature conservation, but also uncertainty, delay and additional cost for business.

A Natural England Commissioned Report<sup>85</sup> into FCS, which focused on 10 Member States, found 'important differences in the interpretation of conservation status amongst the Member States in question, in particular regarding the manner in which FRVs [favourable reference values] are established'<sup>86</sup>. The differences included the approach to selection of the baseline year for FRVs, different assumptions on which to base Minimum Viable Population (MVP) sizes and variability in the definition of 'strict' in relation to species protection measures. The report acknowledged that 'greater uniformity in the ways that Member States interpret these concepts could improve the quality of biodiversity reporting at the European level'<sup>87</sup>.

The report also showed that the UK's failure to ensure conservation objectives for SACs and SPAs are adequately contributing to FCS (see above) is mirrored in other Member States such as Austria and the Netherlands, while others have given the issue only limited consideration (Denmark, Italy and Ireland)<sup>88</sup>.

The European Commission report on the Habitats Directive Article 6(3) Permitting Procedure<sup>89</sup> found variable quality among Appropriate Assessments (AA), including inconsistent screening of plans and projects and a persistent lack of assessment of cumulative effects:

'It is clear from the work undertaken for this study that the way in which the Article 6.3 permit procedure has been applied varies greatly from one country to another, and even from one region to another within a Member State. According to our estimate there are more than 70 different AA approaches underpinned by either national or regional legislation across the EU. Because of the very diverse ways in

<sup>82</sup> [http://www.ascobans.org/sites/default/files/document/ASCOBANS\\_NSG4\\_Report.pdf](http://www.ascobans.org/sites/default/files/document/ASCOBANS_NSG4_Report.pdf)

<sup>83</sup> <http://www.ieep.eu/publications/2011/03/financing-natura-2000>

<sup>84</sup> [http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing\\_natura2000.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing_natura2000.pdf)

<sup>85</sup> Review of Favourable Conservation Status and Birds Directive Article 2 interpretation within the European Union (NECR176), Natural England March 2015: <http://publications.naturalengland.org.uk/publication/4852573913743360>

<sup>86</sup> Ibid. Page 1

<sup>87</sup> Ibid. Page 1

<sup>88</sup> Ibid. Para. 7.5:

<sup>89</sup> [http://ec.europa.eu/environment/nature/natura2000/management/docs/AA\\_final\\_analysis.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/AA_final_analysis.pdf)

which the Art 6.3 procedure operates it is extremely difficult to obtain a full overview of how it is being implemented across the EU.’

Although overall the procedure was found to be ‘working well and not as problematic as sometimes claimed’<sup>90</sup>, several nature authorities reported poor quality AAs and this was often linked to the level of knowledge, skills and capacity of those undertaking the AA or involved in the permitting procedure. A poor or inadequate knowledge base on which to assess impacts was also blamed.

The same study also found inconsistencies in the use of Article 6(4)<sup>91</sup>. This conclusion was reinforced by the findings of two unpublished reports (**See Annex 3**) for BirdLife Europe on Article 6(4) compensation cases under the Birds and Habitats Directives, based on the latest Article 12 and 17 reports. These confirmed that:

- Article 6(4) is used infrequently across the EU Member States
- half of all Member States are not reporting any Article 6(4) compensation cases;
- 3 Member States (DE, IT, UK) account for a large proportion;
- overall, only the UK included a significant number of plans.

The Birdlife reports also found that it is difficult to extract detailed information about the use of Article 6(4) and the limited available information shows that usually compensation is not in place before a development occurs, that monitoring, if done, is frequently not publicly available and that it is extremely rare for a compensation site to have been designated as part of the Natura 2000 network.

### **Consideration for protected species when determining planning applications forms an essential part of conservation**

Where sufficient resources and appropriately experienced staff members are in post the system works well. However, in the UK there are many instances of planning authorities being ill equipped to make judgements, leading to poor practice and unnecessary burdens being placed on developers. This has become increasingly prevalent following the restructuring of Natural England and Local Governments. Typical examples include:

- Failure by a local planning authority to provide pre-application advice relating to the need for surveys delaying a development;
- Advice from professional consultants contradicting best practice resulting in non-compliance and associated penalties or prosecution for developers;
- Inappropriate systems (protocols) leading to disproportionate administrative costs in more marginal cases.

In the UK there have also been instances of national legislation being interpreted, in the absence of any guidance or legal clarity in the legislation, in such a way that compliance with the Birds and Habitats Directives is undermined. For example the permitted development statutory Instrument (SI No. 564<sup>92</sup>) is not clear in relation to the requirement to consider European Protected Species. Our evidence shows that this results in vastly differing approaches between local authority planning departments. In the most extreme cases it has been interpreted by local planning authorities that they need only pass onto the applicant that the legislation exists. This leaves some local authorities and applicants in breach of legislation and threatens populations of protected species and causes confusion and mistrust in the planning process.

This situation has been exacerbated by moves by Defra and its regulators to simplify all of the guidance they and their associated bodies provide. The justification is to make it quicker to understand and easier to use. However, the new guidance focuses on information that government *has* to provide (such as explaining law, services or how to access your rights) and has discarded into archive a very large resource of guidance much of which was tailored to the sectors wishing to receive advice on the most effective and streamlined way on complying with the Habitat Regulations. This large resource of well-used and process-simplifying guidance has not been replaced<sup>93</sup>.

NGO concerns about the loss of expertise within UK conservation agencies was expressed in

<sup>90</sup> Ibid. p.29

<sup>91</sup> Ibid. p.63

<sup>92</sup> <http://www.legislation.gov.uk/uk/si/2014/564/contents/made>

<sup>93</sup> <http://guidanceanddata.defra.gov.uk/>

submissions to the Habitats Regulations Review, where RSPB in particular stated;

'The loss of intellectual capital from Natural England is of significant concern, as is its locus and ability to continue to engage with developers and others with confidence, through knowing that it has the support of Government should it be necessary to sustain an objection, or refuse consent for damaging projects.'<sup>94</sup>

**See Annex I:** Case Studies S.3 (xi) to S.3 (xvi)

### **Perverse Incentives<sup>95</sup> under EU Sectoral Policies**

The Directives cannot be seen in isolation from policies and practice under other EU sectoral policies affecting the natural environment, including the Common Agricultural Policy and Common Fisheries Policy. Policy failures in these areas can and do have implications for the species and habitats intended to be covered by the Directives<sup>96</sup>.

In the UK and across the EU, subsidies under the Common Agricultural Policy that are supposed to contribute to sustainable development are actively opposing progress towards the objectives set out in the Directives. In Northern Ireland, the audit approach used for Single Farm payment during the 2007-13 programme resulted in farmers paring back hedges and removing rough grass margins that provided a valuable habitat for wildlife to ensure eligibility for the payment.

**Inadequate enforcement and penalties** – The fundamental principles of the species protection elements of the Birds Directive are largely transposed into UK law<sup>97</sup>. However, inadequate enforcement of these provisions has resulted in a systematic failure to prevent persecution, through the deliberate killing, nest destruction and disturbance of raptor species. This represents a failure to fulfil Article 5 obligations and prevents the UK from fulfilling its obligations under Articles 2, 3 and 4 as the failure to address persecution prevents these raptors from occupying the suitable habitat that constitutes their natural range, including in areas classified as SPA for the protection of the habitat of these species<sup>98,99</sup>.

The Bat Conservation Trust has been following cases of bat crime since 2008. Over this period a worrying pattern has started to emerge that undermines the very necessary legislation meant to protect bats and their roosts; the fines given following conviction are being set at such a very low level that it is working out cheaper for criminals to break the law, but the tide may be turning on this injustice (see 2<sup>nd</sup> case study below).

**See Annex I:** Case Study S.3 (xvii)

These rulings inadvertently support a stance that it is cheaper to destroy wildlife. The Bat Conservation Trust has been working with both the Police and the Crown Prosecution Service (CPS) to ensure that sentencing for wildlife reflects the damage done as well as being dissuasive and real deterrent to offenders. There is a hope this situation might improve as in a recent case.

**See Annex I:** Case Study S.3 (xviii)

It is perhaps indicative of the effectiveness of the Directives that the positive results outlined in S1.1 above have been achieved despite political and legal barriers we have described in S.3. The Birds and Habitats Directives remain the single most effective conservation tool available to the EU and its Member States.

<sup>94</sup> [http://www.rspb.org.uk/Images/rspb2ndsubmissionofdefrahrccasestudycommentaryandanalysis\\_tcm9-305620.pdf](http://www.rspb.org.uk/Images/rspb2ndsubmissionofdefrahrccasestudycommentaryandanalysis_tcm9-305620.pdf) P.18

<sup>95</sup> <http://www.cbd.int/financial/fiscalenviron/g-subsidyperverse-iucn.pdf>

<sup>96</sup> <http://www.cbd.int/incentives/doc/submissions/2011-014-223/uk-submission-en.pdf>

<sup>97</sup> Primarily by the Wildlife and Countryside Act 1981, as amended, the Wildlife Order (Northern Ireland) 1985, as amended and in Scotland the Nature Conservation (Scotland) Act 2004 and the Wildlife and Natural Environment (Scotland) Act 2011.

<sup>98</sup> Fielding, A., Haworth, P., Whitfield, P., McLeod, D. & Riley, H. 2011. *A Conservation Framework for Hen Harriers in the United Kingdom*. JNCC Report 441. Joint Nature Conservation Committee, Peterborough.  
<http://jncc.defra.gov.uk/pdf/jncc441.pdf>

<sup>99</sup> Natural England 2008 A future for the Hen Harrier in England?

[http://webarchive.nationalarchives.gov.uk/20110320092856/http://www.naturalengland.org.uk/Images/hen\\_harrier\\_report221208\\_tcm6-9451.pdf](http://webarchive.nationalarchives.gov.uk/20110320092856/http://www.naturalengland.org.uk/Images/hen_harrier_report221208_tcm6-9451.pdf)



## S.4 - Have the Directives led to any other significant changes both positive and negative?

*This question aims to assess whether the implementation of the Nature Directives has brought about any significant environmental, social or economic effects or changes that were not intended or foreseen by the Directive at the time of their approval, and whether these changes were positive, negative or neutral in terms of their contribution towards meeting the objectives of the Directives. Examples of such effects or changes might include the development of a culture of social participation in nature-related decisions as evidenced by Committees for the development of management plans or higher cooperation of departments of different ministries, etc.*

### **Answer:**

Implementation of the Birds and Habitats Directives has led to numerous positive effects that were not explicitly foreseen at the time of their adoption. These include:

- **Better understanding of the distribution and status of wildlife across Europe**
- **Better understanding of the importance of biodiversity for delivering ecosystem services**
- **Driving the sustainable use of natural resources**
- **Birth of new environmental sectors**
- **Growth of the green economy**
- **Increased popular support for the EU**

### **Better understanding of the distribution and status of wildlife across Europe**

Surveillance measures and reporting requirements have resulted in better focused monitoring and a greater understanding of habitats and species of European importance. The Directives have also stimulated a greater appreciation of the need to secure the ecological networks necessary to maintain (and restore) the national network of protected areas.

Results from the latest Article 17 reports on the conservation status of the habitats and species listed under the Habitats Directive show a reduction in the proportion of assessments where conservation status is unknown, from 31% to 17% for species and from 18% to 7% for habitats<sup>100</sup>. Furthermore, establishment of the Natura network has prompted research on a number of themes, including adaptation to environmental change and management strategies, further contributing to the overarching objectives of the Directives<sup>101</sup>.

Monitoring of bird species through the Pan European Common Bird Monitoring Scheme (PECBMS)<sup>102</sup>, and BirdLife's IBA programme<sup>103</sup>, have also helped improve the knowledge and evidence base for birds protected under the Birds Directive.

**See Annex I:** Case Study S.4 (i)

### **Better understanding of the importance of biodiversity for delivering ecosystem services**

Many of the ecosystem service benefits of Natura 2000, such as carbon storage, water retention, recreational benefits were not really an issue at the time the Directives were in development.

<sup>100</sup> EEA, 2015, *The European environment — state and outlook 2015: synthesis report*, European Environment Agency, Copenhagen

<sup>101</sup> EEA, 2012. Protected Areas – An Overview.

<sup>102</sup> <http://www.ebcc.info/pecbm.html>

<sup>103</sup> BirdLife International (2013) Designating Special Protection Areas in the European Union. Presented as part of the BirdLife State of the world's birds website. Available from: <http://www.birdlife.org/datazone/sowb/casestudy/244>

A 2010 study titled 'Costs and Socio-Economic Benefits associated with the Natura 2000 Network'<sup>104</sup> estimated the annual costs of implementing the Natura 2000 network at €5.8 billion per year for the EU-27. Research has reported that habitats in favourable status were found to provide 'more biodiversity and had a higher potential to supply, in particular, regulating and cultural ecosystem services' than habitats with unfavourable status<sup>105</sup>. A 2014 study titled 'The Economic benefits of the Natura 2000 Network'<sup>106</sup> found that the benefits that flow from Natura 2000 are of the order of €200 to €300 billion/year. This study estimated that there are between 1.2 to 2.2 billion visitor days to Natura 2000 sites each year, generating recreational benefits worth between €5 and €9 billion per annum.

The UK Natural Capital Committee's<sup>107</sup> third State of Natural Capital report recognises the value of the natural environment in environmental, economic, and social terms, and states that, 'Carefully planned investments in natural capital, targeted at the best locations, will deliver significant value for money and generate large economic returns.' Examples include upland peatland, woodlands, wetlands and intertidal habitats.

Research has shown that Habitats in favourable status were found to provide 'more biodiversity and had a higher potential to supply, in particular, regulating and cultural ecosystem services' than habitats with unfavourable status<sup>108</sup>.

In addition to the importance of the supporting, regulating, and provisioning services derived from nature, there has been increasing interest in the relationship between biodiversity and human wellbeing through 'cultural' ecosystem services (Church et al., 2011<sup>109</sup>; NEA, 2011<sup>110</sup>; Lovell et al., 2014<sup>111</sup>), since the publication of the UK's National Ecosystem Assessment (NEA) in 2011. Cultural ecosystem services are the 'nonmaterial' benefits of aesthetics, leisure, recreation and a sense of place (Clark et al., 2014<sup>112</sup>; Lovell et al., 2014<sup>113</sup>). The importance that we place on cultural services from natural environments is evident in the amount of time and money we spend to enable us to experience nature and in the rise in environmental group membership worldwide (Clark et al., 2014<sup>114</sup>).

Evidence suggests that time spent in natural environments of high value increases health (Barton et al., 2009<sup>115</sup>) and links between health status and the condition of the local natural environment have also been observed (Clark et al., 2014<sup>116</sup>). Environments rich in nature are also associated with improved wellbeing (Huby et al., 2006<sup>117</sup>), with visits to areas rich in nature providing emotional, social and psychological benefits such as improvements in self-esteem and mood (Huby et al., 2006<sup>118</sup>;

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<sup>104</sup> [http://ec.europa.eu/environment/nature/natura2000/financing/docs/natura2000\\_costs\\_benefits.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/natura2000_costs_benefits.pdf)

<sup>105</sup> Maes, J., M. L. Paracchini, G. Zulian, M. B. Dunbar, and R. Alkemade. 2012. 'Synergies and Trade-Offs between Ecosystem Service Supply, Biodiversity, and Habitat Conservation Status in Europe.' *Biological Conservation* 155 (October): 1–12.

<sup>106</sup> [http://ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018\\_LR\\_Final1.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018_LR_Final1.pdf)

<sup>107</sup> <https://www.naturalcapitalcommittee.org/>

<sup>108</sup> Maes, J., M. L. Paracchini, G. Zulian, M. B. Dunbar, and R. Alkemade. 2012. 'Synergies and Trade-Offs between Ecosystem Service Supply, Biodiversity, and Habitat Conservation Status in Europe.' *Biological Conservation* 155 (October): 1–12.

<sup>109</sup> Church, A., J. Burgess, N. Ravenscroft, W. Bird, K. Blackstock, E. Brady, M. Crang, R. Fish, P. Gruffudd, S. Mourato, J. Pretty, D. Tolia-Kelly, K. Turner, and M. Winter (2011) Cultural services. Pages 633–691 in United Kingdom National Ecosystem Assessment, editor. *The UK national ecosystem assessment technical report*. United Nations Environment Programme–World Conservation Monitoring Centre (UNEP-WCMC, Cambridge, UK)

<sup>110</sup> National Ecosystem Assessment (2011) *The UK National Ecosystem Assessment: Synthesis of the Key Findings*. Cambridge, UNEP-WCMC.

<sup>111</sup> Lovell R, Wheeler B, Higgins SL, Irvine KN and Depledge MH (2014). A systematic review of the health and wellbeing benefits of bio diverse environments. *Journal of Toxicology and Environmental Health, Part B: Critical Reviews*, 17: 1-20

<sup>112</sup> [Clark NE, Lovell R, Wheeler BW, Higgins SL and Depledge MH \(2014\). Biodiversity, cultural pathways, and human health: a framework. \*Trends in Ecology and Evolution\*, 29: 198-204.](#)

<sup>113</sup> Lovell R, Wheeler B, Higgins SL, Irvine KN and Depledge MH (2014). A systematic review of the health and wellbeing benefits of bio diverse environments. *Journal of Toxicology and Environmental Health, Part B: Critical Reviews*, 17: 1-20

<sup>114</sup> [Clark NE, Lovell R, Wheeler BW, Higgins SL and Depledge MH \(2014\). Biodiversity, cultural pathways, and human health: a framework. \*Trends in Ecology and Evolution\*, 29: 198-204.](#)

<sup>115</sup> Barton J, Hine R and Pretty J (2009). The health benefits of walking in green spaces of high natural and heritage value. *Journal of Integrative Environmental Sciences*, 6: 61-278.

<sup>116</sup> [Clark NE, Lovell R, Wheeler BW, Higgins SL and Depledge MH \(2014\). Biodiversity, cultural pathways, and human health: a framework. \*Trends in Ecology and Evolution\*, 29: 198-204.](#)

<sup>117</sup> Huby M, Cinderby S, Crowe AM and White PCL (2006). The association of natural, social and economic factors with bird species richness in rural England. *Agric. Econ*, 57: 295-312.

<sup>118</sup> Ibid.

Curtin et al., 2009<sup>119</sup>; Barton et al., 2009<sup>120</sup>; Lemieux et al.<sup>121</sup>, 2012; Clark et al., 2014<sup>122</sup>). Several studies have highlighted the positive association between richness of wildlife and plant species within an environment with mental wellbeing (Fuller et al., 2007<sup>123</sup>; Dallimer et al., 2012<sup>124</sup>; Clark et al., 2014<sup>125</sup>) and wellbeing is increased in individuals who perceive themselves to be in areas more diverse in birds, butterflies and plants (Clark et al., 2014<sup>126</sup>).

**See Annex I:** Case Study S.4 (ii)

### **Driving the sustainable use of marine natural resources**

In the management of fishing activities in the marine environment (see also case study in section S.1.1), Article 6 of the Habitats Directive has proved to be very effective in prescribing protection at site level (to preserve site integrity) not just protection of the feature itself. This has meant that potentially damaging activities have been prohibited not just over specific features, but in buffer areas around these features. There is some research to suggest this approach benefits biodiversity, and wider ecosystem goods and services<sup>127</sup>.

The opportunities for protecting larger areas of seabed has also resulted in better enforcement technology being further developed for inshore fishing boats called Vessel Monitoring Systems (VMS)<sup>128</sup>. This technology is tamper proof, and allows text messages – with geolocational information – to be sent to enforcement agencies ashore. This allows cost-effective real-time high frequency monitoring data of fishing vessels to be made to regulators. This will stop encroachment, and lead to self-enforcement within the industry of vessels that come into the district/area of concern from outside the local ports. Such projects necessarily bring the fishing industry ‘along’ with them, as they allow access to sites to a degree where conservation features aren’t present. This further engenders buy-in to the process of developing management and compliance of EMS and fishing activities.

In addition, the revised approach to fisheries management in English European Marine Sites has also lead to increased protection of national marine protected areas called Marine Conservation Zones. In 2014/15, the implementation group set up by the UK Government to address the management of fishing activities in European Marine Sites under Article 6 of the Habitats Directive (see section S.1.1) agreed an additional goal: the equivalent management of fishing activities in English Marine Conservation Zones. Initially, this was not part of the intended scope of the project, and without this work on the correct implementation of the Habitats Directive, this level of management of national protected sites would have been unlikely.

**See Annex I:** Case Studies S.4 (iii) and (iv)

### **Birth of new environmental sectors**

EU environmental legislation has also helped create and boost the ‘green economy’ through the creation of new roles and sectors, including new environmental professionals, and new businesses. For example, Scottish expertise in assessing the environmental impacts of onshore windfarms and developing sites in a sustainable manner, is already being exported overseas (e.g. via the EU-funded

<sup>119</sup> Curtin S (2009). Wildlife tourism: The intangible, psychological benefits of wildlife encounters. *Current Issues in Tourism*, 12: 451-474.

<sup>120</sup> Barton J, Hine R and Pretty J (2009). The health benefits of walking in green spaces of high natural and heritage value. *Journal of Integrative Environmental Sciences*, 6: 61-278

<sup>121</sup> Lemieux CJ, Eagles PF, Slocombe DS, Doherty ST, Elliot SJ, et al (2012). Human health and wellbeing motivations and benefits associated with protected area experiences: An opportunity for transforming policy and management in Canada. *Parks*, 18: 71-96

<sup>122</sup> [Clark NE, Lovell R, Wheeler BW, Higgins SL and Depledge MH \(2014\). Biodiversity, cultural pathways, and human health: a framework. \*Trends in Ecology and Evolution\*, 29: 198-204.](#)

<sup>123</sup> Fuller RA, Irvine KN, Devine-Wright P, Warren PH and Gaston KJ (2007). Psychological benefits of green space increase with biodiversity. *Biology Letters*, 3: 390-394

<sup>124</sup> Dallimer MK, Irvine A, Skinner Z, Davies J, Rouquette L, et al (2012). Biodiversity and the feel-good factor: understanding associations between self-reported human wellbeing and species richness. *Bioscience*, 62: 47-55

<sup>125</sup> [Clark NE, Lovell R, Wheeler BW, Higgins SL and Depledge MH \(2014\). Biodiversity, cultural pathways, and human health: a framework. \*Trends in Ecology and Evolution\*, 29: 198-204.](#)

<sup>126</sup> [Clark NE, Lovell R, Wheeler BW, Higgins SL and Depledge MH \(2014\). Biodiversity, cultural pathways, and human health: a framework. \*Trends in Ecology and Evolution\*, 29: 198-204.](#)

<sup>127</sup> <http://www.sciencedirect.com/science/article/pii/S0025326X13005407>

<sup>128</sup> [http://www.google.co.uk/url?q=http://randd.defra.gov.uk/Document.aspx%3FDocument%3D11218\\_MF1214\\_Evid4LF\(gus1\)LF.docx&sa=U&ei=x-75VID7JcOE7ga9m4GYBQ&ved=0CCwQFiAD&usq=AFQjCNFyOR0OZ72HtdPDFhJdr9iPlmopNA](http://www.google.co.uk/url?q=http://randd.defra.gov.uk/Document.aspx%3FDocument%3D11218_MF1214_Evid4LF(gus1)LF.docx&sa=U&ei=x-75VID7JcOE7ga9m4GYBQ&ved=0CCwQFiAD&usq=AFQjCNFyOR0OZ72HtdPDFhJdr9iPlmopNA)

GPWIND project<sup>129</sup>).

### **Growth of the green economy**

A recent report for DG Environment estimated that the full implementation and management of the Natura 2000 network can be expected to directly support 122,000 FTE jobs<sup>130</sup> and Gross Value Added of €3.05 billion in the regions in which sites are located, helping to provide a new source of income for land owners and managers and to diversify the rural economy. Taking account of indirect and induced effects (through purchased inputs and employee expenditures), the total impact at the EU level is estimated to be to support 207,400 FTE jobs and GVA of €5.2 billion at the EU level<sup>131</sup>.

Green Alliance's December 2012 report 'Green Economy: A UK Success Story'<sup>132</sup> indicates that the UK's low carbon and green economy has already created almost as many jobs as the financial services sector, and twice as many as the automotive sector. The CBI states that in 2010-11 over a third of economic growth in the UK is likely to have come from green business. In 2010-11 the UK exported low carbon and environmental goods and services to 52 countries and with a value of £11.8 billion.

### **Increased public contact with nature**

It is estimated that there are between 1.2 to 2.2 billion visitor days to Natura 2000 sites each year, generating recreational benefits worth between €5 and €9 billion per annum<sup>133</sup>.

Scientific studies have demonstrated the socio-economic benefits that Natura 2000 delivers<sup>134</sup>, as well as the diversity of activities that take place in Natura 2000 sites<sup>135</sup>.

**See Annex I:** Case Studies S.4 (v) and (xi)

### **Increased popular support for the EU**

The EU's role in protecting the Europe's natural heritage is valued by a large proportion of its citizens, 77% of whom think that EU environmental legislation is necessary. Environmental protection is seen as key benefit of European integration, and an area where citizens trust the EU and acknowledge, even in more Eurosceptic countries, that the EU has a role to play<sup>136</sup>.

### **Business Certainty**

An EU-wide approach has given businesses operating across different Member States more certainty and a fairer approach to competition, through the development of a common legislative framework across Europe. This has helped businesses save resources compared to a situation in which they would have had to comply with twenty-eight different nature protection regimes in the different Member States<sup>137</sup>.

### **Stakeholder buy-in and collaboration**

As per the answer to S.3, the Directives have fostered collaboration between stakeholders. In this respect the Directives provide for the effective management and resolution of conflicts over different uses of nature in such a way that nature does not lose out<sup>138</sup>.

**See Annex I:** Case Studies S.4 (vi) and S.4 (vii)

### **Driving eco-innovation and sustainable solutions**

The Directives have required developers to pay greater attention to the impacts of development projects on wildlife, and driven the adoption of innovative and environmentally sustainable solutions

<sup>129</sup> <http://www.project-gpwind.eu/>

<sup>130</sup> GHK et al (2010) Economic Benefits of Environmental Policy. Report for DG Environment

<sup>131</sup> Based on a multiplier of 1.7 (direct + indirect + induced to direct effects) for natural resource based activities from modelling work in the GHK et al (2007) study on the links between the environment, economy and jobs

<sup>132</sup> [http://issuu.com/greenallianceuk/docs/green\\_economy\\_a\\_uk\\_success\\_story/2](http://issuu.com/greenallianceuk/docs/green_economy_a_uk_success_story/2)

<sup>133</sup> BIOIS (2011) Estimating the economic value of the benefits provided by the tourism/recreation and Employment supported by Natura 2000, a study for the European Commission, DG Environment

<sup>134</sup> <http://inderscience.metapress.com/content/u641472246gw6587/>

<sup>135</sup> <http://link.springer.com/article/10.1007/s00267-013-0036-6>

<sup>136</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_416\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_416_en.pdf)

<sup>137</sup> <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file44583.pdf>

<sup>138</sup> [http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/index\\_en.htm](http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/index_en.htm)

where in the past nature would have lost out.

**See Annex I:** Case Studies S.4 (viii) and S.4 (ix)

Harvard economist Michael Porter found that environmental regulations ‘can trigger innovation [broadly defined] that may partially or more than fully offset the costs of complying with them’<sup>139</sup>. This was borne out in a recent review of the drivers of a range of ‘eco-innovations’ that address the ecological impacts of wind energy deployment – for instance collision risk for birds and bats, or hearing damage to marine mammals caused by the installation of offshore turbines. Many of the innovations identified are driven by environmental regulations, such as those implemented by the EU Habitats Directive (92/43/EEC) and Birds Directive (2009/147/EC), thereby demonstrating the importance of robust and well-designed regulation to build a truly sustainable renewable energy industry<sup>140</sup>.

**See Annex I:** Case Study S.4 (x)

### **Protection for non-target species**

An EEA study<sup>141</sup> on The impact of Natura 2000 on non-target species, found that the abundance of a large number of bird species is higher inside than outside the Natura 2000 network, showing that the Natura 2000 areas designated upon the presence of targeted bird species listed in Annex I of the Birds Directive also harbour a substantial number and population of common bird species.

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<sup>139</sup> Porter, Michael and Clause van der Linde (1995) ‘Toward a New Conception of the Environment-Competitiveness Relationship’ *Journal of Economic Perspective* 9(4), pp.97-118.

<sup>140</sup> Roddis, Philippa (2014) ‘Wind energy and wildlife: The role of innovation in addressing the ecological impacts of wind energy’. Unpublished Masters Dissertation, MA Environment, Development and Policy, University of Sussex, UK.

<sup>141</sup> [http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/PDF/Impact\\_Natura2000\\_on\\_non-target\\_species\\_volunteer-based\\_biodiversity\\_monitoring.pdf](http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/PDF/Impact_Natura2000_on_non-target_species_volunteer-based_biodiversity_monitoring.pdf)

## 2. Efficiency

### MAIN POINT

The Directives are **delivering environmental, social, and economic benefits that far outweigh the costs of implementation**. It is therefore reasonable to suggest that failure to implement the Directives would incur substantial environmental, economic and social costs that would far outweigh any savings made. The evidence shows that they do not generate unnecessary administrative costs, and that they are not a significant burden for business. Evidence also shows that inadequate implementation of the Directives, and of EU legislation generally, often generates uncertainty and unnecessary burdens for businesses.

### Y.1 - What are their costs and benefits (monetary and non-monetary)?

*Based on the explanation given above, please indicate, supported by evidence, what types of costs and benefits have resulted from the implementation of the Nature Directives. Please provide evidence, quantitative where possible, of costs and benefits, describe their nature (monetary/non-monetary) and value, and who is affected and to what extent. Please distinguish between the costs and benefits arising from the Directives themselves and those arising as a result of other factors. To facilitate analysis of the answers it would be useful if costs and benefits could be addressed separately.*

#### Answer:

##### Costs

In relation to the Natura 2000 network, a 2010 study<sup>142</sup> estimated the annual costs of implementing the network at €5.8 billion per year for the EU-27. This is a conservative estimate and is around four times higher than the the present annual EU budget contribution<sup>143</sup>. Another category of costs that is important to consider in relation to the Directives is regulatory costs, defined by the OECD (2014) as 'all of the costs attributable to the adoption of a regulatory requirement, whether direct or indirect in nature...this includes the direct costs to business and the impact on economic growth...'. In terms of the costs of regulation to business, there are two main categories to consider: administrative costs (i.e. the costs of complying with regulatory information obligations) and policy (i.e. substantive compliance) costs (i.e. all other direct costs to business associated with regulatory compliance obligations)<sup>144</sup>. These latter costs are closely related to regulatory stringency and essentially reflect political decisions regarding the policy objectives to be achieved<sup>145</sup>. A third category of costs sometimes considered are so-called 'irritation' costs; evidence suggests that business perceptions of the costs of regulation tend to be linked closely to subjectively felt 'irritation' with regulation, despite the fact that such perceptions are not always correlated with administrative costs<sup>146</sup>. These costs are discussed in answers to questions Y.3., Y.4., and Y.7. The general conclusion is that the regulatory costs associated with the Directives are limited and are substantially outweighed by the benefits (described below).

In addition to direct costs, there is also a large body of evidence assessing the broader effects of regulation on competitiveness, innovation, and economic growth. A recent review by the OECD (2014) concluded that, at least in relation to environmental regulations, most of the available evidence

<sup>142</sup> Gantioler et al. (2010). *Costs and Socio-Economic Benefits associated with the Natura 2000 Network*. Final report to the European Commission, DG Environment on Contract ENV.B.2/SER/2008/0038. Institute for European Environmental Policy / GHK / Ecologic, Brussels 2010.

<sup>143</sup> Kettunen et al. (2009). *Biodiversity and the EU Budget*. Institute for European Environmental Policy, London / Brussels.

<sup>144</sup> OECD. (2014). *OECD Regulatory Compliance Cost Assessment Guidance*. OECD Publishing.

<sup>145</sup> Hampton, P. (2005). *Reducing Administrative Burdens: Effective Inspection and Enforcement*. HM Treasury/HMSO, London.

<sup>146</sup> OECD. (2012). *Measuring Regulatory Performance: A Practitioner's Guide to Perception Surveys*. OECD Publishing; Peck et al. (2012). *Business Perceptions of Regulatory Burden*. Centre for Regional Economic Development: University of Cumbria, Carlisle.

is highly context-specific and largely inconclusive; the overall impacts are rather ambiguous<sup>147</sup>. Although there is some evidence of near-term trade-offs between environmental regulation and growth, a Defra (2010) review concluded that 'these effects have typically been found to be small or even insignificant'<sup>148</sup>.

### Benefits: Ecosystem Services and Natural Capital

The species and habitats protected by the Natura 2000 network provide a range of socio-economic benefits to the people of Europe. In this section, we provide an overview of the ecosystem services provided by nature in Europe i.e. the outputs of ecosystems from which people derive benefits. Some of these benefits are enjoyed locally (e.g. local air quality improvements), whilst others are global in their impacts (e.g. carbon sequestration by Natura 2000 sites provides global climate change mitigation benefits). Many are public goods, meaning that they are underprovided by the market, a serious concern given that the natural environment provides the air we breathe, the water we drink and the food we eat<sup>149</sup>. Unfortunately, awareness of the socio-economic benefits of the Natura 2000 network amongst the general public in the EU is generally low<sup>150</sup>.

Nevertheless, evidence suggests that conservation designations deliver more ecosystem services than non-designated sites, and that habitats in favourable status provide 'more biodiversity and have a higher potential to supply, in particular, regulating and cultural ecosystem services' than habitats with unfavourable status<sup>151</sup>.

It is important to note that many of the benefits provided by nature cannot be accurately quantified/expressed in monetary terms. In particular, expressing the value of cultural services – the non-material benefits people obtain from contact with nature – in monetary terms is difficult if not impossible in many cases, and is not necessarily desirable either. Many people believe that nature is intrinsically valuable and should be conserved for its own sake; a 2010 Eurobarometer poll found that the vast majority of EU citizens see the conservation of biodiversity first and foremost as a moral obligation<sup>152</sup>. People who believe that nature is intrinsically valuable argue that there is an important ethical dimension to human relationships with the natural world. This is reflected in the EU Biodiversity Strategy to 2020, which states that biodiversity should be protected and restored for both its intrinsic value **and** its contribution to human wellbeing<sup>153</sup>.

It is also important to note that the flow of ecosystem services depends on the sustainable management of the underlying stock of ecological assets (e.g. species and habitats), sometimes referred to as natural capital. Biodiversity underpins the delivery of ecosystem services and plays an important role in enhancing ecosystem stability, thus ensuring long-run sustainability<sup>154</sup>. This is also explicitly recognised by the EU Biodiversity Strategy to 2020, in which the headline target is 'halting the loss of biodiversity **and** the degradation of ecosystem services in the EU by 2020, and restoring them in so far as feasible...' and the vision is that, by 2050, 'European Union biodiversity **and** the ecosystem services it provides — its *natural capital* — are protected, valued and appropriately restored...' <sup>155</sup>. It is clear that Natura 2000 and the Nature Directives are key to achieving this.

<sup>147</sup> Kozluk, T. & Zipperer, V. (2014). Environmental policies and productivity growth: a critical review of empirical findings. *OECD Journal: Economic Studies*, Vol. 1. OECD Paris; Albrizio, S. et al. (2014). Do environmental policies matter for productivity growth? Insights from new cross-country measures of environmental policies. *OECD Economics Department Working Paper No. 1176*.

<sup>148</sup> Department for Environment, Food and Rural Affairs. (2010). *Economic Growth and the Environment*. Defra Evidence and Analysis Series: Paper 2.

<sup>149</sup> Millennium Ecosystem Assessment. (2005). *Ecosystems and Human Well-being: Synthesis*. Island Press, Washington DC.

<sup>150</sup> Gantioler et al. (2010). *Costs and Socio-Economic Benefits associated with the Natura 2000 Network*. Final report to the European Commission, DG Environment on Contract ENV.B.2/SER/2008/0038. Institute for European Environmental Policy / GHK / Ecologic, Brussels 2010.

<sup>151</sup> Eastwood et al. (2013). Nature conservation and ecosystem service delivery. JNCC Report No. 492; Maes et al. (2012). Synergies and trade-offs between ecosystem service supply, biodiversity, and habitat conservation status in Europe. *Biological conservation*, 155, 1-12.

<sup>152</sup> Eurobarometer. (2010). Attitudes of Europeans towards the issue of biodiversity. Analytical report Wave 2. [http://ec.europa.eu/public\\_opinion/flash/fl\\_290\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_290_en.pdf)

<sup>153</sup> COM (2011) 244 final.

<sup>154</sup> McCarthy, D. & Morling, P. (2014). *A Guidance Manual for Assessing Ecosystem Services at Natura 2000 Sites*. Produced as part of the Natura People project, part financed by the European Regional Development Fund (ERDF) through the INTERREG IV A 2 Mers Seas Zeeën Crossborder Programme 2007-2013. Royal Society for the Protection of Birds: Sandy, Bedfordshire; RSPB (2009). [Naturally, at your service: Why it pays to invest in nature](#); Mace et al. (2012). Biodiversity and ecosystem services: a multilayered relationship. *Trends in ecology & evolution*, 27(1), 19-26.

<sup>155</sup> COM (2011) 244 final.

Research carried out for the European Commission has provided a first estimate of the overall economic benefits of the Natura 2000 network. The study estimated the value of these benefits to be between €200 and €300 billion per year. Although subject to a considerable degree of uncertainty, these figures provide a first illustrative estimate of the gross economic benefits of the Natura 2000 network. To name just one specific example from the study, it was estimated that the Natura 2000 network currently stores around 9.6 billion tonnes of carbon, equivalent to 35 billion tonnes of CO<sub>2</sub>, which is estimated to be worth between €600 billion and €1,130 billion (stock value in 2010), depending on the price attached to a tonne of carbon (i.e. to reflect the value of avoided damage of climate change by avoided GHG emissions). It can be expected that in the future these carbon values will increase, especially if the conservation status of the network improves<sup>156</sup>.

This study also estimated that there are between 1.2 to 2.2 billion visitor days to Natura 2000 sites each year, generating recreational benefits worth between €5 and €9 billion per annum. Nature reserves are key focal attractions for nature-based tourism, which can benefit local economies through increased economic activity. Visitor expenditure resulting from these visits provide direct and indirect economic impacts estimated in the range of €50-€85 billion and supporting directly and indirectly between 4.5 and 8 million full time equivalent jobs. Evidence suggests that over a quarter of holidaymakers in the EU state that their main reason for going on holidays is to visit nature<sup>157</sup>, and almost a third regard environmental attractiveness as the key consideration when deciding on a holiday destination<sup>158</sup>.

There are also a broad range of mental and physical health and well-being benefits associated with access to high-quality and biodiverse natural settings such as Natura 2000 sites<sup>159</sup>. For example, access to high-quality green space can enhance physical activity, crucial given that more than half of Europe's population is not active enough to meet health recommendations, with physical inactivity one of the leading risk factors for health and is estimated to attribute to one million deaths per year in Europe (10 % of the total)<sup>160</sup>. Accessible environmental settings are particularly important close to urban areas, where the overwhelming majority of people in Europe live; interestingly, Natura 2000 sites exist in 32 major cities in Europe and over half of Europe's capitals harbour one or more Natura 2000 sites. Collectively, these sites harbour 40% of the threatened habitat types (mostly forests and semi natural grasslands), half the bird species and a quarter of the rare butterflies listed in the Nature Directives<sup>161</sup>. For additional discussion of the health and well-being benefits associated with Natura 2000 and nature conservation in general, see the answer to question **S.4**.

In the UK, further evidence is available in the UK National Ecosystem Assessment (2011; 2014) , especially in relation to the protection of the marine environment<sup>162</sup>. Although ecosystem services have been less studied in the marine environment, research shows that appropriately designed and managed marine protected areas provide a range of valuable ecosystem services<sup>163</sup>. It has been estimated that conserving 20-30 % of global oceans through MPAs could create a million jobs, sustain fish catch worth US\$70–80 billion/year and provide ecosystem services with a gross value of roughly

<sup>156</sup> ten Brink et al. (2013). [The Economic Benefits of the Natura 2000 Network](#). Synthesis Report; ten Brink et al. (2011). [Estimating the Overall Economic Value of the Benefits provided by the Natura 2000 Network](#). Final Report to the European Commission, DG Environment on Contract ENV.B.2/SER/2008/0038. Institute for European Environmental Policy / GHK / Ecologic, Brussels 2011

<sup>157</sup> [http://ec.europa.eu/public\\_opinion/flash/fl\\_370\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_370_en.pdf)

<sup>158</sup> [http://ec.europa.eu/public\\_opinion/flash/fl\\_328\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_328_en.pdf)

<sup>159</sup> Pretty et al. (2011). [Chapter 23: Health Values from Ecosystems](#). In: The UK National Ecosystem Assessment Technical Report. UK National Ecosystem Assessment, UNEP-WCMC, Cambridge; Lovell R, Wheeler B, Higgins SL, Irvine KN and Depledge MH (2014). A systematic review of the health and wellbeing benefits of bio diverse environments. *Journal of Toxicology and Environmental Health, Part B: Critical Reviews*, 17: 1-20; Clark et al. (2014). Biodiversity, cultural pathways, and human health: a framework. *Trends in ecology & evolution*, 29(4), 198-204.

<sup>160</sup> <http://www.euro.who.int/en/health-topics/disease-prevention/physical-activity/data-and-statistics/10-key-facts-on-physical-activity-in-the-who-european-region>

<sup>161</sup> Sundseth, K., & Raeymaekers, G. (2006). Biodiversity and Natura 2000 in urban areas: Nature in cities across Europe – a review of key issues and experiences. Brussels, Ecosystems Ltd., Brussels. <http://www.forumtools.biz/Fedenatur/upload/N2000inmajorEuropeancities.pdf>

<sup>162</sup> UK National Ecosystem Assessment. (2011). The UK National Ecosystem Assessment: Synthesis of the Key Findings. UNEP-WCMC, Cambridge.

<sup>163</sup> Turner et al. (2014). UK National Ecosystem Assessment Follow-on. [Work Package Report 4: Coastal and marine ecosystem services: principles and practice](#). UNEP-WCMC, LWEC, UK.



US\$4.5–6.7 trillion/year<sup>164</sup>.

### Other Benefits

The answer to question **C.6.** outlines the economic benefits associated with the Directives in terms of the creation of a level playing field for economic actors, alongside a range of other business benefits. Answers in relation to the questions in **Section C** as a whole also demonstrate that the Directives make a key contribution to meeting other EU environmental objectives, which in turn provide substantial benefits to society.

See **Annex IV** Case Studies Y.1 (i) – (ix)

## Y.2 - Are availability and access to funding a constraint or support?

*This question focuses on the proportion of identified funding needs that has been or is being met by EU and Member State funding, respectively, the extent to which the level of available funding affects the implementation of the Directives and enables the achievement of their objectives (as set out in Annex I to this questionnaire), and the extent to which initial funding allocations for nature under EU funding instruments were used as well as any factors which may have favoured or hindered access to and use of funds. In your answer please consider whether funding constraints affect costs or create administrative burdens (eg as a result of limitations on guidance or delays in decision making).*

### Answer:

'Based on the existing information, it is clear that spending on Natura 2000 through EU funded instruments does not cover the costs that Member States regard as necessary if the network is to be managed satisfactorily, which is of course greatly above current levels of spending.'<sup>165</sup>

Adequate long-term funding is essential to achieving the objectives of the Directives, and public sector support (including funding from the EU budget) forms a key component of this, as explicitly recognised by Article 8 of the Habitats Directive and the EU Biodiversity Strategy to 2020<sup>166</sup>.

To date, the majority of the funding for the Natura 2000 network has come from the public sector through EU funds, co-financed from national nature conservation budgets<sup>167</sup>. The importance of the network in the delivery of a range of public goods (e.g. see answer to question **Y.1.**), and growing awareness of the linkages between these benefits and the achievement of a range of other policy objectives (e.g. see answers in **Section C**), provides a very strong argument in favour of greater public sector funding for the network.

However, there are considerable unmet financing needs for nature conservation at both the UK and EU-levels (see also answer to question **C.7.**)<sup>168</sup>, and this lack of adequate funding is one of the main reasons for slow implementation of the Directives. According to one report, funding is particularly lacking in relation to site management and monitoring (for example due to limited staff capacity)<sup>169</sup>. In

<sup>164</sup> Balmford et al. (2004). The worldwide costs of marine protected areas. *Proceedings of the National Academy of Sciences of the United States of America*, 101(26), 9694-9697.

<sup>165</sup> Kettunen et al. (2011). *Assessment of the Natura 2000 co-financing arrangements of the EU financing instrument. A project for the European Commission – final report*. Institute for European Environmental Policy (IEEP), Brussels, Belgium.

<sup>166</sup> Medarova-Bergstrom, K, Kettunen, M, Rayment, M, Skinner, I and Tucker, G (2014) [Common Framework for Biodiversity-Proofing of the EU Budget: General guidance](#). Report to the European Commission, Institute for European Environmental Policy, London.

<sup>167</sup> Kettunen et al. (2014). [Financing Natura 2000 Guidance Handbook. Part I – EU funding opportunities in 2014-2020](#), a publication commissioned by the European Commission DG Environment (June 2014).

<sup>168</sup> For UK level, see GHK. (2010). [Costs of the UK Biodiversity Action Plan – Update to Defra](#). For EU level, see Gantioler et al. (2010). [Costs and Socio-Economic Benefits associated with the Natura 2000 Network](#). Final report to the European Commission, DG Environment on Contract ENV.B.2/SER/2008/0038. Institute for European Environmental Policy / GHK / Ecologic, Brussels. See also, McCarthy et al. (2012). Financial costs of meeting global biodiversity conservation targets: current spending and unmet needs. *Science*, 338(6109), 946-949.

<sup>169</sup> EEB. (2011). Where there is a will there is a way: Snapshot report of Natura 2000 management. <http://www.eeb.org/EEB/?LinkServID=5CC039F5-5056-B741-DBFACCB777CA4E16>

spite of its effectiveness, the only EU funding source dedicated to nature conservation (LIFE) represents less than 1% of total EU budget<sup>170</sup>.

In terms of private sector support, there are a range of innovative financing tools that have the potential to play a complementary role alongside public sector support<sup>171</sup>. However, there are a number of barriers to mobilising such support including market failure (i.e. the fact that many of the ecosystem services provided by Natura 2000 sites are public goods and hence can only be supported through government intervention), regulatory uncertainty, and policy failures linked to perverse subsidies (e.g. in relation to the Common Agricultural Policy) (see answers to questions **C.4.** and **C.5.**)<sup>172</sup>.

### The current 'integration approach'

The existing evidence suggests that financial support from the EU budget is an important source of financing for the Natura 2000 network; such support will continue to be justified as a result of the shared public benefits that the network delivers. However, in terms of EU funding it is not only a matter of budget size but very much a matter how Member States decide to allocate EU funds that could be used for implementation of the Directives (see also answer to question **C.7.**).

Since 2007, most EU co-funding for the Natura 2000 network has been made available through attempts to integrate biodiversity goals into various existing EU funds or instruments. Theoretically provision of funding for nature conservation through EU sectoral funding could provide significant additional support, but a lack of earmarking reduces transparency and prevents tracking how these funds are spent, with the result being underfunding<sup>173</sup>. In many countries, the experience after two successive EU budget periods (2007-2013, 2014-2020) has been very negative overall with regard to the integration approach. As pointed out by Gantioler et al. (2010), 'in practice, financing the management of Natura 2000 often loses out for other competitive priorities under different EU funding instruments'<sup>174</sup>. For example, a recent European Court of Auditors report found that ERDF funding opportunities for projects directly promoting biodiversity have not been exploited to their full potential. The Court reported that:

'Not only did many Member States allocate little or no ERDF funding directly to biodiversity, but for those which did allocate funding, the financial uptake was below the average for all cohesion policy funding. Since the beginning of the 2007–13 programming period, the financial uptake for biodiversity projects remained slow, despite the fact that, in 2011, the Commission called for the situation to be rectified.'<sup>175</sup>

A series of case studies analysed by WWF (2009) similarly demonstrate that, without clear political support at the national level (and/or strengthened obligations and guidance), the integrated funding model is unlikely to be fully effective in practice<sup>176</sup>. Evidence thus suggests that, as well as a greater availability of funds, there is also a need for 'clearer priorities and dedicated earmarking of funds for Natura 2000 at the EU level'<sup>177</sup>. It is thus clear that there is some way to go to minimising any harmful impacts and maximising the beneficial biodiversity impacts of EU spending<sup>178</sup>.

<sup>170</sup> SEC(2011) 1573 final.

<sup>171</sup> Kettunen et al. (2011). *Assessment of the Natura 2000 co-financing arrangements of the EU financing instrument. A project for the European Commission – final report*. Institute for European Environmental Policy (IEEP), Brussels, Belgium.

<sup>172</sup> Dickie et al. (2012). *Innovative Use of Financial Instruments and Approaches to Enhance Private Sector Finance of Biodiversity*. Final Summary Report to European Commission Directorate-General Environment.

<sup>173</sup> Gantioler et al. (2010). *Costs and Socio-Economic Benefits associated with the Natura 2000 Network*. Final report to the European Commission, DG Environment on Contract ENV.B.2/SER/2008/0038. Institute for European Environmental Policy / GHK / Ecologic, Brussels. [http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing\\_natura2000.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing_natura2000.pdf)

<sup>174</sup> Gantioler et al. (2010). *Costs and Socio-Economic Benefits associated with the Natura 2000 Network*. Final report to the European Commission, DG Environment on Contract ENV.B.2/SER/2008/0038. Institute for European Environmental Policy / GHK / Ecologic, Brussels. [http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing\\_natura2000.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing_natura2000.pdf)

<sup>175</sup> European Court of Auditors. (2014). *Is the ERDF effective in funding projects that directly promote biodiversity under the EU biodiversity strategy to 2020?* Luxembourg: Publications Office of the European Union, 2014.

<sup>176</sup> WWF & IEEP. (2009). *Innovative use of EU funds to finance management measures and activities in Natura 2000 sites*. Output of the project Financing Natura 2000: Cost estimate and benefits of Natura 2000. WWF, Brussels, Belgium. 103 pp. + Annexes. [http://ec.europa.eu/environment/nature/natura2000/financing/docs/innovative\\_use\\_eu\\_funds.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/innovative_use_eu_funds.pdf)

<sup>177</sup> Kettunen et al. (2011). *Assessment of the Natura 2000 co-financing arrangements of the EU financing instrument. A project for the European Commission – final report*. Institute for European Environmental Policy (IEEP), Brussels, Belgium.

## Some of the Impacts of Underfunding in the UK (see also answer to question S.3.)

### Wildlife Crime

In the UK, the impacts of underfunding are all too clear to see. For example, there are serious concerns regarding adequate enforcement in relation to European Protected Species arising from a lack of financial resources. In addition, planning conditions often 'lack teeth', and there is a need for better recording and monitoring of wildlife crime to produce meaningful information on the extent of infringements. However, police resources to deal with wildlife crime are constrained, wildlife crime often proceeds without prosecution, and those who inform Natural England or the police of wildlife crime often see no action. These are of course problems of training, resources and implementation, rather than of law. Furthermore, many species offences go unreported – which is why the RSPB and the Bat Conservation Trust (BCT) have dedicated investigations units. In addition, persecution of wild birds, notably birds of prey remains, a significant problem in the UK<sup>179</sup>. While this is not purely a funding issue, inadequate prioritisation and long-term funding of protective agencies such as the National Wildlife Crime Unit, is a major component of this failure. Positive steps such as an EC funded project to establish a European Network against Environmental Crime are welcome, but insufficient alone to address this shortfall.

### Capacity of Statutory Agencies

In 2012<sup>180</sup>, NGOs in England expressed significant concerns around capacity building, including the absence of ecologists in many local authorities (only 35% of local authorities now have any in-house ecological expertise<sup>181, 182</sup>), the variable standards of ecological consultants and the lack of accreditation. NGOs highlighted that the ability of Natural England to act as an independent scientific advisor, with sufficient expertise and resource to service proactive and front-loaded engagement in development proposals and license applications, is critical to the effective, consistent and streamlined implementation of the Habitats Regulations.

This was against a background of significant reductions in the quality and consistency of Natural England's advice associated with reductions in its confidence, budget and the numbers, experience and technical expertise of front-line staff dealing with Natura 2000 and EPS issues. Experience then suggested that the provision of advice by Natural England at the local level had diminished, and the level of dialogue and expertise required to resolve issues when they arise was no longer embedded in the process. Since these points were raised, further budget cuts have been implemented, in all likelihood further limiting Natural England's capacity to function as an effective independent scientific advisor. In fact, between 2009-10 and 2015-16, the real terms cut in Natural England's budget is over 40%<sup>183</sup>.

See Annex IV: Case Studies Y.2 (i) – (iv)

## Y.3 - If there are significant cost differences between Member States, what is causing them?

*This question seeks to understand the factors that affect the costs of implementing the Directives, whether there is evidence of significant cost differences between Member States, and the causes of these cost differences. In your answer, please describe the cost differences and the reasons for them (e.g. whether they arise from specific needs,*

<sup>178</sup> Medarova-Bergstrom, K, Kettunen, M, Rayment, M, Skinner, I and Tucker, G (2014) [Common Framework for Biodiversity-Proofing of the EU Budget: General guidance](#). Report to the European Commission, Institute for European Environmental Policy, London.

<sup>179</sup> RSPB. (2014). Birdcrime 2013: Offences against wild bird legislation in 2013. [http://www.rspb.org.uk/Images/birdcrime\\_2013\\_tcm9-384665.pdf](http://www.rspb.org.uk/Images/birdcrime_2013_tcm9-384665.pdf)

<sup>180</sup> Wildlife and Countryside Link Submission to the Defra Review of the Implementation of the Habitats and Wild Birds Directives [http://www.wcl.org.uk/docs/link\\_response\\_to\\_nature\\_directives\\_060212.pdf](http://www.wcl.org.uk/docs/link_response_to_nature_directives_060212.pdf)

<sup>181</sup> HM Government. (2012). Report of the Habitats and Wild Birds Directives Implementation Review.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)

<sup>182</sup> [http://www.cieem.net/data/files/Resource\\_Library/News/ALGE\\_Report\\_on\\_Ecological\\_Compentence\\_and\\_Capacity.pdf](http://www.cieem.net/data/files/Resource_Library/News/ALGE_Report_on_Ecological_Compentence_and_Capacity.pdf)

<sup>183</sup> <https://www.gov.uk/government/collections/natural-englands-corporate-plans>

circumstances or economic factors), supported by quantitative evidence. Do these differences lead to differences in impact? Please note that Question Y.5, below, focuses on good practices in keeping costs low. For this Question Y.3 we are interested in evidence of overall differences in implementation cost (see typology of costs in Annex II to this questionnaire) along with the reasons for them.

**Answer:**

There are inevitably some cost differences between Member States regarding the Nature Directives; such differences can be explained by a number of factors, in particular relating to different choices regarding national implementation alongside a range of context-specific factors linked to different national circumstances. For example, there are significant differences between Member States in terms of the proportion of their national territory protected under Natura 2000 due to differences in their relative importance for the conservation of species and habitats of EU concern<sup>184</sup>. Gantioler et al. (2010) find that much of the variation in Natura 2000 management costs across Member States is a result of context-specific factors such as the location and size of sites, the range of different habitat types present, the state of the sites and the pressures that they face, and the types of management approaches taken. Other factors such as wage costs may also be important due to differences in income levels across Member States<sup>185</sup>.

For the remainder of this question, our focus is very much on regulatory costs, in particular administrative and compliance costs (although we also touch on the broader impacts of regulation on competitiveness and innovation)<sup>186</sup>. Based on the available evidence, we conclude that in most cases, any cost differences that do exist can be explained by differences in national circumstances and/or implementation decisions. Moreover, most are unlikely to be significant given that regulatory costs to business are typically found to be relatively small as a proportion of business turnover/production costs. Where there are cost issues regarding implementation, following best practice (e.g. see answers to questions Y.5. and Y.8.) should help resolve many of the problems that exist, including improving the quality and consistency of advice/guidance, building the capacity/resources/expertise of the competent authority, and ensuring availability of and access to relevant data<sup>187</sup>.

**Are there cost differences between Member States and what are the causes?**

The existing evidence in relation to differences in regulatory costs associated with EU legislation is well-summarised in a recent report produced for the European Commission<sup>188</sup>. Overall, the available evidence is limited; according to the report, ‘the amount of information that allows direct comparison between the MS is negligible in many cases...’ Nevertheless, the report discusses a range of factors that help to account for the cost differences that do exist. It highlights that many of the differences in costs simply reflect the different background/circumstances in different Member States and so are to be expected, whilst other differences are likely to reflect the different decisions made by different Member States in applying the law i.e. differences in implementation (including delays, inconsistencies, and failings, some of which need to be urgently addressed). It is therefore important to distinguish between those costs that arise directly from EU law and those that arise from Member States decisions regarding how the EU law is implemented and/or are context-specific. In terms of these latter costs, Member States do of course typically have a considerable degree of flexibility when it comes to implementation in order to ensure that policies can be tailored efficiently to the specific context. This helps to ensure that any distortionary effects are kept to a minimum such that a ‘level

<sup>184</sup> SEC(2011) 1573 final.

<sup>185</sup> Gantioler et al. (2010). *Costs and Socio-Economic Benefits associated with the Natura 2000 Network*. Final report to the European Commission, DG Environment on Contract ENV.B.2/SER/2008/0038. Institute for European Environmental Policy / GHK / Ecologic, Brussels. [http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing\\_natura2000.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing_natura2000.pdf)

<sup>186</sup> OECD. (2014). *OECD Regulatory Compliance Cost Assessment Guidance*. OECD Publishing.

<sup>187</sup> IEEP et al. (2014). Study to analyse differences in costs of implementing EU policy. A project under DG Environment’s Framework contract for economic analysis ENV.F.1/FRA/2010/0044; Ecosystems Ltd. (2013). *Study on Evaluating and Improving the Article 6.3 Permit Procedure for Natural 2000 Sites*. 92/43/EEC.

<sup>188</sup> IEEP et al. (2014). Study to analyse differences in costs of implementing EU policy. A project under DG Environment’s Framework contract for economic analysis ENV.F.1/FRA/2010/0044.

playing field' can be achieved<sup>189</sup>. However, some problems with implementation do need to be addressed.

According to the findings of the European Commission's 'Action Programme for Reducing Administrative Burdens in the European Union' in relation to differences in administrative costs between Member States, almost a third of the administrative burden is a result of differences in implementation rather than the requirements of EU legislation (in fact, the findings stated that 'the vast majority of the excess burden felt by businesses is linked to national administrative procedures...'<sup>190</sup>), whilst other differences simply reflect the different situations in different countries (including differences in 'business as usual' costs i.e. the costs that would have occurred anyway in the absence of EU legislation). These findings also suggest that over-implementation (i.e. Member States going beyond what is required by EU legislation) is not particularly significant; in total, only 4% of the administrative burden of EU origin felt by businesses in the Member States is a result of 'gold-plating' according to the findings (and in some cases going beyond what is required by EU legislation is beneficial for the Member State concerned)<sup>191</sup>. This complements existing evidence suggesting that claims of gold-plating are routinely over-exaggerated<sup>192</sup>. Together, these results suggest that there is scope for pursuing improvements in national implementation as a sensible way of minimising any significant cost differences that do exist in relation to EU legislation, but that claims of significant 'unnecessary' burdens are exaggerated (see answer to question Y.7.).

There has been only a limited amount of research relating directly to the regulatory costs associated with the Birds and Habitats Directives, such that detailed comparisons between Member States are difficult to make. However, the evidence again suggests that many of the differences are related to choices regarding national implementation (e.g. see answer to question S.3.) and/or a result of different situations in different Member States. In relation to the former issue, different Member States have adopted significantly different approaches to implementation. For example, in relation to permitting procedures and decision-making timescales under Article 6.3 of the Habitats Directive, a European Commission report found significant differences in the administrative set-up across different Member States<sup>193</sup>. There are, for example, differences between Member States regarding who is responsible for undertaking (and funding) appropriate assessments. Other factors that can be important in determining decision-making timescales include the expertise/capacity/resources of the competent authority, the availability of (and access to) data, and the existence of clear guidance or protocols, all of which are fundamentally dependent on the national context. As a result, some costs differences can be explained by differences in relation to national institutional arrangements and administrative structures<sup>194</sup>. In England, the review of the implementation of the Birds and Habitats Directives similarly found that the costs are strongly influenced by national (and local) processes of administration and delivery, and recommended a range of sensible measures for reducing such costs to the minimum level required to achieve the objectives of the Directives<sup>195</sup>. Reviews in Germany and the Netherlands have also found that issues in relation to transposition and implementation (including a lack of clear guidance) are responsible for many of the issues around perceived 'burdens'<sup>196</sup>.

An example of an 'implementation failure' creating additional costs for business is where inadequate monitoring of the marine environment in the UK has placed additional burdens on the renewable energy sector, with offshore windfarm developers tied to development within specific zones which

<sup>189</sup> Jacob et al. (2009). Environment and the Single Market. Final Report to the European Commission.

[http://ec.europa.eu/environment/enveco/economics\\_policy/pdf/single\\_market.pdf](http://ec.europa.eu/environment/enveco/economics_policy/pdf/single_market.pdf)

<sup>190</sup> High Level Group on Administrative Burdens. (2011). Europe can do better. Report on best practice in Member States to implement EU legislation in the least burdensome way. [http://ec.europa.eu/smart-regulation/refit/admin\\_burden/best\\_practice\\_report/docs/bp\\_report\\_signature\\_en.pdf](http://ec.europa.eu/smart-regulation/refit/admin_burden/best_practice_report/docs/bp_report_signature_en.pdf)

<sup>191</sup> High Level Group on Administrative Burdens. (2011). Europe can do better. Report on best practice in Member States to implement EU legislation in the least burdensome way. [http://ec.europa.eu/smart-regulation/refit/admin\\_burden/best\\_practice\\_report/docs/bp\\_report\\_signature\\_en.pdf](http://ec.europa.eu/smart-regulation/refit/admin_burden/best_practice_report/docs/bp_report_signature_en.pdf)

<sup>192</sup> For example, see Morris, R. K. (2011). The application of the Habitats Directive in the UK: Compliance or gold plating? *Land Use Policy*, 28(1).

<sup>193</sup> Ecosystems Ltd. (2013). [Study on Evaluating and Improving the Article 6.3 Permit Procedure for Natural 2000 Sites](#). 92/43/EEC.

<sup>194</sup> IEEP et al. (2014). Study to analyse differences in costs of implementing EU policy. A project under DG Environment's Framework contract for economic analysis ENV.F.1/FRA/2010/0044.

<sup>195</sup> HM Government. (2012). Report of the Habitats and Wild Birds Directives Implementation Review.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)

<sup>196</sup> See: Ecosystems Ltd. (2013). [Study on Evaluating and Improving the Article 6.3 Permit Procedure for Natural 2000 Sites](#). 92/43/EEC.

were identified and allocated without a proper assessment of their environmental sensitivities (See also question Y.8. in relation to defining and assessing favourable conservation status). Another example is the way in which the Nature Directives have been transposed into English law through a number of legal instruments over the past 33 years<sup>197</sup>. Effective implementation depends first and foremost on clear and robust transposition designed to deliver the purposes of the Nature Directives, helping to create certainty and confidence in all users. In this regard, the UK Government has been only partially successful and has frequently had to respond to criticisms of its transposition through piecemeal amendments, often rushed through without the benefit of appropriate levels of public consultation, and thus requiring further amendments. This need for ad hoc amendment has been a cause of ongoing uncertainty for all those who interact with the legislation as it has resulted in irregular ‘moving of goalposts’, perhaps most significantly in respect of EPS, where the law has been subject to frequent amendments in recent years.

### **Are the cost differences between Member States ‘significant’?**

In terms of the question of whether or not any of the cost differences between Member States are significant, the simple answer is that they almost certainly are not on the whole (although that does not rule out specific individual cases). As already highlighted, it is natural for there to be some cost differences between Member States as a result of the different situations in different Member States. In fact, the economic gains from trade rely on the existence of these contextual differences and the comparative advantage that this brings (subject to a common legislative framework providing a ‘level playing field’). So, while it is important to ensure that EU requirements are clear and consistent across Member States, it is natural for it to be the case that national choices and context-specific factors result in some cost differences. A study for the European Commission in 2009 regarding environmental policy and the single market made this point explicitly<sup>198</sup>. From an economic perspective, EU level action on nature and the environment helps to reduce market distortions by internalising environmental externalities. However, a difference in the costs of implementation is not necessarily significant; it depends on the cause and the consequences. In terms of the cause, for example, lower costs in some countries that are due to incomplete implementation (i.e. overly lax standards) may require greater efforts (e.g. time/resources/political will) to ensure that full implementation takes place as soon as possible to avoid market distortions. However, some cost differences are inevitable. In terms of the consequences, it depends on the size of the cost difference amongst other factors (see below)<sup>199</sup>. When considering any cost differences, it is important to remember the strong body of evidence demonstrating that EU environmental policies have contributed to the removal of a range of historical market distortions resulting from differing internalization of environmental costs. Although there may be some remaining differences in implementation in some cases<sup>200</sup>, this is best solved through putting greater emphasis on ensuring full and effective implementation<sup>201</sup>.

Another crucial point is that any differences that do exist are likely to be relatively insignificant; the over-whelming body of existing evidence in relation to environmental legislation in general suggests that regulatory costs tend to be small and result in limited impacts in terms of competitiveness. For example, a review conducted in England by the Department for Environment, Food, and Rural Affairs found that on average across all sectors, the total direct costs associated with environmental regulations account for less than 2% of industry turnover. For example, the total direct costs associated with environmental regulations were estimated to account for 0.4% of energy sector turnover, 0.2% of construction sector and manufacturing sector turnover, and 0.1% of mining sector turnover. Once the benefits to business were taken into account, the net costs were even lower, whilst the net benefits to society as a whole were extremely significant (see also answer to question Y.1.,

<sup>197</sup> In particular: Wildlife and Countryside Act 1981 (as amended), Conservation of Species and Habitats Regulations 2010 (as amended), Offshore (Marine Conservation) Regulations 2007 (as amended), Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001 (as amended)

<sup>198</sup> Jacob et al. (2009). Environment and the Single Market. Final Report to the European Commission. [http://ec.europa.eu/environment/enveco/economics\\_policy/pdf/single\\_market.pdf](http://ec.europa.eu/environment/enveco/economics_policy/pdf/single_market.pdf)

<sup>199</sup> Jacob et al. (2009). Environment and the Single Market. Final Report to the European Commission. [http://ec.europa.eu/environment/enveco/economics\\_policy/pdf/single\\_market.pdf](http://ec.europa.eu/environment/enveco/economics_policy/pdf/single_market.pdf)

<sup>200</sup> Differences in implementation across the EU can lead to competition distortions, although there is a distinct lack of evidence on this in relation to the environmental acquis. For example, see European Commission. (2011). *The costs of not implementing the environmental acquis*. Final report. ENV.G.1/FRA/2006/0073.

<sup>201</sup> Jacob et al. (2009). Environment and the Single Market. Final Report to the European Commission. [http://ec.europa.eu/environment/enveco/economics\\_policy/pdf/single\\_market.pdf](http://ec.europa.eu/environment/enveco/economics_policy/pdf/single_market.pdf)

Y.4., and Y.7.)<sup>202</sup>.

Although this most recent Defra review does not present a breakdown of administrative costs for individual regulations, a previous review found that, in relation to the Conservation (Natural Habitats) Regulations 1994 (which transposed Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora into national law), the administrative burden was equivalent to less than 0.0001% of the total administrative burden associated with Defra's stock of regulations. In addition, only a portion of these costs were judged to have originated directly from EU law<sup>203</sup>. At the EU level, a study of the total costs of a range of environmental policies (including the Habitats Directive) for the manufacturing industry in the EU in 2009 found that total annualised costs are typically less than 2% of production value for those sectors most affected. The study concluded that '...environmental expenditures do not form a large cost driver for the sectors' and that they do not have 'a material effect on the competitiveness of Europe's manufacturing sectors'<sup>204</sup>.

These findings also hold more widely. According to a recent review conducted by the London School of Economics (2014), '...while environmental regulations have proliferated globally over the past decades, the general consensus is that...the costs of complying...represent a relatively small share of production value for most sectors'<sup>205</sup>. Such studies have also demonstrated that regulatory cost differences tend to have only limited impacts on a range of measures of economic performance including productivity, employment, competitiveness, and growth at both the sectoral and national levels<sup>206</sup>. These effects are small, at least in part, because the costs of complying with environmental regulations represent a relatively small share of production value for most sectors (a small fraction of a firms' total costs)<sup>207</sup>. There are thus other factors that are equally if not more important in influencing these variables. In conclusion, any regulatory cost differences in relation to the Nature Directives are highly unlikely to be significant.

#### Y.4 - Can any costs be identified (especially regarding compliance) that are out of proportion with the benefits achieved? In particular, are the costs of compliance proportionate to the benefits brought by the Directives?

*Please provide any quantitative evidence you may have demonstrating that the costs of implementing the Directives exceed the benefits. Do the Directives require any measures which give rise to significant costs but which bring about little, or only moderate benefits?. If so, please explain the extent to which any imbalances are caused by the Directives themselves, or by specific approaches to implementation.*

#### Answer:

There is a strong body of evidence showing that the costs associated with the Directives are substantially outweighed by the benefits (for a more detailed overview of the evidence regarding specific costs and benefits, see answer to question Y.1.), noting that it is rarely possible to quantify all benefits in monetary terms whereas costs can more easily be quantified. For example:

- A study of the costs and benefits associated with Natura 2000 sites in Scotland found an overall benefit-cost ratio (BCR) of 7:1. However, this ratio assumed that there would be no

<sup>202</sup> DEFRA. (2015). Emerging Findings from Defra's Regulation Assessment: First Update Covering 2012.

<https://www.gov.uk/government/publications/the-costs-and-benefits-of-defra-s-regulations>

<sup>203</sup> DEFRA. (2006). Administrative Burdens Measurement Exercise: Final Report.

<sup>204</sup> Vercaemst, P., S. Vanassche, et al. (2007). [Sectoral Costs of Environmental Policy](#). Study accomplished under the authority of the European Commission, DG Environment.

<sup>205</sup> Dechezleprêtre, A. & Sato, M. (2014). The Impacts of Environmental Regulations on Competitiveness – Grantham Research Institute on Climate Change and the Environment Policy Brief. For a specific example of the limited importance of regulatory costs (in relation to EU air pollution legislation) in influencing competitiveness, see AEA Technology, A Comparison of EU Air Quality Pollution Policies and Legislation with other Countries, 2004, DG Enterprise, Brussels.

<sup>206</sup> Koźluk, T., & Zipperer, V. (2013). Environmental Policies and Productivity Growth: A Critical Review of Empirical Findings. *OECD Economics Department Working Papers*, No. 1096; Jaffe, A. B., Peterson, S. R., Portney, P. R., & Stavins, R. N. (1995). Environmental regulation and the competitiveness of US manufacturing: What does the evidence tell us? *Journal of Economic Literature*, 33, 132–163.

<sup>207</sup> OECD. (1993), *Environmental Policies and Industrial Competitiveness*, Paris.

conservation in the absence of Natura 2000. Looking at the marginal costs and benefits, the BCR increased to 12:1. The BCR was positive for all of the case study sites assessed<sup>208</sup>.

- A study of the costs and benefits associated with Sites of Special Scientific Interest in England and Wales found a BCR of 8:1 in England and over 10:1 in Wales (note that all Natura 2000 sites in England and Wales are also SSSIs). The research also concluded that designation as a Natura 2000 site provided additional benefits over-and-above those that would have otherwise been provided, and that improving the conservation status of sites can also deliver net benefits<sup>209</sup>.
- At the EU-level, evidence suggests that the costs associated with effectively implementing the Natura 2000 network (€5.8 billion per annum) are also substantially outweighed by conservative estimates of the benefits (€200-300 billion per annum)<sup>210</sup>.

In terms of specific areas where the costs may outweigh the benefits, to our knowledge no substantive evidence currently exists. However, it is clear that there are some costs, such as those associated with poor implementation and non-compliance (e.g. fines and business uncertainty), that could be reduced at the same time as enhancing benefits through improved effectiveness<sup>211</sup>.

Regarding the specific question of compliance and administrative costs, evidence from a Defra review of environmental regulations as a whole suggests that such costs are outweighed 3:1 by the benefits, and account for less than 2% of industry turnover on average. For example, the total direct costs associated with environmental regulations were estimated to account for 0.4% of energy sector turnover, 0.2% of construction sector and manufacturing sector turnover, and 0.1% of mining sector turnover. It is also important to account for the benefits of regulation to business which sometimes actually outweigh the costs according to the Defra analysis; once the benefits to business are taken into account, the net costs are even lower (see also answer to question Y.3. and Y.7.)<sup>212</sup>. Moreover, by definition substantive policy compliance costs (for business) are closely related to policy stringency, such that any attempt to reduce such costs will almost certainly be at the expense of achieving the objectives of the legislation<sup>213</sup>.

It is worth noting that such estimates also do not account for issues of sustainability; it is clear that environmental regulations play a central role in protecting the natural capital that underpins economic performance in the long-term. Once ecosystems are heavily damaged, restoration can be very costly and take a long time, and in some cases impossible. Failure to manage natural capital sustainably could result in persistent or irreversible changes, thus limiting the economic opportunities available to future generations to enjoy those benefits<sup>214</sup>.

The business-led Aldersgate Group states in 2006 report 'Green Foundations: Better Regulation and a Healthy Environment for Growth and Jobs' that:

'...there is no inherent contradiction between regulating for high environmental standards at the same time as maintaining economic competitiveness and stimulating wealth creation. *Quite the reverse* [emphasis added]: no economic policy which sacrifices environmental quality can succeed in the long term. We have now entered an era where continued economic growth depends more and more on the efficient use of increasingly scarce resources, and on the continued ability of the

<sup>208</sup> Jacobs et al. (2004). An Economic Assessment of the Costs and Benefits of Natura 2000 Sites in Scotland. Environment Group Research Report 2004/05. <http://www.gov.scot/Publications/2004/06/19426/38107>

<sup>209</sup> GHK. (2011). Benefits of Sites of Special Scientific Interest: Final Report. <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=1&ProjectID=17005>

<sup>210</sup> Gantioler et al. (2010). *Costs and Socio-Economic Benefits associated with the Natura 2000 Network*. Final report to the European Commission, DG Environment on Contract ENV.B.2/SER/2008/0038. Institute for European Environmental Policy / GHK / Ecologic, Brussels. [http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing\\_natura2000.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing_natura2000.pdf)

<sup>211</sup> Note: the impact on businesses from the uncertainty about implementation of the environmental legislation could be substantial. These costs are less easily quantified, but they should not be neglected. See: European Commission. (2011). *The costs of not implementing the environmental acquis*. Final report. ENV.G.1/FRA/2006/0073.

<sup>212</sup> DEFRA. (2015). Emerging Findings from Defra's Regulation Assessment: First Update Covering 2012. <https://www.gov.uk/government/publications/the-costs-and-benefits-of-defra-s-regulations>

<sup>213</sup> Hampton, P. (2005). *Reducing Administrative Burdens: Effective Inspection and Enforcement*. HM Treasury/HMSO, London.

<sup>214</sup> Natural Capital Committee. (2015). *Third State of Natural Capital Report*; Natural Capital Committee. (2014). *Second State of Natural Capital Report*; Natural Capital Committee. (2013). *First State of Natural Capital Report*.



biosphere to deal with the pollution we create.<sup>215</sup>

A follow-on report in 2009 concluded that pressures to remove regulation simply because it is not necessarily convenient for business in the shorter-term must be resisted<sup>216</sup>.

They also make the point that:

'it will sometimes be beneficial to go beyond minimum requirements of EU legislation to secure UK environmental aspirations, provide international leadership or to create future competitive advantage for British based firms in the green economy ... the regulatory framework must encourage a rapid shift to a sustainable economy rather than being held back by vested interests or the lowest common denominator.'<sup>217</sup>

**See Annex IV: Case Studies Y.4 (i) – (iii)**

## **Y.5 - Can good practices, particularly in terms of cost-effective implementation, be identified?**

*Here we are looking for examples of where the objectives of the Directives are being met more cost-effectively in some Member States or regions than others, and the reasons for these differences. It is important to understand whether they are due to particular practices (rather than, for example, differences in needs, circumstances or economic factors) that have kept costs relatively low. We would welcome examples of differences in practices between Member States in implementing the requirements of the Directives, including initiatives designed to achieve cost-effective implementation, and evidence of whether these initiatives or practices have reduced costs in certain Member States or regions.*

### **Answer:**

There are a large number of examples of good practice in the proper implementation of the Birds and Habitats Directives, in terms of both cost-effective delivery of the requirements of the Directives themselves, and of cost-effective delivery of multiple outcomes, including and sometimes driven by the requirements of the Directives (see also answer to question **Y.8.** regarding the importance of high-quality data).

### **Improving the quality and consistency of advice and implementation across the sector**

'...an important factor affecting the costs [of regulation] to business is the support that they get in meeting their regulatory requirements.'<sup>218</sup>

Consistent and informed advice and guidance is needed by developers and applicants from all those involved in the implementation of the Habitats Regulations in order to ensure cost-effective implementation<sup>219</sup>. This means that standards and knowledge need to be raised, reviewed and enforced within the private sector, local authorities and Statutory Nature Conservation Organisations.

Two good examples are presented below:

- The publication of a British Standard Code of Practice for Planning and development (BS42020)<sup>220</sup> in 2013 offers a coherent methodology for biodiversity consideration and plays an important role in helping protect and enhance UK biodiversity. This British Standard seeks

<sup>215</sup> Aldersgate Group. (2006). [Green Foundations: Better Regulation and a Healthy Environment for Growth and Jobs.](#)

<sup>216</sup> Aldersgate Group. (2009). [Green Foundations 2009 - The path to a vibrant economy, competitive advantage and sustainable prosperity.](#)

<sup>217</sup> Aldersgate Group. (2011). [Dealing with Deficits: Best value regulation to reduce our environmental and financial debts.](#)

<sup>218</sup> IEEP et al. (2014). Study to analyse differences in costs of implementing EU policy. A project under DG Environment's Framework contract for economic analysis ENV.F.1/FRA/2010/0044

<sup>219</sup> HM Government. (2012). Report of the Habitats and Wild Birds Directives Implementation Review.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)

<sup>220</sup> <http://www.bsigroup.com/en-GB/about-bsi/media-centre/press-releases/2013/September/Pioneering-biodiversity-management-standard-is-published/>

to promote transparency and consistency in the quality and appropriateness of ecological information submitted with planning applications and applications for other regulatory approvals.

- The integration of planning decisions with conservation initiatives forms an essential part of effective conservation, particularly at a landscape scale. Currently many of the local decisions being made through the planning system focus on an individual site by site mitigation resulting in a disjointed approach that fails to take advantage of the positive benefits well planned development practices could bring. The provision of tools that would link local planning advice to existing data on habitats enhancement spots, and areas of importance should be used to incorporate conservation needs at the planning stage more effectively. The Bat Conservation Trust is leading on a Planning and Wildlife project that will support the consideration of biodiversity by all those involved in planning decisions by providing a toolkit of resources that will allow best practice guidance and species distribution data to be interpreted appropriately and efficiently. This project is being delivered in close collaboration with partners that include other conservation organisations as well as professionals within the planning process and professional ecologists.

#### **Improved communication and engagement between businesses and the relevant authorities**

The Dibden Bay and Immingham Outer Harbour case studies referenced above (see answer to question **S.3.**) illustrate that when businesses fail to engage constructively with the law, significant costs and uncertainty may result, but can be avoided through proactive and constructive engagement. This finding was also reflected in the review conducted by the UK Government in relation to the implementation of the Directives<sup>221</sup>.

#### **Improving the standards of professional ecologists**

The introduction of a class licensing system by Natural England allows low level works to take place with minimum bureaucracy, in a more cost-effective way. Training is due to be introduced shortly that following satisfactory assessment will allow earned recognition to apply to individuals seeking to obtain personal European Protected Species (EPS) Licences.

**See Annex IV: Case Studies Y.5 (i) – (vii)**

## **Y.6 - What are likely to be the costs of non-implementation of legislation?**

*This question seeks to gather evidence on the impacts of non-implementation of the Birds and Habitats Directives, and its associated costs, whilst assuming that some measures would be taken to conserve nature. Taking into account current national measures that do not arise directly from obligations under the Directives, please describe and, if possible, quantify, with supporting evidence, the potential impacts and associated costs of non-implementation of the Directives, for instance on: habitats and species of Community interest and wider biodiversity; ecosystem services (eg in relation to carbon sequestration, areas for recreation); and economic and social costs (eg jobs and health).*

#### **Answer:**

The main costs of not implementing the Birds and Habitats Directives are the not-realised social, economic, and environmental benefits, as well as **‘the costs related to the uncertainty and friction that is created by the lack of implementation’**<sup>222</sup>. Many of the current benefits associated with the Directives would be lost or substantially reduced in the absence of effective implementation, and the

<sup>221</sup> HM Government. (2012). Report of the Habitats and Wild Birds Directives Implementation Review.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)

<sup>222</sup> European Commission. (2011). *The costs of not implementing the environmental acquis*. Final report. ENV.G.1/FRA/2006/0073.

consequences for EU biodiversity would be disastrous (see below).

### EU Implementation Gap

Regarding the costs associated with the existing implementation gap in the designation of Natura 2000 sites and the achievement of 2020 biodiversity targets, they have been estimated to be in the order of €50 billion per year at the EU-level, extrapolated from a global estimate of the costs of failing to halt the decline of biodiversity of €545 billion per year<sup>223</sup>. However, given that it is difficult to quantify many of the environmental and health benefits, these are likely to be underestimated in many cases. Failure to achieve EU biodiversity objectives is also generating knock-on costs in other policy areas and resulting in substantial costs to business due to the uncertainty around implementation. Although such costs can be difficult to quantify, they should nevertheless be given serious consideration<sup>224</sup>.

### Non-Implementation

The costs associated with non-implementation would be substantially greater than the estimates presented above, given the substantial benefits that would be put at risk. For example, the value of the ecosystem services delivered by Natura 2000 sites has been conservatively estimated to be in the range of €200-300 billion per year<sup>225</sup>. Such benefits would be put at serious risk, not to mention the negative implications directly in relation to species and habitats (and the public's strong views regarding the intrinsic value of nature). There is also an international dimension, in that the positive influence of the EU on the development of environmental legislation beyond its borders would be substantially undermined (see answer to question **AV.1.**)

In the EU, it is difficult to determine exactly what measures would be taken to conserve nature in the individual Member States in the case of non-implementation of the Directives, or the extent to which such measures would be effective. However, answers given under **S1.1.**, **S.3.**, **S.4.** and **Y.1.** demonstrate that implementation of the Directives has delivered a considerable suite of environmental, economic and social benefits; answers given under **S.3.** and **Y.5.** demonstrate that inadequate implementation of the Directives is the root cause of ongoing biodiversity losses, unnecessary costs to business, and lost environmental, economic, and social opportunities; and answers under **AV.1.**, **AV.2.** and **AV.3.** demonstrate that current national measures are a wholly inadequate substitute for the international conservation framework established by the Birds and Habitats Directives. Finally, answers under **Y.3.**, **Y.4.**, and **Y.7.** demonstrate the costs of implementing the Directives are substantially outweighed by the benefits. Evidence suggests that voluntary alternatives to environmental regulations in Europe [e.g. self- and co-regulation]<sup>226</sup> are limited in terms of their impacts and rarely achieve their objectives or high rates of compliance<sup>226</sup>.

### UK level impacts

The most comprehensive work to date in relation to the costs of failing to adequately protect the UK natural environment is the UK National Ecosystem Assessment (2011), which concluded that:

‘Actions taken and decisions made now will have consequences far into the future for ecosystems, ecosystem services and human well-being. It is important that these are understood, so that we can make the best possible choices, not just for society now but also for future generations.’

A key component of the UKNEA was an analysis of how ecosystem services and human well-being might change under a range of plausible futures (e.g. different policy scenarios). A key finding was that those scenarios that prioritise the conservation of biodiversity and ecosystem services result in much greater societal benefits over time compared to those in which environmental legislation is weakened. For example, under the ‘World Markets’ scenario ‘...the underlying policy prescription...is essentially a ‘hands off’ approach, i.e. there is very little legislation...market forces dominate and...legislation relating to land use planning is greatly diminished.’ In contrast, under the ‘Green and

<sup>223</sup> European Commission. (2011). [The costs of not implementing the environmental acquis](#). Final report. ENV.G.1/FRA/2006/0073.

<sup>224</sup> European Commission. (2011). [The costs of not implementing the environmental acquis](#). Final report. ENV.G.1/FRA/2006/0073.

<sup>225</sup> ten Brink et al. (2013). [The Economic Benefits of the Natura 2000 Network](#). Synthesis Report.

<sup>226</sup> McCarthy et al. (2015). Using Regulation as a Last Resort: Assessing the performance of Voluntary Approaches. RSPB Report (in press)

Pleasant Land' scenario, it is assumed that '...a range of legislation has enabled higher levels of protection for landscape and biodiversity, and the UK has willingly adopted many EU environmental directives and often gone further with UK legislation'<sup>227</sup>.

The impacts (based on both market and non-market values) up to 2060 relative to a 2000 baseline are significantly different depending on the scenario. For example, relative to 'World Markets' and 'National Security', the total annual monetised value of ecosystem services is £12- 31 billion higher under 'Green and Pleasant Land'. Although these values are highly uncertain (and based on a subset of ecosystem services), these results nevertheless demonstrate that relying on markets alone (i.e. in the absence of environmental legislation) is likely to be far less beneficial to society once a range of ecosystem services are taken into account, and illustrate the societal importance of maintaining strong protections for the natural environment<sup>228</sup>.

Any costs associated with failure to implement the Directives will be felt in both the short-term and the long-term, particularly given that there is little indication that drivers and pressures on the natural environment over the next 50 years will reduce. In fact, they are likely to grow. In the UK, the expert Natural Capital Committee has stated clearly that 'nature underpins our economy and is central to our wellbeing' and that 'if economic growth is to be sustained, natural capital has to be safeguarded'<sup>229</sup>. In other words, the UK's long-run prosperity is fundamentally dependent on the protection of its natural capital, in particular biodiversity.

**See Annex IV:** Case Studies Y.6 (i) and (ii)

## **Y.7 - Taking account of the objectives and benefits of the directives, is there evidence that they have caused unnecessary administrative burden?**

*This question seeks to gather evidence of any unnecessary burden arising from the administrative requirements of the Directives for different stakeholders (MS authorities, businesses, landowners, non-governmental organisations, citizens). Administrative burdens are the costs to businesses and citizens of complying with information obligations resulting from legislation, and relate to information which would not be collected in the absence of the legislation. Some administrative burdens are necessary if the objectives of the legislation are to be met effectively. Unnecessary burdens are those which can be reduced without affecting the objectives. Quantitative evidence may include typical requirements in terms of human resource inputs, financial costs (such as fees and wages), delays for development and other decision-making processes, and other measures of unnecessary or disproportionate burden the administrative costs in terms of effort and time, and other inputs required, financial costs, delays and other measures of unnecessary or disproportionate burden.*

### **Answer:**

In line with COM (2007)23, this question defines administrative burdens as the costs of complying with information obligations resulting from legislation, where such obligations relate to information which would not otherwise have been collected. It defines unnecessary administrative burdens as those burdens that can be reduced without affecting the underlying objectives of the legislation (i.e. in theory leading to improved efficiency). This clarity regarding definitions is key, as terms like 'red tape' and 'burden' are frequently used without being clearly defined, leading to confusion and mixed messages.

<sup>227</sup> UK National Ecosystem Assessment (2011), in particular Ch.25 and Ch.26. <http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx>

<sup>228</sup> UK National Ecosystem Assessment (2011), in particular Ch.25 and Ch.26. <http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx>

<sup>229</sup> <https://www.naturalcapitalcommittee.org/state-of-natural-capital-reports.html>

## Summary

There is no evidence for any unnecessary burdens associated with the Birds and Habitats Directives. Moreover, any burdens that do exist are almost certainly small (e.g. limited to a very narrow set of circumstances) and due primarily to issues regarding Member State implementation (including the need for clear communication and guidance).

## UK Evidence

In the UK, the best source of quantitative data regarding administrative costs (and overall regulatory costs more generally) is a series of reviews conducted by Department for Environment, Food, and Rural Affairs in relation to the stock of environmental regulation. The most recent of these reviews found that such costs are typically quite small<sup>230</sup>:

- On average, the total direct costs associated with environmental regulations account for less than 2% of industry turnover across the 12 sectors reviewed. For example, the total direct costs associated with environmental regulations are estimated to account for 0.4% of energy sector turnover, 0.2% of construction sector and manufacturing sector turnover, and 0.1% of mining sector turnover. Once the benefits to business are taken into account, the net costs are even lower.
- Administrative costs represent only a small fraction of the total direct costs across the majority of policy areas (and only 22% on average). There is no evidence to suggest that any of these administrative costs are unnecessary in relation to the achievement of regulatory objectives.

It is worth noting that most of the cost estimates in the Defra report are based on the figures contained within the original regulatory impact assessments undertaken. However, evidence suggests that such ex ante assessments tend to routinely over-estimate regulatory costs, such that the true costs may be even lower<sup>231</sup>. For example, a systematic case study of the costs to business of EU environmental legislation found that ex ante cost estimates are often twice as large as the ex post results, due in part to subsequent efficiency gains through unanticipated innovations<sup>232</sup>.

Unfortunately, the most recent Defra review does not present a breakdown of administrative costs for individual regulations. However, a previous review found that, in relation to the Conservation (Natural Habitats) Regulations 1994 (which transposed Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive) into national law), the administrative burden was equivalent to less than 0.0001% of the total administrative burden associated with the regulations imposed by Defra. In addition, only a portion of these costs were judged to have originated directly from EU law<sup>233</sup>.

Relevant evidence is also available as a result of the UK Government's Habitats Regulations Review, which found that '...in the large majority of cases the implementation of the Directives is working well, allowing both development of key infrastructure and ensuring that a high level of environmental protection is maintained'<sup>234</sup>. Evidence submitted by Wildlife and Countryside Link showed that, of the thousands of land use consultations received by Natural England each year, less than 0.5% result in an objection under the Habitats Regulations<sup>235</sup>. Given the small area subject to designation, the proportion of total land use applications affected is very small and the proportion where significant effects and/or compensation is required is even smaller. In other words, the review concluded that there is very little evidence for any significant burdens, let alone unnecessary burdens associated with the Directives. Nevertheless, the review concluded that there were some opportunities to reduce costs

<sup>230</sup> DEFRA. (2015). Emerging Findings from Defra's Regulation Assessment: First Update Covering 2012.

<https://www.gov.uk/government/publications/the-costs-and-benefits-of-defra-s-regulations>

<sup>231</sup> Bailey, P. D., Haq, G., & Gouldson, A. (2002). Mind the gap! Comparing ex ante and ex post assessments of the costs of complying with environmental regulation. *European Environment*, 12(5), 245-256; Harrington, W., Morgenstern, R. D., & Nelson, P. (2000). On the accuracy of regulatory cost estimates. *Journal of Policy Analysis and Management*, 19(2), 297-322.

<sup>232</sup> Oosterhuis, F. et al. (2006). Ex-post Estimates of Costs to Business of EU Environmental Legislation: Final Report. A report commissioned by the European Commission under framework contract No. ENV.G.1/FRA/2004/0081.

[http://ec.europa.eu/environment/enveco/ex\\_post/pdf/costs.pdf](http://ec.europa.eu/environment/enveco/ex_post/pdf/costs.pdf)

<sup>233</sup> DEFRA. (2006). Administrative Burdens Measurement Exercise: Final Report.

<sup>234</sup> HM Government. (2012). Report of the Habitats and Wild Birds Directives Implementation Review.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)

<sup>235</sup> Wildlife and Countryside Link Submission to the Defra Review of the Implementation of the Habitats and Wild Birds Directives [http://www.wcl.org.uk/docs/link\\_response\\_to\\_nature\\_directives\\_060212.pdf](http://www.wcl.org.uk/docs/link_response_to_nature_directives_060212.pdf)

through improved communication and improved information, clearer standards and simpler guidance.

Aside from this, the main source of evidence in the UK regarding the costs of regulation is subjective business perception surveys. However, there is strong evidence to suggest that business perceptions are an unreliable indicator of regulatory costs, and that an evidence-based approach needs to rely on more than anecdote<sup>236</sup>. In particular, evidence suggests that 'irritation' based on past negative front-line experiences with regulation may have a greater influence on perceptions of the overall impact of regulation than actual measurable costs, despite the fact that 'irritation factors' do not tend to be correlated with administrative burdens<sup>237</sup>. Interestingly, those respondents to the 2012 UK Business Perceptions Survey that identified themselves as 'not informed' about regulation were more likely to state that there was 'too much regulation' than those who described themselves as 'informed', suggesting that better communication is key to improving the business experience of regulation<sup>238</sup>. This fits with the findings of a review conducted for the Department of Business, Innovation, and Skills in 2009 based on six in-depth case studies, which concluded that 'clear and effective communication is a key tool in improving perceptions, tackling irritants and demonstrating how Government has improved regulation'<sup>239</sup>.

In summary, there is thus no evidence that the Directives themselves have caused or are causing unnecessary administrative burdens in the UK. Moreover, if any unnecessary burdens do exist, they are likely to be small.

## EU Evidence

At the EU-level, there is a similar lack of evidence to suggest that the Directives have caused or are causing unnecessary administrative burdens. Under the 'Action Programme for Reducing Administrative Burdens in the European Union', work was carried out to estimate the administrative costs and administrative burdens associated with EU legislation (and national measures implementing or transposing it) across 13 priority areas. No explicit attempt was made to quantify the proportion of administrative burdens that could be deemed unnecessary; the work under the Action Programme only estimated the size of the administrative burden and not the proportion of the burden that could be deemed to be unnecessary. As yet, there is no robust methodology available for carrying out such an assessment, such that any attempt to reduce administrative burdens is likely to be lacking in the extent to which it is reliably evidence-based.

Nevertheless, a key finding of this work was that almost one-third of the administrative burden of EU origin is linked to decisions regarding national implementation, in particular 'due to inefficient national, regional or local implementation of EU requirements in Member States', rather than due to the requirements of EU legislation<sup>240</sup>. The High Level Group on Administrative Burdens concluded that 'the vast majority of the excess burden felt by businesses is linked to national administrative procedures...' (note the word 'excess' rather than 'unnecessary') and that there is 'ample scope for improvement in the efficiency of the implementation of EU legislation in the Member States'<sup>241</sup>. When discussing the issue of administrative burdens in relation to the Directives, therefore, it is clear that tackling issues regarding national implementation is key (see also answers to questions **S.3.**, **Y.2.**, **Y.3.**, **Y.5.**, and **Y.8.**). Reviews in Germany and the Netherlands have also found that issues in relation to national transposition and implementation (including a lack of clear guidance) are responsible for many of the issues around perceived 'burdens'<sup>242</sup>. While there are perhaps some lessons to be learned through improved exchange of information between Member States regarding best practice in implementing EU legislation, it is worth noting that some cost differences are inevitable due to differing circumstances in the different Member States (see answer to question **Y.3.**).

<sup>236</sup> OECD. (2012). *Measuring Regulatory Performance: A Practitioner's Guide to Perception Surveys*. OECD Publishing.

<sup>237</sup> Peck, F., Mulvey, G., Jackson, K., & Jackson, J. (2012). [Business Perceptions of Regulatory Burden](#). Centre for Regional Economic Development: University of Cumbria, Carlisle.

<sup>238</sup> IFF Research. (2012). *Business Perceptions Survey 2012*. Prepared for NAO/LBRO/BRE By IFF Research. [http://www.nao.org.uk/wp-content/uploads/2012/06/Business\\_Perceptions\\_Survey\\_2012.pdf](http://www.nao.org.uk/wp-content/uploads/2012/06/Business_Perceptions_Survey_2012.pdf)

<sup>239</sup> Department for Business, Innovation, & Skills. (2009). [Better regulation, better benefits: getting the balance right](#).

<sup>240</sup> High Level Group on Administrative Burdens. (2011). [Europe can do better. Report on best practice in Member States to implement EU legislation in the least burdensome way](#).

<sup>241</sup> High Level Group on Administrative Burdens. (2011). [Europe can do better. Report on best practice in Member States to implement EU legislation in the least burdensome way](#).

<sup>242</sup> Summarised in Ecosystems Ltd. (2013). [Study on Evaluating and Improving the Article 6.3 Permit Procedure for Natural 2000 Sites](#). 92/43/EEC.

Another finding of the EU baseline measurement of administrative burdens was that the degree to which businesses consider an information obligation to be irritating is very often uncorrelated to the administrative burdens imposed. Evidence suggests that the 'irritation factor' depends on the acceptance of the policy objective, on the perceived usefulness of the information for the policy objective, the integration of the legal requirements into the business processes and the ease of interaction with the respective authorities<sup>243</sup>. Dealing with perceptions through better communication and clearer processes is thus a key pre-condition for securing the involvement of stakeholders in the longer run<sup>244</sup>.

In relation to negative perceptions, a study in relation to the Article 6.3 permit procedure for Natura 2000 sites, for example, concluded that a number of historical problems (e.g. due to uncertainty associated with slow designation, a lack of clear government guidance, and consequently initial challenges associated with understanding and applying the procedure appropriately) 'help explain why there was so much frustration and bad press with Article 6.3 in the first 10-15 years of the Directive'. This might also explain issues regarding negative perceptions today. According to the study, 'this legacy of the past unfortunately remains set in people's minds today, even though many of the initial problems have since been resolved...'<sup>245</sup>.

This review also concluded that, due to limited evidence:

'...it is impossible to confirm the claims made by certain sectors that 'the AA permit procedure generates a high administrative and financial workload for administrators and economic operators'... this may be true for some plans or projects but there is nothing to suggest, from the information gathered during the course of this study, that this reflects the overall situation ... Individual, high profile examples, whilst of legitimate concern in their own right, do also have a tendency to polarize people's perceptions of the AA procedure as being always 'difficult' and burdensome when in reality this is mostly not the case. They are also used by politicians and others as examples to try to discredit the Habitats Directive and the AA procedure as a whole.'<sup>246</sup>

Another important finding of the Action Plan review is that environmental legislation is responsible for less than 1% of the administrative burden on business in the EU, again emphasizing that any unnecessary burdens associated with the Directives will be negligible<sup>247</sup>. This is supported by a study of the total costs of a range of environmental policies (including the Habitats Directive) for the manufacturing industry in the EU in 2009, which found that total annualised costs (of which administrative costs form only a proportion) are typically less than 2% of production value for those sectors most affected<sup>248</sup>.

It is also worth considering the significance of any administrative burdens in the broader context. According to a recent review conducted by academics at the London School of Economics, '...while environmental regulations have proliferated globally over the past decades, the general consensus is that...the costs of complying...represent a relatively small share of production value for most sectors'<sup>249</sup>. In part as a result of this, the available body of evidence suggests that regulatory costs have only limited impacts on a range of measures of economic performance including productivity, employment, competitiveness, and growth at both the sectoral and national levels<sup>250</sup>. For example, see OECD (2013) and OECD (2014)<sup>251</sup>. According to Dechezleprêtre and Sato (2014), 'the available

<sup>243</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0544:FIN:EN:PDF>

<sup>244</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0544:FIN:EN:PDF>

<sup>245</sup> Ecosystems Ltd. (2013). [Study on Evaluating and Improving the Article 6.3 Permit Procedure for Natural 2000 Sites](#). 92/43/EEC.

<sup>246</sup> Ecosystems Ltd. (2013). [Study on Evaluating and Improving the Article 6.3 Permit Procedure for Natural 2000 Sites](#). 92/43/EEC.

<sup>247</sup> High Level Group on Administrative Burdens. (2014). [Cutting Red Tape in Europe](#).

<sup>248</sup> Vercaemst, P., S. Vanassche, et al. (2007). [Sectoral Costs of Environmental Policy](#). Study accomplished under the authority of the European Commission, DG Environment.

<sup>249</sup> Dechezleprêtre, A. & Sato, M. (2014). The Impacts of Environmental Regulations on Competitiveness – Grantham Research Institute on Climate Change and the Environment Policy Brief.

<sup>250</sup> Kozłuk, T., & Zipperer, V. (2013). Environmental Policies and Productivity Growth: A Critical Review of Empirical Findings. *OECD Economics Department Working Papers*, No. 1096; Jaffe, A. B., Peterson, S. R., Portney, P. R., & Stavins, R. N. (1995). Environmental regulation and the competitiveness of US manufacturing: What does the evidence tell us? *Journal of Economic Literature*, 33, 132–163.

<sup>251</sup> Kozłuk, T. & Zipperer, V. (2014). Environmental policies and productivity growth: a critical review of empirical findings. *OECD Journal: Economic Studies*, Vol. 1. OECD Paris; Albrizio, S. et al. (2014). Do environmental policies matter for

evidence suggests that there is no case to cut back environmental regulations for competitiveness reasons<sup>252</sup>.

**See Annex IV Case Studies Y.7 (i) – (v) and Annexes V(a) & V(b): Results from RSPB Article 6(3) Survey**

## Y.8 - Is the knowledge base sufficient and available to allow for efficient implementation?

*This question seeks to establish the extent to which adequate, up-to-date and reliable information required to implement the Directives efficiently is available, such as information related to the identification, designation, management and protection of Natura 2000 sites, the choice of conservation measures, the management and restoration of habitats, the ecological requirements of species and the sustainable hunting/use of species, permitting procedures, etc. Please indicate key gaps in available knowledge relating to your country and, if relevant, at biogeographical and EU levels. If possible, please provide evidence that inadequacies in the knowledge base have contributed to the costs and burdens identified in previous questions.*

### Answer:

Adequate, up-to-date, and reliable information on issues such as the status and distribution of species and habitats is essential in ensuring conservation efficiency and effectiveness through, for example, proper targeting of scarce resources and the implementation of appropriate conservation measures. It can also help reduce any unnecessary costs and delays for business. For example, the review of the implementation of the Birds and Habitats Directives in England concluded that 'improved mechanisms for sharing data, combined with better information on the status and trends of European Protected Species and habitats, will help flag issues earlier, increase transparency and support more evidence-based decision making'<sup>253</sup>.

Taking into account the Precautionary Principle, the information currently available is sufficient to support the full implementation of the Directives as they currently stand, and progress towards achievement of the objectives as set out in the Directives. However, there are some serious gaps in the data currently available, in particular due to the failure of Member State governments to invest in sufficient monitoring. This failure is reflected in, for example, the significant percentage of 'UNKNOWN' assessments in Birds and Habitats Directives reporting by Member States<sup>254</sup>. Similarly, the limited investment in monitoring the incidental capture and killing of Annex IV species in fisheries has hindered assessment of the level of impact on the species concerned and consequently the implementation of conservation measures. Though uncertainty is high, recent analyses suggest that current bycatch levels of the harbour porpoise might exceed conservation limits and point to the necessity for further action being taken by Member States to fully implement monitoring requirements and conservation measures under the Habitats Directive<sup>255</sup>.

### UK Experience

In general, experience in the UK has demonstrated that monitoring and surveillance are essential to

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productivity growth? Insights from new cross-country measures of environmental policies. *OECD Economics Department Working Paper No. 1176*.

<sup>252</sup> Dechezleprêtre, A. & Sato, M. (2014). The Impacts of Environmental Regulations on Competitiveness – Grantham Research Institute on Climate Change and the Environment Policy Brief.

<sup>253</sup> HM Government. (2012). Report of the Habitats and Wild Birds Directives Implementation Review. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/69513/pb13724-habitats-review-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf)

<sup>254</sup> [http://ec.europa.eu/environment/nature/knowledge/rep\\_habitats/index\\_en.htm](http://ec.europa.eu/environment/nature/knowledge/rep_habitats/index_en.htm)

<sup>255</sup> [http://www.ascobans.org/sites/default/files/document/ASCOBANS\\_NSG4\\_Report.pdf](http://www.ascobans.org/sites/default/files/document/ASCOBANS_NSG4_Report.pdf); ICES WGBYC. 2014. Report of the Working Group on the Bycatch of Protected Species. 4–7 February 2014, Copenhagen, Denmark. ICES CM 2014/ACOM:28. 94pp.



effective and efficient evidence-based and policymaking. In the environmental field, monitoring data is needed to target policy interventions, assess effectiveness, and correctly apply assessment procedures. Investment in data gathering thus yields benefits for conservation, for business, and for administrative efficiency. A lack of data compromises conservation delivery, business certainty, and impedes efficient decision-making.

In the context of implementation of the Birds and Habitats Directives in the UK, inadequacies in the knowledge base (due to a lack of appropriate monitoring) have created fundamental barriers to both effective conservation and the evidence-based assessment of potential impacts of development on habitats and species (see also answer to question **S.3.**). These arise from limited understanding of the distributions, populations/extent, function/dynamics/behaviour, conservation status and sensitivities of habitats and species, and lack of clarity on the conservation objectives or outcomes required to maintain or achieve favourable conservation status (FCS). This is an issue both on land and at sea, although the limits on understanding in respect of both habitats and species are an order of magnitude greater in the marine environment.

In addition, the on-going cuts to the resources (funds and skilled staff) at both Defra and Natural England (see also answer to question **Y.2.** and **Y.3.**) has not only impacted adversely the work carried out by this Government department and associated bodies but has also had the knock-on effect of less funding of NGOs in their delivery related to the Habitats Directive. This is delaying their ability to gain that achievable knowledge base.

**See Annex IV:** Case Study Y.8 (i)

### **Sites**

The importance of data and clarity of objectives in evidence-based assessment and decision-making at every stage of the tests that are applied by the Habitats Regulations to development proposals which have the potential to impact upon Natura 2000 sites and features cannot be overstated – from assessment of ‘likely significant effect’ to assessment of a case for ‘imperative reasons of overriding public interest’ (IROPI).

Where data is unavailable and objectives are unclear, the precautionary approach (which applies to the implementation of European Directives) is the logical and rational response to uncertainty. However, in many cases its continued use is indicative of a failure to address that uncertainty over time. For example, the failure by competent authorities to require adequate post-construction monitoring of impacts, and the efficacy of mitigation and/or access to the results of such monitoring, means that actual (as opposed to theoretical) impacts remain unquantified over time and that decisions remain locked in a precautionary system; again an issue which is especially acute in the marine environment. The precautionary approach will always have a role to play where uncertainties persist, but in many cases appropriate use of conditions on consents for development should be able to secure relevant, compatible and comparable data on impacts which can be used to move from a precautionary to a more evidence-based approach to decision-making.

A particular issue in the UK is a lack of data in the marine environment. For offshore waters, the designation process was delayed by Government reluctance to acknowledge application of the Nature Directives to them; the successful 1999 Judicial Review brought by Greenpeace clarified this<sup>256</sup>. However, the lack of investment in marine survey has meant that basic data are not available<sup>257</sup>.

This means that at sea, strategic development areas (e.g. the zones for offshore wind development and oil and gas licensing rounds), are allocated in the absence of adequate information, in particular about mobile species and without adequate SEAs being carried out prior to allocation. This means that developers head out to sea blind. They then invest in surveys which often result in the identification of aggregations of these species, the importance of which it may be hard to determine given the lack of contextual information about their distributions and densities in the wider marine environment. In some cases, the aggregations found in this way are of such significance that they require designation, as was the case for the London Array windfarm development (which is presented as a case study below).

This situation poses an unacceptable risk to marine habitats and species and to expedient

<sup>256</sup> R. v. Secretary of State for Trade and Industry, ex parte. Greenpeace Ltd [2000] Env. L.R. 221

<sup>257</sup> [http://www.rspb.org.uk/Images/rspb2ndsubmission\\_todefrahrccasestudycommentaryandanalysis\\_tcm9-305620.pdf](http://www.rspb.org.uk/Images/rspb2ndsubmission_todefrahrccasestudycommentaryandanalysis_tcm9-305620.pdf)

assessment of marine development proposals. It also represents a failure to meet Government aspirations on and responsibilities for both nature conservation and sustainable development. In order to start to address this issue UK NGOs have long called for a Government-led, national integrated marine survey programme to harness the efforts of Government, developers and others to identify and address the gaps in our knowledge. Costs of surveys at sea are significant, but much could be achieved in terms of economies of scale through better coordination and redistribution of existing effort and investment, and improved access to the data that already exists. Furthermore, the reduced uncertainty and investor risk associated with the clarity that designation of a coherent Natura 2000 network at sea would provide could also deliver significant benefits for government and industry.

### **Species**

For species, the failure to define and assess FCS at national level, or at the spatial levels appropriate for different species, means that a precautionary approach to assessing must be adopted based on a goal of no net loss (as it is not known what scale of loss might prove significant). Therefore, steps to define and then assess FCS at the national and other appropriate spatial scales for EPS would both enhance effectiveness and potentially reduce costs as it would be possible to develop a more streamlined and less precautionary approach to assessing development impacts.

Definitions and assessments of FCS are also required to inform and to guide progress towards national and EU biodiversity targets, and to assess the effectiveness and impact of EPS interventions. For example, there is currently little evidence to show what happens to bat roosts that are excluded from houses or to dormouse populations separated by roads or housing developments<sup>258</sup>.

In terms of specific knowledge gaps, data and knowledge of populations and ranges of some terrestrial EPS is improving, (e.g. our knowledge on bat populations and ranges of some bat species has improved due to volunteer efforts in the last decade), but there are still significant gaps and some species (e.g. great crested newts, most invertebrates, and some species of bats) where knowledge on populations and trends is incomplete or in some cases wholly inadequate. Likewise, data and knowledge of populations and ranges of some marine EPS are improving (e.g. bottlenose dolphins and harbour porpoise, as well as common dolphins in the Mediterranean), but there are also still significant gaps where knowledge on populations and trends is incomplete (e.g. Risso's dolphins, beaked whales, common dolphins, white-beaked dolphins, minke whales, etc.). Furthermore, in most cases knowledge of meta populations is inadequate to fully understand the direct and indirect impacts of developments on conservation status e.g. housing development resulting in destruction of common dormouse habitat and the subsequent arrival of domestic cats that then prey on these dormice. Steps to better define FCS should therefore be balanced with the need for robust data and spatial systems (e.g. sensitivity mapping) to back up the assessment process, and an understanding of the limitations of the available data.

The levels of success of mitigation measures also remain a gap in our understanding and it is important that evidence is gathered in this area; this is not only essential for increasing our knowledge base but will also influence future best practice. Bat bridges are an example of this. Numerous schemes exist in Europe and North America that have been designed with the environmental factors integrated and understood from the outset. These schemes not only mitigate negative impacts on protected species, but improve ecosystems services, provide community benefits and enhancement for other wildlife.

**See Annex IV:** Case Studies Y.8 (ii) – (v)

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<sup>258</sup> Wildlife and Countryside Link Submission to the Defra Review of the Implementation of the Habitats and Wild Birds Directives [http://www.wcl.org.uk/docs/link\\_response\\_to\\_nature\\_directives\\_060212.pdf](http://www.wcl.org.uk/docs/link_response_to_nature_directives_060212.pdf)

### 3. Relevance

#### MAIN POINT

The Directives establish a **modern, flexible, effective legislative framework for nature conservation**. Evidence shows that they are able to respond to climate change, and to adapt to the different political, environmental and geographical situations in the twenty-eight EU Member States, while delivering scientifically proven benefits for wildlife. The Directives represent a 'litmus test' for sustainable development, allowing an environmentally sustainable balance to be struck between the interests of nature conservation and short-term economic gain. Experience strongly suggests that fully implementing the Directives as they stand, rather than opening the Directives to update species listings, would have the best outcome for the objectives of the Directives between now and 2020. Concern about biodiversity loss, and support among European citizens for EU environmental action remain very high.

#### R.1 - Are the key problems facing species and habitats addressed by the EU nature legislation?

*By 'key problem', we mean the main pressures and threats that species and habitats face, which are significantly widespread in terms of their incidence (geographic extent) and/or magnitude/severity. Do the Nature Directives respond adequately to these problems? Are the specific and operational objectives of the Directives suitable in light of the key problems identified? Please justify your answers with evidence.*

#### Answer:

The Directives remain the cornerstone of efforts to tackle the drivers of biodiversity loss in the UK and across the EU. They have proven to be the best tools we have for halting this loss, and reversing past declines.

#### Drivers of biodiversity loss

The EU Biodiversity Strategy to 2020 notes that the main drivers of biodiversity loss in the EU are land-use change, over-exploitation of biodiversity and its components, the spread of invasive alien species, pollution and climate change<sup>259</sup>.

The UK's Natural Capital Committee<sup>260</sup> has noted that:

'there is little indication that drivers and pressures on natural capital will lessen over the next 50 years. In fact, they are likely to grow. Nor will the rate of conversion to other forms of capital slow without targeted interventions. The challenge society faces, both domestically and globally, is how to manage natural capital so that it can continue to meet the needs of people and the economy, despite the mounting pressures.'

The Pan-European Common Birds Indicator<sup>261</sup> shows that biodiversity loss is continuing, despite the successes of Directives.

The European Environment Agency's State of Europe's Environment report from 2010 points to the fact that today's understanding and perception of environmental challenges are changing: no longer can they be seen as independent, simple and specific issues. Rather, the challenges are increasingly broad-ranging and complex, part of a web of linked and interdependent functions provided by different natural and social systems. This does not imply that the environmental concerns which emerged in the previous century, such as how to reduce greenhouse gas emissions or halt biodiversity loss, are

<sup>259</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0244>

<sup>260</sup> <https://www.naturalcapitalcommittee.org/>

<sup>261</sup> <http://www.ebcc.info/pecbm.html>

no longer important. Rather, it points towards an increased degree of complexity in the way we understand and respond to environmental challenges.

A number of underlying developments in Europe's environment display key characteristics of systemic risk:

- many of Europe's environmental issues, such as climate change or biodiversity loss, are linked and have a complex and often global character;
- they are closely linked to other challenges, such as unsustainable resource use, that span the societal and economic spheres and undermine important ecosystem services;
- as environmental challenges have become more complex and more profoundly linked to other societal concerns, the uncertainties and risks associated with them have increased.

For example, in the marine environment, seabed habitats have become homogenised over the last 130 years<sup>262</sup> due to increased expansion in the footprint of industrial trawl fisheries. Marine Protected Areas are needed to limit and reverse this impact, in order to recover to a more complex, resilient and functioning ecosystem.

### **Land-use Change**

Urbanisation and expanding transport networks are fragmenting habitats, thus making populations of animals and plants more vulnerable to local extinction due to hampered migration and dispersal.

These land-cover changes affect ecosystem services. Soil characteristics play a crucial role here because they influence water, nutrient and carbon cycles. Soil organic matter is a major terrestrial sink of carbon and thus important for mitigating climate change. Peat soils represent the highest concentration of organic matter in all soils, followed by extensively managed grassland and forest: soil carbon losses occur when these systems are converted. Loss of these habitats is also associated with decreased water retention capacity, increased flooding and erosion risks and reduced attractiveness for outdoor recreation.

Intensification of agriculture, especially the introduction of highly toxic insecticides, has created hostile conditions for most species outside protected areas. Pollination is worth £510 billion per year to the UK economy, but the loss of bees and other pollinators is impacting that value. If there were more pollinators, there would be £5 million worth more Gala apples on British trees (Simon Potts, Reading University, in press).

In 2010 the EEA reported that a slight increase in forest cover was a positive development, but overall the decline of natural and semi-natural habitats — including grassland, bogs, heaths and fens; all with a high content of soil organic matter — was a major cause for concern.

**See Annex VI: Case Study R1 (i)**

### **Over-exploitation of Biodiversity and Natural Resources**

The overall environmental impact of Europe's resource use continues to grow. Europe relies heavily on natural resources to fuel its economic development. Past and current production and consumption patterns have underpinned substantial growth in wealth across Europe. However, concerns about the sustainability of these patterns are mounting, particularly regarding the implications related to resource use and over-use.

As resource use in Europe exceeds local availability, Europe's dependence on and competition for resources from elsewhere in the world raises questions about security in the supply of resources for Europe in the long term, and carries a potential for future conflicts.

The potential withdrawal of the EU's Circular Economy package does not bode well for progress in tackling the over-exploitation of natural resources.

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<sup>262</sup> Simon F. Thrush, John S. Gray, Judi E. Hewitt, and Karl I. Ugland 2006. PREDICTING THE EFFECTS OF HABITAT HOMOGENIZATION ON MARINE BIODIVERSITY. *Ecological Applications* 16:1636–1642. [http://dx.doi.org/10.1890/1051-0761\(2006\)016\[1636:PTEOHH\]2.0.CO;2](http://dx.doi.org/10.1890/1051-0761(2006)016[1636:PTEOHH]2.0.CO;2)

## Invasive Alien Species

The cumulative number of alien species in Europe has been increasing steadily since the beginning of the 20th century. In 2010 the EEA reported that out of a total of 10,000 established alien species, 163 have been classified as the worst invasive alien species because they have proved to be highly invasive and damaging to native biodiversity in at least part of their European range. While the increase may be slowing down or levelling off for terrestrial and freshwater species, this is not the case for marine and estuarine species. In 2014 the Commission reported that this number had increased to 12,000 established alien species, of which 10 – 15% were thought to be invasive.

## Pollution

Most European data regarding the effects of pollutants on biodiversity and ecosystems concern acidification and eutrophication. One of the success stories of Europe's environment policy has been the significant reduction in emissions of the acidifying pollutant SO<sub>2</sub> since the 1970s. The area subject to acidification has decreased further since 1990. In 2010, 10 % of the EEA natural ecosystem area was, however, still subject to acid depositions beyond its critical load. With sulphur emissions declining, nitrogen emitted by agriculture and fossil fuels is now the principal acidifying (and eutrophying) component in our air.

There is growing concern about the impacts on wildlife on a range of pollutants, including livestock wormers, plastic fragments, endocrine disruptors and neonicotinoid insecticides. Marine litter, mostly plastic, is a growing issue globally and in the EU. In the North Sea, over 90% of fulmar sea birds have plastic in their stomach and on average 712 items of litter are found on 100m stretch of beach on the Atlantic Coast. The impacts of this increasing problem are manifold and their magnitude not yet fully known<sup>263</sup>. Measures required under the MSFD, if well implemented, as well as the review of EU waste policy and proposed Circular Economy package, could help mitigate this threat.

Light pollution has dramatic impacts on a range of wildlife and remains a growing problem in most EU countries, but remains largely unregulated<sup>264</sup>. Some countries, including Slovakia, have reversed this trend which proves that it is possible to reduce light pollution<sup>265</sup>. There have also been a number of dark sky reserves established and regulating legislation with detailed studies of light pollution reduction measures in Slovenia.

## Climate change

In 2010 the EEA reported that the consequences of changing climatic conditions include increases in global mean ocean temperatures, widespread melting of snow and ice sheets, increased flood risk for urban areas and ecosystems, ocean acidification, and extreme climatic events including heat waves. The impacts of climate change are expected to be felt in all regions of the planet, and Europe is no exception. Unless action is taken, climatic changes are expected to lead to considerable adverse impacts.

A 2011 Commission study on the vulnerability of the Natura 2000 network to climate change found that the availability of suitable habitat within new areas of suitable climate is likely to be a particular problem for species of Community Interest. Many of such species are habitat specialists and are already constrained by habitat availability and/or condition; climate change is likely to exacerbate such threats, rather than create new opportunities<sup>266</sup>.

## See Annex VI: Case Study R1(ii)

Scientific evidence has shown that the Directives have been delivering improvements in the status of protected species in the face of these growing pressures, despite inadequate resourcing and incomplete implementation<sup>267</sup>.

Evidence shows that the Directives establish an effective, efficient, and flexible legal framework that has proven capable of addressing a wide range of problems and concerns facing species and

<sup>263</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0097&from=EN>

<sup>264</sup> <https://www.buglife.org.uk/tags/light-pollution>

<sup>265</sup> <http://www.nature.com/srep/2014/140121/srep03789/full/srep03789.html>

<sup>266</sup> <http://ec.europa.eu/environment/nature/climatechange/pdf/study.pdf>

<sup>267</sup> <http://www.sciencemag.org/content/317/5839/810.abstract>

habitats listed in the Directives<sup>268</sup>, when properly implemented, and that business has been able to work with<sup>269</sup>.

### **The value of all wildlife is not equally matched.**

Plants and fungi face a challenge as they are often relegated to our more charismatic fauna. There has been a decline in plant and fungi expertise in agencies and museums since 1999 including a 33% decline in botanists, 45% decline in mycologists, 63% decline in bryologists and a 96% decline in Lichenologists<sup>270</sup>.

## **R.2 - Have the Directives been adapted to technical and scientific progress?**

*With this question, we are seeking to examine the implications of technical and scientific progress regarding the habitats and species that the Directive focus on. Please summarise, and provide any evidence you may have that indicates that the annexes listing habitats and species in both Nature Directives are, or are not, sufficiently updated to respond to technical and scientific progress.*

### **Answer:**

There are pressing political and economic reasons not to update the Annexes and any change is likely to jeopardise progress towards achieving the objectives of the Directives. As butterfly scientists have suggested, all efforts of EU Member States should be devoted to the full implementation of the Directives as they stand<sup>271</sup>.

The fundamental principles of nature conservation, and the science underpinning them, have not changed since the Directives were adopted. Both Directives have stood the test of time and proven indispensable in establishing a flexible legal framework that delivers effective nature conservation action for a wide range of habitats and species, in response to a wide range of threats. This includes historic threats, such as hunting, but also more recently perceived threats, such as invasive alien species and climate change.

The Directives remain the key tools for achieving the targets set out in the EU Biodiversity Strategy to 2020. This strategy recognises explicitly that;

‘The full implementation of the Birds and Habitats Directives (i.e. reaching favourable conservation status of all habitats and species of European importance and adequate populations of naturally occurring wild bird species) is critical to preventing further loss and restoring biodiversity in the EU’<sup>272</sup>.

Butterfly scientists from across the EU have stated that;

‘EU Member States have agreed to halt the loss of biodiversity and ecosystem services and to restore them by 2020. The Habitats Directive calls for measures additional to site designation and management to improve the coherence of the network and this could be used, along with the EU’s planned Green Infrastructure Strategy, to underpin the stronger action needed for biodiversity at a landscape scale. Seeking to amend the Annexes now would divert attention and resources and risks being counterproductive. All efforts of EU Member States should go into full implementation of the existing Directive, as envisaged in the EU Biodiversity

<sup>268</sup> <http://www.panda.org/?uNewsID=146283>

<sup>269</sup> [http://www.birdlife.org/sites/default/files/attachments/2014\\_10\\_8%20JOINTAPPEAL-BL-CEM%20%28signed%29.pdf](http://www.birdlife.org/sites/default/files/attachments/2014_10_8%20JOINTAPPEAL-BL-CEM%20%28signed%29.pdf)

<sup>270</sup> [http://www.plantlife.org.uk/uploads/documents/GSPC\\_2014\\_print\\_version\\_FINAL\\_web.pdf](http://www.plantlife.org.uk/uploads/documents/GSPC_2014_print_version_FINAL_web.pdf)

<sup>271</sup> [http://www.researchgate.net/publication/236680375\\_Not\\_the\\_right\\_time\\_to\\_amend\\_the\\_Annexes\\_of\\_the\\_European\\_Habitats\\_Directive](http://www.researchgate.net/publication/236680375_Not_the_right_time_to_amend_the_Annexes_of_the_European_Habitats_Directive)

<sup>272</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52011DC0244>

Strategy'<sup>273</sup>.

As outlined above, significant steps are still required, particularly in the marine environment, just to achieve full implementation of the site designation measures required under the Directives, let alone accompanying site management measures. Diverting scarce resources to amending the annexes would be an unwelcome distraction from this task. As things stand there is no evidence-led process for reviewing the annexes, and no methodology for identifying at Member State level which species in favourable or improving conservation status are entirely conservation dependent, and at risk of rapidly declining back into unfavourable status were they to be de-listed. It may also be difficult for Member States to find the additional resources required to engage with a review of the Annexes at this time, particularly as the EU red listing process is still not yet sufficiently complete to form a robust basis for the review.

A diversion of focus and resources from implementation to updating the annexes, particularly if this could not be done without opening other elements of the Directives to redrafting, would send a very unhelpful message to the EU's international partners in the lead up to globally important environmental negotiations this year, and beyond. The credibility of the EU in such negotiations would be undermined by the suggestion that Member States were no longer willing to abide by environmental pledges made at the global level. In political terms, the Directives and the Annexes provide uniquely long term benefits and as such are less likely to be improved if reviewed at a time of short term economic crisis.

In economic terms, changes to the annexes would also be likely to lead to considerable uncertainty for business over whether the Natura 2000 network of sites would be likely to change, and if so by how much, and where, at a time when business is already under pressure from the global economic crisis. Long-established stability in relation to the listing of huntable species might also be disturbed, raising the spectre of a repeat of the fractious and drawn out negotiations between hunters and conservationists prior to the launch of the Sustainable Hunting Initiative.

It should also be noted that in practice implementation of the Directives has had significant benefits not just for species listed in the Annexes, but also for other species. An EEA study<sup>274</sup> on The impact of Natura 2000 on non-target species, found that the abundance of a large number of bird species is higher inside than outside the Natura 2000 network, showing that the Natura 2000 areas designated upon the presence of targeted bird species listed in Annex I of the Birds Directive also harbour a substantial number and population of common bird species.

### R.3 How relevant are the Directives to achieving sustainable development?

*This question seeks to examine the extent to which the Directives support or hinder sustainable development, which is about ensuring that the needs of the present generation are met without compromising the ability of future generations to meet their own needs. It requires ensuring a balance between economic development, social development and environmental protection. In your answer, please provide evidence of the impacts that implementation of the Directives has had in relation to these three 'pillars' of sustainable development.*

#### **Answer:**

One of the pillars of sustainable development is the environment, and the Birds and Habitats Directives represent the cornerstone of EU efforts to deliver environmental sustainability through conservation of biological diversity. They remain central to the achievement of sustainable development in the EU.

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[http://www.researchgate.net/publication/236680375\\_Not\\_the\\_right\\_time\\_to\\_amend\\_the\\_Annexes\\_of\\_the\\_European\\_Habitats\\_Directive](http://www.researchgate.net/publication/236680375_Not_the_right_time_to_amend_the_Annexes_of_the_European_Habitats_Directive)

<sup>274</sup> [http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/PDF/Impact\\_Natura2000\\_on\\_non-target\\_species\\_volunteer-based\\_biodiversity\\_monitoring.pdf](http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/PDF/Impact_Natura2000_on_non-target_species_volunteer-based_biodiversity_monitoring.pdf)

The UK's Commission on Sustainable Development recognised that the Directives serve as a litmus test of sustainable development<sup>275</sup> as they do not prevent development, but rather ensure that it is undertaken in a way which is compatible with the protection of wildlife

The European Commission's 2013 report on Permitting Procedures<sup>276</sup> found that:

'Natura 2000 does not, on the whole, act as a general ban on developments within these sites ... only a very small proportion of projects are actually abandoned because the AA has concluded an adverse effect and even fewer use the derogation procedure under Article 6.4'<sup>277</sup>.

In the UK the number of objections to planning applications represent a minute fraction of the total number of planning applications. In England, the RSPB responded to a total of 2,177 planning applications between 2001 and 2010, an average of 217 per annum. This compares to a total 5,993,408 planning applications received in England over the same period at an average of 599,341 per annum. The RSPB therefore commented on approximately 0.036% of all planning applications in England between 2001 and 2010<sup>278</sup>.

Of the 13 Nationally Significant Infrastructure Project (NSIP) determinations made in 2013 in England and Wales, development consent was granted for all except one, which was turned down on the grounds of geological uncertainty surrounding the storage of gas underground. Six projects required an appropriate assessment and five of these concluded no adverse effect. The one project where an adverse effect could not be ruled out was subject to the Article 6(4) tests and passed. With the exception of the project where the Article 6(4) tests were applied, the time taken to reach the decision (an average of 16 months) was unaffected by whether or not an AA was undertaken. The underlying analysis is presented in Annexes III and Va and Vb.

The Directives also deliver wider environmental and social benefits, including employment<sup>279</sup> and health benefits<sup>280</sup>. The paper, 'Human Activities in Natura 2000 Sites: A Highly Diversified Conservation Network' by A Tsiafouli et al. (2013) further demonstrates the extent to which Natura 2000 sites allow human activities/environmental protection to co-exist and combine social/ecological sustainability<sup>281</sup>.

For example Sandifer et al. have reported;

'Based on our review, experiencing nature can have positive effects on mental/psychological health, healing, heart rate, concentration, levels of stress, blood pressure, behaviour, and other health factors (Brown and Grant, 2005). For example, viewing nature, even through a window, improves recovery from surgery (Ulrich, 1984), while exercise outdoors in a natural environment improves mood and self-esteem (Barton and Pretty, 2010) and is more restorative than exercise outdoors in an urban environment (Hartig et al., 2003)'<sup>282</sup>.

There is increasing evidence that not only the quantity, but also the quality of green space is important in delivering physical and mental health benefits. The richness and extent of Natura 2000 sites means they are likely to provide a host of human benefits. Natural England has estimated that if everyone were to have access to high quality natural green space, £2.1 billion could be saved for the NHS every year, with corresponding improvements in quality of life.

Protected species and protected sites provide a 'reservoir' of biodiversity, which in turn helps to sustain the ecosystem services that contribute a great deal of social and economic capital. For example, the Natura 2000 network has a role in mitigating flood risk, which costs the UK economy an average of £1.1 billion each year, with impacts on the economy and the communities that are affected.

<sup>275</sup> <http://www.sd-commission.org.uk/publications.php?id=607>

<sup>276</sup> [http://ec.europa.eu/environment/nature/natura2000/management/docs/AA\\_final\\_analysis.pdf](http://ec.europa.eu/environment/nature/natura2000/management/docs/AA_final_analysis.pdf)

<sup>277</sup> Ibid. p.88

<sup>278</sup> [http://www.rspb.org.uk/Images/rspb2ndsubmissionofdefrahrrcasestudycommentaryandanalysis\\_tcm9-305620.pdf](http://www.rspb.org.uk/Images/rspb2ndsubmissionofdefrahrrcasestudycommentaryandanalysis_tcm9-305620.pdf)

<sup>279</sup> [http://ec.europa.eu/environment/nature/natura2000/financing/docs/natura2000\\_costs\\_benefits.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/natura2000_costs_benefits.pdf)

<sup>280</sup> [http://www.rspb.org.uk/Images/wellbeing\\_tcm9-148929.pdf](http://www.rspb.org.uk/Images/wellbeing_tcm9-148929.pdf)

<sup>281</sup> <http://link.springer.com/article/10.1007%2Fs00267-013-0036-6>

<sup>282</sup> <http://www.sciencedirect.com/science/article/pii/S2212041614001648>



The OECD has recognised that environmental regulations play a central role in protecting the environment and the natural capital upon which our long-term prosperity ultimately depends. Yet, such regulations are often perceived solely as a burden on business and the wider economy, despite their proven benefits. However, we know that such perceptions are an unreliable indicator of the true regulatory 'burden'; evidence suggests that there may be a considerable disparity between perceptions of regulatory quality and actual measurable results i.e. there may be a gap between business perceptions of regulation and 'objective reality'<sup>283</sup>.

#### R.4 - How relevant is EU nature legislation to EU citizens and what is their level of support for it?

*The aim of this question is to understand the extent to which citizens value the objectives and intended impact of the EU nature legislation. To this end, we would like to obtain information and evidence on the extent to which nature protection is a priority for citizens (e.g. in your country), including in comparison with other priorities; for example whether citizens (e.g. in your country) support the establishment and/or expansion of protected areas, the extent to which they access/use them or; the extent to which citizens are involved in any aspect of the implementation of the Directives (e.g. participation in the development of management plans of protected areas or decisions concerning the permitting of projects which have an impact on protected areas).*

*Please note that the Birds and Habitats Directives may be relevant to citizens even if they do not actually know of their existence or the existence of the Natura 2000 network.*

#### **Answer:**

The legal protection of Europe's wildlife, which is provided by the EU Nature conservation legislation, and the Natura 2000 network of protected sites created through this legislation, is a key concrete, tangible benefit of EU membership which is recognized by EU citizens across the Union. This is reflected in the consistently high level of support from EU citizens for Union action on the environment. Awareness of the EU Nature Directives themselves and Natura 2000 remains very low across the Union.

A recent Eurobarometer survey on Attitudes of European Citizens Towards the Environment shows 95% of EU citizens say that protecting the environment is important to them personally, and 77% agree that European environmental legislation is necessary for protecting the environment in their country, and over half of Europeans think the EU is not doing enough to protect the environment<sup>284</sup>.

Given that policymakers are increasingly recognizing the importance of green spaces in urban areas, and that approximately 80% of Europeans live in cities, it is worth noting that Natura 2000 sites exist in 32 major cities in Europe and over half of Europe's capitals harbour one or more Natura 2000 sites. Collectively, these sites harbour 40% of the threatened habitat types (mostly forests and semi natural grasslands), half the bird species and a quarter of the rare butterflies listed in the two EU Nature Directives<sup>285</sup>.

#### **UK Evidence**

The Eurobarometer results for the UK are similar to those at EU level, with 66% of UK citizens agreeing that European environmental legislation is necessary for protecting the environment. This corresponds with the results of previous Eurobarometer surveys showing that environment is one of the few policy areas where British citizens think the EU has a role and trust the EU.

<sup>283</sup> OECD (2012). Measuring Regulatory Performance: A Practitioner's Guide to Perception Surveys. Paris, OECD

<sup>284</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_416\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_416_en.pdf)

<sup>285</sup> Sundseth, K. and Raeymaekers, G.: Biodiversity and Natura 2000 in urban areas. Nature in cities across Europe: a review of key issues and experiences. Brussels, Ecosystems LTD, 2006: <http://www.forumtools.biz/Fedenatur/upload/N2000inmajorEuropeancities.pdf>

National level surveys have produced similar results. Wildlife and Countryside Link's annual Nature Check survey and ComRes public opinion survey indicate high levels of support for more and better action to protect and improve the natural environment<sup>286</sup>. For example, the 2013 ComRes survey showed the personal value of the environment to people in Britain, alongside their view of the UK Government's performance. Findings include:

- Regarding the environment: 91% of people agree we should improve the condition of the natural environment for future generations. 85% agree the natural environment boosts their quality of life.
- Regarding the UK Government's performance: 28% agree the Government is taking the right steps to leave the natural environment in a better condition for future generations.
- Regarding the environment and the economy: 83% of British adults believe the natural environment should be protected at all costs.
- A substantial majority (64%) of British people do not agree that the natural environment is less important than economic growth and this proportion has grown in the last year.

The Scottish Natural Heritage 'Scotland's People and Nature Survey 2013/14'<sup>287</sup> (published December 2014) revealed that around four-fifths of the adult population in Scotland had visited the outdoors for recreation in the 12 months prior to interview (82%) and the estimated volume of visits to the outdoors taken by adults in Scotland in the period March 2013 to February 2014 was 395.8 million, the highest annual figure recorded since 2006. The vast majority of people in Scotland believe the country's areas of wild land should be protected (94%); allied to this is a widely held belief that Scotland's landscapes make an important contribution to the economy (93% agree). 42% of people surveyed claimed to be concerned about loss of Scottish native animals/plants, and 39% about the effects of climate change on Scotland's natural environment. The results of this survey demonstrate a high level of use of the outdoors, support for its protection, and concern about the loss of wild areas.

Figures supplied by LINK Members demonstrate that SACs and SPAs are popular destinations with the British public;

### Visitor Numbers

WWT owns five sites which are SPA/SACs, visitor numbers for 2013-2014 are 437,615:

Solway Firth	(WWT Caerlaverock Wetland Centre)	17,136
Strangford Lough	(WWT Castle Espie Wetland Centre)	54,446
Martin Mere	(WWT Martin Mere Wetland Centre)	179,703
Burry Inlent	(WWT Llanelli Wetland Centre)	52,073
Severn Estuary	(WWT Slimbridge Wetland Centre)	205,641
Ouse Washes	(WWT Welney Wetland Centre)	25,079

WDC runs two visitor centres in Scotland, the Scottish Dolphin Centre in Spey Bay and the Dolphin and Seal Centre in North Kessock. They were opened due to the bottlenose dolphins frequenting the Moray Firth SAC. The centres run education programs, outdoor activities, workshops and festivals throughout the year and attracted 102,230 visitors in 2014 alone<sup>288</sup>.

PlantLife has reported that 9,000,000 people visit UK gardens every year and 2,639,235 visited the Royal Botanic Gardens Kew and Edinburgh in 2011-2012.

This is translated into high levels of support for environmental NGOs in the UK;

- National Trust: 4.2m members
- RSPB 1.1m members
- Wildlife Trusts: 800,000 members
- WWF-UK 470,000 members

<sup>286</sup> <http://www.wcl.org.uk/nature-check.asp>

<sup>287</sup> <http://www.snh.gov.uk/publications-data-and-research/publications/search-the-catalogue/publication-detail/?id=2198>

<sup>288</sup> [http://www.wdcs.org/connect/wildlife\\_centre](http://www.wdcs.org/connect/wildlife_centre)

- Whale and Dolphin Conservation: 124,430 supporters
- John Muir Trust: 10,000+ members
- Plantlife 7835 members
- Bat Conservation Trust: 5000+ members

and significant levels of citizen engagement in environmental campaigning, for example:

- In 2010, over 230,000 individuals signed a petition demanding an end to the illegal killing of birds of prey<sup>289</sup>. This was a record at the time for most signatures ever collected by an RSPB led campaign.
- Recently a spider, the horrid ground weaver, was threatened by a housing development proposal. The spider is a tiny animal that is hardly ever seen, but it is globally endemic and only known from three sites around Plymouth. Within a week nearly 10,000 people had signed a petition to save it from extinction, and their comments are an expression of the ethical importance people attach to preventing extinction<sup>290</sup>.
- The number of volunteer hours for Plantlife and the Botanical Society for Britain and Ireland in 2012 was 137,537.
- 7,102 people have signed Plantlife's Road Verge Warriors petition that lobbies local councils to manage suitable road verges for wildlife<sup>291</sup>.
- Over 200,000 people took action with Friends of the Earth's Bee Cause campaign between 2012 and 2014<sup>292, 293</sup>.
- In the John Muir Trust Award audit year £1million of volunteering effort was generated – 24,432 days in total for the year (John Muir Trust Conserve Audit 2011)<sup>294</sup>.

There is also evidence that natural environments rich in wildlife contribute significantly to health and wellbeing. The Nature and Wellbeing Act Green Paper<sup>295</sup> drafted by the Wildlife Trusts and RSPB brings together a catalogue of references to the state of nature in the UK, and to the role of nature in supporting health and wellbeing. Findings from a literature review compiled in support of the Green Paper<sup>296</sup> demonstrate that:

- Environments rich in wildlife are also associated with improved wellbeing, through emotional, social and psychological benefits such as improvements in self-esteem and mood.
- However, health and wellbeing studies only rarely refer to the 'quality' or level of biodiversity in the environments studied in any detail, and the health benefits of environments rich in nature and wildlife specifically had until recently not been fully assessed.
- Lovell et al. (2014)<sup>297</sup> in their systematic review found evidence to suggest that biodiverse natural environments may be associated with good health and well-being - ranging from better mental health outcomes, to associations with increased healthy behaviours.
- It is generally understood that the loss of natural environments rich in wildlife may ultimately decrease the ecosystem services they are able to provide; and as a result negatively impact on human health and wellbeing.

<sup>289</sup> <http://www.rspb.org.uk/joinandhelp/donations/campaigns/birdsofprey/>

<sup>290</sup> <https://you.38degrees.org.uk/petitions/critically-endangered-spider-under-threat-from-development>

<sup>291</sup> <http://www.plantlife.org.uk/roadvergecampaign/petition>

<sup>292</sup> [http://www.foe.co.uk/resource/press\\_releases/bee-action-plan-due-last-chance-bees\\_31102014](http://www.foe.co.uk/resource/press_releases/bee-action-plan-due-last-chance-bees_31102014)

<sup>293</sup> <http://www.rspb.org.uk/news/240754-200000-say-stop-killing-birds-of-prey>

<sup>294</sup> <http://www.jmt.org/jmaward-conserve-audit-2015.asp>

<sup>295</sup> [http://www.rspb.org.uk/Images/nature\\_and\\_wellbeing\\_act\\_green\\_full\\_tcm9-384572.pdf](http://www.rspb.org.uk/Images/nature_and_wellbeing_act_green_full_tcm9-384572.pdf)

<sup>296</sup> Wellbeing benefits from natural environments rich in wildlife: A literature review for The Wildlife Trusts. Dr Rachel Bragg\*, Dr Carly Wood, Dr Jo Barton and Professor Jules Pretty. \*Correspondence contact: Dr Rachel Bragg, Senior Research Officer, Green Exercise Research Team and School of Biological Sciences, University of Essex, Wivenhoe Park, Colchester CO4 3SQ. [rebragg@essex.ac.uk](mailto:rebragg@essex.ac.uk)

<sup>297</sup> Lovell R, Wheeler B, Higgins SL, Irvine KN and Depledge MH (2014). A systematic review of the health and wellbeing benefits of bio diverse environments. *Journal of Toxicology and Environmental Health, Part B: Critical Reviews*, 17: 1-20.

- The literature review concluded that the relationship between biodiversity and health is multidimensional but increasing biodiversity may not increase health in all situations.
- The existing 'weight of evidence' does suggest that 'there is value in continuing to explore associations between biodiverse environments and good health and wellbeing' (Lovell et al., 2014, p.16)

See Annex VI: Case Studies R4 (i) – (iii)

## R.5 - What are citizens' expectations for the role of the EU in nature protection?

*The aim of this question is to obtain information and evidence on questions such as: whether citizens submit complaints or petitions to the EU requesting its involvement on cases regarding nature protection, whether citizens expect the EU to become more involved in promoting nature protection, or whether nature protection should be left to each individual Member State; whether citizens expect the EU to introduce laws on nature protection to be applied in all Member States equally or whether the EU should limit itself to coordinating Member States' initiatives; whether the EU should focus on laying down rules, or whether the EU should more actively promote their monitoring and enforcement in Member States.*

### Answer:

Citizens expect the EU to deliver on its nature conservation commitments under the Birds and Habitats Directives and under the EU Biodiversity Strategy to 2020.

The backbone of environmental legislation in most EU Member States is derived directly from EU not national law. Without the EU, or with a diluted EU impact, such protection as exists would be likely to deteriorate significantly<sup>298</sup>.

A recent Eurobarometer survey on Attitudes of European Citizens Towards the Environment shows 95% of EU citizens say that protecting the environment is important to them personally, and 77% agree that European environmental legislation is necessary for protecting the environment in their country, and over half of Europeans think the EU is not doing enough to protect the environment<sup>299</sup>.

### UK Evidence

The results for the UK are similar, where 66% agree that European environmental legislation is necessary for protecting the environment. This corresponds with the results of previous Eurobarometer surveys showing that environment is one of the few policy areas where British citizens think the EU has a role and trust the EU.

The UK Government's Balance of Competences Review Environment Report<sup>300</sup> found that:

'The majority of respondents believed that EU competence has increased environmental standards in the UK and across the EU and that this has led to improved performance in addressing several environmental issues. The evidence showed that a large number of organisations representing all sectors considered that it is in the UK's national interest for the EU to have a degree of competence in the broad areas of environment and climate change because of the advantages that this brings for the Single Market and environmental protection.'

Where the EU, and Member States, fail in these efforts, there is a very high level of concern from EU citizens, as evidenced by the number of petitions to the European Parliament concerning the environment, and the high level of EU-wide interests in significant breaches of nature conservation legislation, e.g. Spring hunting in Malta.

<sup>298</sup> <http://www.endsreport.com/47523/eu-withdrawal-would-be-an-environmental-nightmare-for-the-uk>

<sup>299</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_416\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_416_en.pdf)

<sup>300</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284500/environment-climate-change-documents-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284500/environment-climate-change-documents-final-report.pdf)

The public in the UK expect their government to properly implement EU Directives and in instances where NGOs have taken action to ensure that this occurs, the public response is always supportive.

Four environmental 'Link' networks operate in the UK - in England, Northern Ireland, Scotland and Wales. Each Link represents its member organisations and facilitates their shared efforts in profiling environmental issues and concerns with decision makers, opinion formers, media and the public. Where appropriate, the Links also facilitate cross-border collaboration between their members and working groups on issues of UK-wide impact and concern, working federally as 'the Joint Links', 224 members strong and collectively representing over 8 million people across the UK.

See Annex VI: Case Study R5 (i)

#### 4. Coherence

##### MAIN POINT

The Birds and Habitats Directives establish a legal framework **that is coherent and integrated with other EU environmental laws, and with EU sectoral policies. This framework is key to achievement of EU and international biodiversity conservation objectives.** The Directives also help deliver a level playing field in competition terms for companies in support of the EU single market. The flexibility built in to the Directives, stakeholder consultation, Commission Guidance, and jurisprudence have helped resolve many real or perceived conflicts. Achievement of the goals set out in the Directives and in the EU's Biodiversity Strategy has, however, been significantly undermined by inadequate implementation, underfunding, and unsustainable practices promoted under the EU's sectoral policies (e.g. CAP and CFP).

#### C.1 – To what extent are the objectives set up by the Directives coherent with each other?

*This question focuses on coherence between objectives within each Directive, and/or between objectives of the Birds and Habitats Directives. It covers not only the strategic objectives but also the specific and operational objectives set out in Annex I to this document. Based on experience in your country/region/sector, please provide evidence of any inconsistencies between the objectives that negatively impact on the implementation of the Directives.*

##### Answer:

**The Objectives of the Birds and Habitats Directives are consistent and together create a coherent legislative framework for nature conservation. More specifically:**

Coherence<sup>301</sup>

- Aim - the objective of the Habitats Directive is to maintain or restore the habitats and species protected under the Directive at favourable conservation status (FCS)<sup>302</sup>. The Birds Directive requires Member States to take the requisite measures to maintain the population of all European wild bird species at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level<sup>303</sup>. This obligation has generally been described as analogous to FCS by the European Commission<sup>304</sup> and considered analogous to FCS by those working in the scientific and policy fields.

<sup>301</sup> Day, C (2015) 'The EU 'Fitness Check' on Nature Legislation: Legal Analysis of certain Mandate questions' legal research for WWF-UK

<sup>302</sup> Recital 6 of the preamble to the Habitats Directive and Article 2(2) of the Habitats Directive

<sup>303</sup> Article 2, Birds Directive

<sup>304</sup> [http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/hunting\\_guide\\_en.pdf](http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/hunting_guide_en.pdf) (see para 2.4.14)

- Central tenets – both instruments recognise the need for measures at the Community level due to the trans-frontier nature of the resource<sup>305</sup>.
- Natura 2000 – both Directives require the identification and designation/classification of a coherent suite of sites. The Habitats Directive requires Member States to designate Special Areas of Conservation (SACs) for the protection of natural habitat types listed in Annex I and species listed in Annex II of the Directive<sup>306</sup>. The Birds Directive requires Member States to classify Special Protection Areas (SPAs) for species listed on Annex I of the Birds Directive and migratory birds<sup>307</sup>. Together, these sites form the European Natura 2000 Network.
- Species protection – both Directives require Member States to establish regimes of strict protection for species inside and outside Natura 2000 sites. The regime established under the Birds Directive applies to all wild European bird species<sup>308</sup>, whereas the Habitats Directive provides protection for endangered species listed in Annex IV(a) and (b)<sup>309</sup>. Both Directives permit Member States to derogate from the regime in certain circumstances<sup>310</sup>.
- Socio-economic factors – both Directives allow Member States to take socio-economic factors into account when implementing the Directives<sup>311</sup> (although Member States are prohibited from taking account of economic, social and cultural requirements or regional and local characteristics when selecting and defining the boundaries of Natura 2000 sites<sup>312</sup>). Article 6 of the Habitats Directive sets out the circumstances in which Member States may take account of such factors in relation to Natura 2000 sites.
- Sustainable use – both instruments permit the ‘exploitation’ of certain species including, for example, hunting<sup>313</sup> and fishing<sup>314</sup>.
- Measures outside protected areas – both Directives encourage Member States to take measures outside Natura 2000 to improve the ecological coherence of the network. Article 4(4) of the Birds Directive requires Member States to strive to avoid the pollution or deterioration of habitats outside SPAs. Article 10 of the Habitats Directive urges Member States to use land-use planning and development policies to encourage the management of features of the landscape which are of major importance for wild fauna and flora<sup>315</sup>.
- Monitoring and reporting - both Directives place reliance on surveillance and reporting in order to ensure the objectives of the Directives are being achieved<sup>316</sup>.
- Introductions – both Directives seek to ensure the introduction of species not naturally occurring in the EU territory does not prejudice local fauna and flora<sup>317</sup>. The Habitats Directive also requires Member States to study the desirability of re-introducing species listed in Annex IV of the Directive that are native to their territory where this may contribute to the achievement of FCS<sup>318</sup>.
- Research – both instruments recognise the value of necessary research and scientific work<sup>319</sup>, including the exchange of information in the interests of coordination at the EU level.

Differences between the Directives are few, and certainly do not introduce any inconsistencies with negative impacts on implementation, for example:

<sup>305</sup> Recital 3 of the Birds Directive and recitals 4 and 11 of the Habitats Directive

<sup>306</sup> Recital 7 and Article 3(1) Habitats Directive

<sup>307</sup> Recital 9 and Article 4(1) Birds Directive

<sup>308</sup> Article 5 Birds Directive

<sup>309</sup> Recital 15 and Articles 12 and 13 Habitats Directive

<sup>310</sup> Article 9 Birds Directive and Article 16 Habitats Directive

<sup>311</sup> Recital 6 and Article 9 Birds Directive and recital 3 and Articles 2(3), 6(4) and 16 Habitats Directive

<sup>312</sup> See Case C-44/95, UK – ‘Lappel Bank’ in respect of SPAs and cases C-371/98, UK – ‘First Corporate Shipping’ and C-67/99, *Commission v Ireland* in respect of SACs

<sup>313</sup> Article 7 covers the hunting of species listed in Annex II to the Birds Directive. See also Recital 11 to the preambles to the Directive

<sup>314</sup> Article 14 Habitats Directive

<sup>315</sup> See also recital 13 of the preamble to the Habitats Directive

<sup>316</sup> Recital 16 and Articles 4(3) and 12 Birds Directive and recital 16 and Articles 12(1), 12(2) and 17 of the Habitats Directive

<sup>317</sup> Recital 15 and Article 11 Birds Directive and Article 22(b) Habitats Directive

<sup>318</sup> Article 22(a) Habitats Directive

<sup>319</sup> Article 10 Birds Directive and recital 17 and Article 18 Habitats Directive

- Article 14 of the Birds Directive provides that Member States may introduce stricter protective measures than those provided for under that Directive. There is no equivalent provision in the Habitats Directive. However, the Habitats Directive was adopted on the basis of Article 192 TFEU, which provides that Member States may adopt more stringent protective measures<sup>320</sup>. Examples where this has happened can be found in the marine environment where the life-history requirements of many species that rely on specific marine features are more wide ranging<sup>321</sup> and expanded protection measures have been adopted under the Habitats Directive (e.g. management of the South White Maritime SAC<sup>322</sup>).

## C.2 – To what extent are the Directives satisfactorily integrated and coherent with other EU environmental law e.g. EIA, SEA?

*This question is similar to the previous question, but focuses on the extent to which the EU Nature Directives are coherent with and integrated into other EU environment legislation, and the extent to which they are mutually supportive. EU environment legislation of particular relevance to nature conservation includes the following:*

- *Strategic environmental assessment of policy plans and programmes 2001/42/EC Directive (SEA)*
- *Environmental impact assessment of projects 85/337/EC Directive as codified by Directive 2011/92/EU (EIA)*
- *Water Framework Directive 2000/60/EC, (WFD)*
- *Marine Strategy Framework Directive 2008/56/EC (MSFD)*
- *Floods Directive 2007/60/EC (FD)*
- *National Emission Ceilings Directive 2001/81/EC (NECD)*
- *Environmental Liability Directive 2004/35/EC (ELD).*

*This question considers how the main provisions and measures set out in these instruments interact with the EU nature legislation, including whether there are potential gaps or inconsistencies between these instruments and the EU nature legislation, for example whether the current permitting procedures are working in a coherent way or whether they are acting as barriers to achieve the EU Nature Directive's objectives; whether the assessments required under the different pieces of EU legislation, in particular under the EIA, are aligned or whether there are differences which result in additional administrative burden; whether any identified gaps and inconsistencies are due to the texts of the Directives or due to implementation in your/a Member State.*

### Answer:

There is a high degree of integration and coherence between the Birds and Habitats Directives and other EU environmental legislation. Experience suggests that in terms of practical implementation, much depends on the attitudes, approach and cultures of those involved in their implementation. In some cases perceived conflicts between their requirements are cited as a barrier to effective

<sup>320</sup> Case C-2/10 *Azienda Agro-Zootecnica Franchini Sarl and Eolica di Altamura Srl v Regione Puglia*, paragraphs 49-50

<sup>321</sup>

[http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCsQFjAB&url=http%3A%2F%2Fwww.researchgate.net%2Fprofile%2FSian\\_Rees%2Fpublication%2F236580352\\_A\\_legal\\_and\\_ecological\\_perspective\\_of\\_%2527site\\_integrity%2527\\_to\\_inform\\_policy\\_development\\_and\\_management\\_of\\_Special\\_Areas\\_of\\_Conservation\\_in\\_Europe%2Flinks%2F0c96051b83bc71e6f1000000.pdf&ei=sMr5VM33IsHvUq6wgOgD&usq=AFQjCNFDDwc9OdaZN4mu7KaBcfUsiAZDrw](http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCsQFjAB&url=http%3A%2F%2Fwww.researchgate.net%2Fprofile%2FSian_Rees%2Fpublication%2F236580352_A_legal_and_ecological_perspective_of_%2527site_integrity%2527_to_inform_policy_development_and_management_of_Special_Areas_of_Conservation_in_Europe%2Flinks%2F0c96051b83bc71e6f1000000.pdf&ei=sMr5VM33IsHvUq6wgOgD&usq=AFQjCNFDDwc9OdaZN4mu7KaBcfUsiAZDrw)

<sup>322</sup> [http://www.southern-ifca.gov.uk/sitedata/files/PDFbyelaw\\_bottomtowedfishi.pdf](http://www.southern-ifca.gov.uk/sitedata/files/PDFbyelaw_bottomtowedfishi.pdf)

implementation, while in others synergies between the requirements of legislative instruments and associated opportunities and funding streams are being exploited to maximise beneficial outcomes for the environment. Guidance and the identification and dissemination of best practice in integrated implementation is therefore essential coupled with the political will to achieve the EU Nature Directives Objectives.

Detailed analysis of the degree of integration between the Birds and Habitat Directives and other EU Environmental law, with associated case studies, is presented at **Annex VII** to this submission, and draws heavily on Day, C (2015) 'The EU 'Fitness Check' on Nature Legislation: Legal Analysis of certain Mandate questions' legal research for WWF-UK, supplemented with additional analysis and case studies members of the Joint Links.

The Fitness Check of the Water Framework Directive found that legal coherence between the Birds and Habitats Directives and the Water framework Directive is clear, 'although the interaction on the ground needs interpreting on a case by case basis by the Member States.'<sup>323</sup>

### **C.3 - Is the scope for policy integration with other policy objectives (e.g. water, floods, marine, and climate change) fully exploited?**

*This question is linked to the previous questions as it addresses the extent to which the objectives of the Nature Directives have been integrated into or supported by the objectives of other relevant EU environment policies. However, this question focuses more on policy implementation. The other EU legislation and policies targeted in this question are the same as those referred to under question C.2, as well as climate change policy. When answering this question, please note that the scope of integration refers to the integration from the EU Nature Directives to other policies as well as to the extent in which the objectives of these other policies are supported by the implementation of the Nature Directives.*

#### **Answer:**

Delayed implementation of nature directives means that scope for policy integration in some policy areas has not yet been fully exploited despite the fact that a well managed Natura 2000 network will make a key contribution to meeting other EU environmental objectives, including targets set by the Water Framework Directive and the Marine Strategy Framework Directives.

#### **Integration with climate change policy**

Biodiversity will be more resilient to climate change, more able to adapt, if we maintain our ecosystems in a healthy state. This will be vital also to human adaptation to climate change, because our prosperity and wellbeing depend on the services that healthy ecosystems supply.

If the existing provisions of the BHDs were fully implemented, Member States would have a robust armoury of tools to address both the causes and effects of climate change. Such provisions include: monitoring the effects of climate change (both within Natura 2000 sites and the wider land/sea scape); the employment of administrative and policy measures to address the causes of site deterioration and improve ecological coherence/connectivity between sites; the encouragement of large scale habitat restoration and recovery to mitigate the impacts of climate change in the longer term; a forum for international collaboration and cooperation; and procedures for reviewing the Annexes as the status of species and habitats change as a result of climate change, or are better understood.

Natura 2000 – which aims to maintain habitats and species in favourable conservation status – is in this context a critical climate change adaptation measure. Our protected area network provides space for nature and helps sustain nature's 'adaptation options'.

<sup>323</sup> <http://ec.europa.eu/environment/water/blueprint/pdf/SWD-2012-393.pdf>



Both the Birds Directive and Habitats Directive are driven by the ecological requirements of the species and habitats concerned and both build in flexibility to deal with changing environmental circumstances such as climate change:

- the Habitats Directive explicitly defines FCS by reference to the long-term needs of the habitat or species concerned (see Article 1(e) and 1(i) respectively);
- the Birds Directive requires the maintenance of populations at levels that correspond in particular to ecological, scientific and cultural requirements. Population levels must be defined by reference to these requirements. Clearly, if any of the requirements change, e.g. as a result of climate change, the population objectives (such as numbers, range, distribution) will need to be adjusted accordingly<sup>324</sup>.

Scientific evidence shows that protected areas are already playing a critical role in nature conservation in the face of climate change, helping to both retain retracting species and encourage colonisation by expanding species (see S.2), and the importance of this role is expected to increase as the impacts of changes in climate become more severe. Researchers concluded that protected areas seem set to continue to deliver high biodiversity benefits, even if the relative abundances and identities of the species present changes<sup>325 326 327 328</sup>.

The protected area network is also important for climate change mitigation. Habitats in favourable condition, such as soils, peatlands and woodlands, often act as better carbon sinks. For example, improvements on around 140,000ha of upland peatland could deliver benefits (in net present value terms) of approximately £560m over 40 years in sequestered carbon<sup>329</sup>. Restoration of peatland can help sequester carbon, an important contribution to UK and EU climate change mitigation objectives. The restoration of peatland and other habitats also brings adaptation and climate resilience benefits, such as reduction of flood risk. In this way, implementation of BHD is important for the achievement of the EU's climate package, alongside the conservation benefits.

### **Integration with fisheries policy**

A European Commission Staff Working Paper on Financing Natura 2000 noted that a lack of information about funding for Natura 2000 under the European Fisheries Fund may be partly explained by poorer progress in establishment of Natura 2000 for the marine environment<sup>330</sup>.

**See Annex VII:** Case Studies C.3(i) and (ii)

### **Integration with sustainable development policy**

Environmental protection is one of the three pillars of sustainable development, and a key objective of the EU 2020 Strategy.

The Habitats Directive regime for the protection of Natura 2000 sites and European Protected Species (EPS) provides a practical framework for sustainable development. It applies a set of tests to all activities and developments to ensure that all those which do not adversely affect sites and species of European importance may continue, and that those which cannot be progressed without such effects are only permitted if and when strict tests are passed (to ensure that such damage is unavoidable, is warranted by the importance of the development or activity and can be compensated for). Too often presented as a barrier to socio-economic activity, the Directives instead provide a 'litmus test' for sustainable development.<sup>331</sup>

<sup>324</sup> <http://www.utrechtlawreview.org/index.php/ulr/article/view/119>

<sup>325</sup> <http://www.utrechtlawreview.org/index.php/ulr/article/view/119>

<sup>326</sup> 'Protected areas facilitate species' range expansions,' Chris D. Thomas et al

<http://www.pnas.org/content/109/35/14063.abstract>

<sup>327</sup> <http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=2&ProjectID=16731>

<sup>328</sup> Johnston *et al.* 2013. Observed and predicted effects of climate change on species abundance in protected areas. *Nature Climate Change*. DOI: 10.1038/NCLIMATE2035

<sup>329</sup> Third State of Natural Capital Report; <https://www.naturalcapitalcommittee.org/state-of-natural-capital-reports.html>

<sup>330</sup> [http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing\\_natura2000.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing_natura2000.pdf)

<sup>331</sup> [http://www.sd-commission.org.uk/data/files/publications/Tidal\\_Power\\_in\\_the\\_UK\\_Oct07.pdf](http://www.sd-commission.org.uk/data/files/publications/Tidal_Power_in_the_UK_Oct07.pdf)

Strong examples are available to demonstrate the ability of the Directives to help planners adopt plans that establish robust frameworks designed to avoid or substantially reduce project level conflicts between social and economic development, and the protection of Natura 2000 sites<sup>332</sup>.

#### **Integration with water policy**

See Annex VII: Case Study C.3 (iii)

#### **Integration with agriculture policy**

See Annex VII: Case Studies C.3 (iv) and (v)

#### **Integration with flood risk management policy**

See Annex VII: Case Study C.3 (vi)

### **C.4 – To what extent do the Nature Directives complement or interact with other EU sectoral policies affecting land and water use at EU and Member State level (e.g. agriculture, regional and cohesion, energy, transport, research, etc.)?**

*In this question we are aiming at gathering evidence on whether the provisions of EU nature legislation are sufficiently taken into account and integrated in EU sectoral policies, particularly in agriculture, rural development and forestry, fisheries and aquaculture, cohesion or regional development, energy, raw materials, transport or research policies. It also addresses whether those policies support and act consistently alongside EU nature legislation objectives. Please provide specific examples which show how the Nature Directives are coherent with, or conflict with, relevant sectoral legislation or policies. Please be as precise as possible in your answers, e.g. pointing to specific articles of the legislation and how they support or contradict requirements or objectives of other legislation or policies, stating what are main reasons or factors for the lack of consistency and whether there are national mechanisms in place to monitor coherence.*

#### **Answer:**

Other EU sectoral policies have a significant impact on nature in the UK and across the EU and are often still a driver for unsustainable practices. These include the Common Agricultural Policy and Common Fisheries Policy.

#### **CAP – EU level**

By far the most significant integration failure is the EU's Common Agriculture Policy (CAP). The scientific literature reports that the main drivers of biodiversity loss in the EU are land use changes, and most notably agricultural intensification<sup>333, 334</sup>.

Upcoming reports under Art 12 (Birds Directive) and Art 17 (Habitats Directive), the recent EEA

<sup>332</sup> [http://assets.wwf.org.uk/downloads/final\\_report\\_influence\\_of\\_eu\\_policies\\_on\\_the\\_environment.pdf](http://assets.wwf.org.uk/downloads/final_report_influence_of_eu_policies_on_the_environment.pdf)

<sup>333</sup> Rural Economy and Land Use Programme (RELU), Eating Biodiversity: an Investigation of the Links Between Quality Food Production and Biodiversity Protection, 2008;

I. Williams, 'Insect Pollination and Crop Production: A European Perspective' in P. Kevan and V.L. Imperatriz

PECBMS, State of Europe's common bird, 2007, CSO/RSPB, Prague, 2007.

PECBMS, Population Trends of European Common Birds in Europe, 2010, CSO/RSPB, Prague, 2010.

P.F. Donald et al., 'Further evidence of continent-wide impacts of agricultural intensification on European farmland birds' in Agriculture, Ecosystems and Environmental, vol. 116, September 2006, pp. 189-196;

P. Reidsma et al., 'Impacts of land-use change on biodiversity: An assessment of agricultural biodiversity in the European Union' in Agriculture, Ecosystems and Environmental, vol. 114, May 2006, pp. 86-102.

C.A.M. Van Swaay et al., The European Butterfly Indicator for Grassland species 1990-2009, De Vlinderstichting, Wageningen, 2010.

<sup>334</sup> Donald et al 2006 Further evidence of continent-wide impacts of agricultural intensification on European farmland birds, 1990–2000 Agriculture, Ecosystems & Environment Volume 116, Issues 3–4, September 2006, Pages 189–196  
<http://www.sciencedirect.com/science/article/pii/S016788090600079X>

SOER<sup>335</sup> and the upcoming Red List of Birds all identify agriculture as a main source of biodiversity loss, with trends worsening or negatively stable.

The European Environment Agency observes that 'biodiversity in agro-ecosystems is under considerable pressure as a result of intensification and land abandonment'<sup>336</sup> and in 2011, the European Farmland Bird Index, which monitors farmland bird populations, fell to its lowest ever recorded level<sup>337</sup>.

Although the CAP includes several references to the Birds and Habitats Directives, all the evidence suggests that there has been a catastrophic failure to integrate nature conservation. To list a couple of examples related to the CAP before this latest reform round:

1. the inclusion of references to the Birds and Habitats Directives in the cross compliance mechanism are not sufficient. This has been highlighted not just by BirdLife<sup>338</sup> but also by the Court of Auditors<sup>339</sup>. The main reasons are because the scope and objectives of cross compliance are not well-defined and the requirements are not properly translated in concrete on the ground measures.

2. Furthermore within Rural Development measures related to the implementation of Natura 2000 were not always effective or targeted<sup>340</sup>.

3. Finally, it is clear also that there is an overlap between the CAP subsidies and the most problematic zones in terms of environment and biodiversity as can be seen by BirdLife's transparency report<sup>341</sup>.

**See Annex VII: Case Study C.3 (i)**

#### **CAP – UK Level**

Rapid and widespread changes to agricultural practices in last 50 years are widely recognised as the driving force behind many species declines in the UK. Common Agricultural Policy subsidies indirectly incentivise production, while at the same time, farmers receive environmental payments to help prevent damage to the environment and to protect important wildlife habitats. The two instruments potentially work against one another with the former dwarfing the latter. Realignment of these incentive systems could provide the same income opportunities for farmers while reducing the depletion of natural capital.<sup>342</sup>

The well-documented decline in farmland birds in the UK and across Europe is also mirrored by declines in other farmland biodiversity in the UK, as highlighted in the recent 'State of Nature report': 60% of the 1064 species studied were declining, including 64% of farmland moths, 70% of carabid beetles and 76% of the plant species preferred by bumblebees as food sources<sup>343</sup>.

Plantlife's findings from the *Our Vanishing Flora*<sup>344</sup> show that the rate of loss of wild flora in Britain is accelerating. Plantlife revealed the rate of loss of flowers from over 50 counties across England, Scotland and Wales, covering more than half of the British land area. Since botanical records began in the 17th century, 80 species (flowering plants, mosses, liverworts and lichens) have become extinct in Britain; on a country level the figures are even higher – England has lost 106, Wales 102 and Scotland 97. Experts predict a further 13 species that could face a similar fate.

<sup>335</sup> <http://www.eea.europa.eu/soer>

<sup>336</sup> European Environment Agency (2010) 10 messages for 2010: Agricultural ecosystems;

<http://www.eea.europa.eu/publications/10-messages-for-2010-agricultural-ecosystems>

<sup>337</sup> Pan-European Common Bird Monitoring Scheme: <http://www.ebcc.info/index.php?ID=457>

<sup>338</sup> BirdLife Europe, through the green smokescreen;

[http://agrireregionieuropa.univpm.it/sites/are.econ.univpm.it/files/FinestraPAC/Editoriale\\_17/Through\\_the\\_green\\_smokescreen\\_November\\_2009.pdf](http://agrireregionieuropa.univpm.it/sites/are.econ.univpm.it/files/FinestraPAC/Editoriale_17/Through_the_green_smokescreen_November_2009.pdf)

<sup>339</sup> [http://www.eea.europa.eu/Lists/News/NEWS0812\\_09\\_01/NEWS0812\\_09\\_01\\_EN.PDF](http://www.eea.europa.eu/Lists/News/NEWS0812_09_01/NEWS0812_09_01_EN.PDF)

<sup>340</sup> BirdLife Europe, 'Could do better' report; [http://www.rspb.org.uk/Images/coulddobetter\\_tcm9-219584.pdf](http://www.rspb.org.uk/Images/coulddobetter_tcm9-219584.pdf)

<sup>341</sup> BirdLife Europe, reality check; [http://www.seo.org/wp-content/uploads/tmp/docs/birdlife\\_reality-check\\_transparency-report\\_july10.pdf](http://www.seo.org/wp-content/uploads/tmp/docs/birdlife_reality-check_transparency-report_july10.pdf)

<sup>342</sup>

<https://nebula.wsimg.com/17ce16211194bfe53215bb754444686d?AccessKeyId=68F83A8E994328D64D3D&disposition=0&alloworigin=1>

<sup>343</sup> Burns F, Eaton MA, Gregory RD, et al. (2013) State of Nature report. The State of Nature partnership.

<http://www.rspb.org.uk/ourwork/projects/details/363867-the-state-of-nature-report>

<sup>344</sup> [http://www.plantlife.org.uk/publications/our\\_vanishing\\_flora](http://www.plantlife.org.uk/publications/our_vanishing_flora)

## **CAP – Pillar I**

Due to the nature of its payments, which are annual and non-contractual (in contrast to Pillar II schemes), Pillar I is much less able to secure environmental improvements than Pillar II. One of the principal means of enforcing environmental legislation (and indeed for providing important extra levels of protection in areas covered by CAP payments) is through the cross compliance system – a suite of rules, often linked to specific elements of EU legislation.

However, cross compliance is failing to drive positive environment management for a number of reasons. Firstly, its coverage is not universal – only those in receipt of CAP direct payments, and some Pillar 2 payments, are covered by its remit and those not in receipt (likely to be relatively very small in number) will never be subject to a cross compliance inspection. Its content is also problematic as it does not link to every relevant piece of legislation, notably aspects of the Birds and Habitats Directives.

The most recent CAP reform round, in which biodiversity was identified as one of the key objectives, has failed to deliver real change as was stated in an article published by Science in June 2014<sup>345</sup>. Indeed cross compliance requirements related to the Birds and Habitats Directives have actually been reduced in number under successive CAP reforms, eroding the coherence of EU agriculture policy with EU nature conservation objectives.

For example, Article 5(a), (b) and (d) covering the deliberate killing, capture or disturbance of wild birds and the destruction or damage of nests have been removed from the Birds Directive Statutory Management Requirement (SMR). This leaves open the possibility that recipients of Pillar I direct payments under the CAP could breach these requirements and see no reduction in their direct payments. This change has created incoherence between two major EU policy mechanisms and eroded the effectiveness of cross-compliance with respect to nature conservation at a national level.

Another negative change associated with cross-compliance has been the removal of any reference to avoiding the ‘deterioration of habitats’ in the Good Agricultural and Environmental Condition (GAEC) framework set out in Annex II of Regulation 1306/2013. The GAEC framework now only covers soil, water and the maintenance of landscape features. This has made it harder for Managing Authorities to incorporate robust habitats protections in their implementation of cross-compliance at a national level, further eroding its effectiveness with respect to nature conservation. This also removes important protections for habitats from the baseline of Pillar II funded agri-environment schemes, creating incoherence both within the CAP (between Pillar I and Pillar II) and between the CAP and the aims and requirements of the Nature Directives. In some cases, the friction between Pillar I environmental requirements and Pillar 2 agri-environment schemes may even result in a loss of environmental delivery on some farms. The ‘greening’ requirements’, arising from the 2013 round of CAP reform, were themselves so watered down during negotiations that the end result is unlikely to deliver any meaningful environmental benefits<sup>346</sup>.

Furthermore, much of the most environmentally valuable farmland is currently excluded from receiving direct payments due to an inappropriately restrictive definition of pasture (which excludes some grazing land on the basis of having a high proportion of trees and shrubs). There is no agronomic justification for making these areas of environmentally valuable grazing land ineligible for direct payment.

**See Annex VII: Case Study C.4 (ii)**

## **CAP – Pillar II**

Pillar 2 (Rural Development) provides Member States with the flexibility to offer a range of payments to farmers and land managers, including some which are able to deliver significant environmental benefits – principally, well-designed, funded and implemented agri-environment schemes.

<sup>345</sup> Pe'er et. al, Science (6 June 2014), EU Agricultural Reform Fails on Biodiversity; <http://www.sciencemag.org/content/344/6188/1090.summary>

<sup>346</sup> Pe'er et. al, Science (6 June 2014), EU Agricultural Reform Fails on Biodiversity; <http://www.sciencemag.org/content/344/6188/1090.summary>

Whilst the evidence is clear that such schemes can work well for target species (and often non-target species too), they are also something of a rarity with most agri-environment schemes lacking ambition and/or funding. As a result, while the potential of such schemes to drive positive land management over significant areas of land is high, the political will to fulfil their potential is generally absent – often linked to the ability of those with influence to see off more demanding scheme requirements, and/or additional funding for such schemes through transfers of funds from Pillar I into Pillar 2.

Agri-environment schemes are the principal mechanism utilised in the UK to secure appropriate management of Natura 2000 sites (as required under the Habitats Directive) and to provide a sufficient diversity and area of habitat for birds listed in Annex 1 of the Birds Directive.

Unlike direct payments (or more accurately the cross compliance requirements associated with them), agri-environment schemes are generally viewed by farmers in a more positive light, although there remains a tension around diverting money from Pillar 1 into Pillar 2 schemes which not all farmers can access. In many situations, farmers view these schemes as a contractual agreement, entered into voluntarily, with clear tasks that need to be undertaken in return for the payments. They form part of the business which rewards farmers for making space for nature.

Other Pillar 2 schemes, for example Less Favoured Area payments, are labelled as environmental by the Rural Development Regulation but in reality are more akin to Pillar I direct payments, simply targeted to certain geographical areas with few, if any, environmental conditions attached. Their ability to influence land management decisions are therefore closer to direct payments in nature.

Other, non-environmental Pillar 2 schemes provide the means to invest in farm competitiveness measures and wider rural development (such as rural community cohesion). These payments can also influence land management decisions. For example, measures to support local processing and marketing can provide an important outlet for produce from extensive livestock systems. On the other hand, such investments can just as easily be used to support very intensive systems of farming.

**See Annex VII: Case Studies (iii) – (vi)**

### **Common Fisheries Policy**

Overfishing presents a major threat to biodiversity, both through species depletion and the impact of destructive fishing practices on marine habitats. Fisheries are acknowledged to be a group of activities with major potential to affect the conservation status of habitats and species protected in Natura 2000 sites<sup>347</sup>. The integration of sustainable fisheries management is therefore essential in order to support achievement of the objectives of the Habitats Directive. Rather than generating a more sustainable fishing sector, the EFF (2007-2013) worked significantly to its detriment. Less than one-quarter of the fund was directed at fleet capacity reduction, instead available funds were used to help vessel owners overcome economic problems at the expense of rebuilding fish stocks.

The recently reformed Common Fisheries Policy (the CFP - Regulation 1380/2013/EU) provides more than ever before for the integration of environmental requirements into EU fisheries policy. Article 2(1) requires environmental sustainability as the foremost objective of the CFP. Article 2(2) requires that the precautionary approach to fisheries management be applied, Article 2(3) that an ecosystem based approach to fisheries management be implemented, and Article 2(5)(j) that the CFP must be coherent with EU environmental legislation, in particular with the objective of achieving a good environmental status by 2020 as set out in the Marine Strategy Framework Directive (Directive 2008/56/EC). The new CFP also contains a new article (Article 11) setting out a mechanism for passing conservation measures necessary for compliance with obligations under Union environmental legislation in relation to protected sites under the Habitats (Article 6), Birds (Article 4) and Marine Strategy Framework (Article 13(4)) Directives.

This is definitely progress, and it is to be hoped that the CFP is now implemented in a way that complies with the binding requirements. However, a certain amount of confusion and lack of clarity remains, particularly in relation to Article 11, and it is important to ensure that the measures passed under this Article comply with the strict requirements of Article 4 of the Birds and Article 6 of the

<sup>347</sup> Natura 2000 newsletter, January 2015 [http://ec.europa.eu/environment/nature/info/pubs/natura2000nl\\_en.htm](http://ec.europa.eu/environment/nature/info/pubs/natura2000nl_en.htm)

Habitats Directive. That this is a valid concern has already become clear through the delays that are occurring in relation to England's revised management approach to fisheries in off-shore sites<sup>348</sup>.

### Renewable energy

EU countries have agreed on a renewable energy target of at least 27% of final energy consumption in the EU as a whole by 2030. This will require the development of a range of new infrastructure and land use changes.

Climate change remains the greatest long-term threat to biodiversity and there is no inherent conflict between an increased proportion of renewables in the energy mix and the objectives of the BHD Directives. In fact, many renewable technologies like solar can go hand-in-hand with improved biodiversity.

Problems have arisen, however, where the BHD have not been properly implemented. For example, a lack of monitoring and designation of protected sites offshore have led to an unnecessary challenge for offshore wind development in the UK. This could be remedied by proper implementation of BHD.

### EU Bioenergy policy

Unsustainable policies and subsidies related to the production of bioenergy are adding another challenge for biodiversity concerns and require urgent reform. This can be seen for example by the serious threats that biogas production in Germany had on Natura 2000 sites by the dramatic conversion of high biodiverse grasslands to intensive maize production<sup>349</sup>. Improved sustainability criteria for new energy sources such as biomass and biofuels are urgently needed.

See Annex VII: Case Study C.4 (vii)

### Other policy areas

The Nature Directives have helped integrate biodiversity concerns into pan-EU initiatives, through the establishment of an EU-wide legal framework for nature conservation. For example Commission guidance on Projects of Common Interest<sup>350</sup> identifies the Habitats Directive as a key tool for taking impacts on biodiversity and habitats into account. However, recent steps to remove elements of the Nature Directives from cross-compliance obligations under the CAP has diminished this integration.

## C.5 - How do these policies affect positively or negatively the implementation of the EU nature legislation

*In this question, we are keen to gather evidence on whether agriculture and rural development, fisheries and aquaculture, cohesion or regional development, energy, raw materials, transport and research policies have a positive or negative impact on the achievement of the objectives of nature legislation. Please provide specific examples/cases (including infringement cases or case law), which demonstrate clear conflicts or incoherencies between sectoral policies and EU nature legislation, and/or examples showing how specific policies influence the implementation of the Nature Directives in a positive or negative way, for example in relation to Article 6 of the Habitats Directive (see Annex I to this questionnaire). Where possible, please include evidence of the main factors influencing the positive and negative effects. Please consider in your answer what ex ante and ex post evaluation procedures are applied to ensure that this coherence is implemented or supervised.*

<sup>348</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/345970/REVISED\\_APPROACH\\_Policy\\_and\\_Delivery.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/345970/REVISED_APPROACH_Policy_and_Delivery.pdf)

<sup>349</sup> NABU (2014) Vollzugsdefizite und Verstöße gegen das Verschlechterungsverbot bei FFH-Lebensraumtypen auf Grünlandstandorten in Deutschland [https://www.nabu.de/imperia/md/content/nabude/landwirtschaft/gruenland/140403-nabu-beschwerde\\_ffh-gr\\_nland.pdf](https://www.nabu.de/imperia/md/content/nabude/landwirtschaft/gruenland/140403-nabu-beschwerde_ffh-gr_nland.pdf)

<sup>350</sup> [http://ec.europa.eu/environment/eia/pdf/PCI\\_guidance.pdf](http://ec.europa.eu/environment/eia/pdf/PCI_guidance.pdf)

## Answer:

In theory, other sectoral policies are supposed to be implemented in a way that is consistent with the EU's biodiversity conservation objectives, but in practice this is often not the case (e.g. CAP and CFP). Furthermore, under the EU's Integration approach, other sectoral policies including the CAP, CFP and Structural Funds are supposed to deliver funding to support nature conservation, but in practice this is not fully effective.

**See Annex VII: Case Study C.5 (i)**

### Common Fisheries Policy

Overfishing presents a major threat to biodiversity, both through species depletion and the impact of destructive fishing practices on marine habitats. Fisheries are acknowledged to be a group of activities with major potential to affect the conservation status of habitats and species protected in Natura 2000 sites<sup>351</sup>. The integration of sustainable fisheries management is therefore essential in order to support achievement of the objectives of the Habitats Directive.

The reformed Common Fisheries Policy (CFP) includes significant progress towards making fisheries policy more consistent with the objectives of the Birds and Habitats Directives. Measures agreed in the reform (e.g. legally binding targets to stop overfishing, transparent, objective criteria for distribution of fishing opportunities and reduction of bycatch and discards) should support more sustainable fisheries management.

In addition, the expansion of the marine Nature 2000 network and an increased focus on management within Natura sites should help protect and restore marine species and habitats<sup>352</sup>. However, ambitious implementation of the CFP will be essential to realising its objectives. In its first test in 2014 ministers chose not to reduce quotas for several stocks, against scientific advice. Fishing pressure has been decreasing in the Atlantic and Baltic but 41% of their assessed stocks are still fished above their maximum sustainable yield whilst 91% of assessed stocks in the Mediterranean and 71% in the Black Sea were being overfished in 2014<sup>353</sup>. Sustainable fisheries practices are essential to protecting marine biodiversity and ensuring the protection and long-term viability of habitats and species listed under the Birds and Habitats Directives.

In addition to monitoring requirements under the Habitats Directive, Commission Regulation 812/2004 on cetacean bycatch sets out more prescriptive requirements for monitoring of cetacean bycatch, requiring compulsory onboard observers for given fisheries and the mandatory use of acoustic deterrent devices ('pingers') in certain fisheries. This regulation has helped increase data collection and reporting by Member States but multiple problems have been identified with CR 812/2004, particularly concerning which fisheries it covers, and in light of the review of the Common Fisheries Policy (CFP), EC Regulation 812/2004 is likely to be repealed in favour of bycatch measures (monitoring and mitigating) being subsumed into measures within the new CFP<sup>354</sup>. Such measures could, if regularly updated in accordance with scientific knowledge, help support Member States compliance with obligations under the Habitats Directive.

**See Annex VII: Case Study C.5 (ii)**

### Marine Policy

The Marine Strategy Framework Directive has the potential to support attainment of the objectives of the Birds and Habitats Directives and Europe's biodiversity targets. The first phase of MSFD implementation helped progress scientific knowledge about Europe's seas and oceans, and fostered collaboration between Member States. However, Member State's definition of GES and their proposed measures to achieve GES have shown limited ambition and a lack of coherence across the

<sup>351</sup> Natura 2000 newsletter, January 2015 [http://ec.europa.eu/environment/nature/info/pubs/natura2000nl\\_en.htm](http://ec.europa.eu/environment/nature/info/pubs/natura2000nl_en.htm)

<sup>352</sup> EEA, 2015, *The European environment — state and outlook 2015: synthesis report*, European Environment Agency, Copenhagen. <http://www.eea.europa.eu/soer-2015>

<sup>353</sup> EEA, 2015, *The European environment — state and outlook 2015: synthesis report*, European Environment Agency, Copenhagen. <http://www.eea.europa.eu/soer-2015>; EC, 2014e, Communication from the Commission to the European Parliament and the Council concerning a consultation on fishing opportunities for 2015 under the Common Fisheries Policy, COM(2014) 388 final

<sup>354</sup> [http://www.ascobans.org/sites/default/files/document/ASCOBANS\\_WS\\_Bycatch\\_2015\\_Doc.03\\_Compilation-Recommendations-Bycatch.pdf](http://www.ascobans.org/sites/default/files/document/ASCOBANS_WS_Bycatch_2015_Doc.03_Compilation-Recommendations-Bycatch.pdf)

Union<sup>355</sup>.

See Annex VII: Case Study C.5 (iii)

### Common Agricultural Policy

The Common Agricultural Policy has consistently undermined achievement of objectives of the Birds and Habitats Directives and contributed to the collapse of farmland biodiversity (see C.3 above for detail). Farming is also the sector that has seen the poorest levels of implementation as public authorities have often failed to prevent gross violations of the Directives, such as the clearing of protected habitats for the expansion of intensive cropping<sup>356</sup>. This has led to massive loss of biodiversity, notably in the case of grasslands destruction, which in some regions has reached catastrophic levels (97% of protected grasslands destroyed in parts of Bavaria in less than two decades<sup>357</sup> and significant declines of grasslands in Bulgaria<sup>358</sup>). An investigation carried out by BirdLife Europe has failed to find almost any cases of farmers being penalised for habitat clearing, either through genuine sanctions or through withdrawing of subsidies under cross compliance<sup>359</sup>, despite the destruction of tens of thousands of hectares in hundreds of individual cases.

Early indications from the latest CAP reform round (2014 – 2020) suggest that the situation has not improved, but rather worsened. Permanent crops have been exempted from greening measures, monocultures can in some instances be deemed equivalent to crop diversification measures, and Member States are not obliged to designate all grasslands within Natura 2000 sites as environmentally sensitive, which would have qualified them for additional protection measures.

The inadequate integration of biodiversity conservation within the CAP overall does not mean that there are no success stories. In relation to agri-environment measures there are several positive examples (e.g. corncrake scheme in Czech Republic<sup>360</sup> and great bustard scheme in Portugal<sup>361</sup>) and agri-environment has definitely been the most effective measure within the CAP on biodiversity and the environment<sup>362</sup>. Unfortunately not even agri-environment measures have been without problems as can be seen from the Court of Auditors report<sup>363</sup>.

## C.6- To what extent do they support the EU internal market and the creation of a level playing field for economic operators?

*This question seeks to gather evidence of the implications of the EU Nature Directives for economic operators in terms of whether they help ensure a level playing field across the EU (e.g. by introducing common standards and requirements for activities carried out in or around Natura 2000 areas or otherwise depend on natural resources protected under the*

<sup>355</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0097&from=EN>

<sup>356</sup> Bundesamt für Naturschutz (2014): Grünland Report - Alles im Grünen Bereich? [http://www.bfn.de/fileadmin/MDb/documents/presse/2014/PK\\_Gruenlandpapier\\_30.06.2014\\_final\\_layout\\_barrierefrei.pdf](http://www.bfn.de/fileadmin/MDb/documents/presse/2014/PK_Gruenlandpapier_30.06.2014_final_layout_barrierefrei.pdf)  
NABU (2014) Vollzugsdefizite und Verstöße gegen das Verschlechterungsverbot bei FFH-Lebensraumtypen auf Grünlandstandorten in Deutschland [https://www.nabu.de/imperia/md/content/nabude/landwirtschaft/gruenland/140403-nabu-beschwerde\\_ffh-gr\\_nland.pdf](https://www.nabu.de/imperia/md/content/nabude/landwirtschaft/gruenland/140403-nabu-beschwerde_ffh-gr_nland.pdf)

<sup>357</sup> NABU (2014) Vollzugsdefizite und Verstöße gegen das Verschlechterungsverbot bei FFH-Lebensraumtypen auf Grünlandstandorten in Deutschland [https://www.nabu.de/imperia/md/content/nabude/landwirtschaft/gruenland/140403-nabu-beschwerde\\_ffh-gr\\_nland.pdf](https://www.nabu.de/imperia/md/content/nabude/landwirtschaft/gruenland/140403-nabu-beschwerde_ffh-gr_nland.pdf)

<sup>358</sup> V Dobrev, G Popgeorgiev, D Plachyiski (2014) Effects of the Common Agricultural Policy on the coverage of grassland habitats in Besaparski Ridove Special Protection Area (Natura 2000), southern Bulgaria <http://www.acta-zoologica-bulgarica.eu/downloads/acta-zoologica-bulgarica/2014/supplement-5-147-156.pdf>

<sup>359</sup> BirdLife (2009) Through the Green Smokescreen: How is CAP Cross Compliance delivering for biodiversity? [http://agriregionieuropa.univpm.it/sites/are.econ.univpm.it/files/FinestraPAC/Editoriale\\_17/Through\\_the\\_green\\_smokescreen\\_November\\_2009.pdf](http://agriregionieuropa.univpm.it/sites/are.econ.univpm.it/files/FinestraPAC/Editoriale_17/Through_the_green_smokescreen_November_2009.pdf)

<sup>360</sup> Agri environment for corncrake – evidence to be submitted later.

<sup>361</sup> Agro-GES (2005) EVALUATION DES MESURES AGRO-ENVIRONNEMENTALES ANNEXE 34 : ETUDE DE CAS CASTRO VERDE. Cascais, France. <http://ec.europa.eu/agriculture/eval/reports/measures/annex34.pdf>

<sup>362</sup> Broyer, J., Curtet, L., and Chazal, R. 2014. How to improve agri-environment schemes to achieve meadow bird conservation in Europe? A case study in the Saône valley, France. J. Ornithol. 155(1):145-155 [http://link.springer.com/article/10.1007/s10336-013-0996-6?wt\\_mc=alerts\\_TOJournals](http://link.springer.com/article/10.1007/s10336-013-0996-6?wt_mc=alerts_TOJournals)

<sup>363</sup> European Court of Auditors (2011). ISSN 1831-0834 EUROPEAN COURT OF AUDITORS EN 2011 Special Report No 7 IS AGRI-ENVIRONMENT SUPPORT WELL DESIGNED AND MANAGED? Luxembourg, Publications Office of the European Union: [http://www.eca.europa.eu/Lists/ECADocuments/INSR11\\_07/INSR11\\_07\\_EN.PDF](http://www.eca.europa.eu/Lists/ECADocuments/INSR11_07/INSR11_07_EN.PDF)



Directives), predictability and legal certainty (e.g. helping to avoid that developments are blocked due to 'Not In My Backyard' type challenges), or whether they negatively affect the internal market.

**Answer:**

Environmental standards are key for the proper functioning of the single market in purely economic terms as they help set a level playing field across the EU, and prevent any one Member State deriving an unfair short-term competitive advantage by destroying its environment. EU environmental standards achieve this by establishing minimum standards for environmental protection that apply across all EU Member States. This also serves to provide certainty for businesses operating across the EU, that the rules applicable to them are the same in all Member States. Businesses that wish to trade within any EU Member State must comply with these rules whether they are based in the EU or outside.

In a May 2014 Joint Statement on 'the EU's nature conservation policy'<sup>364</sup> by Cemex and BirdLife Europe stated that:

- 'We believe there is not, and must not be, a conflict between sound conservation and sound business.
- Clear and consistent regulation, guidance and implementation that is science based- and outcome-driven are preconditions for both areas of interest.
- We believe that sound and well implemented legislation are important in order to provide a level playing field for industry and stimulate innovation and enhanced performance.
- The EU Birds and Habitats Directives provide an appropriate and effective legal instrument for the conservation of biodiversity in Europe and an appropriate framework for the development of extractive activities in harmony with nature'.

Aside from the functioning of the internal market, it is also important to recognise the role played by EU environmental standards in supporting the EU economy more broadly. There is a growing body of evidence regarding the importance of the natural environment in relation to the valuable goods and services it provides<sup>365</sup>.

There is also a growing body of evidence suggesting that, in the long-run, environmental regulation is good for business by opening up new market opportunities and driving cost-reducing innovation<sup>366</sup>.

Research has clearly demonstrated the major role played by Europe's Natura 2000 network in safeguarding the natural capital upon which Europe's prosperity and well-being ultimately depends, providing a wide range of important benefits to society and the economy via the flow of ecosystem services<sup>367</sup>. As an EU -wide network, Natura 2000 represents an important shared resource capable of providing multiple benefits to society and to Europe's economy<sup>368</sup>.

Ecosystem services deliver benefits over multiple spatial and temporal scales; many are trans-boundary in nature. In addition, the complex ecological processes underpinning the delivery of these services also do not respect national boundaries. Protecting supra-national 'public goods' must be a shared responsibility; without EU environmental standards that simply would not be possible.

Environmental standards can also help create new markets for environmental products or services, as well as promoting improved levels of environmental protection globally among countries wishing to trade with the EU. Within a Member State, such standards are also important as they should play a role in preventing environmental damage taking place in one sector (for example agriculture) which, by damaging the natural environment, has a negative impact on another sector (such a tourism). The

<sup>364</sup> [http://www.birdlife.org/sites/default/files/attachments/20140527\\_Joint\\_statement\\_SIGNED.pdf](http://www.birdlife.org/sites/default/files/attachments/20140527_Joint_statement_SIGNED.pdf)

<sup>365</sup> For example, see: Millennium Ecosystem Assessment (Program). (2005). *Ecosystems and Human Well-Being: Our Human Planet: Summary for Decision Makers* (Vol. 5). Millennium Ecosystem Assessment (Ed.). Island Press.

<sup>366</sup> Rayment, M., E. Pirgmaier, et al. (2009). The economic benefits of environmental policy - Final Report., Institute for Environmental Studies.

<sup>367</sup> [http://ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018\\_LR\\_Final1.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/ENV-12-018_LR_Final1.pdf)

<sup>368</sup> Kettunen, M. et al. (2011). Assessment of the Natura 2000 co-financing arrangements of the EU financing instrument. A project for the European Commission – final report. Institute for European Environmental Policy (IEEP), Brussels, Belgium.

Europe 2020 Strategy aims to create a smart, sustainable and inclusive European economy. As one of the three pillars of sustainable development, environmental protection is therefore a key element of the current political objectives of the single market.

In the UK, the ground-breaking 2011 UK National Ecosystems Assessment clearly highlighted the wide variety of significant benefits provided by the natural environment in terms of economic prosperity, human health and well-being; the risks posed to the delivery of these benefits through inadequate protection and management; and, the importance of regulation in safeguarding and enhancing the delivery of key services<sup>369</sup>.

In its report, 'Green Foundations 2009 The path to a vibrant economy, competitive advantage and sustainable prosperity'<sup>370</sup> the Aldersgate Group concluded that:

- applying the principles of 'Better Regulation' can mean that policy implementation beneficially goes beyond minimum standards;
- high standards of environmental care are vital to the long-term health of the economy and future competitiveness
- pressures to remove regulation simply because it is not convenient for business in the shorter-term must be resisted
- The business community is increasingly demanding more regulation to remove uncertainty in the markets and enable them to exploit potential opportunities.

In its report 'Pricing the Priceless. The business case for action on biodiversity'<sup>371</sup> the Aldersgate Group further emphasized that Regulation is a key driver to support new markets which would otherwise not exist or develop too slowly, and that the UK must be an early mover in areas where it has competitive advantages to maximise economic opportunities.

The UK Government's Balance of Competences Review Environment Report<sup>372</sup> found that;

'The majority of respondents believed that EU competence has increased environmental standards in the UK and across the EU and that this has led to improved performance in addressing several environmental issues. The evidence showed that a large number of organisations representing all sectors considered that it is in the UK's national interest for the EU to have a degree of competence in the broad areas of environment and climate change because of the advantages that this brings for the Single Market and environmental protection.'

## **C.7 – To what extent has the legal obligation of EU co-financing for Natura 2000 under Article 8 of the Habitats Directive been successfully integrated into the use of the main sectoral funds?**

*This question builds on question Y.2 on the availability and access to funding, but aims at examining whether Member States have sufficiently identified the funding needs and are availing of EU funding opportunities to meet the requirements of Article 8 of the Habitats Directive. EU co-funding for the Natura 2000 network has been made available by integrating biodiversity goals into various existing EU funds or instruments such as the European Agricultural Fund for Rural Development (EAFRD), European (Maritime and) Fisheries Fund (EFF / EMFF), Structural and Cohesion funds, LIFE and Horizon 2020. In your reply, please distinguish between different sources of funding.*

<sup>369</sup> UK NEA (2011). The UK National Ecosystem Assessment. Synthesis of the Key Findings. UNEP-WCMC, Cambridge.

<sup>370</sup> [http://www.aldersgategroup.org.uk/asset/download/1117/green\\_foundations\\_2009.pdf](http://www.aldersgategroup.org.uk/asset/download/1117/green_foundations_2009.pdf)

<sup>371</sup> <http://www.aldersgategroup.org.uk/asset/download/472/Business%20and%20Biodiversity.pdf>

<sup>372</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284500/environment-climate-change-documents-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284500/environment-climate-change-documents-final-report.pdf)

## Answer:

Nature conservation action across the EU remains significantly underfunded.

The Commission has acknowledged that the use of different EU instruments is still very significantly below the financial needs of Natura 2000 as defined by the Member States<sup>373</sup>. Only 9-19% of the estimated financial needs of Natura 2000 are covered by the EU funds<sup>374</sup>.

A recent study<sup>375</sup> by the Institute for European Environmental Policy estimates that somewhere in the region of €34 billion per year would be required to cover the cost of environmentally beneficial land management on agricultural and forested land in the EU, rising to €43 billion per year when supportive costs (such as advice provision) are factored in.

The CAP's Rural Development pillar represents the single largest fund available in the EU for conservation measures but receives just c€12 billion per year. It is also important to note that not all of this funding is used to support more sustainable and wildlife-friendly land management.

In the current CAP (2014 – 2020), Member States are required to spend at least 25% of the RD budget on 'environmental measures' however some schemes are little more than additional income support (such as the Less Favoured Area payment) or have been poorly designed by the Member States<sup>376</sup> and so deliver minimal environmental benefit (the issue of limited expertise and capacity within the Commission is also at fault here as they have responsibility for scheme approval).

It is clear therefore that considerably less is being spent on protecting and enhancing the natural environment than is required.

### European Maritime and Fisheries Fund

With regard to the European Maritime and Fisheries Fund (the EMFF), the operational programme has not been adopted yet. However, it would appear that financing Natura 2000 areas in the marine environment is not a priority for the UK<sup>377</sup>. The UK's primary focus appears to be on finance the proper implementation of the discard ban, the use of selective gears and partnership between scientists and fishermen. Of course, this does not mean that none of the funds will be dedicated to protecting biodiversity or financing the management of Natura 2000 sites, but it is unlikely that there will be sufficient funding.

### Structural Funds

With regard to Structural Funds (ERDF/CF) an IEEP study from 2011 on financing Natura 2000 shows that despite the fact that Structural Funds offer opportunities for funding biodiversity, the actual use of these funds for financing biodiversity is very limited<sup>378</sup>. Whether the various regional funding programmes for the UK include possibilities of funding biodiversity is difficult to identify. It seems that the Scottish funding programme has the possibility of financing Natura2000 sites since the thematic priority 6 on environment and resource efficiency has been included. However, this does not mean that in practice projects linked to Natura2000 or biodiversity in general will be financed.<sup>379</sup>

To ensure that spending goes to Natura 2000 areas, funding programmes should be legally required to spend a certain percentage of funds on biodiversity related projects. That this is an intention of EU policy is borne out by the reference to EMFF funding for Natura 2000 sites in the actions (action 14b) required to meet target 4 of the EU's Biodiversity Strategy to 2020.

<sup>373</sup> [http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing\\_natura2000.pdf](http://ec.europa.eu/environment/nature/natura2000/financing/docs/financing_natura2000.pdf)

<sup>374</sup> <http://www.ieep.eu/publications/2011/03/financing-natura-2000>

<sup>375</sup> Hart K, Baldock D, Tucker G, Allen B, Calatrava J, Black H, Newman S, Baulcomb C, McCracken D, Gantioler S (2011) Costing the Environmental Needs Related to Rural Land Management, Report Prepared for DG Environment, Contract No ENV.F.1/ETU/2010/0019r. Institute for European Environmental Policy, London

<sup>376</sup> European Court of Auditors (2011) Special report no. 7: Is agri-environment support well designed and managed?

<sup>377</sup> <https://www.gov.uk/government/policies/reforming-and-managing-marine-fisheries-for-a-prosperous-fishing-industry-and-a-healthy-marine-environment>

<sup>378</sup> see page 74, [http://www.ieep.eu/assets/791/Assessment\\_of\\_Natura\\_2000\\_Co-financing.pdf](http://www.ieep.eu/assets/791/Assessment_of_Natura_2000_Co-financing.pdf)

<sup>379</sup> [http://ec.europa.eu/regional\\_policy/index.cfm/en/atlas/programmes/2014-2020/United%20Kingdom/2014uk16fop004](http://ec.europa.eu/regional_policy/index.cfm/en/atlas/programmes/2014-2020/United%20Kingdom/2014uk16fop004)

## UK Level

In a UK context the total cost of meeting the UK's future environmental land management requirements, not including provision of advice for farmers, was estimated to be in the region of three times the existing annual agri-environment budget<sup>380</sup>.

In stark contrast, Pillar I of the CAP receives the lion's share of the CAP budget, some 75%, despite having no clear policy objective and numerous studies calling its efficacy and value for money into question<sup>381</sup>. More worrying yet is the role of Pillar I payments in subsidising a fundamentally unsustainable approach to land management in many cases as payment rates are often still linked to historic production levels, resulting in the highest support payments going to those who produced the most (and generally intensified the most) in the reference period. The cross compliance conditions attached to Pillar I payments also leave much to be desired with the European Court of Auditors stating that the system's scope is poorly defined and can be expected to deliver only limited results at farm level<sup>382</sup>.

## C.8 - Are there overlaps, gaps and/or inconsistencies that significantly hamper the achievements of the objectives?

*This question refers to overlaps, gaps and/or inconsistencies in the different EU law/policy instruments regarding nature protection. It therefore depends largely on the results of other questions related to the coherence of the Nature Directives with other EU law and policies. When answering this question you may want to consider whether the identified overlaps, gaps and inconsistencies hamper the achievement of the Directive's objectives (e.g. see Annex I to this questionnaire).*

### Answer:

As per the answer to C.1, there are no gaps or inconsistencies within the Directives themselves that hamper achievement of the objectives.

Implementation failures and inconsistencies at Member State levels have, however, created gaps and inconsistencies that are hampering achievement of the objectives, while also, in some cases, creating a significant burden for business and distorting the single market.

According to the findings of the UK-focused Davidson Review<sup>383</sup> on the 'Implementation of EU Legislation' from 2006:

'many businesses that operate across Europe said that differential implementation across Member States, thereby undermining the single market, matters more than whether there is over-implementation in a particular country;'

See the answers to C.2 – .7 for examples of overlaps, gaps and inconsistencies and evidence of their impact on achievement of the Directive's objectives.

<sup>380</sup> Cao, Y., Elliott, J., McCracken, D., Rowe K., Whitehead, J., and Wilson, L. (2009) Estimating the Scale of Future Environmental Land Management Requirements for the UK, Report prepared by ADAS UL Ltd and Scottish Agricultural College for the Land Use Policy Group: London.

<sup>381</sup> Baldock et al (2010) The Single Payment Scheme after 2013: New approach, new targets. Study for the European Parliament - Directorate General for Internal Policies Policy Department B: Structural and Cohesion Policies, Agriculture and Rural Development; Tangermann, S (2011) Direct Payments in the CAP post 2013. Study for the European Parliament - Directorate General for Internal Policies Policy Department B: Structural and Cohesion Policies, Agriculture and Rural Development;

<sup>382</sup> European Court of Auditors (2008) Is cross compliance an effective policy? Special report no. 8

<sup>383</sup> <http://www.bis.gov.uk/files/file44583.pdf>

## C.9 - How do the directives complement the other actions and targets of the biodiversity strategy to reach the EU biodiversity objectives?

*With this question we seek to collect evidence on ways in which the implementation of measures under the Birds and Habitats Directives that are not explicitly mentioned in the EU Biodiversity Strategy, help to achieve actions and targets of the EU Biodiversity Strategy. For example, restoration of Natura 2000 sites can significantly contribute to helping achieve the goal under Target 2 of the EU Biodiversity Strategy to restore at least 15% of degraded ecosystems.*

### Answer:

The EU has pledged to meet the international 2020 biodiversity goals and objectives agreed to under the CBD. This requires taking action within the EU, but also at global level since the EU derives significant benefits from global biodiversity and is at the same time responsible for some of the loss and degradation that occurs beyond its borders, notably due to its unsustainable consumption patterns. The Birds and Habitats Directives help deliver on the actions and targets of the EU Biodiversity Strategy as follows;

#### Target 1:

**To halt the deterioration in the status of all species and habitats covered by EU nature legislation and achieve a significant and measurable improvement in their status so that, by 2020, compared to current assessments: (i) 100% more habitat assessments and 50% more species assessments under the Habitats Directive show an improved conservation status; and (ii) 50% more species assessments under the Birds Directive show a secure or improved status.**

The first target of the EU Biodiversity Strategy and the EU's international treaty obligations can only be achieved if the full and timely implementation of the BHDs is achieved. Indeed, one of the aims of the new Strategy is to achieve a significant and measurable improvement in the conservation status of species and habitats protected under the BHDs. The EEA's State of Environment Report (SOER) also points out;

'Achieving a significant and measurable improvement in the status of species and habitats will require the full and effective implementation of the Biodiversity Strategy to 2020 and of EU nature legislation. It will also require policy coherence between relevant sectoral and regional policies (e.g. agriculture, fisheries, regional development and cohesion, forestry, energy, tourism, transport, and industry). Consequently, the fate of European biodiversity and the ecosystem services it underpins is closely intertwined with policy developments in these areas.'<sup>384</sup>

Information submitted in our Answers to questions S1.1, S1.2 and S1.3 highlights the progress that has been made, and the actions and targets that have not been delivered. Information submitted under Y2 highlights the impact inadequate funding has had on implementation and progress.

#### Target 2:

**By 2020, ecosystems and their services are maintained and enhanced by establishing green infrastructure and restoring at least 15% of degraded ecosystems.**

The Strategy reinforces Articles 3(3) and 10 of the Habitats Directive, which encourage (but do not require) Member States to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora.

The Birds and Habitats Directives contribute to this target by establishing a framework for monitoring and assessing the conservation status of habitats and species across the EU. This is a vital step in

<sup>384</sup> <http://www.eea.europa.eu/soer-2015/synthesis/report/3-naturalcapital>

assessing the status of ecosystems, and identifying priorities for ecosystem restoration, supporting Actions 5 and 6 under this target.

Our responses to questions S1.1, S1.2, S1.3, and Y.8 highlight that while the information base is sufficient in many areas, gaps remain, notably in the marine environment, hindering progress towards achievement of the objectives of the Directives and of the EU Biodiversity Strategy targets.

The Directives also establish a framework for assessing the impacts of projects, plans and programmes on biodiversity, and compensating for losses to biodiversity where there are no alternatives and the losses are justified by imperative reasons of overriding public interest. Supporting Action 7 under this target and helping to ensure that there is no net loss of biodiversity in Natura 2000 sites.

### Target 3

**A) Agriculture: By 2020, maximise areas under agriculture across grasslands, arable land and permanent crops that are covered by biodiversity-related measures under the CAP so as to ensure the conservation of biodiversity and to bring about a measurable improvement in the conservation status of species and habitats that depend on or are affected by agriculture and in the provision of ecosystem services as compared to the EU2010 Baseline, thus contributing to enhance sustainable management.**

**B) Forests: By 2020, Forest Management Plans or equivalent instruments, in line with Sustainable Forest Management (SFM)<sup>21</sup>, are in place for all forests that are publicly owned and for forest holdings above a certain size (to be defined by the Member States or regions and communicated in their Rural Development Programmes) that receive funding under the EU Rural Development Policy so as to bring about a measurable improvement(\*) in the conservation status of species and habitats that depend on or are affected by forestry and in the provision of related ecosystem services as compared to the EU 2010 Baseline.**

Much of the Natura 2000 network is on farmland, and so the Directives play a key role in protecting farmland and forest biodiversity. The Birds and Habitats Directives establish a framework for managing habitats, including farmed and forested areas, in support of biodiversity conservation objectives, and the Directives urge Member State Governments to conserve biodiversity in the wider countryside outside Natura. The Birds and Habitats Directives complement nature conservation efforts in wider countryside, by protecting hotspots of biodiversity which serve as pools of species that can colonise beyond the Natura 2000 sites. The Directives provide the tools needed to help put agriculture and forestry on an environmentally sustainable footing, if they are properly implemented and resourced.

#### **An EEA report confirms that:**

‘the abundance of a large number of bird species is higher inside than outside the Natura 2000 network, showing that the Natura 2000 areas designated upon the presence of targeted bird species listed in Annex I of the Birds Directive also harbor a substantial number and population of common bird species’<sup>385</sup>.

In practice the positive impacts of the Directives have been overridden by environmentally unsustainable practices promoted under the CAP.

Evidence submitted in our response to C4 outlines some successes, but also highlights the failure of the CAP to deliver effective biodiversity-related measures. Of particular relevance to this target is the fact that much of the most environmentally valuable farmland is currently excluded from receiving direct payments due to an inappropriately restrictive definition of pasture (which excludes some grazing land on the basis of having a high proportion of trees and shrubs), and the removal of any reference to avoiding the ‘deterioration of habitats’ in the Good Agricultural and Environmental Condition (GAEC) framework set out in Annex II of Regulation 1306/2013. Evidence submitted under C5 highlights that the CAP has led to massive loss of biodiversity, notably in the case of grasslands destruction, which in some regions has reached catastrophic levels (97% of protected grasslands

<sup>385</sup> [http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/PDF/Impact\\_Natura2000\\_on\\_non-target\\_species\\_volunteer-based\\_biodiversity\\_monitoring.pdf](http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/PDF/Impact_Natura2000_on_non-target_species_volunteer-based_biodiversity_monitoring.pdf)

destroyed in parts of Bavaria in less than two decades<sup>386</sup> and significant declines of grasslands in Bulgaria<sup>387</sup>).

Evidence submitted under AV1 also demonstrates that in the UK changes to the Wildlife and Countryside Act 1981, driven by the requirements of the Birds Directive, have led to a marked improvement in protection for biodiversity in the UK. Prior to this national legislation had provided limited protection from development and damage caused by changes in agricultural and forestry management, with 10–15% of SSSIs being damaged each year. By the early 1990s, the area of SSSI being lost per year had fallen to below 0.005% and the area subject to short-term damage to around 2–3% per year. Since 2007, only 139 ha, or 0.01%, of the total SSSI network has been lost as a result of development or land-use change<sup>388</sup>.

#### **Target 4:**

**Fisheries: Achieve Maximum Sustainable Yield (MSY)22 by 2015. Achieve a population age and size distribution indicative of a healthy stock, through fisheries management with no significant adverse impacts on other stocks, species and ecosystems, in support of achieving Good Environmental Status by 2020, as required under the Marine Strategy Framework Directive.**

Evidence submitted in our answer to C5 highlights the contribution the Birds and Habitats Directives could make to the conservation of marine biodiversity if fully implemented. In particular the expansion of the marine Nature 2000 network and an increased focus on management within Natura sites should help protect and restore marine species and habitats<sup>389</sup>. However, our evidence also highlights that ambitious implementation of the CFP will be essential to realising its objectives. In its first test in 2014 ministers chose not to reduce quotas for several stocks, against scientific advice. Sustainable fisheries practices are essential to protecting marine biodiversity and ensuring the protection and long-term viability of habitats and species listed under the Birds and Habitats Directives.

#### **Target 5:**

**By 2020, Invasive Alien Species and their pathways are identified and prioritised, priority species are controlled or eradicated, and pathways are managed to prevent the introduction and establishment of new IAS.**

The Birds and Habitats Directives play a key role in maintaining habitats and species, but also in delivering restoration of degraded habitats and depleted species populations. They therefore complement efforts to tackle pressures on wildlife, including climate change and invasive alien species.

In the context of the new EU Regulation on invasive alien species, monitoring activities required under the Birds and Habitats Directives will make a significant contribution to assessing the spread of invasive alien species, their impacts on protected habitats and species, and to targeting relevant management actions.

#### **Target 6:**

**By 2020, the EU has stepped up its contribution to averting global biodiversity loss.**

The Birds and Habitats Directives not only help the EU deliver on its own biodiversity conservation objectives, but also serve as an example for other countries to follow.

Evidence submitted in response to question C6 shows that EU environmental standards can help promote improved levels of environmental protection globally among countries wishing to trade with

<sup>386</sup> NABU (2014) Vollzugsdefizite und Verstöße gegen das Verschlechterungsverbot bei FFH-Lebensraumtypen auf Grünlandstandorten in Deutschland [https://www.nabu.de/imperia/md/content/nabude/landwirtschaft/gruenland/140403-nabu-beschwerde\\_ffh-gr\\_nland.pdf](https://www.nabu.de/imperia/md/content/nabude/landwirtschaft/gruenland/140403-nabu-beschwerde_ffh-gr_nland.pdf)

<sup>387</sup> V Dobrev, G Popgeorgiev, D Plachyiski (2014) Effects of the Common Agricultural Policy on the coverage of grassland habitats in Besaparski Ridove Special Protection Area (Natura 2000), southern Bulgaria <http://www.acta-zoologica-bulgarica.eu/downloads/acta-zoologica-bulgarica/2014/supplement-5-147-156.pdf>

<sup>388</sup> [http://www.wildlifetrusts.org/sites/default/files/nature\\_and\\_wellbeing\\_act\\_final.pdf](http://www.wildlifetrusts.org/sites/default/files/nature_and_wellbeing_act_final.pdf)

<sup>389</sup> EEA, 2015, *The European environment — state and outlook 2015: synthesis report*, European Environment Agency, Copenhagen. <http://www.eea.europa.eu/soer-2015>

the EU.

The Directives also contribute to joint efforts between the EU, or individual EU Member States and third states in respect of habitats or species that cross international borders.

The evidence submitted in response to question C10 shows that the monitoring and conservation measures undertaken to fulfil the requirements of the Habitats Directive are coherent with Member States' commitments under international agreements such as the IWC and CMS. They are a central component of Member States' progress reports to international and regional conventions such as the IWC, ASCOBANS and ACCOBAMS and contribute to fulfilling their commitments under these conventions.

As the achievement of FCS for species and habitats listed on the Directives is designed to be achieved primarily, but not exclusively, through the Natura 2000 network of sites, the realisation of targets 2, 3, 4 and 5 of the EU Biodiversity Strategy are directly relevant to the objectives of the BHDs. As such, the two instruments are inextricably linked and mutually supportive.

**See Annex VII:** Case Study C.9 (i)

### **C.10: How coherent are the directives with international and global commitments on nature and biodiversity?**

*This question seeks to assess whether and how the EU nature legislation ensures the implementation of obligations arising from international commitments on nature and biodiversity which the EU and/or Member States have subscribed to<sup>390</sup>, and whether there are gaps or inconsistencies between the objectives and requirements of the EU nature legislation and those of relevant international commitments, including the way they are applied. For example, the Directives' coherence with international agreements which establish targets relating to nature protection and/or require the establishment of networks of protected areas.*

#### **Answer:**

At the international level, growing concern over biodiversity loss has spurred governments, including the EU, to sign up to ever more ambitious biodiversity conservation targets<sup>391</sup>. The need to conserve biodiversity is even more pressing now in the face of climate change.

In this context, the Birds and Habitats Directives are the cornerstone of EU efforts to conserve biological diversity, and the main tools for delivering on the EU's obligations under the Convention on Biological Diversity<sup>392</sup>, and other international conventions, including the Bonn Convention on Migratory Species and accompanying agreements, and the Bern Convention on European Habitats.

For example, in 1979, the EC signed and ratified the Bern Convention on the conservation of European wildlife and natural habitats, which explicitly recognises 'that wild flora and fauna constitute a natural heritage of aesthetic, scientific, cultural, recreational, economic and intrinsic value that needs to be preserved and handed on to future generations'<sup>393</sup>.

Recent scientific analysis has examined and quantified the extent to which the Natura 2000 network

<sup>390</sup> e.g. Bern Convention; Convention on Biological Diversity; Convention for the Protection of the World Cultural and Natural Heritage; Ramsar Convention; European landscape Convention; CITES Convention; CMS (Bonn) Convention; International Convention for the protection of Birds; Agreement on the Conservation of African-Eurasian Migratory Waterbirds; Regional Sea Conventions (Baltic, North East Atlantic, Mediterranean and Black Sea).

<sup>391</sup> <http://www.cbd.int/sp/targets/>

<sup>392</sup> <http://www.cbd.int/convention/articles/default.shtml?a=cbd-00>

<sup>393</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/104.htm>



contributes to meeting Aichi Target 17 (i.e. percentage area of land and sea within protected areas), and suggests that it will make an essential contribution to meeting this target. The results of this analysis will be submitted to the Fitness Check once finalised.

Recent scientific analysis has examined and quantified the extent to which the Birds and Habitats Directives as currently implemented, and in particular the Natura2000 network of protected sites, contribute towards meeting CBD strategic goals for 2020 as set out in the Aichi Targets. This has found that 65% of EU citizens live within 5 km of a Natura 2000 site, and 98% live within 20 km, suggesting that these sites could contribute greatly to raising awareness of biodiversity (contributing to Aichi Target 1) and have the potential to deliver associated ecosystem services to a high proportion of the EU's population, including benefits to health and wellbeing (Aichi Target 14). The analysis has found that total carbon stocks are on average 42% higher per unit area within than outside Natura 2000 sites (Aichi Target 15). The analysis has also found that the Natura 2000 network makes an essential contribution to meeting Aichi target 11 (i.e. percentage area of land and sea within protected areas). The analysis concludes that the Birds and Habitats Directives are making, or could potentially make, significant contributions to meeting a number of Aichi Targets and all five CBD strategic goals, and that their fuller implementation will help the EU and its constituent states to meet many of their legal obligations under the CBD. The results of this analysis will be submitted to the Fitness Check once finalised.

Monitoring and conservation measures undertaken to fulfil the requirements of the Habitats Directive are coherent with Member States' commitments under international agreements such as the IWC and CMS. They are a central component of Member States' progress reports to international and regional conventions such as the IWC, ASCOBANS and ACCOBAMS and contribute to fulfilling their commitments under these conventions.

**See Annex VII:** Case Study C.10 (i)

If the EU is seen to be diluting the protection given by its much-vaunted environmental legislation, that sends a negative message to countries across the world with much larger, richer and more pristine ecosystems – and much more 'justified' pressure on these resulting from the need to alleviate much higher levels of absolute poverty. The environmental cost of revising the EU Directives would almost certainly be multiplied many times outside Europe.

**See Annex VII:** Case Studies C.10 (ii) – (iii)

## 5. EU added value

### MAIN POINT

The Birds and Habitats Directives were adopted to **address failures and inconsistencies in national nature protection laws, and tackle rapid and accelerating biodiversity losses**. As nature knows no borders, to be effective nature conservation action must be coordinated at international level, justifying an EU-level approach. Similarly, in a common market we need a level-playing field for economic activity, based on a shared framework of environmental laws and standards.

### AV.1 - What has been the EU added value of the EU nature legislation?

*When responding to this question, you may wish to consider the following issues: What was the state of play or the state of biodiversity in your country at the moment of the adoption of the Directives and/or your country's entry into the EU? To what extent is the current situation due to the EU nature legislation? In answering this question, please consider different objectives/measures set out in the Directives (eg regarding protected areas, species protection, research and knowledge, regulation of hunting, etc, including their transboundary aspects).*

#### Answer:

##### Impact of EU nature legislation across Europe

Multilateral action is essential to conserve shared biological resources and ensure complementarity of conservation action across different jurisdictions—nature knows no borders. EU-level action has proven to be an effective way to achieve this at the regional level.

European added value can be defined as the value resulting from an EU intervention which is additional to the value that would have been otherwise created by Member State action alone. The rationale for EU intervention in relation to nature is that the issues addressed by the Directives are unlikely to be sufficiently achieved by Member States acting alone due to the need for coordinated cross-border action. It occurs, at least in part, due to the need for collective environmental action and the additional benefits that this provides. As highlighted by Medarova-Bergstrom et al. (2012), there are positive externalities associated with action at the EU level in relation to environmental protection<sup>394</sup>. In addition, moving beyond a narrow economic interpretation or EU added value, there is also a strong case to be made that action at the EU level helps to support the delivery of high level political priorities, for example in relation to climate change and international biodiversity conservation commitments/obligations.

There is clear scientific evidence that species protected by the Directives fare better than species that are not.

Biodiversity loss in the UK remains unacceptably high, with 60% of species for which we have data in decline<sup>395</sup> (ref State of Nature). However, the rate of decline has undoubtedly slowed since the implementation of the Directives and several positive examples indicate the power of this legislation to deliver recovery. For example, when the Directives came into force, the red kite (a species near endemic to Europe) remained a rare bird with a population of a few dozen pairs confined to remote valleys in Wales. Following legal protection established by the Directives and a series of reintroduction projects encouraged and partly funded by EU mechanisms, the species has now been brought back to areas across the UK. Red kites are now a bird of the wider countryside in many areas, with approaching 2,000 pairs (nearly 10% of the global population) spread across all four

<sup>394</sup> Medarova-Bergstrom, K., Volkery, A. and Baldock, D. (2012) Criteria for maximising the European added value of EU budget: the case of climate change, IEEP, Brussels.

<sup>395</sup> [http://www.rspb.org.uk/Images/stateofnature\\_tcm9-345839.pdf](http://www.rspb.org.uk/Images/stateofnature_tcm9-345839.pdf)

countries of the UK.

A 2013 IEEP 'Report on the influence of EU policies on the environment'<sup>396</sup> found that the Nature Directives:

'have helped to conserve the species and habitats for which they were designed, and in so doing they have helped to conserve the natural environment more widely and the supply of ecosystem services associated with protected sites. This legislation is also an important element in seeking to ensure that one Member State does not gain competitive advantage over others through the adoption of lower environmental standards, and that populations of migratory species are not adversely affected throughout their range by a Member State allowing damaging development'

It also found that 'The opinions of the Court of Justice (CJEU) and accumulated case law in Europe have had a bearing on the understanding of the directive's requirements and the consequent implications for the UK and other Member States'.

A study for the European Commission in 2009 regarding environmental policy and the single market also highlights the added value of environmental policy in terms of supporting the internal market and a 'level playing field'<sup>397</sup>.

In terms of protected areas, the Birds and Habitats Directives have expanded the protected area network across Europe, established effective and flexible rules for nature conservation, and have helped businesses to integrate biodiversity into their planning in a coherent way.

**See Annex VIII: Case Study AV.1 (i)**

As of January 2015, a total of 27,384 Natura 2000 sites had been designated under the Birds and Habitats Directive, covering over 1.1 million km<sup>2</sup> and 18.14% of land area<sup>398</sup>. This represents a vast increase in the area of land designated and protected for nature conservation.

On average at the EU level, 30% of land designated for nature conservation is only designated under Natura 2000, with a further 40% being designated at both national level and as part of the Natura 2000 network. Natura 2000 has therefore led to a significant increase in the area of land targeted for biodiversity and nature protection<sup>399</sup>.

Whilst progress in designating marine sites has been slower than on land and still has major gaps, the Natura 2000 network has nevertheless made a substantial contribution to the conservation of marine biodiversity in Europe.

In the UK, before the Birds Directive came into force, the only sure way to protect a site was to buy it: compulsory purchase by the Nature Conservancy Council (Natural England's predecessor) was used to protect sites, such as the Ribble Estuary, from development threats.

### **Impact of EU nature legislation beyond Europe's borders**

The Birds and Habitats Directive have also made a significant contribution towards biodiversity conservation outside the EU. Actions taken by Member States' to fulfil their obligations under the Nature Directives both contribute to and strengthen the commitments made by EU Member States within international fora. Additionally, Member States' obligations under the Nature Directives often forms the basis of a common EU negotiating position within international fora, this coherence between EU Member States' acts as a significant voice in international negotiations, both in terms of swinging a vote towards pro-conservation initiatives as well as demonstrating leadership globally in environmental protection and conservation.

**See Annex VIII: Case Study AV.1 (ii)**

### **Impact of EU nature legislation in the UK**

The UK has a long history of nature conservation legislation and the UK was instrumental in the

<sup>396</sup> [http://assets.wwf.org.uk/downloads/final\\_report\\_influence\\_of\\_eu\\_policies\\_on\\_the\\_environment.pdf](http://assets.wwf.org.uk/downloads/final_report_influence_of_eu_policies_on_the_environment.pdf)

<sup>397</sup> Jacob et al. (2009). Environment and the Single Market. Final Report to the European Commission.

[http://ec.europa.eu/environment/enveco/economics\\_policy/pdf/single\\_market.pdf](http://ec.europa.eu/environment/enveco/economics_policy/pdf/single_market.pdf)

<sup>398</sup> Natura 2000 newsletter, January 2015 [http://ec.europa.eu/environment/nature/info/pubs/natura2000nl\\_en.htm](http://ec.europa.eu/environment/nature/info/pubs/natura2000nl_en.htm)

<sup>399</sup> Born et al. 2014. The Habitats Directive in its EU Environmental Context: European Nature's Best Hope? Routledge.

promotion of both the Birds and Habitats Directives, as they in large part reflected the expression of UK aspirations for the protection of nature at the European level. However, the Birds and Habitats Directives have led to substantial improvements in the standards of protection for habitats and species in the UK.

'The Habitats and Birds Directives have added a layer of protection for nature in the UK above and beyond that provided in previous national legislation'<sup>400</sup>.

For example, UK national protected areas (Sites of Special Scientific Interest (SSSIs) in England, Scotland and Wales and Areas of Special Scientific Interest (ASSIs) in Northern Ireland) were introduced in national legislation in 1949, but until 1981 was ineffective as it provided limited protection from development and damage caused by changes in agricultural and forestry management. As a consequence, 10–15% of SSSIs were damaged each year. In England, the total number of nationally designated sites damaged in England from 1987 to 1993 was almost a quarter of the total number of these sites in England<sup>401</sup>. Changes to the Wildlife and Countryside Act 1981, driven by the requirements of the Birds Directive, have led to a marked improvement in SSSI protection. By the early 1990s, the area of SSSI being lost per year had fallen to below 0.005% and the area subject to short-term damage to around 2–3% per year. Since 2007, only 139 ha, or 0.01%, of the total SSSI network has been lost as a result of development or land-use change<sup>402</sup>.

**See Annex VIII:** Case Study AV.1 (iii)

The role of EU legislation in improving environmental performance is recognised by a wide range of stakeholders. The UK Government's Balance of Competences Review Environment Report<sup>403</sup> found that;

'The majority of respondents believed that EU competence has increased environmental standards in the UK and across the EU and that this has led to improved performance in addressing several environmental issues.'

Evidence submitted to the Balance of Competences Review by the Tyndall Centre for Climate Change Research<sup>404</sup> underlines this:

'According to the peer-reviewed academic literature...the EU has had many significant and long lasting effects on UK practice [in relation to environmental policy]. For example, it has: significantly raised (and subsequently maintained) environmental standards across many areas, but especially those relating to water, air quality, waste and wildlife protection...'

'There is some discussion in the academic literature of how much policy change over the last 40 years can realistically be ascribed to EU membership... three sources of evidence suggest that the total EU effect has been significant. First of all, so many of the changes noted above are to be found in other comparable Member States, that the EU's influence is very likely to have been a significant one.... Second, comparative policy analysis work suggests that any domestic change that would have occurred in the UK independently of the EU's influence, would almost certainly have adopted a very different form i.e. far fewer rigid timetables, binding targets and explicit standards. Third, areas where there have been infringement proceedings against the UK for non-compliance with EU rules...provide further insight into what a 'non-EU' world might have looked like.'

In addition, the Nature Directives have improved monitoring and enforcement procedures at the UK level. In respect of enforcement, this is illustrated by the strengthening of protection for national protected areas (ASSIs and SSSIs) described above. The UK Habitats Regulations<sup>405</sup> (which transpose the requirements of the Habitats Directive) have made the damage or destruction of

<sup>400</sup> [http://assets.wwf.org.uk/downloads/final\\_report\\_influence\\_of\\_eu\\_policies\\_on\\_the\\_environment.pdf](http://assets.wwf.org.uk/downloads/final_report_influence_of_eu_policies_on_the_environment.pdf)

<sup>401</sup> <http://www.parliament.uk/briefing-papers/rp94-90.pdf>

<sup>402</sup> [http://www.wildlifetrusts.org/sites/default/files/nature\\_and\\_wellbeing\\_act\\_final.pdf](http://www.wildlifetrusts.org/sites/default/files/nature_and_wellbeing_act_final.pdf)

<sup>403</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284500/environment-climate-change-documents-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284500/environment-climate-change-documents-final-report.pdf)

<sup>404</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/279198/environment-climate-change-evidence-all.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/279198/environment-climate-change-evidence-all.pdf) (see page 782)

<sup>405</sup> <http://www.legislation.gov.uk/uksi/2010/490/regulation/41/made>

breeding or resting places of European Protected Species an absolute offence. Any damage amounts to a criminal offence even if committed accidentally, there is no need to evidence any intent, recklessness or deliberate action. This was not the case prior to the Habitats Directive. The Habitats Regulations require local authorities to consider the impact of proposed developments on bats, and surveys undertaken in support of planning applications have been of enormous importance when investigating allegations of offences.

**See Annex VIII:** Case Study AV.1 (iv)

## **AV.2 - What would be the likely situation in case of there having been no EU nature legislation?**

*This question builds on question AV.1. In answering it, please consider the different objectives/measures set out in the Directives (eg. whether there would be a protected network such as that achieved by Natura 2000; whether the criteria used to identify the protected areas would be different, whether funding levels would be similar to current levels in the absence of the Nature Directives; the likelihood that international and regional commitments relating to nature conservation would have been met; the extent to which nature conservation would have been integrated into other policies and legislation, etc).*

### **Answer:**

#### **Implications of no EU nature legislation across the EU level**

In the absence of EU nature legislation, it is likely that uncoordinated nature conservation efforts would have continued at national level across the EU (including the selection of sites, conservation measures, monitoring of conservation status). Evidence suggests that these approaches had not been effective prior to the adoption of the Birds and Habitats Directives, and the absence of any international coordination would have presented an additional serious challenge to achieving the goal of halting the loss of biodiversity, both within Europe and globally.

Inconsistency of nature protection rules across the EU Member States would also have compromised achievement of a single market and different regimes for business and planning would have led to increased legal, administrative and compliance costs for businesses operating in the UK<sup>406</sup>.

Furthermore, incoherence in Member States' legal protection of nature, as well as political differences in prioritisation of nature conservation would have significantly weakened EU Member States' global commitments to halting biodiversity loss. Instead EU Member States' have been able to demonstrate strong leadership globally in taking actions to conserve biodiversity. For example, by voting as a bloc in international fora such as the IWC with a strong precautionary position backed up by EU legislation, European Member States have been crucial in preventing attempts to overturn the moratorium on commercial whaling and have been a strong voice in supporting global nature conservation initiatives.

Looking at the Birds Directive in particular, Donald et al. (2007: *Science* 317: 810-813) looked at trends in the populations of Annex I and non-Annex I species pre and post the introduction of the Birds Directive in original Member States (or the point at which it began to apply in accession states). The results showed that Annex I species were faring significantly worse than non-Annex I species before accession, but that after accession they fared significantly better. Significant declines across Annex I species were successfully reversed. This suggests that without the Birds Directive, declines in Annex I species would have continued.

#### **Implications of no EU nature legislation on meeting international commitments to nature conservation.**

Both the EU and its individual Member States are signatories to the Convention on Biological Diversity, and are therefore committed to meeting their obligations under Aichi Target 17 (i.e.

<sup>406</sup> <http://www.bis.gov.uk/files/file44583.pdf>

percentage area of land and sea within protected areas). Recent scientific analysis has examined and quantified the extent to which the Natura 2000 network contributes to meeting this target, and suggests that it will make an essential contribution to meeting this target. The results of this analysis will be submitted to the Fitness Check once finalised.

### Implications of no EU nature legislation at the UK level

In AV.1 above we outlined improvements made to the protection of UK national protected areas (SSSIs and ASSIs) as a result of changes made to national legislation to meet the requirements of the Birds Directive. However, the standard of protection from damaging development applied to these sites remains lower than that afforded to Natura 2000 sites under the Birds and Habitats Directives. This has been illustrated by a number of cases where damaging developments of management activities on (non-Natura) SSSIs have been consented under circumstances which would not have complied with the legal requirements for protection of Natura 2000. Recent examples that are the subject of ongoing NGO and public concern include housing development at Lodge Hill SSSI in Kent<sup>407</sup> and Rampisham Down in Dorset<sup>408</sup>, and Canvey Wick in Essex, where not only was a road put through the SSSI, the proposed compensation habitat was not enforced<sup>409</sup>.

**See Annex VIII:** Case Study AV.2 (i)

Enforcement of the requirements of the Birds and Habitats Directives by the European Commission and the European Court of Justice have been vital in tackling threats and damage to habitats and species which have proved impossible to address in spite of national protection.

**See Annex VIII:** Case Study AV.2 (ii)

The reluctance of the UK Government to implement elements of the requirements of the Birds and Habitats Directives also points to the extent to which effective action to protect habitats and species at UK level has relied on the existence (and the threat of enforcement of) the Birds and Habitats Directives. For example, it took approximately 18 years after adoption of the Habitats Directive for the UK Government (Defra) to start to strategically lead on protecting European marine species protected under the Habitats Directive from damaging fishing. Prior to the Habitats Directive there were only three marine nature reserves in the UK. The need to identify marine SACs and marine SPAs considerably enhanced marine conservation in UK waters.

In the UK, the requirements of the Birds and Habitats Directive have acted as a catalyst and driver for projects which deliver multiple benefits far in excess of their costs which would never have been undertaken without this. Key examples include the Alkborough managed realignment project<sup>410</sup> on the Humber Estuary and the Wallasea Island habitat creation project<sup>411</sup>, both driven by the need to avoid deterioration and to compensate for losses of intertidal habitat to flood defence developments within SPAs and SACs.

Finally, funding associated with the EU nature legislation has been fundamental in the creation, restoration and management of habitats and the recovery of many species in the UK. Without the Directives, UK biodiversity would be much the poorer.

<sup>407</sup> <http://www.rspb.org.uk/whatwedo/campaigningfornature/casework/details.aspx?id=tcm:9-317476>

<sup>408</sup> <http://action.wildlifetrusts.org/ea-action/action?ea.client.id=1823&ea.campaign.id=35104>

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<http://cmis.essexcc.gov.uk/EssexCmis5/Document.ashx?czJKcaeAi5tUFL1DTL2UE4zNRBcoShgo=TDQ89SSZPPs2wlqk2iGHdl64fFDa1PNq%2BQhmETn4Y9DT9uPfdyNHw%3D%3D&mCTIbCubSFfXsDGW9IXnlq%3D%3D=hFfIUdN3100%3D&kCx1AnS9%2FpWZQ40DXFvdEw%3D%3D=hFfIUdN3100%3D&uJovDxwdjMPoYv%2BAJvYtA%3D%3D=ctNJFf55vVA%3D&FgPIIEJYlotS%2BYGoBi5olA%3D%3D=NHdURQburHA%3D&d9Qji0ag1Pd993jsyOJgFvmyB7X0CSQK=ctNJFf55vVA%3D&WGewmoAfeNR9xqBux0r1Q8Za60lavYmz=ctNJFf55vVA%3D&WGewmoAfeNQ16B2MHuCPMRKZMwaG1PaO=ctNJFf55vVA%3D>

<sup>410</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/291631/scho0409bpvm-e-e.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/291631/scho0409bpvm-e-e.pdf)

<sup>411</sup> <http://www.rspb.org.uk/whatwedo/campaigningfornature/casework/details.aspx?id=tcm:9-235089>

### AV. 3 - Do the issues addressed by the Directives continue to require action at EU level?

*When answering this question the main consideration is to demonstrate with evidence whether or not EU action is still required to tackle the problems addressed by the Directives. Do the identified needs or key problems faced by habitats and species in Europe require action at EU level?*

#### **Answer:**

<sup>412</sup>Actions are still required at an EU level as we have yet to halt the loss of biodiversity, and the solutions cannot be adequately tackled by Member States acting in isolation.

There is scientific evidence that EU level intervention through the Birds and Habitats Directives has proven to be effective at reducing the rate of loss of biodiversity<sup>413</sup>. This is in spite of the fact that the Nature Directives have not yet been fully implemented, that conservation funding remains inadequate, and that biodiversity remains in decline. For example, the Pan-European Common Birds Indicator<sup>414</sup> shows that biodiversity loss is continuing, despite successes of Directives.

#### **See Annex VIII: Case Study AV.3 (i)**

The evidence also shows that EU nature legislation has improved the fate of habitats and species over and above that which had been (and would have continued to have been) achieved at national level, and also shows the appetite of European citizens for EU level action on the environment.

Europe is a continent that values and protects its environment; many people believe that the nature has its own intrinsic value that cannot be traded off against purely economic values. A 2010 Eurobarometer poll found that EU citizens (including in the UK) see the conservation of biodiversity first and foremost as moral obligation rather than as a means of protecting our own well-being and quality of life<sup>415</sup>. Likewise, public support for EU level action to tackle environmental problems also remains high<sup>416</sup>.

It is therefore clear that the issues addressed by the Directives continue to require action at the EU level, especially at a time when national Governments are focussed on short-term financial gain at the expense of longer term benefits to biodiversity. In its report, 'The State of Natural Capital', the UK's Natural Capital Committee pointed out that '...when thinking about natural capital, wild species and habitats require special treatment that reflects their irreplaceability'<sup>417</sup>.

Business also supports EU level intervention because of the advantages that this brings for the Single Market and environmental protection<sup>418</sup>, (see also evidence at C.6 above), supported by Commission guidance and judgements from the ECJ which have increased clarity and consistency of implementation across the EU (see S.3 above).

Finally action at EU level is a matter of ecological and practical necessity, as wildlife does not respect national borders and so requires trans-boundary protection, and effective conservation action often necessitates trans-boundary cooperation. This is particularly pertinent in respect of migratory birds and other mobile species and in the marine environment where less than 20% of all biodiversity features are considered to be in Good Environmental Status<sup>419</sup>. Addressing the impact of climate change also needs coordination and consistent approaches at EU level.

Many marine species migrate across national boundaries and their protection requires coordinated measures between Member States, particularly given the complex dynamics of Member States'

<sup>412</sup> Day, C (2015) 'The EU 'Fitness Check' on Nature Legislation: Legal Analysis of certain Mandate questions' legal research for WWF-UK

<sup>413</sup> <http://www.sciencemag.org/content/317/5839/810.abstract>

<sup>414</sup> <http://www.ebcc.info/pecbm.html>

<sup>415</sup> Eurobarometer (2010). Attitudes of Europeans towards the issue of biodiversity Analytical report Wave 2 [http://ec.europa.eu/public\\_opinion/flash/fl\\_290\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_290_en.pdf)

<sup>416</sup> [http://ec.europa.eu/public\\_opinion/archives/ebs/ebs\\_416\\_en.pdf](http://ec.europa.eu/public_opinion/archives/ebs/ebs_416_en.pdf)

<sup>417</sup> NCC (2013). *The State of Natural Capital: Towards a framework for measurement and valuation*.

<sup>418</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/284500/environment-climate-change-documents-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/284500/environment-climate-change-documents-final-report.pdf)

<sup>419</sup> European Environment Agency. 2014. *Marine Messages: Our seas, our future — moving towards a new understanding*.

fishing rights. For example, evidence obtained through monitoring under the Habitats Directive indicates that bycatch of harbour porpoise in the North Sea may be unsustainable. Coordinated and increased monitoring by Member States and joint commitments to undertake conservation measures – essentially full implementation of their obligations under the Habitats Directives - are essential to ensuring protection of such species.

**See Annex VIII:** Case Study AV.3 (ii)

### **UK Public Support for Environmental Legislation: The Red Tape Challenge**

In 2011, the UK Government launched the Red Tape Challenge (RTC), consisting of an online platform designed 'to give business and the general public the opportunity to challenge the Government to get rid of burdensome regulations'<sup>420</sup>. As such, the primary emphasis of this crowd sourcing exercise was on reducing the costs of regulation to business and unleashing popular frustration with regulation. Nevertheless, analysis of the feedback received during the first phase of the RTC found that '...most of the received comments were about protecting or enhancing regulation'. For example, 84% of respondents were in favour of keeping and/or strengthening biodiversity regulations, and only 2% were in favour of weakening biodiversity regulations.<sup>421</sup>

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<sup>420</sup> Department for Business, Innovation & Skills. (2014). The Ninth Statement of New Regulation. <https://www.gov.uk/government/collections/one-in-two-out-statement-of-new-regulation>

<sup>421</sup> Lodge, M., & Wegrich, K. (2014). Crowdsourcing and regulatory reviews: A new way of challenging red tape in British government?. *Regulation & Governance*, 9(1), 30-46.