

Brussels, 10 February 2017

Dear Madam/Sir,

BirdLife welcomes the chance to give feedback to the process of drafting an Action Plan to follow up the Fitness Check of the Nature Directives. With this written input BirdLife wants to contribute for that the Action Plan becomes a success story to tackle the challenges mentioned in the findings of the Fitness Check of the Birds and Habitats Directives.

The draft ideas presented at the meeting of the CGBN group the 26.01.2017 contain some first thoughts of the Commission. According to BirdLife's view, they though don't respond appropriately to the key implementation gaps identified in the Staff Working Document that was published the 16.12.2016. Thus, overall higher ambition is needed. This especially holds for the issue of insufficient funding, for the finding that other EU policies are incoherent with the objectives of the Birds and Habitats Directives, and furthermore also for the issue of insufficient compliance assurance respectively an appropriate enforcement of existing law through Member States.

After a more than two years lasting exercise that helped to collect clear evidence the momentum is unique. The process of drafting and later on implementing the Action Plan opens the chance to address these aspects not only from the perspective of the environmental legislator, but to come up with a joint battle plan embraced by all Commissioners. Let's leap at that chance to finally set actions that stop the loss of biodiversity.

Please find attached proposals for concrete actions to be integrated into the Action Plan.

Kind regards,



Ariel Brunner

## An Action Plan for Nature, People and the Economy

For its proposal, BirdLife follows the structure of priorities presented by the Commission at the meeting of the CGBN group the 26.01.2017. Considering the proper character and importance of the challenges existing in the fields of investment and coherence, BirdLife though urges the Commission to treat the corresponding actions of both fields as separate priorities.

### I. Smarter Implementation

The evidence gathered during the Fitness Check process revealed that Smarter Implementation is a field that – when done properly – can help nature, people and economy. BirdLife especially sees room for improvement in stepping up with concrete guidance in the field of species protection and in updating existing guidance for the assessment of Articles 6 (3) and 6 (4) of the Habitats Directive.

#### **Key findings of the Staff Working Document**

- The 2010 evaluation [of funded Species Action Plans] concluded that well-resourced and coordinated implementation efforts deliver positive species recovery results (Page 35 SWD).
- Problems have arisen as a result of limited expertise, insufficient staff resources and inconsistent standards with impact assessments and permitting procedures (Page 41 SWD).
- Stakeholders [Non-Energy Extractive Industries] have called for better implementation of Nature legislation at national, regional and local level, including dissemination and awareness of the Commission’s guidance (Page 77 SWD).

#### **Further evidence from the Fitness Check process (Expert Study and Consultation)**

- “The Birds and Habitats Directives work and can achieve their objectives if they are properly implemented.” (CEMBUREAU The European Cement Association).
- “Transmission system operators need predictable rules and clear indication on which zones are protected and which are not.” (Renewables Grid Initiative RGI).
- “Implementation of Article 6.3 made an important contribution to optimising many infrastructure and building projects to make them more compatible with nature. Contrary to initial fears, it proved perfectly possible to carry out infrastructure projects that were in the public interest, either by designing them to be compatible with nature or by putting damage limitation or coherence measures in place. Furthermore, coherence measures were necessary for only six or seven projects a year in Germany, which was fewer than anticipated” (DE, Federal Ministry for the Environment, Die Bundesregierung 2013).
- “A study of permit requests from 2000 to 2005 shows that no permits were refused due to the activity being incompatible with the nature values of the area. Dutch case law also shows that only in very few cases the HD does not permit an activity in the area.” (NL, VBN).

**1. Further species protection guidance to be developed**

New guidance explaining the rules of species protection should cover both the Birds Directive (Articles 5-9) and the Habitats Directive (Articles 12-16) in relation to projects and other activities. BirdLife proposes to approach it via sectors (mineral extracting industry, roads and railways, agriculture) or by coherent species groups (e.g. common species). The guidance should cover the treatment of derogations. The Action Plan should contain deadlines for starting and ending the process.

**2. Update of the existing guidance as to Article 6 (3) and 6 (4) Habitats Directive**

The existing guidance for the assessment foreseen in the Articles 6 (3) and 6 (4) Habitats Directives could be seen as starting point. Important terminology (such as alternatives, project, etc.) though should be further clarified. Aspects of how to measure cumulative effects and critical loads have to be included in the guidance, and the guidance should refer to recent judgment to make clear how to treat certain projects approved without a proper assessment (See ECJ in the rulings as to “Kaliakra” and “Dresden Waldschlößchenbrücke”).

Action	Responsible	Expected Result	Timeline
Develop further guidance on species protection of the Nature Directives	European Commission	Sectoral or taxonomic guidance improving effectiveness and efficiency of species protection	One guidance document per year
Update existing guidance on Articles 6 (3) and (4) Habitats Directive	European Commission	Legal clarity and more consistent implementation of Articles 6 (3) and 6(4) of the Habitats Directive	2017
Provide guidance on defining favourable conservation status under the Birds and Habitats Directives	European Commission	Clear, ambitious and realistic objectives for both Directives; consistent definition of favourable conservation status across Member States	2019

## II. Stepping up the enforcement of the Nature Directives

The history shows that for reaching the state of implementation we have today (“halfway there”?) enforcement of the provisions through infringements was central. For that reason, BirdLife urges the Commission to even stepping up enforcement through more resources for the infringement handling units and also through the use of new instruments to assure compliance with EU law.

### Key findings of the Staff Working Document

- When looking at the establishment of the Natura 2000 network, it becomes clear that there are still important gaps for the marine environment. As to the SCA designation and establishment of the necessary conservation measures, progress is very insufficient both for marine and terrestrial sites for nearly all Member States. Only 50 % of Natura 2000 sites are reported to have comprehensible management plans (Pages 32sq. SWD).
- When looking at habitat conservation beyond Natura 2000, it appears that the Directives have been far less successful in contributing to the maintenance and restoration of habitats outside of the network (Pages 34sq. SWD).
- The illegal killing of birds, particularly of migrants in the Mediterranean but also of birds of prey in some MS, remains a cause for concern (Page 36 SWD).
- Enforcement [through complaints and infringements] has been central to progress in implementing the Directives (Page 41 SWD).

### Further evidence from the Fitness Check process (Expert Study and Consultation)

- “...many Natura 2000 areas have still no management plans. Besides, the quality of existing management plans is heterogeneous. The conservation targets are often vague.” (ASFINAG BAU MANAGEMENT GMBH, Austria).

### Corresponding asks of EU’s biodiversity strategy and its Mid-term review

- While much has been achieved since 2011 in carrying out the actions under this target, the most important challenges remain the completion of the Natura 2000 marine network, ensuring the effective management of Natura 2000 sites” (Target 1, MTR).

### 1. A more systematic and improved use of infringements and complaints is necessary

The history of complaint and infringement handling of the European Commission in the field of environmental law shows that additional resources in DG ENV are needed. In the experiences of BirdLife and its partners, complaints often lie for two till three years within the Commission without any step being undertaken towards the Member State. The Commission also should make use of Interim

Measures for cases where priority habitats or irreplaceable habitats or endangered species are concerned.

## **2. European Commission should use remote sensing tools for compliance assurance**

The Commission should make use of COPERNICUS and other satellites, such as LANDSAT with its long historical archive, to assess changes in habitats and landscapes over time. It should focus as a priority on grassland conversion and urbanization, which are – according to the EEA’s “State of Nature in the EU” report – key threats to species and habitats in the Natura 2000 network. Information should be made publicly available, ideally in the form of a web platform (potentially integrated into the Natura 2000 viewer), but also downloadable for research purposes.

## **3. A Regulation to introduce minimal criteria for the Member State inspection systems is needed**

The 7<sup>th</sup> Environmental Action Programme (*EAP*) foresees stepping up implementation through inspections. BirdLife therefore urges the Commission to introduce a Regulation on Inspections. This should establish minimum criteria for inspections, including a requirement for “Environmental Inspection Plans” at Member State level as well as a duty of Member States to ensure that they have sufficient staff to implement EU’s environmental law. Besides, the Commission should be granted proper competence to investigate specific infringement cases on the ground of the Member States through independent consultants, with which the Member States would be obliged to cooperate.

## **4. A binding legislative instrument to fully implement the Aarhus Convention on EU level is needed**

The Communication on Access to Justice planned by the Commission can be seen as interim measure, but is not sufficient to implement the Aarhus Convention with all of its different pillars. As to access to courts for the public, Article 9 (3) Aarhus Convention foresees that NGOs are able to challenge plans (not just projects) such as Habitats Directive’s management plans or derogations. By now, many Member States don’t fulfill this obligation, and neither does the EU.

<b>Action</b>	<b>Responsible</b>	<b>Expected Result</b>	<b>Timeline</b>
Increase capacity on complaint and infringement handling	European Commission	Speedier resolution of complaints and infringements; additional own initiative infringement cases	Before 2020
Improved use of remote sensing	European Commission, European Environment Agency	A web platform with data on historical and present land use in Natura 2000 areas; additional own initiative infringement cases based on this evidence	Before 2020
A Regulation on Environmental Inspections	European Commission, European Parliament, Member States	An adequate minimum quality of environmental inspections across the EU as to the environmental acquis	2018
A legal instrument on Access to Environmental Justice	European Commission, European Parliament, Member States	Legal clarity and more consistent implementation of the Aarhus Convention (especially its Article 9 (3)); better implementation of the Birds and Habitats Directives through the assessment of management plans	2018

### III. Increased funding, and better targeting of EU funds

The Staff Working document identified the lack of funding to be one of the biggest constraints to an effective implementation. This justifies putting a special focus on actions that deliver additional funding.

#### **Key findings of the Staff Working Document**

- The limited availability of funding is consistently raised as ... having the strongest negative influence on implementation (Pages 38sq. SWD).
- A study estimated that allocations from EU funds towards managing the Natura 2000 network represented only 9-19 % of the estimated financing needs per year. It concluded that it is unlikely that national funding would be able to cover the significant gap (80-90 %).
- Apart from the allocation under the LIFE program there is no earmarking of funds for nature and biodiversity under different EU funds. In the reports of the European Court of Auditors the lack of integration of biodiversity into the key funds is highlighted (Page 52 SWD).
- The extent to which the PAFs have strengthened integration of Natura 2000 into the main EU sectoral funds has still to be determined.

#### **Further evidence from the Fitness Check process (Expert Study and Consultation)**

- “The lack of adequate funding is one of the reasons for slow implementation and low acceptance of the Directives.” (CEMBUREAU, the European Cement Association).

#### **Corresponding asks of EU’s biodiversity strategy and its Mid-term review**

- While much has been achieved since 2011 in carrying out the actions under this target, the most important challenges remain ... securing the necessary finance to support the Natura 2000 network” (Target 1, MTR).

#### **1. Next Multi-Annual Financial Framework to ring-fence 75% of the required funding for nature**

Without preempting any decision about the structure of the next Multi-Annual Financial Framework (MFF), the Action Plan has to set the base for the financing needs from the biodiversity perspective. Therefore it has to refer to the MFF, setting criteria for the ongoing debate on its future. The identified funding gaps must be targeted through a ring-fencing 75% of the amount required for the implementation of the Birds and Habitats Directives including the implementation of the Natura 2000 network. Through setting aside the budget, the Commission can ensure that the funding is available for the Member States to invest in the Natura 2000 network and in bringing the protected species and habitat types in favourable conservation status. As a consequence, an assessment of the funding needs, based on the updated Priority Action Frameworks and on indexing of previous cost estimates is needed.

## 2. A Trans-European Network for Green Infrastructure (TEN-G) to be established

Changes to natural and semi-natural habitats due to man-made land use change and infrastructure development is the second largest driver of biodiversity loss in the EU. Fragmentation and loss of habitat connectivity greatly hampers further recovery of biodiversity and ecosystem services in the EU. Large scale ecosystem restoration projects providing simultaneous benefits for various sectors and policies, should help improve the status of species and habitats of EU importance and the coherence of the Natura 2000 network. To facilitate such action the European Commission should, also as a reaction to the calls from the EU Council and European Parliament, present a TEN-G initiative. The TEN-G should be a program based on a regulation similar to the existing Trans-European Networks. TEN-G should cover large scale projects (regional level or above) and have a separate budget line of at least 1 billion EUR annually. Projects should be 75% co-financed by the EU, and TEN-G only fund projects which clearly and demonstrably contribute to the integrity of the Natura 2000 network. A wide range of activities should be eligible for including ecological restoration and creation of wilderness areas, removal and bypass of key barriers such as hydro-electrical dams and roads, development of agri-environment mechanisms and land purchase. To ensure coherent implementation, the European Commission needs to develop a TEN-G priority corridors map. The map should be based on the existing European ecological networks and wilderness areas, with the view of establishing an EU wide network.

## 3. LIFE Fund to be strengthened

LIFE has consistently delivered good results for nature and biodiversity, but is by far too small. The Action Plan thus should make sure it will ask for a significant strengthening of LIFE. Furthermore, in the next Multi-Annual Financial Framework the co-financing rate should be set to at least 75% in order to increase uptake of the fund. The Commission should also reduce the administrative burdens on applicants and project beneficiaries.

Action	Responsible	Expected Result	Timeline
Updated estimate of the funding gap	European Commission	Assessment of investment needed per Member States	End of 2018
Ring-fencing 75% of the funds needed in the next Multi-Annual Financial Framework	European Commission, European Parliament, Member States	Sufficient co-financing available for EU Member States to implement the Birds and Habitats Directives	Proposals in 2019

A TEN-G Regulation with budget line	European Commission, European Parliament, Member States	A substantial investment in large scale green infrastructure; improved connectivity of the Natura 2000 network	Proposals in 2019
A strengthened LIFE fund	European Commission, European Parliament, Member States	An increased budget and co-financing rate; lower administrative burden; increased uptake of the fund and better projects	Proposals in 2019

## IV. Better integration into other policies such as the CAP

The Fitness Check process revealed that one of the main challenges for the future is to ensure better coherence of other EU policies. This finding justifies putting a special focus on actions that deliver ensure better integration of the Nature Directives' objectives into the relevant policies such as the Common Agriculture Policy (CAP), the Common Fisheries Policy or the field of energy legislation.

### Key findings of the Staff Working Document

- "...the overall continuing decline of species and habitats associated with agriculture has shown the need for more effective integration with the CAP in order to reach biodiversity objectives (Page 94 SWD).
- The latest state of Nature in the EU assessment reveals that species and habitats protected under the Nature Directives dependent on farming systems are amongst those showing the most unfavorable conservation status (Pages 70sq. SWD).
- The revised eligibility criteria [for CAP Pillar 1] have the potential to extend some previously excluded farmland, but it is too early to assess if this has fully solved the problem. ... Given the continuing decline of species and habitats associated with agriculture, greater efforts are needed to conserve and enhance biodiversity through more effective integration with the CAP (Pages 71, 73 SWD).
- Responses from the targeted consultation included examples of possible conflicts with nature conservation objectives in relation to biofuels, wind power, shale gas and hydropower. Potential negative impacts from these technologies that were cited include habitat fragmentation, degradation and loss of terrestrial and marine habitats, as well as direct mortality to species from construction activities or collisions of birds and bats with wind turbines or disturbance of cetaceans from marine construction (Page 75 SWD).
- Best practice [for transport infrastructure] suggests that appropriate assessments under Article 6 (3) Habitats Directive (Activity A5) that are carried out at the strategic planning stage rather than at project level have the potential to result in the selection of transport routes that are more favourable to habitats and species (Page 78 SWD).

### Further evidence from the Fitness Check process (Expert Study and Consultation)

- "Under the CAP 2014-2020 new Pillar 1 greening requirements are not expected to benefit biodiversity while Pillar 2 funding for RDPs remains a fraction of the Pillar 1." (International Federation of Organic Agriculture Movements IFOAM).
- "Without sweeping reform of the CAP, conservation objectives under the Birds and Habitats Directives, particularly in the wider countryside, are unlikely to be met." (Joint LINKs, United Kingdom).

### Corresponding asks of EU's biodiversity strategy and its Mid-term review

- No significant progress has been made towards the Target 3a (i.e.: increase the contribution of agriculture to maintaining and enhancing biodiversity): The CAP has an essential role to

play in this process...” (Target 3a, MTR).

- No significant progress has been made towards the Target 3b (i.e.: increase the contribution of forestry to maintaining and enhancing biodiversity): “... the conservation status of forest habitats and species covered by EU nature legislation shows no signs of improvement” (Target 3b, MTR).
- Progress towards Target 4 (Ensure the sustainable use of fisheries resources) is at insufficient rate: “As a result of multiple pressures, marine species and ecosystems continue declining in Europe’s seas” (Target 4, MTR).

### **1. Incoherence of the EU’s Common Agriculture Policy with the Nature Directives to be addressed**

There is already ample evidence that the current CAP is not delivering on biodiversity. This holds both for the huge part of Pillar I direct payments and for pillar II. Without preempting the ongoing debate on the Future of the CAP, the Action Plan has to name the needs from the environmental legislator’s perspective for this debate. More precisely, the Action Plan must include an action to develop the environmental criteria that have to be integrated into the parallel discussion about objectives of the future agricultural policy of the EU, defining the public goods the EU budget will be spend for.

### **2. Spatial planning and appropriate assessment at the strategic planning stage are needed**

The Commission needs to take action to ensure that an environmentally sustainable approach to spatial planning, based on sensitivity mapping, is being applied by the EU Member States for sectors such as Energy and Transport. In particular, the Commission should scrutinize whether alternatives have been sufficiently considered by the Member States, such as: the use of energy efficiency measures; a different mix of renewable energies; mitigating impacts and increasing the efficiency of existing infrastructure through refurbishment and upgrading.

### **3. Implementation of the Common Fisheries Policy to be coherent with the provisions of the Nature Directives**

The Action Plan must include actions to analyze and fill existing gaps relating to the implementation of the current legal framework of the EU’s Common Fisheries Policy. In particular, the actions should focus on halting overfishing and eliminating by-catch of protected species.

### **4. Problematic invasive alien species for the Birds and Habitats Directive should be addressed**

Invasive Alien Species are a significant driver of declining favourable conservation status for European protected habitats and species. As such, the European Commission should take actions to ensure the full and effective implementation of the Invasive Alien Species Regulation. The Action Plan should ensure that action is taken to tackle those invasive alien species that have the greatest impacts on the

conservation status of species and habitats protected under the Nature Directives, and achievement of the conservation objectives of Natura 2000 sites. The completion of risk assessments for these species, for consideration by the Invasive Alien Species Committee and the associated Scientific Forum, should be a high priority.

<b>Action</b>	<b>Responsible</b>	<b>Expected Result</b>	<b>Timeline</b>
Reform of the Common Agricultural Policy	European Commission, European Parliament, Member States	Defining criteria for a CAP that delivers on public goods; A future CAP that respects the environmental/biodiversity objectives; reversal of the negative trends of farmland biodiversity	Criteria to be set in Q1/Q2 2017; ongoing process until 2020
EU wide sensitivity mapping for key sectors (including for marine areas)	European Commission	Maps to ensure better planning and less conflicts around human activities	End of 2019
Scrutiny on the application of Article 6(4) in energy and transport	European Commission	Earlier resolution of infringement; better planning and development of energy and transport	Continuous
Evaluate all fisheries management measures currently in place in terms of coherence with the objectives of the Directives	European Commission	Understanding of coherence between fisheries measures and achieving favourable conservation status and conservation objectives of Natura 2000 sites	End of 2018
Risks assessment of invasive alien species threatening protected species, habitats and Natura 2000 sites	European Commission	Listing of key species of concern for the implementation of the Birds and Habitats Directives	End of 2020