

Why it makes sense not to Merge the Birds and Habitats Directives

Introduction

The Mandate Letter addressed by Jean-Claude Juncker, President of the European Commission, to the new Environment Fisheries and Maritime Affairs Commissioner, Karmenu Vella, called on the Commissioner to focus on;

- *‘Continuing to overhaul the existing environmental legislative framework to make it fit for purpose. In the first part of the mandate, I would ask you to carry out an in-depth evaluation of the Birds and Habitats directives and assess the potential for merging them into a more modern piece of legislation’.*

The suggestion that the Birds and Habitats Directives should be merged might appear at face value to be a logical thing to do. However, opening the text of the Directives for revision at the present time would carry unacceptable risks for nature conservation, for business certainty, and for the international credibility of the EU. These risks far outweigh any potential benefits.

This paper seeks to answer some of the most repeated arguments in favour of merging the Directives, and sets out the evidence which demonstrates why such a merger would, at best, be risky and, at worse, disastrous for biodiversity.

Arguments in favour of merger, and why they are unfounded

Having two Directives, and two types of Natura 2000 sites confuses land-users, stakeholders and administrations and creates additional bureaucracy

On the ground it should make no difference for land-users whether they deal with SPAs or SACs (and SCIs). Both SPAs and SACs/SCIs are protected by the regime set out in Articles 6(3) and 6(4) of the Habitats Directive, so the protection given to these sites and the features for which they have been designated, and the associated assessment and consenting processes, should not create additional bureaucracy. It is the job of the Member State authorities to implement the Nature Directives in a workable way, and to communicate them in a way that stakeholders can work with them. This goes for every other EU Directive as well. There are many examples of best practice in, and guidance on implementing the Birds and Habitats Directives across the EU for Member State authorities to follow.

The Directives are so old – we should review and merge them

Civil society across the EU is committed to ensuring that the Fitness Check of the Birds and Habitats Directives is an evidence-led process. The scientific evidence to date suggests that the role of the Directives in halting biodiversity loss has been positive where they have been implemented. At the same time 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 and wider landscape measures. The age of the legislation underpinning conservation action across the EU is not, of itself, a credible reason for change, particularly given Member State tardiness in implementing it.

Merging the Directives would not necessarily lower the standards of nature protection

When the Habitats Directive was adopted in 1992 it was decided not to amend the Birds Directive, but to establish a separate piece of legislation, carefully integrated and linked to the Birds Directive. This system has been proven to work, and many authorities and stakeholders have developed ways to implement both Directives consistently and effectively. Merging the Directives would be a complicated and prolonged exercise, with no guarantee that the standards established by the Directives would be maintained. In political terms the Directives provide uniquely long term benefits and as such are less likely to be improved if reviewed at a time when economic crisis drives short-term thinking.

Arguments Against Merger

Incomplete implementation means the best is yet to come

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 and wider landscape measures. While those measures that have been implemented have led to demonstrable improvements in the status of Europe's wildlife, many of the conservation tools established by the Birds and Habitats Directives remain unused. Scientific evidence also shows that the lag between policy intervention and a detectable population-level response exceeds 10 years. As was emphasized by Dr. Elsa Nickel, Director General, Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMU), Germany at Green Week 2015, the Nature Directives are just beginning to work for biodiversity, and governments and businesses have learned how to operate with the Directives, such that they have become a routine part of daily operations.

Change would erode certainty for businesses and for stakeholders

In economic terms, changes to the Directives would also be likely to lead to considerable uncertainty for business over whether the Natura 2000 network of sites and the species and habitats given the special protection 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.

Merger could undermine the wider EU environment acquis

The Birds and Habitats Directives are key components of a coherent set of EU environmental policy instruments, including the Water Framework Directive, Marine Strategy Framework Directive and both SEA and EIA Directives. The extent of this coherence was highlighted by legal research presented in the UK NGOs response to the Fitness Check evidence gathering questionnaire¹. Changes to the Birds and Habitats Directives could compromise the coherence of the EU's

¹ Day, C (2015) "The EU "Fitness Check" on Nature Legislation: Legal Analysis of certain Mandate questions" legal research for WWF-UK

environmental acquis, negating existing guidance and case law, and potentially lead to a domino effect of further changes to other Directives.

EU and international biodiversity targets would be missed

The prospect of any changes being made to the Directives will act as a brake on further action on implementation. The process of making any changes through the EU institutions will inevitably be a long and tortuous one, possibly taking years to complete, creating a long period of uncertainty during which governments are likely to effectively suspend implementation and enforcement. This would compromise and could even reverse progress towards biodiversity conservation targets at EU and international levels. In the context of the urgent need for a step change in our efforts to halt and reverse the loss of biodiversity, as highlighted by the recent State of the Environment Report (SOER)² report and enshrined in the EU Biodiversity Strategy and international Aichi targets, this would be wholly inappropriate.

The EU's international credibility could be compromised

A diversion of focus and resources from implementation to merging the Directives 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.

Conclusion

At this point in time there are strong political and scientific reasons for not merging the Directives. Instead, the EU should focus its capacity on delivering the actions that will make the greatest positive difference for biodiversity and ecosystems: full implementation of the Directives, financing for nature conservation, and reform of EU sectoral policies.

² <http://www.eea.europa.eu/soer>