



ENEP THEMATIC TASK FORCE NOTES FROM REFIT CONFERENCE ON THE NATURE DIRECTIVES

BRUSSELS 20TH NOVEMBER 2015

ATTENDED BY ENEP THEMATIC TASK FORCE REPRESENTATIVES DAVID TYLDESLEY, CIEEM AND SIMON PASCOE, ENEP PROJECT OFFICER

THE PURPOSE OF REFIT CONFERENCE

The purpose of the conference was to discuss the draft findings of the '*Evaluation Study to Support the Fitness Check of the Birds and Habitats Directives*'. The report has been prepared by the consortium of consultants appointed by the Commission to assist with the evidence gathering of the check. The consortium is led by Milieu Ltd and included IEEP, ICF International and Ecosystems Ltd.

The draft report is available at

http://ec.europa.eu/environment/nature/legislation/fitness_check/docs/consultation/Fitness%20Check%20final%20draft%20emerging%20findings%20report.pdf

The 6 page Executive Summary is worth reading even if you do not have time to read the whole report and its supporting documents. The most pertinent of these may be the '*Report on the Open Public Consultation of the 'fitness check' of the Birds and Habitats Directives.*' Oct 2015. Again there is a 5 page executive summary.

http://ec.europa.eu/environment/nature/legislation/fitness_check/docs/consultation/public%20consultation_FINAL.pdf

ATTENDANCE

450+ delegates from every member state (MS). NGOs, particularly Friends of the Earth, Birdlife and WWF, were well represented at European level and also from a number of MS. Most MS sent representatives from their relevant Ministries. Agricultural and fisheries / angling interests, land owners and industry (especially minerals, energy and transport) were also well represented. However, whilst many organisations appear to have sent 2 delegates CIEEM and ENEP (European Network of Environmental Professionals) had only one each and were the only organisations representing professional membership bodies. A full delegate list is available at

http://ec.europa.eu/environment/nature/legislation/fitness_check/docs/consultation/Participants%20List%20Fitness%20Check%20Conference%2011-11-2015.pdf and can be found attached to the [ENEP Newsflash 46 article](#)

STRUCTURE OF THE CONFERENCE

The conference had an opening and a closing session. Between these there were four sessions addressing the 5 key topic areas which the Commission asked to be investigated namely **Effectiveness, Efficiency, Coherence, and Relevance and Added Value**. Each of the four sessions comprised an introduction from the consultants (15 minutes) as to the findings under that topic.

MS whose ministers signed the letter to Commissioner Vella and / or whose government ministers or officials supported at the conference the retention of the Nature Directives (NDs) and improved implementation, included France, Germany, Spain, Italy, Poland, Slovenia, Romania, Croatia, Luxembourg and the Netherlands, I understand Greece has now expressed its wish to support the letter.

KEY MESSAGES FROM PARTICIPANTS

There should be no merging or changing of the Nature Directives (NDs), it would lead to a period of time and resource consuming examination of the detail of each clause (likened to opening Pandora's box), unnecessary expense and delay and a period of unacceptable uncertainty. This message came equally from the government of several (probably a majority of) MS present and several industry representatives as well as NGOs

Rather, the NDs should be better implemented and much more rigorously and evenly enforced.

There are many illegal activities and infringements in and affecting Natura 2000 sites and poor or absent assessment of effects of plans and projects.

Nature is very important to people and the economy of Europe. The public response to the fitness check consultation was unprecedented, 552,472 citizen responses (though many were orchestrated by interest groups – including wildlife conservation, hunting, angling and agriculture) of which, overwhelmingly, over 520,000 were supportive of the objectives and retention of the NDs.

The NDs have provided a Europe-scale approach to nature conservation. They have helped to harmonise nature conservation, create a level playing field for action and economic activity. Globally they are inspiring to others and the best example of transboundary nature protection.

Whilst they may not be perfect and biodiversity has declined and the ND objectives have not been met (at least yet), there is evidence that where the NDs are implemented properly and over time they lead to biodiversity benefits, or at least slow or halt declines that occur where they are not applied.

It takes time to see results from directives such as these and in the natural world and there is much still to be done to achieve 2020 targets but the ND are key, indispensable tools to the EU Biodiversity Strategy.

There is a need to be able to change the Annexes to reflect the enlarged EU and to update the status of habitats and species more easily without changing the Directives but there are differing views as to whether this is possible.

The point was made several times that the court/legal/planning cases over the years have helped to clarify the meaning of the NDs, which is a strong reason for not needing to open them up for revision. These cases have also served to improve delivery in different MS, allowing some flexibility with application, whilst still complying with the terms of the directives. This is again another reason for not re-opening them.

The report has treated the CAP and CFP problems with 'kid gloves' and needs to be much stronger in its analysis and criticisms. CAP and CFP have undermined the objectives of the NDs rather than contributed to them. Evidence shows agricultural practice driven by CAP is a serious impact on farmland birds and many habitat types particularly undermining the Birds Directive. CAP first pillar has been a disproportionate cost to the tax payer at the expense of habitats and species. The second pillar of CAP is wasted; at best it is merely funding counter-action of the damage caused by

the first pillar. There needs to be fundamental change (Germany referred to a 'regime shift') in the application of these financial instruments to ensure they are consistent with the NDs. There is no reason why these mechanisms cannot be changed to make a major positive rather than negative contribution to biodiversity but this may require greater targeting of resources and less choice at MS level as to the application of the funds. It is no use saying that CAP is *potentially* coherent and *can* help biodiversity it needs to be changed to make sure it is and does. It is CAP that needs the fitness check rather than the various environmental directives – too much emphasis on checking the environment directives whilst REFIT has overlooked the root causes of environmental problems caused by lack of cohesion and poor integration of policy in CAP and other funds – the Commission should audit and analyse them.

Need to fund implementation using a smarter analysis of use of public money, many public budgets are empty so we need to redirect existing funding. Nature funding is very small compared to infrastructure budget, especially transport, which has many negative effects on biodiversity. Need a better balance if we are to achieve ND objectives and 2020 targets.

Many voices called for a ring-fenced dedicated funding for N2K even outside the Life Fund umbrella that would be targeted to local delivery with less MS national government discretion to make sure funds reached local levels.

Many other EU funding mechanisms need to be examined and changed to contribute to NDs objectives without increasing overall expenditure.

The report has underestimated how other sectors e.g. transport, energy and other policy regimes have undermined the NDs' objectives, through lack of coherence and consistency.

Favourable conservation status may, in retrospect, not be a particularly sensitive indicator of change / status because it includes future forecasting.

There is nothing wrong with the NDs, much of the case law has been about poor national choices.

Article 10 re management of landscape features linking and supporting N2K needs to be strengthened and in retrospect should not have been discretionary.

Need to improve and target delivery at local levels – landowners, local authorities, farmers and NGOs.

The directives require greater political support, better reporting, and better transposition.

Costs of assessment under Article 6 are proportionate for larger plans and projects, many developers recognise the need for care when implementing multi-million pound projects in sensitive areas and prefer the certainty of the NDs as set down now (DECC) but can be a burden for SMEs (other delegates) and there can be uncertainty and costs caused by delays and over prescriptive application of process. There was some concern about refusals where effects are uncertain – precautionary principle of Article 6. Need to understand how to deal better with mobile species, managing uncertainty and avoid delays caused by knowledge gaps.

It is difficult to bring farmers and landowners together, where they are willing they do not know what to do, lack of help and guidance they see conflicts in funding objectives, we need to learn lessons where existing funding mechanisms have not worked for biodiversity. Most of N2K is managed by small scale private enterprises not like major industries. Delays and restrictions have been unfair and managers of the marine environment are not properly understood.

It is impossible to calculate all the benefits of NDs, many relate to intrinsic values. Need to recognise value of social capital as well as natural capital including trust and legitimacy, look to add value to what can be done at national and local levels. Cost of delivering all that nature provides is trivial compared to other public expenditure.

Budget cuts mean fewer officials making / contributing to decisions which are even more closely scrutinised and vulnerable to legal challenge, need 'safe places' for informed decision makers beyond unreasonable scrutiny.

Need to spread rewards of tourism, too concentrated in tourist infrastructure rather than for landowners managing the resource that the tourists come to see.

The Danish government complained about a gap problem of using rural development fund for nature, a lack of EC DG coordination, European Court creating less flexibility in its judgments which were counterproductive, and argued that here was a need to be 'practical in real life' and more 'flexible'.

If we carry on as we are we will get the same less than satisfactory results.

Need to take more account of socio economic factors and interests.

Need to use the NDs to deal with the problems of increasing species populations (not specified).

Need more incentives and flexibility for hunting within existing structures

OPENING SESSION

Karmenu Vella European Commissioner for the Environment Maritime and Fisheries

Nature is Europe's most vital resource. A common destination is better protection that we can afford. Remedial action not sufficient the legal mechanisms need to be the best possible proactive, to arrive at destination on time. Today's reality requires bold decisions to improve implementation, other reviews are done or going on but NDs special, a record response, strength of emotion. Threats to species and habitats (referred to some issues specifically), lack of management plans, implementation deficit needs to be addressed promptly. Without the NDs economy would be weaker, biodiversity poorer. Question is how to strengthen implementation framework. Referred to farming in particular. In isolation these 2 NDs will not halt biodiversity loss by 2020. Also need to see a global context. Economic importance of ecosystem services. Still in listening mode. No room for complacency, cannot go on as before and simply hope it will get better. Can we get back on track, where will the solutions come from?

Carole Dieschbourg Minister for Environment for the EU Presidency (Luxembourg)

Cannot accept lowering of nature protection in light of unprecedented response of citizens. Environment Ministers of 8 MS (I think Greece has since added its signature) have sent a letter to Commissioner Vella expressing their strong belief to retain not merge but enforce and improve implementation of the NDs. She referred to the many positive results of the NDs as key tools but not the only ones for biodiversity. Need better merging with other policy areas especially better targeting of CAP which needed increased Pillar 2 funding. Why do we separate nature and agriculture? Farmers should see N2K as an opportunity. Critical to sustainability we cannot afford to lose any more natural capital. Nature does not need us, but we need nature.

Mark Demesbaeker Member of the European Parliament

There is a broad majority in Parliament convinced that the ND should be fully implemented and enforced and not revised, would lead to uncertainty and a weakening of the legislation. Need better guidelines, dialogue, exchange of good practice and cooperative approaches.

Roby Biwer for Committee of the Regions (Nature and Environment Luxembourg)

Need better and more effective implementation in the regions and locally, Directives rely on sub-national delivery, concerned about lack of effective management and implementation of N2K, poor standards of appropriate assessment and EIA. Increasing number of cities and regions recognising importance of nature and ecosystem services. NDs' objectives had been delayed by opposition of stakeholders, case law, poor transposition etc so do not change and open these up again. Regions and local authorities need EU support for implementation – more understandable and available guidelines, better GIS from EEA, better EU funding specifically dedicated to N2K not mixed. Nature loses out because funding retained at MS national level - funding needs to reach local and regional levels. Nature conservation could be one of the really good things the EU could be seen to be doing. Look for pragmatic solutions solve problems on the ground rather than change the NDs

M. Hans Bruyninckx Executive Director European Environment Agency (EEA)

Referred to problems of biodiversity shown by the report on N2K 2007 – 2012 State of Nature Report – summarised findings. NDs underpin nature which in turn underpins life support systems of human society. 7th Environmental Action Programme important with a view out to 2050. We have been better at air and water pollution control but not led to biodiversity improvement (evidence shown on slides). 20 year look ahead on the 'green piano' (a diagrammatic representation of aspects of the environment doing well, better badly etc). Clear that negative and unfavourable trends predominate. Need to deal with gaps and do more to meet 2020 Biodiversity Target.

EFFECTIVENESS

Chair was Michael O'Brian DG Env Fitness Check team

Speakers were: Graham Tucker IEEP for the consultants; Pierre Commenville French Ministry of Environment, Sustainable Development and Energy; Kim Holm Boesen Danish Agency for the Environment, Food, Agriculture and Fisheries; Hutos Cy Griffin European Federation of Associations of Hunting and Conservation (FACE); Irene Lucius WWF Danube and Carpathian Programme

EFFICIENCY

Speakers were: Matt Rayment ICF; Elsa Nickel German Ministry of the Environment, Nature Protection, Construction and Nuclear Safety; Ms Amanda King DECC UK; Christopher Price CLA UK but representing European Landowners; Mike Clarke RSPB / Birdlife

COHERENCE

Speakers were: Jennifer McGuinn Milieu Ltd for the consultants; Piotr Otawski Polish Ministry of the Environment; Bill Callanan Irish Department of Agriculture Food and Marine; Lisa Pietola of Cogeca Finland representing COPA – European Farmers; Jeremy Waites European Environment Bureau (NGO)

RELEVANCE AND EU ADDED VALUE

Chair was Ian Jardine DG Env Fitness Check team

Speakers were: Marta Balasteros Milieu Ltd; Hanno Zingel Estonian Ministry of Environment; Marc de Rooy Netherlands Ministry Environment and Infrastructure and Spatial Planning; Thilo Juchem UEPG European Aggregates; Luc Bas IUCN

CONCLUDING SESSION

Additional points

Hans Hoogeveen DG Agriculture and Nature for the Netherlands (Future Presidency) intend to hold a conference in Amsterdam 2016 on Nature Protection Policies – to promote good practice and flexible interpretation during Dutch presidency. Need a European network on implementation and enforcement of environmental laws. DG Environment should now concentrate on legal compliance.

Ján Ilavský Secretary of State of Environment Slovakia. Only short experience but strong support for NDs, accession caused problems should have consulted landowners more but no need to merge or revise NDs. Need better recognition of small MS with high proportions of N2K in territory (Slovakia 29%). Second future presidency Slovakia will facilitate increased coordination and MS opinions.

Wrap up Daniel Callejo Crespo EC DG Environment

Report to be finished by end of December integrating comments of the Conference. EC will then need time to consider internally. Will publish a 'staff working document' on the EC position for presentation at the Amsterdam Conference. This will set out what concrete action is proposed. Whilst nothing decided these could include.

- View NDs in broader context of nature and biodiversity, NDs cannot address all issues and need for action in wider landscape.
- Need to be ambitious about financing to consider improved policy integration and use of resources efficiently
- Effective implementation, EC to ensure they understand the challenges, shared approaches. Smart implementation, training, guidance, best practice how to employ all implementation tools to maximum effect.
- Enhanced enforcement critical so EC will take its role.
- Improve links to jobs, growth and the economy especially for SMEs.

I note that in contrast to the proposed outputs in June at the EC mission to the UK, which referred to a 'Communication' from the Commission or 'possibly a staff document' as to its proposals, we now can expect only a 'staff working document'. I suspect this reflects the unlikelihood of the EC proposing significant change.

SOME FINAL THOUGHTS

We were struck by the fact that evidence gathering for the fitness check has provided those who wish to see the NDs weakened with little comfort. Critical voices from fisheries, agriculture and some industries and those representing some SMEs, have been (at least) counterbalanced and sometimes outweighed by supportive evidence and opinion in their own sectors. They have been overwhelmed by public support and the citizen response (largely but expertly orchestrated by the NGOs from contrasting interests) which has clearly taken opponents by surprise and made many politicians sit up and take notice and be seen to be supporting the NDs. Commissioner Vella's speech at conference was a different approach to that which he adopted at the outset. One of the most compelling speeches strongly supporting the NDs was that of Elsa Nickel for the German Ministry of the Environment, Nature Protection, Construction and Nuclear Safety, but as I understand it from discussions, expressing the view of the German government as a whole.

This could actually make it very difficult to change anything in the NDs even things like Article 10 for which there is a general feeling *that it is not now strong enough* (management of landscape features linking the N2K network), because there will be no appetite for opening the Articles one by one for debate. Some argue that the Annexes cannot be changed without opening up the Articles of the NDs for debate and ratification which in turn could open the door for weakening protection. However, views differ on this point and the now quite widespread recognition that the Annexes need adjusting may hopefully enable the EC to find a way of doing this without opening up the articles for ratification. All is not straightforward though. I have no idea whether what the EC and politicians may propose will be consistent with the evidence reported or the opinions expressed in this fact finding stage. But it will be a brave Commissioner or MEP who proposes merging and weakening the Directives now – but there may be such views yet to be expressed and changes yet to be proposed flying in the face of the findings.

There are still many calls (some understandable from smaller and more recent MS and from land managers and local authorities) to apply the Directives with more ‘flexibility’ – which can mean what it says, or could be a disguise for non-compliance and turning a blind eye to infringements, which would clash with the many calls for stronger enforcement. Similarly, many declared ‘supporters’ of the NDs talk about more ‘pragmatic’ or more ‘realistic’ implementation. There are many calls for guidance but this too may be a Trojan horse if EC guidance were to open the door for more ‘flexible’, ‘pragmatic’ or ‘realistic’ approaches inconsistent with the true objectives of the NDs. However, in terms of professional practice we otherwise should welcome the widespread and oft repeated pleas for better and more harmonious guidance, training, filling of knowledge gaps and sharing of experience and best practice.

Courtesy of David Tyldesley FRTPI FCIEEM FRSA

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