Evidence Gathering Questionnaire for the Fitness Check of the Nature Directives

Introduction

As part of its Regulatory Fitness and Performance Programme (REFIT), the European Commission is undertaking a Fitness Check of the EU nature legislation, the Birds Directive[1] and the Habitats Directive[2] ('the Nature Directives'),[3] which will involve a comprehensive assessment of whether the current regulatory framework is "fit for purpose".

Adopted in 1979, the Birds Directive relates to the conservation of all wild birds, their eggs, nests and their habitats across the EU. Its strategic objective is 'to maintain the population of all species of wild birds in the EU at a level which corresponds 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'.

The Habitats Directive, adopted in 1992, covers around 1000 other rare, threatened or endemic species of wild animals and plants and some 230 habitat types. These are collectively referred to as habitats and species of Community interest. The strategic objective of the Habitats Directive is "to maintain or restore natural habitats and species of Community interest at favourable conservation status, taking into account economic, social and cultural requirements and regional and local characteristics".

The Directives require Member States to take a variety of measures to achieve these objectives. These measures include the designation of protected areas for birds (Special Protection Areas) and for habitats and species of Community interest (Special Areas of Conservation), which together comprise the Natura 2000 network, and the adoption of strict systems of species protection (see objectives of the Directives in Annex I to this document).

The Fitness Check is intended to evaluate how the Nature Directives have performed in relation to the achievement of the objectives for which they were designed. In accordance with its mandate,[4] adopted by the European Commission in February 2014, it will assess the effectiveness, efficiency, coherence, relevance and EU added value of the Nature Directives[5].

As part of this process, the European Commission has commissioned an evaluation study to support the Fitness Check. The study is tasked with gathering and analysing evidence and data held by a wide range of stakeholders.

The Questionnaire presented below is a key tool to enable you to provide this evidence.

In parallel to this questionnaire, you are invited to contribute to the initial list of published and peer-reviewed documents identified as being relevant for the Fitness Check. The list, which

[1] Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20, 26.1.2010, p. 7-25.

[2] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7-50).

[3] Please note that for the purposes of this questionnaire, the terms 'EU nature legislation' and 'Nature Directives' refer to the Birds Directive and the Habitats Directive.

[4] http://ec.europa.eu/smart-regulation/evaluation/docs/mandate_for_nature_legislation_en.pdf

[5] For more information see: http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm

will be updated at regular intervals, is structured according to the evaluation categories set out in the mandate. It can be accessed at:
http://ec.europa.eu/environment/nature/legislation/fitness_check/index_en.htm

The European Commission will also launch an online public consultation for 12 weeks from April to June 2015. You are welcome to fill in that survey as well, but please be aware that the two exercises are of a different nature. The public consultation will collect views and opinions, whereas the questionnaire presented below aims to collect evidence, meaning facts or information (such as case studies, research findings, infringement cases, case law and data) which support a point or position.

The questionnaire

The questionnaire has been prepared in order to gather evidence-based information for the evaluation. It is being sent out to all Member States and selected key stakeholders across the EU.

Please answer all questions that you consider **relevant to the situation in your country/region/sector/area of activity, based on direct experience supported by evidence. You are not expected or obliged to answer all questions.**

Where possible, quantitative evidence should be provided. Where this is not possible, semi-quantitative or qualitative evidence would be welcome.

We would encourage you to answer in English. In your answers please specify why and how the evidence and documents provided is relevant for the specific question. For documents that are not in English, please provide in the answer to the question a brief summary in English that explains its relevance to the question.

Please **provide full reference details for all documents cited or referred to** in your answers: author / editor names and their initials, full titles, full names of journals, relevant page numbers, publishers and place of publication. If the document is available online, please add a URL link. If it is unpublished information, please supply a copy or relevant excerpt. When citing in short a document for which you have already provided full reference details, please ensure that we can distinguish between references that have the same author(s) and year of publication.

Please, make sure that the link between a question and the document related to it is clear. You may choose to provide the full reference of cited documents in footnotes or in notes numbered and linked to a reference list at the end of the questionnaire. If you send documents as attachments to the email, please give them a name that includes the number of the question(s) they are related to.

Deadlines for submission of the questionnaire

We kindly ask you to fill in the questionnaire and return it by e-mail **within 5 weeks** of receiving it to: info.NatureDirectivesFitnessCheck@milieu.be.

We appreciate that it may not be possible to provide complete answers to all the questions and collect all the evidence you may wish to provide within this timeframe. However, it is essential that we receive an initial response which is as complete as possible within 5 weeks in order to enable us comply with the tight evaluation schedule.

On the basis of the initial responses received, follow-up interviews may be organised to seek clarification or additional information if required. It may not be possible to organise such interviews for responses received after the 5 week deadline. However, you will have until the end of April to complete your final submission in response to the questionnaire. Please note that it will not be possible to take into account contributions received after that deadline.

The evidence gathered through this questionnaire will be vital to the overall process. For this reason, **if you anticipate that you will not be able to complete the questionnaire, please let us know as soon as possible.**

Thank you in advance for your contribution.

QUESTIONNAIRE

A. General Information

Please answer ALL questions in this table

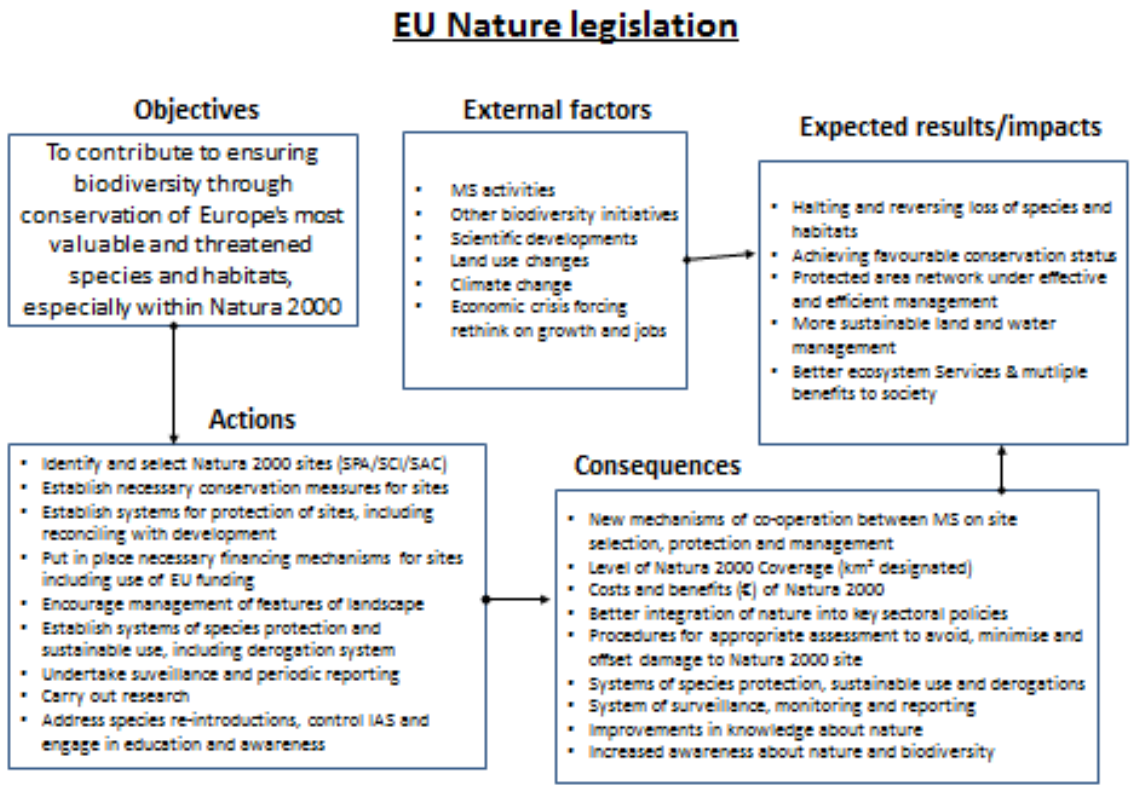
	Answer
Organisation:	**Department for Environment, Food & Rural Affairs (DEFRA)**
Date:	30/04/2015
Country (and, if applicable, region) **represented:**	United Kingdom
Organisation(s) represented:	Defra; Scottish Government; Welsh Government; Northern Ireland Executive Department of Environment
Name of contact for enquires (including follow-up interview if required):	Andy Holden; Steven Dora; Simon Bilsborough; & Ken Bradley
Contact email address:	andrew.holden@defra.gsi.gov.uk; Steven.Dora@scotland.gsi.gov.uk; Simon.Bilsborough@Wales.GSI.Gov.UK; & Ken.Bradley@doeni.gsi.gov.uk
Contact telephone number:	+44 207 238 6285; +44 131 244 6518; +44 300 062 8046; & +44 2890 254808
Languages spoken fluently by contact person:	English
Language for the interview if it is not possible to conduct it in English	
Type of organisations you represent:	Member State authority
Sector represented:	Environment
Additional comments:	The implementation of the Nature Directives in Scotland, Wales and Northern Ireland has been devolved under statute from the UK Government. This response has been jointly drafted by representatives of the relevant national administrations.

B. EVALUATION / FITNESS CHECK questions

Please answer all questions that are relevant to you and for which you can provide informed insights from direct experience and/or supporting evidence.

We would kindly ask that you keep your answers as succinct as possible. They should summarise in **no more than 2 pages** any evidence relevant to a given question. More complete/detailed information, if any, should be provided in the form of references and/or web links. Definitions, explanations and examples are provided under each question to assist you in answering them.

When answering the questions, please note that the Fitness Check intends to examine the performance of the Nature Directives in relation to their stated objectives, taking into account expected results, impacts and external factors. The figure below presents the intervention logic as included in the mandate. For ease of reference, a table presenting the objectives of the Directives, differentiating between different types of objectives (strategic, specific, operational), is included in Annex I to this document.



The questions are structured around the five evaluation criteria addressed in the mandate: effectiveness = S, efficiency = Y, coherence = C, relevance = R, and EU added value = AV.

Effectiveness

This section focuses on assessing the extent to which the objectives of the Birds Directive and Habitats Directive have been met, and any significant factors which may have contributed to or inhibited progress towards meeting those objectives. By 'objectives', we refer not only to the strategic objectives, but also to other specific or operational objectives required under other articles of both Directives (as set out in Annex I to this questionnaire).

'Factors contributing to or inhibiting progress' can relate to the Nature Directives themselves (e.g. the clarity of definitions) or be external factors such as lack of political will, resource limitations, lack of cooperation of other actors, lack of scientific knowledge, or other external factors (e.g. see those listed in the above intervention logic).

We are particularly keen to learn of evidence that is not included in the Member State implementation reports[6].

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: Member State progress on implementing the Habitats & Wild Birds Directives is assessed through reports provided to meet requirements under Articles 17 and 12 of the respective Directives. A summary of progress against the objectives listed in Annex I is provided below:

Strategic objectives

EU Habitats Directive – Favourable Conservation Status (Article 2)

The most recent UK Article 17 report indicates the overall number of features achieving favourable conservation status (FCS) has remained relatively stable since the previous report in 2007. A like-for-like comparison (excluding any unknown or un-assessed features) reveals a change of 20% to 21% between the previous report, with species (17% to 20% change) having fared better than habitats (3% to 2% change).

The relatively small overall increase in FCS reflects how challenging it is to achieve this objective for different habitats and species. This is partly because of widespread pressures (such as climate change or changing farming practices) but also because it takes time for restoration efforts to take effect. For example restoration to FCS of peatland habitats which have suffered from drainage schemes and peat cutting will take many years. However, there are clear indications of progress: the populations of five of the seventeen bat species in the UK have increased year on year and otters are now found in every county of England after near extinction in the 1970's.

The EU Biodiversity Strategy sets an objective of making improvements relative to the 2007 baseline assessments and the UK has made progress towards achieving this; a number of features that were previously assessed as declining are now stable or improving and there has been no significant change in the proportion of unfavourable-bad assessments. Nevertheless, conservation efforts need to be maintained. For habitats in particular the proportion in favourable status has remained small, which is likely to reflect the many pressures that they face. Notable amongst these are over or under-grazing, hydrological changes and invasive non-native species. Climate change is also expected to be an increasing pressure. Much of this is connected with declines in habitat condition, partly as a result of nitrogen deposition. Various species are also facing particular pressures on their populations which are challenging to address.

[6] Habitats Directive Reports: http://bd.eionet.europa.eu/activities/Reporting/Article_17/Reports_2013/
Birds Directive Reports: http://bd.eionet.europa.eu/activities/Reporting/Article_12/Reports_2013/

EU Wild Birds Directive – maintenance of naturally occurring bird populations (Article 2)

The most recent UK Article 12 report indicates that about half of all native species were either increasing (42%) or stable (7%) for both short-term and long-term trends, which indicates good progress, although there is clearly more work to be done.

Whilst the report identifies pressures and threats operating within the UK, many will also operate elsewhere in the EU (and beyond) and some factors important for UK species occur entirely outside the EU. This emphasises the value of wider international initiatives such as the Convention on Migratory Species to address these.

Other key objectives

Establishment of Natura 2000 (HD Art 4 & 6; WBD Art 4)

The UK's Natura 2000 network is substantially complete and good progress is being made on the delivery of the SPA network in the marine environment. The ongoing UK SPA review may also indicate a need for further provision for certain species in the terrestrial environment). Further work has been undertaken to identify Special Areas of Conservation for harbour porpoise in UK waters and this is expected to deliver later in 2015.

Species protection (HD Art 12, 13,14,15; WBD Art 5 & 6)

HD Article 12 is strictly implemented for Annex IVa species native to the UK. Derogations from the protection in Article 12 are expected to demonstrate no net loss and local planning authorities have a duty to consider the Habitats Directive when carrying out their functions.

All wild birds are protected under the Wildlife and Countryside Act 1981 to meet the requirements of the Birds Directive. The illegal killing of birds of prey is taken very seriously and senior Government and enforcement officers in the UK have identified raptor persecution as a National Wildlife Crime Priority.

Financing (HD Art 8)

The UK submitted regional Prioritised Action Frameworks for Natura 2000 (PAF) in early 2013, which set out previous experience of funding mechanisms (including EU) and the broad priorities for funding during the 2014-20 period[7]

Habitats landscape outside of N2K (HD Art 10; WBD Art 3)

In the UK, this objective is delivered through the establishment of broader biodiversity measures under national biodiversity policies and strategies.[8]

For the marine environment, measures identified in the Marine Strategy Framework Directive programme of measures (the subject of a recent consultation[9]) will contribute to the protection of marine habitats outside of Natura 2000. For example, marine licensing and consents systems, marine planning, marine protected areas (other than those in the Natura 2000 network) and technical measures on fishing activities.

Government planning policy provides further enhancement and respective Planning Policy Frameworks set out the context for how these are expected to be applied in contributing to protecting and enhancing our natural environment; and, as part of this, helping to improve biodiversity.[10] Additionally, WBD Article 3 objectives are also partially met through the establishment of other protected areas (e.g. SACs, SSSIs Ramsar sites) – which provide additional protected habitat even if

[7] http://jncc.defra.gov.uk/page-6934

[8] https://www.gov.uk/government/publications/biodiversity-2020-a-strategy-for-england-s-wildlife-and-ecosystem-services
http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/biodiversity/BiodiversityStrategy
http://wales.gov.uk/consultations/environmentandcountryside/nature-recovery-plan/?status=closed&lang=en#
http://www.doeni.gov.uk/niea/biodiversity/northern_ireland_s_biodiversity/northern_ireland_biodiversity_strategy.htm

[9] https://www.gov.uk/government/consultations/marine-strategy-framework-directive-msfd-proposals-for-uk-programme-of-measures

[10] https://www.gov.uk/government/publications/national-planning-policy-framework--2
http://www.scotland.gov.uk/Publications/2010/02/03132605/0
http://wales.gov.uk/topics/planning/policy/ppw/?lang=en

not specifically designated for the conservation of birds. New duties on public bodies in relation to wild bird habitat are also relevant i.e. regulation 9A of the Habitats and Species Regulations 2010 in England and Wales and regulation 3A of the Conservation (Natural Habitats &c.) Regulations 1994 in Scotland). Regulation 3A of the Conservation (Natural Habitats &c.) (amendment) Regulations 2012 NI.

Surveillance & reporting (HD Art 11)

The UK is seeking to improve our data on the status and distribution of species and habitats, through initiatives such as the UK Terrestrial Biodiversity Surveillance Strategy.[11]

The extent of mapping data on marine habitats offshore has improved significantly[12]. Another example is the National Bat Monitoring Programme which has been surveying summer roosts and winter hibernacula across GB since 1996, producing trend data for Article 17 and biodiversity indicators. It is the longest running purpose-built multi-species monitoring programme for mammals in the UK, producing statistically robust population trends for 11 of the UK's resident bat species.

Research (HD Art 18; WBD Art 10)

A number of research projects have been commissioned in order to assist implementation. These are referenced elsewhere in the questionnaire.

Non-natives (HD Art 22; WBD Art 11

The Non-native Species Framework Strategy for Great Britain provides the high level policy framework for delivering action against non-native species. This was launched in 2008 and is due to be updated later this year. Notable successes under the Strategy include the eradication of three species at a national scale (black bullhead, fathead minnow and African clawed toad) and we are currently attempting to eradicate water primrose, American bullfrog, monk parakeets and topmouth gudgeon. We have almost completed the eradication of ruddy duck in the UK, contributing to the EU-wide effort to safeguard the white-headed duck from extinction due to hybridisation.

The Strategy is supported by robust legislative framework backed by criminal offences. We are confident that the mechanisms and legislative provisions that are already in place under the GB Strategy will enable us to effectively implement the EU Invasive Alien Species Regulation. Indeed, the current GB risk analysis process is one of only two in the whole of the EU that is currently sufficiently comprehensive to be used to underpin listing as a species of Union Concern under the Regulation.

Under the MSFD we are currently considering monitoring programmes to assess the risk from pathways and vectors which facilitate the introduction and spread of marine non-native invasive species.

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: The Directives require a mixture of finite and ongoing actions from MSs. Legal transposition aside, the Directives contain no deadlines or timetables for the finite actions. We are not aware of any evidence of what different stakeholders may have expected at time of transposition. However it is unlikely to have been widely expected that the process of designating SACs would have taken so long.

Much of this delay can be attributed to differences in interpretation of what the Habitats Directive requires. This has led to instances of time-consuming correspondence between the European

[11] http://jncc.defra.gov.uk/default.aspx?page=4409 and http://jncc.defra.gov.uk/page-4221.
[12] http://jncc.defra.gov.uk/default.aspx?page=3356)

Commission and the UK Government and, in extreme cases, the CJEU. In some cases this has led to the recognition of additional requirements long after the date of original transposition. For example, clarity on the application of the Habitats Directive to the offshore area was only achieved in 2007 – some 25 years after the Directive was adopted.

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: The overarching strategic objectives of each of the Directives (Article 2 in each) are long term goals which require ongoing sustained monitoring and action and as such it is not possible to pin point a specific date by which they will be fully achieved. To support these long term goals the UK has put in place some interim targets through national strategies. As such, the broader EU and MS biodiversity strategies act as a single framework that drives progress through a stepwise process of target setting and review (see S.1.1 and S1.1.2 above). As an example, the England Biodiversity Strategy 2020 sets key targets for 2020 including:

- at least 50% of SSSIs (which underpin N2K sites) should be in favourable condition;
- at least 95% of SSSIs should be in favourable or recovering condition;
- at least 25% of inshore waters should be contained within well-managed MPAs.

Biodiversity strategies in the other UK administrations have similar targets, which mirror EU and international objectives[13]

Natura 2000 (HD Art 4 & 6; WBD Art 4)

The UK's network of terrestrial SACs is regarded as essentially complete with site protection mechanisms in place. The marine SAC network (including offshore sites) was largely finalised at the end of 2012 based on available evidence at that time. The UK has since conducted further analysis, specifically with the aim of identifying possible sites for harbour porpoise SAC designation, which will report in summer 2015. The UK is currently undertaking a review of the terrestrial/coastal SPA network which is anticipated to report in 2015, following which further consideration will be given to the adequacy of the current network. For marine SPAs, work is underway to identify further sites, with the expectation that all suitable territories will be identified before the end of 2015.

Approximately 16% of UK waters are currently within Marine Protected Areas (MPAs). There are 108 SACs and 108 SPAs with marine components. Of these 20 SACs are in the offshore environment. In addition to 35 marine extensions to terrestrial seabird SPAs (mostly in Scotland), 3 SPAs are entirely marine. Currently these are mostly within inshore waters (<12nm). Work is well advanced to identify further marine SPAs, including those in the offshore environment.[14] Protected sites monitoring is established through Common Standards Monitoring.[15]:

Protection of habitats & species

Protection of habitats and species is an ongoing responsibility. There are some pervasive and strategic threats to attaining favourable conservation status that are likely to be challenging to mitigate. This includes atmospheric nitrogen deposition[16], along with grazing (both over- and under-) and water-related pressures.

[13] http://www.gov.scot/About/Performance/scotPerforms/indicator/naturesites
[14] http://jncc.defra.gov.uk/page-3053
[15] http://jncc.defra.gov.uk/page-2217
[16] Whitfield, C. & McIntosh, N. 2014. Nitrogen Deposition and the Nature Directives Impacts and responses: Our shared Experiences. Report of the Workshop held 2–4 December 2013 http://jncc.defra.gov.uk/page-6729

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 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 Article 12 & 17 reports provide evidence of the direct contribution that the Directives have made towards ensuring biodiversity. The implementation of the Directives has also had a range of incidental benefits for broader biodiversity. For example, the N2K network supports a range of other species and habitats beyond those for which the sites are explicitly designated. Whilst quantified evidence of these benefits appears scarce, it has been established that butterflies occur at a higher abundance within protected areas[17]. There is also recognition of the crucial role that protected areas play in supporting wider ecological networks (e.g. the Lawton Report). European Protected Species are strictly protected everywhere and these measures also provide protection for their habitats and hence the other species that depend on those habitats. The 'CHAINSPAN' project, looking at the impacts of climate change on SPAs, indicates that Natura 2000 sites are likely to play a key role for newly arriving species.[18] It is likely however that those species not listed on the relevant annexes will gain only limited protection or support from the Directives; at least in part because they are relatively widespread. This implies that the Directives are not sufficient on their own to achieve broader biodiversity policy goals such as halting the overall loss of biodiversity, and that whilst they contribute to these goals they are not focussed on delivering them.

Within the marine environment the species and habitats subject to the Directives' provision are more limited in scope and our understanding of the contribution the measures under the Directives will make is reduced. Measures aimed at contributing to the delivery of Good Environmental Status for marine waters under the MSFD will help address any gaps that may be perceived in the coverage of the Directives.

In terms of the EU Biodiversity Strategy, the Nature Directives primarily contribute towards achieving Target 1 ("Fully implement the Birds and Habitats Directives") and its associated actions. However, data from the latest Article 17 report has been used in a Mapping and Assessing of Ecosystems and their Services (MAES) pilot project[19] under Target 2 ("Maintain and restore ecosystems and their services").

More generally the Directives have also undoubtedly raised the profile of biodiversity within Government and across a wide range of stakeholder interests (eNGOs, the public, business and industry etc).

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).

[17] http://bd.eionet.europa.eu/Reports/ETCBDTechnicalWorkingpapers/Impact_Natura%202000_non-target_species
[18] http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=2&ProjectID=16731
[19] http://ec.europa.eu/environment/nature/knowledge/ecosystem_assessment/pdf/2ndMAESWorkingPaper.pdf.

Answer:

Contributing factors

The UK has a long history of biodiversity protection and already afforded a level of protection to many of the same species prior to the Directives coming into force. For example, the UK's domestic SSSI/ASSI network of sites was first established under The National Parks and Access to the Countryside Act 1949. This pre-existing network greatly assisted creation of the UK N2K network, with many SSSI/ASSI sites becoming N2K sites and nearly all terrestrial N2K sites benefiting from an existing underpinning SSSI/ASSI designation that allows for both preventative and proactive measures to protect and conserve sites.

Many of the measures required to implement the Directives are undertaken in partnership with environmental NGOs, supported by a strong UK volunteer community. For example, many NGOs assist in surveillance and monitoring programmes and the management of Natura 2000 sites[20] Alongside this there has been the development of a considerable professional community of environmental consultants, which has raised the quality of compliance and mitigation advice and good practice available to developers. Progressive business sectors have also contributed to driving forward implementation and acceptance of the Directives

Obstructing factors

Implementing the EU Nature Directives has not been without difficulty. Some of the requirements can be resource intensive and availability of funding is inevitably a consideration. Ecosystems are also complex systems and impacts can take decades to be felt, so for some habitats we are dealing with legacy issues arising from actions taken well before protections were introduced.[21]

Uncertainty or differences in interpretation of key terms or requirements has also proved challenging. For example, a lack of certainty about what Favourable Conservation Status means in practice for particular species can give rise to excessively precautionary decision making, delays and higher costs. This broader uncertainty has contributed to a culture of risk aversion as identified in the Defra Habitats Directive Implementation Review (HDIR) in 2012. Natural England has taken steps following the HDIR (and the Penfold review of consents) to address this within their own operations but risk aversion remains in the consultancy and applicant sector.

The Directives can also conflict with other domestic or EU policy; either in terms of what they are trying to achieve or how they are applied in particular circumstances. Examples are provided in response to questions in section C.

The UK has specific challenges in regard to implementing the Directives in the marine area as the UK has a large marine area in comparison with many other MS and that there was little history of biodiversity protection through sites in marine areas prior to the Directives. Surveillance and monitoring to inform designation and management of sites in the marine environment is exceedingly expensive and we do not benefit from the same existing evidence base that exists terrestrially. The procedural requirements of Article 6(3) can be particularly hard to apply in the marine environment as the more limited evidence base makes it harder to have sufficient certainty over the outcome of proposals and compensatory measures could be very difficult or impossible to deliver. Also some marine activities fall entirely or partly outside MS competence (eg fishing, shipping and cabling) which makes it harder for MSs to make sure sites are protected.

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.

[20] http://jncc.defra.gov.uk/default.aspx?page=6873 & http://jncc.defra.gov.uk/page-4253

[21] https://www.naturalcapitalcommittee.org/

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: Alongside the anticipated and predicted benefits of the Directives there have been a number of unforeseen consequences, some of which continue to pose challenges for policymakers and those who implement the Directives. For example, the focus on a small number of European protected species may divert funding from other native species with more pressing conservation needs. In addition, for some species or habitats the designation and strict protection of Natura 2000 sites may not be the most efficient or effective approach to achieving FCS, particularly for highly mobile species.

The strict protections provided by the Directives for some species that are of less concern in the UK have also provided some particular and unexpected challenges. Firstly, the frequency with which species such as Great Crested Newt are encountered by people, particularly in the course of development activities, has required the allocation of resources that might have otherwise been devoted to the protection of rarer species, or used for more strategic protection. This has led to an unintended situation where much of our species activity has been focused on the less rare species, to the detriment of more vulnerable species which might have benefited from greater attention.

Similarly this combination of strong legal protection and relatively high chance of being encountered has created a perceived risk to developments. Over-precaution in response to this risk can lead to over-use of consultancy and technical advice; pushing up costs without always delivering clear benefits in support of the Directives' objectives. Allied to this, the strength of the protections around N2K sites and species means that the Directives are sometimes used as a vehicle to challenge or block developments that are otherwise unwanted or unpopular. This, coupled with the propensity of the Directives to attract negative press reporting (for example, "£1m to save 150 newts on new housing estate"[22]), has led to a culture of risk aversion within parts of the consultancy and development sectors. This is detrimental both in terms of economic impacts, but also for the image of the Directives themselves, and the benefits they might otherwise deliver. Finally, the perceived difficulty of undertaking activities when EPS are present is understood to have discouraged people from voluntarily creating suitable habitat for them.

More positively the Directives have been effective in the UK in building more positive, closer and collaborative working between SNCBs, developers, decision makers and NGOs. The rigorous requirements of the legislation have resulted in an evolution from conflict and delays, to one where early engagement and round table discussions are driving solutions that allow a proposal to be informed by evidence, because early engagement allows adequate time to collate it, and allow a proposal to be designed in a way that provides certainty of site protection. There are a growing number of examples in the UK where win-win solutions are achieving very positive results, and where the relationship between developers and NGOs in particular is notably more positive and inclusive (see the additional case study document provided for Y7, for example). In turn, an early and proactive approach to European site considerations can then make way for a similarly positive approach to other biodiversity assets potentially affected by the proposal.

[22] http://www.miltonkeynes.co.uk/news/local/1million-to-save-150-great-crested-newts-1-5964646

Efficiency

Efficiency is essentially a comparison between inputs used in a certain activity and produced outputs. The central question asked here is whether the costs involved in the implementation of the EU nature legislation are reasonable and in proportion to the results achieved (benefits). Both 'costs' and 'benefits' can be monetary and/or non-monetary. A typology of the costs and benefits resulting from the implementation of the Directives is given in Annex II to this questionnaire. In your answers, please describe the nature, value and overall significance of the costs and benefits arising from the implementation of the Directive, supported by evidence.

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: It is very difficult to be absolute regarding costs and benefits arising purely from the EU Nature Directives. Directives are implemented into the national legislative framework for nature conservation, and many costs (and benefits) cannot be completely decoupled from those associated with administration of the national framework and other indirect benefits, in the context of which Directives are applied.

Costs

The UK PAF[23] provides recent estimates of the total costs of the typology identified in Annex 2. Since submission of the PAF a further estimate of co-financing requirements have been undertaken as part of the National Programming Document.[24] Also an unpublished report from the UK National Audit Office in 2007, whilst unable to evaluate the cost effectiveness of Natura 2000, indicated that the 'average cost' of delivering Natura 2000 per hectare across Britain in 2005/6 was £8.24. More refined estimates of costs will be possible once the UK PAF is updated to incorporate the results of the EU LIFE+ funded IPENS and LIFE Natura 2000 Programme for Wales projects.

In terms of the other types of costs not included in the PAF, such as opportunity costs, foregone development opportunities, delays to development or other restrictions, there are no figures collated at UK level to give an overall picture of this.

There are some costs that developers have estimated associated with individual developments.[25] The national HDIR[26] concluded that uncertain or weak data has the potential to lead to extra surveys being required and/or a more precautionary approach being taken, in terms of licence decisions and licence conditions as well as mitigation measures, which can lead to increased costs and delays for developers. Improving the evidence base and making the data easier to access has the potential therefore to deliver significant improvements to implementation for developers, reducing uncertainty in the systems and thus administrative and opportunity costs for them. It also enables regulators to make more evidence based decisions which reduce precaution and ensure that the environmental objectives of the Directives are maintained. Many of these issues have now been addressed, for example through the creation of the Major Infrastructure and Environment Unit. Good data is available that shows the costs savings from changes made to the species licencing system through Annexed, Class and Organisational licences.[27]

Benefits.

[23] http://jncc.defra.gov.uk/page-6934

[24] https://www.gov.uk/government/publications/european-structural-and-investment-funds-uk-partnership-agreement

[25] Figures can be made available.

[26] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69513/pb13724-habitats-review-report.pdf

[27] See figures in Y5

It is widely recognised that nature has an intrinsic value and the Directives protect nature not just for its benefits for people. Protection of the intrinsic value of nature is therefore a primary benefit of the Directives which lies outside the monetary valuation framework. The economy and society is dependent on the natural environment and the Directives play an important role in contributing to the sustainable development of Europe by protecting the diversity and complexity of the natural system.

Several studies have provided evidence of the cost benefit ratios of either N2K, the national SSSI system, or types of environmental interventions though it can be hard to assess which benefits would or would not have arisen in the absence of the Directives as associated domestic policies have evolved in parallel to the transposition of the Directives.

1. An Economic Assessment of the Costs and Benefits of Natura 2000 in Scotland' (from 2004/2005)[28] found that the full conservation protection of N2K in Scotland had an overall benefit cost ratio of around 7 over a 25 year period, meaning that overall national welfare benefits were seven times greater than the national costs and represented good value for money.

2. Benefits of Sites of Special Scientific Interest (the designation which underpins nearly all terrestrial UK N2K sites) report highlights that the SSSI network in current condition delivers benefits worth £956m/yr (above a counterfactual on letting them gradually decline).[29] This study was used in a recent assessment of the overall benefits and costs of Defra regulations[30] to estimate a 7:1 benefit from biodiversity regulations for SSSI

3. Natural Capital Committee's State of Natural Capital Report (Jan 2015)[31] provided significant underpinning economic analysis of the benefit cost ratios of a range of natural capital investments. For example, it highlighted BCR of at least 5:1 for woodland planning programme, 4:1 for a catchment case study; salt marsh restoration in region of 2 to 3:1 and inland wetlands restoration projects of up to 9:1. The UK National Ecosystem Assessment economics chapter (p1092) estimates the total value of inland and coastal wetlands, many of which will be SPA/ SAC are valued at £1.25 bn/yr)

With regard to other cultural benefits relevant publications include: the social benefits from environmental stewardship; [32] economic impact study of NNRs[33]; Lovell et al (2014) A systematic review of the health and well-being benefits of biodiversity environments[34]

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).

[28] http://www.scotland.gov.uk/Resource/Doc/47251/0014580.pdf

[29] http://randd.defra.gov.uk/Default.aspx?Menu=Menu&Module=More&Location=None&Completed=1&ProjectID=17005

[30] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406225/defra-regulation-assessment-2015.pdf

[31] https://www.naturalcapitalcommittee.org/

[32] http://archive.defra.gov.uk/evidence/economics/foodfarm/reports/es-socioeconomic/esschemes-socioeconomic-100330.pdf

[33] http://publications.naturalengland.org.uk/publication/5358465354563584?category=39013

[34] http://www.ncbi.nlm.nih.gov/pubmed/24597907

Answer: In our experience, the availability and access to funding is both a support and a constraint to the implementation of the Directives. As resources are not infinite there will always be a need to maximise the benefits delivered by what resources are available. This is especially true in the current economic climate. The UK's PAF (see Y1) highlights potential opportunities to explore wider sources of funding and the need to develop more strategic funding strategies. For example the England LIFE + Improvement Programme for England Natura 2000 Sites (IPENS) project is identifying, and attempting to quantify funding gaps that currently exist at individual site level. Land Use Policy Group research, published by Scottish Natural Heritage has also estimated the scale of future UK environmental land management requirements.[35]

Many of the management actions needed to achieve the aims of the Directives are currently directly or indirectly supported by the Common Agricultural Policy. Cross Compliance (Pillar 1) sets minimum standards which were intended to benefit wider biodiversity, whilst agri-environment and similar mechanisms (Pillar 2) support the protection of many valuable habitats including for N2K sites. The co-financing available is currently set out in the national programming document.[36]

Pillar 2 schemes are the single most important funding source across the UK for biodiversity but these are multi objective schemes where the demands from any one objective regularly exceeds the funds available including where there has been additional domestic modulation, as in Wales and England. Increasingly this means that scarce resources have to be targeted at priorities and multiple outcomes. Sites with priority habitat outside the N2K network are less likely to receive funding and several key habitats lie outside the sphere of agriculture and beyond the reach of such schemes. Whilst many species may benefit from the schemes, those associated with non-agricultural habitat for part of their life cycle, or are uncommon species with a widely dispersed distribution across the agricultural landscape can be difficult to target.

In our view CAP should be re-focussed to improve its value for money towards securing the provision of public goods such as protecting the environment and supporting biodiversity. Therefore the proportion of the Pillar 2 budget, which pays for environmental public goods, should be much higher in relation to Pillar 1 subsidies. In the absence of that, we anticipate that continuing the flexibility to transfer funding from Pillar 1 to Pillar 2 will help to ensure more delivery of the Directive's objectives. In the marine environment the new European Maritime and Fisheries Fund can be accessed to help deliver the objectives of the Directives.

Over the various programming periods EU LIFE funding has enabled various habitats and species restoration projects on European sites and also encouraged different bodies to work together in order to secure funding. This funding allowed some new areas to be developed and explored – for example UK Marine SACs project, Living with the Sea, Life in UK Rivers. However, whilst LIFE has proven to be very useful, it is not easily accessible. The entry requirements are quite prescriptive and demanding and the cost of putting in a bid is estimated at circa £20K. In addition, the limited funding for LIFE results in the "biodiversity" strand of this fund being selective, focussing on innovation rather than safeguarding mainstream biodiversity. And although the amount of match funding required under EU LIFE has been reduced it is likely to continue to be a constraint.

The new EMFF fund may enable additional access to funding sources in the marine environment, as it specifically highlights funding for Natura 2000. In the freshwater environment, sources of funding are more diverse and considerable effort has gone into integrating the use of these sources to deliver funding packages at Natura site-level (e.g. the Nature river restoration programme). For issues that require a long-term approach, such as many issues in the freshwater environment, having limited but consistent funding streams does encourage more strategic planning of measures and more sustainable outcomes.

The Wales Audit Office reported in 2014 on the Glastir scheme, and looked at whether it has been designated and implemented in a way that promotes the requirements needed of the scheme.[37]

[35] "Estimating the Scale of future UK environmental land management requirements" - http://www.snh.gov.uk/docs/A931060.pdf

[36] https://www.gov.uk/government/publications/european-structural-and-investment-funds-uk-partnership-agreement

[37] http://www.wao.gov.uk/system/files/publications/Glastir_English_2014.pdf

Regarding habitats they advised that better, more prescriptive targeting would be more effective, particularly for a) water quality interventions, b) improving environmental quality as well as quantity and distribution and c) taking into account the wider ecological context. The programme largely did not deliver against species priorities with sufficient quantities of the correct prescriptions in the right geographical locations.

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, 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: We do not hold the information on other MS to answer this question in an evidence-based way. However, we anticipate that cost differences could arise for a number of reasons, including for example:

- The size, number and type of N2K sites (e.g. fewer, larger and sparsely populated sites are likely to present different challenges to many smaller sites scattered across more populated landscapes);
- Differences in the coverage of sites in the marine environment;
- How MS' choose to share the burden between public and private interests - e.g. where work done in-house is cheaper than bringing in a consultant;
- Differences in knowledge base between MS', which may lead to more precautionary decision making and higher costs in those MS' where the knowledge base is less well developed;
- Some habitat types may require a greater degree of active management to maintain or intervention to restore than habitats than others;
- Geographical issues (e.g. a Member State on the margins of the natural range of a species may encounter additional challenges in achieving and maintaining FCS for non-anthropogenic reasons); and
- Particular MS may have migratory species which are subject to pressures during lifecycle phases when not in the territory of the Member State (e.g. Atlantic salmon).

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: It is difficult to answer this question as the Directives' fundamental rationale is not based on a "cost benefit" analysis. Nevertheless, evidence suggests that the value of benefits received from protecting valuable sites is significant and likely to outweigh the costs (see Y1) for the current set of sites. However again, it is not clear how much of this protection can be attributed to the Directives specifically; the benefit figures in Y1 refer to the gross value of sites rather than the marginal value of the Natura 2000 designation.

Statistics from the protected sites and species consenting regimes in England indicate:

1. less than 0.05% of planning permissions each year require a licence for European Protected

Species reasons; and

2. in relation to SPAs and SACs, whilst Natural England receives around 26,500 land use consultations annually, of these, less than 0.5% are "objected" to on Habitats Regulations grounds. Most of these objections are successfully dealt with at the planning stage.

Despite this general picture some costs associated with implementation have been large. For example costs borne by developers when working up an application which is then not consented[38] or costs associated with the provision of mitigation or compensation to individual developments. As part of the Balance of Competencies exercise the Home Builders Federation gave the example of a development where offsite translocation was refused and the methods to protect great crested newts onsite cost £200,000-£300,000 (not including interest or loss of return on the proposed construction) in the context of a peak count of 23 newts.

The Defra HDIR 2012 looked at how we can make it simpler for businesses to comply with the laws that protect certain habitats and wild bird species. It found that the Directives are largely working well but nevertheless identified a number measures where implementation could be improved, many of which have now been implemented. In particular improvements to/ streamlining of the authorisation processes for plans and projects held the greatest potential to reduce delays and minimise costs to developers[39].

In general, UK Government and industry want to 'do the right thing'. However, there are costs attached, which can make it difficult to do so. In addition to delays in the process, from our experiences of implementation, costs tend to also be driven up, and are thus disproportionate under the following scenarios:

When there is a lack of evidence on which to make decisions, or for developers to assess their proposals.

A poor understanding of the conservation status of certain species can lead to more precautionary decision making and higher costs. A lack of detail in site Conservation Objectives or difficulty in accurately predicting potential impacts may prevent a developer from being able to determine the likelihood that a proposal is viable in the early stages, again driving up costs for a project that may not be consented.

When developers and land managers may be risk averse; proposing mitigation beyond what might be considered reasonable and necessary given the scale of impacts, for fear of prosecution or delays to projects.

This increases costs substantially for developers. Evidence from the Forestry Regulation Task Force[40] found that financial burdens and risks of non-compliance are sufficient to dissuade forest owners from managing sites. A key recommendation of this task force was that *'more resources are devoted to establishing a sound evidence base for determining to what degree approved woodland management activities affect European Protected Species.'* For linear projects, (e.g. highways developments) projects have felt compelled to fit and maintain many kilometres of temporary amphibian fencing, sometimes for many years, to prevent the killing of individual great crested newts. Much of this is an issue around interpretation of the Habitats Directive, where better guidance might help.

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,

[38] Such costs are particularly high in the marine environment.

[39] https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/improving-the-way-we-implement-the-habitats-and-wild-birds-directives

[40] http://www.forestry.gov.uk/forestry/INFD-8D8EF3 Forestry Regulation Task Force ranked wildlife legislation as the most burdensome regulations on the forestry sector.

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: The aspiration to make implementation of the Directives more effective (both financial and non-financial) has been a key driver for a number of very positive initiatives in the UK in recent years.

Defra report on the implementation of the Directives in England (HDIR) 2012

This review found that the Directives are largely working well and much of the concern was around perception. It did however identify a number of measures and broad areas where improvements could be made (and many of which have now been implemented) to make compliance with the legislation less complicated and burdensome[41]

NE produced a number of detailed development project case studies for the HDIR, which may provide additional evidence, although it is important to note that the cases are from before 2012 and since then there has been further notable improvement in the effective and efficient implementation of the Directives in England. See Y7 below.

Multiple Benefit Initiatives

The cost of implementing the Directives is made more efficient by initiatives that seek to achieve multiple environmental benefits where possible. The agri-environment schemes in place within the UK are an obvious example of where financial cost reaps multiple benefits, not only for wider biodiversity but also for other aspects of the environment such as landscape and historic assets.

Defra commissioned Natural England and the Environment Agency in England to identify how more integrated delivery of the objectives of the Biodiversity 2020, Water Framework Directive and Flood and Coastal Risk Management (FCRM) programmes can be achieved. This led to the creation of the Defra Synergies Project; a core objective of which is a set of recommendations for improved, integrated achievement of Government environmental objectives that can bring cost-effective improvements to a range of ecosystem services.

The UK Government's Nature Improvement Areas programme is a further example of a multi-benefit initiative, which particularly contributes to the requirements of Article 10.[42]

Streamlined collection of data

The UK aims to streamline data collection and use under the range of EU and international environmental legislation. As an example of best practice, the collect-once-use-many-times approach is being used in the UK through the development of the UK Marine Monitoring R&D Programme. The current strategy aims to encompass the significant policy and statutory obligations, such as the UK and Devolved Governments High Level Marine Objectives, OSPAR Convention, Nature Directives etc, in the most effective and cost-efficient manner. It is intended that data collection methods and standards will be developed that meet all requirements with the same data used to make comparable overall assessments, even if they have different overarching status class results. This collaborative approach by NE and the EA to the monitoring of inshore waters to meet both Habitats and Water Framework Directive objectives has provided significant efficiencies.

Collaborative Working with the Wider Environmental Community

As captured under our response to S3, many of the measures required to implement the Directives are undertaken in partnership with environmental NGOs (such as the Wildlife Trusts), supported by a strong UK volunteer community.

The UK's approach to biodiversity surveillance and monitoring invests with partners in long term schemes, most of which depend on the contribution of significant amounts of time and effort by

[41] https://www.gov.uk/government/publications/progress-of-the-habitats-directive-implementation-review
[42] https://www.gov.uk/government/publications/nature-improvement-areas-improved-ecological-networks

skilled volunteers. Schemes are sufficiently widespread and systematic to allow assessment of trends in distribution and/or population. Through analysis they can provide information relevant to a wide range of policies.[43] As an example, there is extensive monitoring data available on Welsh Tir Gofal and Tir Cynnal programmes, by habitat type and for particular species.[44]

Effective Implementation of European Protected Species Duties

A comprehensive review of the way in which European Protected Species (EPS) derogation licenses are managed has been undertaken by NE. Case by case consideration of licence applications is incredibly resource intensive and has the potential to delay projects. The introduction of a number of initiatives to streamline the process is underway. These include the use of general and class licences and the publication of new codes of practice which have reduced costs and simplified processes. Financial cost reductions are estimated to be around £400k/yr from the main improvement measures. Savings just from annexed licences are summarised in the table below. License types have been modified to better take account of the type of activity, the level of risk and evidence/oversight requirements. The improvements are also reported to significantly reduce delays to development. The 12 month trial period for the Low Impact Bat class Licence was reported to save 444 weeks in possible delays to development proceeding.

The introduction of Annexed licences to the individual EPS mitigation licence process (currently just for great crested newts, bats and dormice) has also produced efficiency savings for developers. The annexed licence process allows minor issues in the method statement to be dealt with outside of the formal Further Information Request (FIR) process, providing more flexibility to the system. Poor quality applications and those requiring significant changes continue to receive FIRs. The Annexed licence process reduces development delays and costs, due to the licence being issued faster than when an FIR is made. During the first 11 months of introducing the GCN annexed licence process 160 FIRS were avoided. Whilst challenges remain this has made a significant positive improvement.

Savings from Annexed licences

	Saving 2014-15	Cumulative since introduction
GCN	£158,250	£285,000
Bats	£90,000	£90,000
Dormice	£2,250	£2,250

Bat helpline

Natural England funds a Bat Helpline, managed by the Bat Conservation Trust since 1994. Volunteers are equipped and trained by Natural England. The helpline receives in the region of 4-5000 calls per year leading to approximately 2000 visits. The service is recognised as a cost effective benefit to bat conservation which helps people to manage their concerns where bats are present. Benefits include reducing licence requests and a greater awareness of illegal activity.

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

[43] http://jncc.defra.gov.uk/page-6873

[44] http://wales.gov.uk/topics/environmentcountryside/farmingandcountryside/farming/schemes/glastir/tircynnal-tirgofal-monitoring-evaluation/?lang=en

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 costs of not protecting the habitats and biodiversity which the Directives were put in place to protect would be significant in terms of loss of intrinsic value, sustainability, non-use value, option-value, losses of ecosystem service benefits and increased costs to society from the failure of ecosystem services (for further consideration, and in quantifiable monetary terms, see the answer provided for question Y1). However, as referred to above, the UK also has strong national legislation to protect habitats and species, so not all of these costs would be incurred in the absence of the Directives. For further detail on specific benefits the Directives have provided see the AV section.

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: The burden of properly applying Article 6(3) in relation to the assessment of plans and projects is possibly the part of the Directives that is most often referred to by developers and decision makers. Although the implementation of Article 6(3) is clearly necessary for the effective implementation of the legislation, the UK has put considerable effort into considering how the burden can be more effectively met, without weakening the protection of European sites.

As explained in the answer to question Y5 above, the Defra HDIR found that the Directives are largely working well but nevertheless identified a number measures and broad areas where we can improve, many of which have now been implemented.

Examples of recent good practice in minimising burdens include:

- The Hinkley C and Sizewell C nuclear Nationally Significant Infrastructure Projects which demonstrate the importance of agreed tools and mechanisms for applying the legislation.
- The Nutrient Management Plan approach for SAC rivers highlights the opportunities for joint working to achieve sustainable growth whilst protecting SAC interest and working towards an agreed programme of restoration.
- The strategic mitigation scheme approach to dealing with recreational pressure highlights the benefits of investing in large scale assessment work upfront to allow for consistent and smooth progression of individual residential development projects.

*Full detail of these three case studies is provided separately.

The Ports and Maintenance Dredging Protocol is an example of Natural England working closely with industry to find a solution that allows ongoing activities to proceed without the need for repetitive assessment.[45] And recent NSIP applications that have included appropriate assessments have taken no longer to decide than those without.

It should also be acknowledged that the uneven distribution of Natura 2000 within Member States can

[45] http://archive.defra.gov.uk/wildlife-pets/wildlife/protect/bird-habitat/mdpe.htm

lead to disproportionate burden and restriction at the local administrative level. This is probably most apparent for island authorities (particularly in Scotland) which have considerable terrestrial and marine Natura 2000 interests located within their territories.

Difficulties have arisen in instances where structures intended for a specific purpose, such as water treatment reservoirs, have become colonised over time by sufficient number of birds to merit designation. This has then interfered with the ability to operate the reservoir for its intended function – please see p62 of the Balance of Competencies[46] review for a case study.

Perceived burdens relating to species protection provisions are discussed under S4 & Y4.

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: The development of the knowledge base is, in the main, devolved to a MS level. The UK Article 17 reporting highlights some gaps with regard to Favourable Conservation Status assessments. This is an ongoing challenge and one that must be met cost-effectively given continuing pressure on resources. Where other MSs are facing similar challenges there may be opportunity for greater collaborative working e.g. on developing methodologies for filling knowledge gaps and carrying out on-going monitoring. For the UK, this challenge is greatest in the marine environment.

Site issues

The absence of comprehensive information can make Article 6(3) assessments of potential adverse effects challenging. There have been initiatives to try to improve consistency in the evidence that developers are required to provide for decision makers to undertake appropriate assessments, as described under Y5. A lack of data leads decision makers to quite rightly take a precautionary approach which is a significant problem and leads to a bad press for the Directives. Better evidence can usually enable a more accurate and proportionate application of mitigation measures.

Natural England is working with the Department for Energy and Climate Change on a project to improve the application of in-combination assessments for marine wind farms affecting SPAs. A lack of comprehensive data on SPA birds in the marine environment is particularly challenging.

Gaps in our knowledge of the marine environment include the effects of climate change and of what recovery looks like, making it difficult to assess the effect of management interventions. There are notable gaps around evidence of impacts of fishing and recreational activities. These are being considered through the Defra Marine Biodiversity Impacts Evidence Group.

The UK has recently launched Offshore MPA Site Information Centres (SICs) for all 38 offshore MPAs in UK waters. SICs are a one-stop-shop for all relevant information on offshore MPAs in UK waters. They include detailed sections on evidence underpinning the protected features, conservation advice, activities and management information. There are also sections to house information on results of monitoring and assessment studies once these become available.[47]

For terrestrial European sites in England, the IPENS project has developed our understanding of the possible options to improve sites, clarifying the issues that we are not currently able to fully address using existing mechanisms (e.g. Environmental Stewardship, which is currently the principal

[46] https://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review
[47] http://jncc.defra.gov.uk/page-6895

mechanism to help land managers meet the cost of any positive management needed to restore terrestrial European sites to, or maintain them in, favourable condition) (see R1 for further information). Similarly, understanding of the management needs and priorities of SACs and SPAs in Wales is being advanced by Natural Resources Wales' LIFE Natura 2000 Programme.

Species issues

For the application of European Protected Species duties, difficulty in establishing the conservation status of certain species (including key development conflict species like Great Crested Newts (GCN) and bats) and applying it to particular circumstances can also lead to more precautionary decision making and potentially higher costs than might be necessary. But surveying for these EPS can be difficult and expensive, and arguably disproportionate to the benefit to the species. Cost effective means of improving our knowledge continue to be sought and schemes such as the National Bat Monitoring Programme, which uses volunteer effort, have been very successful in developing our understanding of FCS.

GCN pose a particular challenge for the UK as their national distribution is widespread but patchy with particularly high densities in parts of England and Wales and because they frequently inhabit areas subject to ongoing urban, semi-urban and industrial land uses. Surveying is also labour-intensive (requiring three survey methods deployed over four night-time visits to confirm presence or absence, and at least six visits to establish population size class) and restricted to a relatively short survey window (spring – early summer). Costs of surveying a single pond can exceed £1000 and in cases where GCN populations need to be captured, moved and re-homed, the reported costs can exceed £100,000. There may also be additional costs if a development is delayed and such cases regularly attract negative press attention.

The UK is seeking to develop cost efficient methods to improve our knowledge of GCN distribution and conservation status. Two technological solutions hold potential for improving the situation. First, a new survey that tests pond water for traces of GCN DNA has been shown to be an effective and relatively cheap survey method (costing about one-fifth of the traditional survey). Second, species distribution models are being developed which hold potential for informing spatial planning, targeting pond creation and better understanding the local conservation status of GCN. This should enable a more proportionate and efficient response to GCN in the future, which focusses on maintaining and enhancing the conservation status of GCN, and less on protecting individual newts. It should also reduce the consequences for individual developments that might impact on GCN.

The move towards multi-taxa surveying will maximise the efficiency of surveys but emphasis on a small number of EPS could be to the detriment of species and habitats that need greater support. Continued collaboration is needed across Europe to develop more cost-effective methodologies for monitoring and surveying key species.

Relevance

Relevance concerns the extent to which the objectives of the nature Directives are consistent with the needs of species and habitats of EU conservation concern. The question of relevance relates to whether the objectives of the legislation are still necessary and appropriate; whether action at EU level is still necessary in light of the challenges identified and whether the objectives and requirements set out in the EU nature legislation are still valid.

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: Some key pressures and threats that species and habitats face are driven by causes outside designated sites, and the capacity of site management regimes to address the root causes of these kinds of pressures and threats is limited[48]. Wider policy measures are needed to achieve Favourable Conservation Status (and wider biodiversity aims). This entails interaction with a range of sectoral EU policies such as in fisheries, air pollution, agriculture, energy and transport. For some species (e.g. Greenland White-fronted Geese) the key pressures even occur outside of the EU which implies the need for even wider coordination. Examples are provided below.

The Directives are mainly focused on the protection of individual species and habitats which, at the time of adoption, was the common approach to nature conservation. Over recent decades a more holistic Ecosystem Approach to nature conservation has developed, taking into account ecosystem services and natural capital within a wider landscape/river catchment/ scale. This wider ecosystem services approach to the management of sea and land can help address the root causes of the key pressures and threats that impact on species and habitats within designated sites. It is unlikely that the N2K network of sites would provide the necessary ecological connectivity or robustness to accommodate future challenges (e.g. from climate change)[49]. In the UK the N2K network does not exist in isolation and is complimented by other types of protected sites designated under national legislation.

In our view, the Directives are important, but not sufficient in themselves, to deliver the required protections for threatened habitats and species – the specific requirements of the Directives do not deliver the overall ambition without extra, proactive action from MS. For example, they provide protection from direct harm (e.g. by preventing the killing of wild birds), but do not effectively address wider issues such as habitat degradation through climate change or diffuse pollution that could have a more significant effect on populations and which drive decline (general duties around habitat creation and FCS notwithstanding).

<u>Terrestrial/Freshwater</u>

Some pressures and threats reflect the interaction of other regulatory regimes alongside market incentives facing land managers. For example, in Wales, the most commonly cited issue affecting Welsh SAC features is agriculture and land management, with grazing (either under or over) perhaps being the largest cause for concern on terrestrial areas.

Examples of key pressures and threats where wider policy responses are needed include the following:

- Climate change will undoubtedly affect SAC habitats and species in years to come, although the nature and extent of many of these impacts is still unclear[50]. Adverse effects on habitats

[48] http://naturalresources.wales/about-us/our-projects/life-n2k-wales/life-n2k-reports/?lang=en

[49] https://www.gov.uk/government/news/making-space-for-nature-a-review-of-englands-wildlife-sites-published-today

[50] http://www.ccw.gov.uk/landscape--wildlife/habitats--species/terrestrial/habitats/coastal-habitats/sand-dune-rejuvenation/ccw-position-statement.aspx?lang=en

such as raised bogs which rely on water saturation throughout the year may be particularly harmful. Lower summer water availability and increased water temperatures will affect freshwater habitat integrity and the distribution of many native species, possibly allowing more invasive species to colonise areas.

- Nitrogen and diffuse phosphate pollution from anthropogenic factors represent a significant risk to the biodiversity and special features within designated sites. Low-nutrient systems (such as sand dunes, bogs and heaths) are also particularly vulnerable to pollution of the land, air and sea. The specific ecological requirements of these most sensitive habitats are assisted to some degree by current EU/international interventions on pollution management but not others. For example, the UK meets the ceiling in the NECD and plans to take action to meet the stricter ceilings that will apply from 2020 under the Gothenburg Protocol. However, these tighter ceilings will be insufficient to adequately protect sensitive habitats. Currently, negotiations are underway for a new NECD and the UK supports the proposal which has the potential to make an important contribution to improving air quality and reducing harmful impacts on human health and the environment, including sensitive ecosystems.
- This suggests that there is scope and need for further integration of nature protection in sectoral EU policies.

Marine and inter-tidal

Site based protection has to be part of an integrated approach to marine management and only used where it is appropriate. More general measures, such as management of fisheries, marine development and activities, and control of pollution are essential. Furthermore, the coastline and marine environment are subject to change (e.g. through climate change, or by natural and/or human-generated erosion and deposition) which can alter habitats or species distribution in relatively short periods of time. Finally, many marine species can naturally travel significant distances over their life cycles, which can make it difficult to designate particular sites

Mobile habitats & species

The EU nature legislation is not well adapted to change, even when changes are integral natural characteristics of the features protected e.g. growth of scrub into woodland; movement of mud flats, sand bars and shifting dunes; pioneer species deserting established/senescent habitat in favour of fresh habitat opportunities. Whilst the legislation does not preclude the accommodation of natural change (for example, site boundaries might be re-drawn, or the basis for site designations changed) but the absence of a clear mechanism for doing so creates uncertainty and increases cost.

For example, in Wales, natural changes to sand dune habitats has led to:

- a loss of shoreline shifting dune habitat types 2110-Embryonic shifting dunes and 2120-Shifting dunes along the shoreline with Ammophila arenaria ("white dunes") and
- a gain of habitat type 2130* Fixed coastal dunes with herbaceous vegetation ("grey dunes").

"Grey dunes" (habitat type 2130*) are a priority habitat in Annex 1 of the Habitats Directive and restoring the mobile "white dunes" habitat referred to above would therefore require the destruction of a priority habitat.[51]Similar issues regarding mobile species are discussed in R2.

Responses to problems facing species and habitats

The Natural England LIFE funded Improvement Programme for England Natura 2000 sites (IPENS) is working with a range of stakeholders to develop a strategic approach to achieving favourable condition on England Natura 2000 sites. The project has highlighted that while many sites are being adequately conserved and meet their conservation objectives, a significant number are not yet in a healthy state due to a number of pressures, which include the following themes: diffuse water pollution; air pollution; invasive species and deer; habitat fragmentation; public access and disturbance; hydrological functioning; lake restoration; river restoration and climate change.

A key output of the project is the identification of issues that we are not currently able to fully address using existing mechanisms, alongside the development of Site Improvement Plans (SIPs), which

[51] http://www.ccw.gov.uk/idoc.ashx?docid=3a33d0d9-9530-4111-9fe0-2a2798d5437d&version=-1&lang=en

identify the potential mechanisms to bring sites and species into favourable condition. This will in turn aid in the broader achievement of England Biodiversity Strategy objectives and favourable conservation status for the Directive's annex habitats and species.

The project is due to conclude in June this year and will provide: an SIP for each Natura 2000 site in England; theme plans to address common issues across multiple sites; an overall programme plan outlining the future management of all sites; and a directory of actions, measures and funding options to achieve favourable condition[52]. Natural Resources Wales are operating a similar programme[53].

Wildlife Crime

Despite a full transposition of the requirements of the Directive and the provision of a robust legal framework with considerable (and increasing) effort on enforcement, it remains a challenge to address certain conflict issues such as the illegal persecution of raptors.[54]

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: No. The Nature Directives and the annexes which list the habitats and species that must be protected (or in a lesser number of cases, that may be hunted) are basically unchanged since the Directives were negotiated. Provisions exist (under Arts 19 & 15) to update many of the annexes to reflect technical and scientific progress but the only subsequent amendments of the annexes have been additions to reflect the biodiversity of new Member States joining the EU.

Populations and distribution of species and habitats can fluctuate considerably in the space of decades. Some species and habitats not protected by the Directives may have declined sufficiently to now warrant protection. Conversely some other habitats and species may have responded well enough to the protection that they have received so that FCS could now be maintained with a lower level of protection (e.g. by removing a species from annex IV but retaining it on annex II of the Habitats Directive).

The different UK administrations have continued to update national nature protection law since the Nature Directives were introduced (e.g. there have been several amendments to Schedule 5 of the Wildlife & Countryside Act 1981), but if the Nature Directive annexes are not similarly kept under review there is a risk that the finite resources for nature protection are not focused on those species and habitats in greatest need of protection.

Experience gained from implementation has also indicated instances where the approach taken by the Directives may not be the most effective way of achieving FCS. For example the benefit of designating sites to protect highly mobile species (e.g. harbour porpoise) or species that naturally occur widely but at low densities (e.g. kingfisher). There may also be grounds to extend the existing principle of recognising that the distribution and relative abundance of certain species or habitats can justify different levels of protection in different MSs.

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

[52] https://www.gov.uk/government/publications/improvement-programme-for-englands-natura-2000-sites-ipens
http://publications.naturalengland.org.uk/publication/5682306693988352
http://publications.naturalengland.org.uk/category/5458594975711232
[53] http://naturalresourceswales.gov.uk/about-us/our-projects/lifenatura-2000-programme-for-wales/?lang=en
[54] http://www.scotland.gov.uk/Topics/Environment/Wildlife-Habitats/paw-scotland/types-of-crime/crimes-against-birds/Poisoninghotspotmaps
http://www.scotland.gov.uk/Resource/0046/00461141.pdf
http://www.scotland.gov.uk/resource/0043/00434716.pdf
http://biodiversitywales.org.uk/50/en-GB/Wildlife-Crime

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: Implementation of the Directives is highly relevant in regard to the achievement of sustainable development objectives. The EU's Sustainable Development Strategy refers to the need to "*Safeguard the earth's capacity to support life in all its diversity, respect the limits of the planet's natural resources and ensure a high level of protection and improvement of the quality of the environment".* Whilst achievement of this goal clearly requires action beyond protected sites and species, the implementation of the Directives will make a significant contribution. Sustainable development was at the heart of Defra's 2012 Habitats Directive Implementation Review which considered (amongst other things) how to make it simpler for businesses to comply with the Directives, whilst continuing to deliver the important protections that it requires.

However, there are instances where the requirements of the Directives create challenges for developments that might otherwise be considered sustainable. It can be particularly difficult for sea based renewables projects to prove compliance with art. 6(3) as marine data is scarce and expensive to obtain. For example, the decision to place an experimental tidal turbine in the narrows of Strangford Lough, Northern Ireland, which is an important habitat for Common Seals. The experimental nature of the technology meant that there was limited data from which to estimate the potential for noise disturbance or physical harm to the seals and little scope to gather more except through the experiment. This lack of data required extensive and very costly safeguards and monitoring procedures to be put in place costing in excess of £1m. We are making efforts to plug these knowledge gaps (see Y8) but would be helpful if the Commission also focused research work in this area.

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: Awareness, understanding and support for biodiversity conservation has been assessed through the UK biodiversity indicators[55]:

- in 2014, 7% of people across Scotland, England and Northern Ireland (preliminary data for Wales are not available) were highly engaged with the issue of biodiversity loss. These are people who are aware of the threat to biodiversity in the UK, are concerned about the loss of biodiversity and take actions to support and protect biodiversity;
- among these people, 1% were performing 'higher effort' actions, such as volunteering with conservation organisations, which require the participant to act outside the realms of regular daily life and have the capability to persuade others and lead to changes that might impact on biodiversity loss;

[55] http://jncc.defra.gov.uk/page-6069

- 12% of people are aware of the threat to biodiversity, but are not concerned about it, while 41% of people are aware of the threat to biodiversity and are concerned about it, but take little action to support or protect it; and
- 40% of survey respondents stated that they were not aware of the threat to biodiversity in the UK.

See also Monitor of Engagement with the Natural Environment (MENE) survey[56] and the Eurobarometer surveys[57].

Public access to Natura 200 sites is important to allow the public to engage with nature. For example in Wales:

- the public have a legal right of access to around 94% of terrestrial and intertidal SAC by area and to all sea areas within SAC;
- Public Rights of Way provide access to over 1,200 km of paths and trails on SAC;
- in total, over 150,000 ha (94%) of terrestrial and intertidal SAC are designated as open access land (see table 6) under the Countryside and Rights of Way Act 2000 (CRoW Act);
- however, in some cases restrictions are imposed at certain times, for example, to prevent disturbance to breeding livestock or wildlife or to allow management work to be done.

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: We do not have any statistics for citizens' expectations for the role of the EU in nature protection, other than through the biodiversity indicators highlighted in R 4. However public consultation is embedded into the process of designating and managing of Natura 2000 sites.

We are unable to comment on the volume of lobbying by citizens to the EC to strengthen nature protection. However, we can confirm that UK Government departments are often copied into complaints submitted by individuals or NGO groups to the EC regarding compliance with the EU Nature Directives. This suggests that those groups regard the EC as possessing a 'policing' role in regard to MS' compliance with the Directives.

A specific issue (in locations such as island groups in Scotland) is scepticism of new designations due to the perception that they have to accommodate a disproportionately large N2K extent (on land and sea) and that they have managed their natural environment sustainably for generations without protections that create potential barriers to development (such as renewables) where economic opportunity is generally limited.

The Balance of Competences considered attitudes to EU environment legislation more generally[58].

[56] https://www.gov.uk/government/collections/monitor-of-engagement-with-the-natural-environment-survey-purpose-and-results
[57] http://ec.europa.eu/public_opinion/archives/eb_special_419_400_en.htm#416
[58] https://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review

Coherence

Evaluating the coherence of legislation, policies and strategies means assessing if they are logical and consistent, internally (i.e. within a single Directive), with each other (i.e. between both Directives), and with other policies and legislation. Here we are looking for evidence regarding how far and in what ways the Directives are complementary and whether there are significant contradictions or conflicts that stand in the way of their effective implementation or which prevent the achievement of their objectives.

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: Overall, we consider that the two Directives work satisfactorily together, and are broadly coherent. This is supported by CJEU jurisprudence. There are a number of areas where the Commission could seek to make matters clearer for MSs, potentially through guidance or by considering whether to introduce (or initiate the use of existing but dormant) mechanisms for evaluation or amendments:

1. It is not universally understood whether the meaning of Article 2 of the Birds Directive (setting out the overall purpose) is equivalent to that of Article 2 of the Habitats Directive, particularly with regard to the concept of Favourable Conservation Status. This has implications for species licensing regimes within MSs.
2. The Habitats Directive provides some criteria (Article 4) for the selection of SACs, the Birds Directive has no such criteria, risking inconsistencies between selection criteria for SPAs across MS, and making it difficult to secure strategic management for birds across MS borders.
3. Whilst the Habitats Directive has provision for the de-designation of SACs in certain circumstances (Article 9) the Birds Directive has no such provision, even as a result of factors beyond MS control.
4. The Birds Directive protects all species of naturally occurring wild birds and has no priority list for particular species beyond the Annex 1 species whereas the Habitats Directive has a list of priority habitats and species. This is not necessarily an issue, but is an inconsistency in approach with implications for how resources are allocated.
5. Similarly article 3 of the Birds Directive stipulates requirements for the broader provision of habitat for all species of natural occurring wild birds; the Habitats Directive is much more limited in scope (being restricted to those species and habitats listed in the annexes).
6. Article 6(1) of the Habitats Directive (management measures for sites) does not apply to SPAs, although we note that the European Commission guidance highlights that Articles 4(1) and 4(2) of the Wild Birds Directive introduce a similar approach for the management of SPAs to that set out in Article 6.1. This has implications for MS's ability to strategically plan site improvements, particularly where site designations overlap.
7. The derogations (Art 16 Habitats Directive and Article 9 Birds Directive) are not consistent – e.g. you cannot consider socio-economic interests under the Birds Directive, while you can under the Habitats Directive. This has implications for species licensing in MS.

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 are a number of overlaps with other EU legislation. In many cases, the implementation of other related EU legislation compliments the achievement of objectives under the Directives (e.g. implementation of Article 4 of the EU Water Framework Directive will assist in the delivery of favourable condition of water dependent Natura 2000 sites and the EU Environmental Liability Directive furthers the protection of protected species and natural habitats through the prevention and remedying of environmental damage and the polluter pays principle).

EIA & SEA

The EIA Directive amendments will introduce new requirements for co-ordinated or joint procedures for projects which require EIA and also assessment under the Habitats & Birds Directives. Our broad view is that this is achievable in practice because the relevant assessments are required as part of the development consenting process and therefore will usually be undertaken at the same time. This will not necessarily be the case for other assessments (such as SEA for example). During the EIA Directive negotiations the Scottish Government sought to minimise any additional upfront costs to developers at the point in a project when the risk of investment without return is highest, i.e. before the principle of development has been established. Similar concerns may apply should Habitats Directive assessment requirements be integrated with assessment requirements under other EU legislation.

SEA practitioners have to consider the environmental effects of land-use plans on areas designated under the Habitats and Birds Directives. Experience has shown there can be conflict between the terminologies associated with each and with the certainty required by Habitats Directive Art. 6.3 procedures (i.e. "likely to have significant environmental effects" vs "likely significant effect" and how this is interpreted post-Waddenzee). This conflict in terminology can lead to confusion and lack of integration in the assessment process, which in turn can have time and resource implications.

In chronological terms, the SEA of land-use plans often occurs in advance of the execution of the procedural requirements of Art. 6.3 and can therefore support the completion of that process. SEA can prove useful in predicting whether potential plan-related decisions impact on designated areas.

In England, the Planning Inspectorate has produced advice notes for developers of major infrastructure projects on both the EIA and HRA requirements to try to manage the overlaps.[59] The Scottish Government has produced guidance for practitioners in relation to Art. 6.3 and SEA.[60]

[59] http://infrastructure.planningportal.gov.uk/wp-content/uploads/2012/10/Advice-note-10-HRA.pdf (page 12)

In practice Marine Scotland will only usually accept applications which require both EIA and Art. 6.3 assessment if the information for Art. 6.3 is submitted with the Environmental Statement. This working practice has come about through experience of receiving this information separately leading to delays in consenting and duplication of effort.

WFD & MSFD

We note that the Commission is taking forward work to examine the relationships between the water, marine and biodiversity legislation and welcome efforts to make compliance as efficient and effective as possible through, for example, data monitoring that covers several requirements. At present, there are some difficulties reconciling requirements such as the assessment of good ecological or environmental status at sea basin or wide geographical scale, with the assessment of favourable conservation status at site or similar small scale. Similarly, the WFD requires MS to achieve good ecological status within a fixed time period, which may be faster than N2K sites can recover ecologically.

The UK was actively engaged in the 2 Dec 2014 Commission workshop on co-ordinated implementation of the three Directives, and provided case studies. These covered both examples of good practice (the UK's Moors for the Future project, which met multiple objectives while designing flooding catchment measures) and other instances where there was less alignment between the two Directives. While the Commission has produced FAQ and related best practice documents to assist MS, these are not widely publicised – the UK continues to support the follow up work from the workshop to help support MS in working through these implementation issues.

NECD

The Commission has proposed a revision of the National Emission Ceilings Directive to set ceilings for key pollutants including ammonia for 2020 and 2030. One of the objectives of the proposal is to put the EU on a pathway to meet the EUs long term objective of reaching air quality levels that do not cause significant impacts on and risks to human health and the environment. The UK supports this objective. Ceilings must be realistic, deliverable and evidence based and not impact disproportionately on any one sector.

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: Policy integration is generally adequate although difficulties can arise e.g. where different standards or timescales are required under respective legislative instruments (e.g. WFD and HD). With regard to the achievement of favourable site condition status for aquatic habitats in the UK, the implementation of Article 4 of the Water Framework Directive is a key tool in the prevention of deterioration of aquatic sites and the delivery of favourable/recovering condition status of aquatic Natura 2000 sites though as mentioned earlier, the timeframes for ecological recovery may extend beyond what is envisaged in WFD.

There appears to be opportunities to seek better synergies with other related EU Directives where they have complementary but not fully equivalent objectives. We welcome initiatives such as the recent Commission workshops on coordinated implementation of nature, biodiversity, marine and water

http://infrastructure.planningportal.gov.uk/wp-content/uploads/2013/07/Advice-note-7v3.pdf

[60] www.gov.scot/Topics/Built-Environment/planning/Roles/Scottish-Government/Enviromental-Assessment/HRA/Advice-sheets

policies, as a valuable opportunity for MS to share best practice and novel methods to realise synergies between these Directives, especially where they could lead to more streamlined, more effective or lower cost approaches to implementation by MS.

There are issues around the visibility of existing Commission materials e.g. FAQ packs for WFD and the Nature Directives – one of the actions arising from the recent Commission workshop on water, marine and biodiversity is to 'relaunch' the available best practice guidance, but this could be usefully done across a range of topics.

We consider that, for the marine environment, the MSFD provides an effective framework for delivering GES, including biodiversity outcomes. While the Nature Directives will contribute to the delivery of GES, especially indicators 1 and 6, we consider that that any shortfall in the ability of the Directives to deliver these indicators can be addressed through more flexible national measures, or cooperation at a regional or sub-regional level, using instruments such as OSPAR.

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: In general, sectoral policy alignment is supportive for N2K and EPS but less so for biodiversity in the wider countryside. In particular, the potential for CAP to deliver in this regard is not fully exploited (see other questions in Section C, particularly C5) and it is arguable that the societal benefits are not being maximised. We want to see the CAP re-focussed to improve its value for money towards securing the provision of public goods such as protecting the environment and supporting biodiversity.

As an example, links to Welsh Government Habitat Regulations Assessments of sectoral policies:

- WG Draft National Transport Plan[61]
- Flood and Coastal Erosion Risk Management Strategy[62]
- Water Strategy for Wales[63]
- Regional Structural Funds programme[64]
- Consultation on UK Marine Strategy Framework Directive – UK Marine programme of Measures[65]

We note that the revised Common Fisheries Policy now provides an explicit framework (Art 11 of the CFP) to deliver management for Natura 2000 sites, and spatial measures related to the delivery of the MSFD. This is a step forward, but it does rely on all relevant MS to agree to the measures to protect the sites, or the Commission taking measures through a lengthy co-decision procedure. Outside Natura 200 sites, it is still not clear whether the CFP will deliver fishery management measures with respect to Articles of the Directives not linked to Natura 2000 (e.g. Art 3 of the Birds Directive).

[61] http://wales.gov.uk/consultations/transport/draft-national-transport-plan/?lang=en
[62] http://wales.gov.uk/topics/environmentcountryside/epq/flooding/nationalstrategy/seaandhabitats/?lang=en
[63] http://wales.gov.uk/consultations/environmentandcountryside/water-strategy/?status=closed&lang=en
[64] http://wefo.wales.gov.uk/publications/guidanceandpublications14-20/formalops/formalwestwales/?lang=en
[65] http://wales.gov.uk/consultations/environmentandcountryside/marine-strategy-framework-directive/?lang=en

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.

Answer: There appears to be scope for conflict/tension in some areas. For example delivering EU renewable targets in order to mitigate climate change has the potential to impact on biodiversity objectives (e.g. wind farm development and tidal energy infrastructure; both of which have the potential to impact on biodiversity if not carried out appropriately). While there is scope for these policies to work harmoniously together, there are difficulties. For example, in the marine sector there are particular issues related to the availability of data and evidence for seabirds and the extent to which they are affected by offshore wind farms.

Similarly, under the CAP Regulation 1307/2013, greening is "a mandatory component of direct payments which will support agricultural practices beneficial for the climate and the environment applicable throughout the Union" (recital 37), and its implementation should be compatible with the objectives of the Directives (Art. 43 (10)). However, because the greening of direct payments is aimed at setting a common environmental baseline across the whole of Europe it provides the least environmental additionality in MS such as UK where the baseline is already comparatively high.

The limited scope for targeting and the lack of effective management requirements within greening means that MS will find it difficult to form greening into an effective policy lever, with respect to Nature Directives, without going beyond the minimum EU requirements which would incur significant disproportionate costs for farmers and administrations compared with other MS. Therefore, greening is not expected to deliver much which would assist in achieving the objectives of the Nature Directives or supporting wider biodiversity. It is a blunt instrument, trying to deliver across a range of environmental outcomes and there is likely to be a lack of environmental additionality.

As previously mentioned, Pillar 2 funding under the Common Agricultural Policy (i.e. to deliver environmental benefits) is likely to remain constrained and limit the achievement of biodiversity objectives under this mechanism for many MSs. There is scope to achieve much more with Pillar 2, perhaps moving to a payment by results system for delivering e.g. improved hedgerows, but it currently suffers from constrained resourcing.

Environmental protection policies within the water sector have had major positive benefits over the past few decades in the cleaning up of sewage and industrial effluents, which has led to dramatic reductions in gross organic and toxic pollution of riverine and coastal ecosystems. There are however limits to how far water policy will go in restoring water-related ecosystems across the broad range of pressures operating in catchments.

Finally, the wider structural funds are useful for delivering 'one-off' pieces of infrastructure or habitat, but they cannot be used for ongoing programmes of activity, which limits how useful they are for the long-term security of habitat restoration or other relevant activity.

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 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: In our view, one of the key added values in the Directives is the ability to ensure that a coordinated approach is achieved and maintained throughout the EU, noting in particular the needs of migratory and widely dispersed species and habitats. The Directives ensure that no MS is able to gain a commercial advantage over another MS through taking lesser action: all MS are able to set a broadly similar level of ambition, without compromising economic growth. This, of course, depends on all MS implementing and enforcing the Directives equally rigorously and fairly. In practice, this may vary between MS, potentially distorting competitiveness. The Third and Fourth Environmental Action Programmes set out the rationale (e.g. avoiding distortions to industry competitiveness). Further evidence of the impacts on economic operators is available in the UK Government's Review of Competences work. [66]

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.

Answer: It has been a challenge to integrate co-financing for N2K into the main sectorial funds. The Commission has already recognised this is an issue, for example, in developing the Partnership Agreement and programmes in the UK for the period 2014-2020. The report identified the main challenges and pressures on European biodiversity, how they mapped onto the priorities for funding, and noted existing issues with delivery arrangements. It concluded that it was essential that the funds were effectively aligned with ecological priorities, especially at delivery level. Their key actions are summarised below, and we would support these, but it needs to be easier for MS to integrate these funds at a working level.

Key actions:

- *preservation and enhancement of biodiversity and the state of European landscapes through more targeted agri-environment schemes and the protection of Natura 2000 and high Nature Value Farming areas and promotion of collective action to deliver environmental public goods and organic farming;*
- *support for the surveying of seabed habitats.*

The UK has submitted regional PAFs for Natura 2000 which set out the broad priorities for funding (see S.1.1). The objectives of the IPENS project, and the equivalent in Wales, are explained under R.1.

Most of the main structural funds connected to land use are focus on agriculture. While these can be accessed for relevant habitat types, it does not allow us to tap into funding for habitat types such as marine or wetlands. The UK has a higher proportion of some of these sites than many other MS, but we cannot attract funding for these functional units as easily.

Similarly, NGOs and landowners have advised that the costs and difficulties of preparing a LIFE bid can dissuade smaller organisations from bidding for these funds. The Welsh Government can supply a breakdown of costs from their Anglesey bid.

[66] https://www.gov.uk/government/consultations/eu-and-uk-action-on-environment-and-climate-change-review

Finally, it is not clear what structural and other funds are available to assist work to protect individual species outside sites, whether EPS or 2020 target species.

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: There are a number of overlaps with other EU legislation, which have created some implementation difficulties. There is still a degree of uncertainty about the comparability of aims between the various Directives, for example the use of FCS, Good Ecological Status and Good Environmental Status under the HD, WFD and MSFD, plus the general aim of the Birds Directive in Article 2. In coastal waters all 4 may be relevant. Despite the Commission FAQ's stating that the most stringent standard/ requirement should apply there is not a clear understanding of this. We should aim for a situation where measures are designed to achieve a common outcome – recognising however the challenges around differing timeframes.

Similarly, the various Directives are measured or assessed at different geographical scales i.e. the MSFD is considered at a regional level, while the Habitats Directive is considered at national level. For many marine species it would be more beneficial to assess, understand and manage threats at the regional level. It may well be more beneficial to consider how to protect habitats and species outside designated sites – there may be scope to use the other Directives to do this, but it is not often clear how to do so in practice.

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 Nature Directives are mainly contributing to Target 1 of the EUBS2020. As alluded to in the question above, there may be some indirect contribution to the other targets (e.g. the example quoted that the restoration of N2K sites can contribute to the achievement of Target 2 goals under the EU Biodiversity Strategy, to restore at least 15% of degraded ecosystems). However, such contributions are difficult to quantify. For example, in regard to Target 3 (*increase the contribution of agriculture and forestry to maintaining and enhancing biodiversity)*, the UK's comparatively low levels of forestry under N2K make it hard to demonstrate a direct contribution. But forests receiving EU support must comply with UK Forestry Standard and have a forest management plan in place and so will therefore be sustainably managed[67]:

Similarly the establishment of the marine network of N2K sites may assist in the achievement of Target 4 goals. But the sustainability of fisheries is governed primarily by the CFP and it is not clear what relative impact the N2K network would have.

C.10: How coherent are the directives with international and global commitments on nature and biodiversity?

[67] http://www.forestry.gov.uk/ukfs

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[68], 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: The UK is a contracting party to many Multilateral Environmental Agreements (MEA), including for example the CBD and is committed to achieving the various aims and objectives. The CBD COP Decision X/2, Strategic Plan for Biodiversity 2011-2020 (2010) has a particular influence on our current national biodiversity strategy.

Implementation of the Directives in the UK contributes to the achievement of many MEA objectives, as well as other international commitments such as the Bern Convention and Ramsar. In the case of Ramsar, for example, the UK achieves most of the aims and objectives of the Convention through implementation of the EU Nature Directives and the EU Water framework Directive. There is inevitably some inconsistency as Ramsar sites are designated under agreed Ramsar criteria which are not entirely the same as the species and habitats listed on the relevant annexes of the Nature Directives (e.g. the Ramsar designation of Llyn Tegid is partly based on the presence of *Coregonus lavaretus*; a species of fish not listed on Annex II of the Habitats Directive). But in practice there is a large degree of overlap and most Ramsar sites in the UK are also N2K sites (and those that aren't are SSSIs). The core areas of most UK UNESCO Biosphere Reserves are also N2K sites, noting that core areas must be of at least European Importance for its ecosystems.

However, whilst the Directives support the implementation of these wider commitments it is not the objective of the Directives to ensure this and additional MS action is required. For example it is a national policy decision to treat those Ramsar sites outside of N2K sites the same as those inside. And broad commitments on halting biodiversity loss include species/habitats that gain little or no protection from the Nature Directives.

[68] 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).

EU Added Value

Evaluating the EU added value means assessing the benefits/changes resulting from implementation of the EU nature legislation, which are additional to those that would have resulted from action taken at regional and/or national level. We therefore wish to establish if EU action (that would have been unlikely to take place otherwise) made a difference and if so in what way? Evidence could be presented both in terms of total changes since the Directives became applicable in a particular Member State, in changes per year, or in terms of trends.

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: The UK has a history of taking action to protect species and habitats and put in place legislation long before the EU Nature Directives with our National Parks and Access to the Countryside Act (1949) & Wildlife and Countryside Act (1981).

In our view, one of the key added values in the EU Nature Directives is the ability to ensure that a coordinated approach to protecting species and habitats is achieved and maintained throughout the EU, noting in particular the needs of migratory and widely dispersed species and habitats and action to control invasive species. EU Directives provide a level playing field by requiring that MS all set a broadly similar level of ambition without compromising economic growth. Coordinated working through the recent introduction of biogeographic seminars and the development of a Natura 2000 communication platform are typical examples of invaluable joint working by Member States to achieve strategic objectives of the Directives.

Having agreed standards set out in nature legislation across the EU has improved the development of conservation measures and raised the level of ambition (e.g. an understanding of what FCS means in practice). In some cases it has also helped influence the development of complimentary measures under other areas of EU legislation. For example, having Special Areas of Conservation adopted by all MS means that these MS are more receptive to the management of their fishing activities under the CFP. Conversely, the requirement of the Directive to set agreed standards (e.g. FCS) can drive action which does not always add value. For example, the Directives require MS in some cases to designate more of a particular habitat than may otherwise have been considered necessary at a MS level, in order to meet the Directives' aims (e.g. blanket bog in the UK).

The need to meet the monitoring requirements of the Directives has added coherence and structure to biodiversity monitoring across the EU, although this comes at a cost and there is scope for streamlining in order to ensure that it represents good value for money.

The implementation of the Directives has incentivised developers to improve the way in which they carry out major infrastructure projects, considering impacts and potential mitigation measures as a routine element of developing a project.

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: The lack of a 'scientific control' makes this difficult to answer. As mentioned in AV1, the UK had already put in place legislation to protect species and habitats before the EU Nature Directives. The UK's domestic SSSI/ASSI network pre-existed (SSSIs were originally notified under the National Parks & Access to the Countryside Act 1949) and now underpins most terrestrial Natura 2000 sites. At present this network is broader than Natura 2000, protecting species of global, EU and national importance.

It is impossible to judge how the protections provided by pre-existing domestic legislation would have developed over time in the absence of EU nature legislation. However, a number of things suggest that the UK would have continued to move in a positive direction without EU legislation:

- the UK already had clear domestic legislation to support species and habitats;
- the UK has a very strong NGO and public environmental lobby that would have continued to press for further improvements in conservation legislation in the absence of EU measures; and
- the UK is a contracting party to many international biodiversity conventions, including the CBD. These would have driven action in the absence of EU legislation.

The exact shape of the protections put in place in the UK has undoubtedly been influenced by the Nature Directives. As set out in the answer above, the application of FCS and the way in which monitoring has developed have been heavily driven by the Directives, and there may have been less incentive to protect widespread species such as bats and newts without the Directives.

The other interesting consideration is the extent to which the Nature Directives may have driven the shape of the CAP, CFP and other EU frameworks and policies to take account of biodiversity. Although significant improvements could be made to the CAP, the Nature Directives have informed the objectives behind the Pillar 2 Rural Development Regulation which shape the priorities for the Rural Development Programme in each Member Sate and setting a minimum 30% funding requirement on environmental benefits. It may have provided even less support for biodiversity objectives. In the case of CFP, as the answer above indicates, the creation of SPAs has had a tangible impact on MS willingness to put in place measures under CFP to manage their fishing activities.

As stated in the answer above, without the Directives, the level of coherence and cooperation across the EU in implementing policies to protect species and habits would undoubtedly have been less. Although it is likely that groups of MS would have shared best practice, it would have been harder to achieve this on a pan European scale.

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: It is anticipated that unilateral action is likely to be less effective in achieving biodiversity goals at an EU level, particularly in regard to migratory species which often require a coordinated approach (eg to ensure that appropriate measures are in place to protect transit routes).

Continued EU action is likely to drive inter-state parity, especially for new accessions, maintaining a level playing field and certainty for businesses which operate across the EU.

However, there may be scope for greater flexibility in how MSs achieve the outcomes of the Directives. For example, a system of 'earned recognition' could allow those MSs that have demonstrated that they are performing well in implementing the key requirements of the Directives to have more flexibility to implement detailed provisions in ways that suit national circumstances (e.g. having more choice over how a habitat is maintained at FCS where evidence can robustly show that this will be achieved). In addition, the EU's approach to legislation has developed since the

introduction of the Habitats Directive with more recent legislation such as the WFD and MSFD demonstrating an alternative approach to managing complex systems. There is potential for the Nature Directives to learn from these developments and the ongoing 'Make It Work' initiative which the Netherlands, UK, Germany and other MS are involved in.

Annex 1: Objectives of the Directives

Overall objective	To contribute to ensuring biodiversity through conservation of Europe's most valuable and threatened habitats and species, especially within Natura 2000	
	Birds Directive	**Habitats Directive**
Strategic Objectives	Art. 2: Maintain the population of all species of naturally occurring wild birds in the EU 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.	Art 2: Maintain or restore natural habitats and species of Community interest at a favourable conservation status (FCS), taking into account economic, social and cultural requirements and regional and local characteristics.
Specific Objectives	Art. 3: Preserve, maintain or re-establish a sufficient diversity and area of habitats' for birds, primarily by creating protected areas, managing habitats both inside and outside protected areas, re-establishing destroyed biotopes and creating new ones. Art. 5: Establish a general system of protection for all birds. Art. 7: Ensure hunting does not jeopardize conservation efforts and complies with the principles of wise use and ecologically balanced control of the species concerned.	Art 4: Establish Natura 2000 – a coherent network of special areas of conservation (SACs) hosting habitats listed in Annex I) and habitats of species listed in Annex II), sufficient to achieve their FCS across their natural range, and SPAs designated under the Birds Directive. Art. 6: Ensure SCIs and SACs are subject to site management and protection. Art 10: Maintain/develop major landscape features important for fauna and flora Art. 12-13: ensure strict protection of species listed in Annex IV. Art. 14: ensure the taking of species listed in Annex V is in accordance with the maintenance of FCS. Art. 22: Consider the desirability of reintroducing species listed in Annex IV that are native to their territory.
Measures/ Operations objectives	**Site Protection system** Art. 4: 4(1): Designate Special Protection Areas (SPAs) for threatened species listed in Annex I and for regularly occurring migratory species not listed in Annex I, with a particular attention to the protection of wetlands and particularly to wetlands of international importance. 4(3): Ensure that SPAs form a coherent whole. 4(4): [Obligations under Art 6(2), (3) and (4) of Habitats Directive replaced obligations under first sentence of 4(4)]. Outside SPAs, strive to avoid pollution or deterioration of habitats. **Species protection system** Art. 5 (a-e): Prohibit certain actions relating to the taking, killing and deliberate significant disturbance of wild birds, particularly during the breading and rearing periods. 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.	**Site Protection system** Arts. 4 & 5: Select Sites of Community Importance (SCIs) and SACs, in relation to scientific criteria in Annex III. Art. 6(1): Establish necessary conservation measures for SACs. Art. 6(2): [Take appropriate steps to?] Avoid the deterioration of habitats and significant disturbance of species in Natura 2000 sites. **Plans or projects** Art. 6(3/4): Ensure, through an 'appropriate assessment' of all plans or projects likely to have a significant effect on a Natura 2000 site, that those adversely affecting the integrity of the site are prohibited unless there are imperative reasons of overriding public interest. Art. 6(4): When plans or projects adversely affecting the integrity of a site are nevertheless carried out for overriding reasons, ensure that all compensatory measures necessary are taken to ensure the overall coherence of Natura 2000. **Financing** Art. 8: Identify required financing to achieve favourable conservation status of

	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. Art. 8: Prohibit the use of all means of large-scale or non-selective capture or killing of birds, or methods capable of causing the local disappearance of species, especially those listed in Annex IV. Art 9: Provide for a system of derogation from protection of species provisions under specified conditions **Research** Art. 10: Encourage research into relevant subjects, especially those listed in Annex V. **Non-native species** Art 11: Ensure introductions of non-native species do not prejudice local flora and fauna. **Reporting** Art 12: report each 3 years on implementation	priority habitats and species, for the Commission to review and adopt a framework of aid measures. **Landscape features** Art 10: Where necessary, encourage the management of landscape features to improve the ecological coherence of the Natura 2000 network. **Surveillance** Art. 11: Undertake surveillance of the conservation status of habitats and species of Community interest. **Species protection system** Art 12 & 13: Establish systems of strict protection for animal species and plant speces of Annex IV prohibiting specified activities. Art. 14: Take measures to ensure that taking/ exploitation Annex V species is compatible with their maintenance at FCS Art. 15: Prohibit indiscriminate means of capture/killing as listed in Annex VI. Art. 16: Provide for a system of derogation from protection of species provisions under specified conditions **Reporting** Art 17: report on implementation each 6 years, including on conservation measures for sites and results of surveillance. **Research** Art. 18: undertake research to support the objectives of the Directive. **Non-native species** Art. 22: ensure that introductions of non-native species do not prejudice native habitats and species.

Annex 2: Typology of cost and benefits

This annex sets out a typology of costs and benefits resulting from implementation of the Nature Directives in the EU, which need to be considered in the evaluation.

Typology of Costs

The evaluation will consider costs which result directly and indirectly from the Directives, including both monetary costs (i.e. involving direct investments and expenditures) and non-monetary costs (involving additional time inputs, permitting delays, uncertainty and missed opportunities).

It will include both the **compliance costs** of the legislation, and any **opportunity costs** resulting from missed or delayed opportunities for development or other activities. Compliance costs can be further divided into **administrative costs** and **costs of habitat and species management**. Examples of each of these types of costs are set out in Table 1.

Administrative costs refer to the costs of providing information, in its broadest sense (i.e. including costs of permitting, reporting, consultation and assessment). When considering administrative costs, an important distinction must be made between information that would be collected by businesses and citizens even in the absence of the legislation and information that would not be collected without the legal provisions. The costs induced by the latter are called **administrative burdens**.

Evidence of these costs will include:

- **Monetary estimates** of investments required and recurrent expenditures on equipment, materials, wages, fees and other goods and services; and
- **Non-monetary estimates** of administrative time inputs, delays, missed opportunities and other factors affecting costs.

Typology of benefits

The evaluation will collect evidence on the direct and indirect benefits derived from EU nature legislation, which include benefits for biodiversity and for the delivery of ecosystem services, and the resultant effects on human well-being and the economy.

The **ecosystem services** framework provides a structured framework for categorising, assessing, quantifying and valuing the benefits of natural environmental policies for people. However, it is also widely recognised that biodiversity has **intrinsic value** and that the Directives aim to protect habitats and species not just for their benefits to people, but because we have a moral duty to do so. In addition, consideration of benefits needs to take account of the **economic impacts** of implementation of the legislation, including effects on jobs and output resulting from management activities as well as the effects associated with ecosystem services (such as tourism).

A typology of benefits is given in Table 2. Assessment of the benefits of the Directives for biodiversity is a major element in the evaluation of their effectiveness. Effects on ecosystem services will be assessed in both:

- **Biophysical terms** – e.g. effects on flood risk, number of households provided with clean water, number of visitors to Natura 2000 sites etc.; and
- **Monetary terms** – e.g. reduced cost of water treatment and flood defences, value of recreational visits, willingness to pay for conservation benefits.

Evidence of economic impacts will include estimates of expenditures by visitors to Natura 2000 sites, employment in the creation and management of the Natura 2000 network, and resultant effects on gross value added in local and national economies.

Typology of costs resulting from the Nature Directives

Type of costs	Examples
Administrative costs	• Site designation, including scientific studies, administration, consultation etc. • Establishing and running of management bodies • Preparation and review of management plans • Public communication and consultation • Spatial planning • Development casework, including time and fees involved in applications, permitting and development casework affecting habitats and species, including conducting appropriate assessments • Time and fees involved in compliance with species protection measures, including derogations • Research • Investigations and enforcement
Habitat and species management costs	**Investment costs:** • Land purchase • Compensation for development rights • Infrastructure for the improvement/restoration of habitat and species • Other infrastructure, e.g. for public access, interpretation works, observatories etc. **Recurrent costs - habitat and species management and monitoring**: • Conservation management measures– maintenance and improvement of favourable conservation status for habitats and species • Implementation of management schemes and agreements with owners and managers of land or water • Annual compensation payments • Monitoring and surveillance • Maintenance of infrastructure for public access, interpretation etc. • Risk management (fire prevention and control, flooding etc.)
Opportunity costs	• Foregone development opportunities resulting from site and species protection, including any potential effects on output and employment • Delays in development resulting from site and species protection, and any potential effects on output and employment • Restrictions on other activities (e.g. recreation, hunting) resulting from species and site protection measures

Typology of Benefits

Type of benefit	Examples
Benefits for species and habitats	Extent and conservation status of **habitats** Population, range and conservation status of **species**
Ecosystem services	Effects of Directives on extent and value (using a range of physical and monetary indicators) of: • **Provisioning services** – food, fibre, energy, genetic resources, fresh water, medicines, and ornamental resources. • **Regulating services** – regulation of water quality and flows, climate, air quality, waste, erosion, natural hazards, pests and diseases, pollination. • **Cultural services** – recreation, tourism, education/ science, aesthetic, spiritual and existence values, cultural heritage and sense of place. • **Supporting services** – soil formation, nutrient cycling, and primary production.
Economic impacts	Effects of management and ecosystem service delivery on local and national economies, measured as far as possible in terms of: • **Employment** – including in one-off and recurring conservation management actions, as well as jobs provided by tourism and other ecosystem services (measured in full time equivalents); • **Expenditure** – including expenditures by visitors as well as money spent on conservation actions; • **Business revenues** – including effects on a range of land management, natural resource, local product and tourism businesses; • **Local and regional development** – including any effects on investment, regeneration and economic development; and • **Gross Value Added** – the additional wages, profits and rents resulting from the above.