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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 16 December 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT  
EXECUTIVE SUMMARY OF THE FITNESS CHECK of the EU Nature  
Legislation (Birds and Habitats Directives) Directive 2009/147/EC of the  
European Parliament and of the Council of 30 November 2009 on the  
conservation of wild birds and Council Directive 92/43/EEC of 21 May 1992  
on the conservation of natural habitats and of wild fauna and flora

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Delegations will find attached document SWD(2016) 473 final.

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**COMMISSION STAFF WORKING DOCUMENT**

**EXECUTIVE SUMMARY OF THE FITNESS CHECK**

**of the EU Nature Legislation (Birds and Habitats Directives)**

**Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds**

**and**

**Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora**

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This REFIT Fitness Check provides a comprehensive policy evaluation of the Birds<sup>1</sup> and Habitats<sup>2</sup> Directives. It has examined their performance against five criteria: effectiveness, efficiency, relevance, coherence and EU added value. The Fitness Check, supported by a study, has involved extensive evidence gathering and consultation with many stakeholders at Member State and EU levels, including a 12 week public internet consultation that attracted unprecedented interest, with more than 552,000 responses, strongly influenced by different campaigns. The resulting analysis brings together a substantial body of evidence and seeks to identify changes that can be logically attributed to the intervention of the Directives. However, despite evidence of large scale declines in European nature during the 20<sup>th</sup> century, the work has been limited by the fact that there was no clear baseline against which to estimate how the status of flora and fauna might develop in the absence of EU action.

The evaluation on **effectiveness** focused on assessing the extent to which the objectives of the two Directives have been achieved and any significant factors that may have contributed to or inhibited progress towards meeting those objectives. The evaluation showed that **the general objectives of the Directives have not yet been met and it is not possible to predict when they will be fully achieved**. However, **it is clear that the status and trends of bird species as well as other species and habitats protected by the Directives would be significantly worse in their absence and improvements in the status of species and habitats are taking place where there are targeted actions at a sufficient scale**. Although there are still gaps for the marine environment, the terrestrial part of the Natura 2000 protected areas network is now largely established. National systems of species protection and sustainable use are in place. Progress on habitat conservation and delivery of ecosystem services beyond Natura 2000 is more limited.

The Directives have been a catalyst for increased funding for nature, improved stakeholder awareness and engagement, as well as strengthened knowledge and sharing of experience, but this has not taken place at a sufficient scale. The effectiveness of the Directives has also been hindered by delays in the establishment of Natura 2000 and in putting in place the necessary conservation measures for management and restoration of the sites and consequently the network has still not delivered its full conservation and socio-economic potential. Availability and targeting of funding, knowledge gaps, full stakeholder engagement, effective management of the Natura 2000 sites, policy integration and human resource constraints remain the most significant challenges.

The evaluation on **efficiency** has examined if the costs involved in implementation are reasonable and in proportion to the benefits achieved. However, as Member States do not have a duty to report to the Commission on the costs and benefits of the Directives, there is limited quantitative information available at the EU scale to underpin assessments on efficiency. **Compliance costs of designating, protecting and managing Natura 2000 sites have been estimated to be at least €5.8 billion annually across the EU**. Only a qualitative assessment of opportunity costs was possible, showing that the Directives do not create barriers to investments that are sustainable and not damaging to the conservation values of the sites. The vast majority of proposed projects and plans falling within the Article 6 permitting procedures are authorised. Delays in site and species derogation permitting procedures result from a combination of factors including inadequate knowledge, difficulties in access to data and complex procedures put in place at national level. Furthermore, EU financial support

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<sup>1</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds is the codified version of Directive 79/409/EEC as amended. *OJ L 20, 26.1.2010, p. 7–25.*

<sup>2</sup> 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.*

applies to agriculture and forestry, the main land uses in Natura 2000 as well as to prevent damage caused by protected species (e.g. under rural development for large carnivores) or to compensate for such damages (e.g. under fisheries policy for fish-eating birds). The Directives themselves set out the framework of rules that are then developed and applied by Member States. Unnecessary administrative burdens can result from national or regional implementation approaches (e.g. permitting procedures that are more complicated than necessary). However, there is a growing body of good practice on smart implementation approaches, such as early screening of plans and projects, streamlining of permitting procedures, improving the quality and sharing of data.

**The multiple benefits of the Directives, estimated at € 200-300 billion per year, significantly exceed identified costs.** Their implementation contributes to local economies through job creation and tourism, especially in rural areas. However, internalization of costs has not yet been achieved as the socio-economic benefits of the many ecosystem services provided by Natura 2000 have not yet gained widespread recognition, acknowledgement and acceptance in public policy. Furthermore, there can be a mismatch between those bearing the costs, such as landowners and developers and those benefitting, such as tourism and recreational bodies and society more generally, which has implications for the design of compensation and incentive schemes.

**The overall EU co-funding for Natura 2000 during the 2007-2013 period represented only 9-19% of the estimated financing needs and national co-funding was unable to cover the remaining gap. Moreover EU funding has not always been able to achieve demonstrable progress.** For the 2014-2020 multi-annual financial perspective Prioritised Action Frameworks have been developed by Member States, aimed at a better definition of Natura 2000 funding needs and priorities for action to strengthen financial integration.

The examination of **relevance** considered the extent to which the objectives and measures contained within the Nature Directives are consistent with the current needs of EU natural habitats and species of wild fauna and flora, including wild birds. **Evidence shows that the Directives continue to be relevant for tackling the key pressures on habitats and species.** Their general and specific objectives remain valid, setting out what is to be achieved and leaving the responsibility for identifying and responding to specific threats to the Member States. Annexes to both Directives have been amended on a number occasions, most recently linked to the accession of new Member States. Over 1200 species and sub-species as well as 231 habitat types are currently listed under the Habitats Directive. There are differences of views on the current need to update the Annexes to the Directives. Although the Directives do not fully cover all taxonomic groups, available studies indicate that the Natura 2000 network, through its 'umbrella effect', covers a high proportion of species of conservation concern beyond those listed in the Annexes. The evidence indicates that the Annexes in their current form provide an adequate level of protection to enable the objectives of the Directives to be met.

The analysis on **coherence** looked for evidence of synergies or inconsistencies between the Directives and other EU policies which are expected to work together, such as other EU environmental directives and other EU sectoral policies affecting land and water use and adaptation to climate change. **The Nature Directives are coherent with each other but there is continued need to promote implementation solutions that optimise the attainment of their conservation objectives while having full regard to the socio-economic context in which they operate, working with different stakeholder communities. Other environmental directives are consistent and complementary with the Nature Directives, although experience highlights the need and value for improved**

**co-ordination**, in particular as regards monitoring and reporting with a view to collecting data once for multiple purposes and reducing burden.

**The Nature Directives and the EU 2020 Biodiversity Strategy constitute an integrated and fully coherent policy approach.** The Directives are key instruments for achieving the headline target of the EU Biodiversity Strategy to ‘halt the loss of biodiversity and ecosystem services in the EU and help stop global biodiversity loss by 2020’. Several actions under the Strategy help improve ecological coherence of the Natura 2000 network in line with Article 10 of the Habitats Directive, especially target 2 of the Strategy, which focuses on maintenance and restoration of ecosystems and their services. **There is overall coherence between the objectives of the Nature Directives and relevant international Conventions and Agreements on biodiversity and nature protection that apply in the European Union.** Implementation of the Directives is central to the EU and its Member States achieving international biodiversity targets and Sustainable Development Goals.

**Other sectoral EU policies have sometimes competing objectives. Given the continuing decline of species and habitats associated with agriculture, greater efforts are needed to conserve and enhance biodiversity, through more effective integration with the CAP** in order to reach biodiversity objectives. Recent reforms of the CAP and of the Common Fisheries Policy have brought promising changes to the policy framework in terms of improved coherence with the Nature Directives, although more time is needed to confirm results. While the Cohesion, Energy and Transport policies have the potential for both positive and negative impacts on the species and habitats protected under the Nature Directives, several EU policies (e.g. research), instruments and procedures (e.g. SEA, EIA and appropriate assessments) are in place to identify and mitigate the possible negative impacts on nature and to develop innovative tools to improve the condition of the target species and habitats protected by the Directives and their ecosystems..

The analysis on **EU added value** assessed whether action continues to be justified at the EU level and looked for changes that can reasonably be attributed to EU intervention. **There is broad recognition that the Directives have established a stronger and more consistent basis for protecting nature than existed in Europe before their adoption. The needs and rationale for EU level action through the Nature Directives remain valid** also with a view to achieving the multiple ecosystem service benefits that they deliver to society. Nature is a shared heritage of the Member States and effective management of natural resources needs to take place across political boundaries as the ranges of many species, especially migratory ones, are dependent on suitable habitats and conditions being present simultaneously in several Member States. Different nature protection rules across the EU would lead to many diverse legal regimes for business. EU action has created a more consistent, fair and integrated approach to nature conservation and delivery of ecosystem services across the EU, generating opportunities while at the same time addressing transboundary concerns in line with international obligations.

The Directives are 'framework legislation' whose detailed implementation is regulated through national/regional law and decisions of national/regional/local authorities supported by guidance and other EU level policy documents. **The goals of the Directives continue to reflect the needs of nature conservation and sustainable use for nature, people and the economy although more efforts are needed to achieve them.** The Directives **have already led to** improvements in conservation status of species and habitats where targeted actions have been taken at a sufficient scale. There are opportunities for enhancing the efficiency of their implementation and reducing administrative burden such as through smarter use of

permitting procedures. There is a need to ensure better coherence with other EU policies, including strengthened integration with the CAP since agriculture and forestry have the most important influence on terrestrial biodiversity in the EU. Better use of limited financial resources is critical to achieving the Directives' objectives. **Within the framework of broader biodiversity policy the Nature Directives are fit for purpose but fully achieving their objectives and realising their full potential will depend on substantial improvement in their implementation in relation to both effectiveness and efficiency, working in partnership with different stakeholder communities in the Member States and across the EU, to deliver practical results on the ground.**