



Minutes

Intergroup Sustainable Hunting, Biodiversity, Countryside activities and Forestry

20th of October 2015

Fitness Check of EU Nature Legislation For a Better Implementation

Representation of North Rhine-Westphalia to the
European Union

1. Welcome

Rainer Steffens, the director of the representation of North Rhine-Westphalia to the EU welcomes all the participants and especially Karl-Heinz-Florenz, who he is originating from the same state of North Rhine Westphalia.

In his welcome speech, he discusses the EU's biodiversity strategy that was adopted in 2011. The goal of this strategy that runs until 2020 is to prevent the loss of biodiversity by protecting endangered species. The recent mid-term review of this strategy shows a mixed result. There is improvement, but some species are worse off than before, so efforts should not be reduced. The strict implementation of nature legislation will prove vital to preventing further loss of biodiversity. This is why the Intergroup will today see where there is room for improvement in the current directives. The European Commission's fitness check of EU nature legislation is the perfect opportunity to bring any proposals to the Commission's attention and should be used by all stakeholders.

2. Introduction

Karl-Heinz Florenz, President of the Intergroup thanks Rainer Steffens for his welcome and for hosting the intergroup in the beautiful building of the representation of North Rhine-Westphalia. He notes that Mr. Steffens is clearly a green environmental minister with experience on the topic of biodiversity.

He welcomes all the participants and is happy to see that the topic under discussion is of interest to many. It is important to involve all the stakeholders, be they hunters or farmers, in coming up with solutions for environmental protection. Biodiversity is a building stone of life and Europe is at risk of losing it. In his own region, the lower Rhineland,

most of the biodiversity has been lost, a problem that is recognized by 91% of citizens as an important issue.

He believes the legislation on the topic could use more flexibility. There should be room to take the interests of the regions into account. This has already been done quite well in his region, but he invites the European Commission to work more on this aspect of nature legislation. Furthermore, he notes that measures should not only be taken to protect the species, but also their natural habitat. It is important to realize that even if the species are saved, they also need a good habitat

3. Panel discussion

Nicola Notaro – Head of the Nature Unit in DG Environment, European Commission

He gave an overview of where the process of the fitness check stands right now and what is coming up in the next weeks and months, as well as in the longer term. He notes that he himself is new to the nature unit (3 weeks), but that he has 20 years of experience in the field of environment, of which 15 years at the European Commission.

He first would like to tell something about the results of the public consultation. He notes that there have been replies, with more than 20% of the stakeholders in Germany and the United Kingdom answering at least part of the consultation. The total number of replies is around 550,000 and this includes contributions from all kinds of stakeholders, including industry and farmers (520,000 replies came from the #naturealert campaign). He notes that this consultation, together with the State of Nature in the EU report and the Mid-term Review of the Biodiversity Strategy, feeds into the fitness check.

The next step in this fitness check will be a report by the European Commission on the results of the public consultation. This report should be published by the end of the month, or early November. Then there will be a Fitness Check Conference on the 20th November, at which a draft report with preliminary findings will be discussed. It is important to realize that this will not yet be a European Commission report, but rather a paper prepared by an external consultant. The final report from the consultancy firm, that will probably be more than 300 pages, will then be published by the end of the year, or in January. The actual working paper of the European Commission, that ends the fitness check, should be expected in the spring of 2016.

However, this working paper will not include any proposals for immediate actions. Many issues will need more complex work, or even impact assessments in the case of legislative proposals. Furthermore, the European Commission will try to come up with a clear political opinion by the end of 2016, including an overview of which actions will follow and when. Of course, the result of the fitness check will be central to this communication.

He cannot say more about the preliminary findings of the public consultation as they are still drafting the report. However, taking into account both qualitative and quantitative measures, it is clear that many stakeholders have highlighted issues with the implementation of the directives by national and regional governments. He expects further analysis of the replies to confirm this finding.

Concerning the social and economic impact of the directives, he notes that this is clearly an issue for many stakeholders and that this is nothing new for the Commission. They have already produced some specific documents addressing this. He notes that he understands the importance as Natura 2000 legislation covers around 20% of the EU's territory.

Seger van Voorst tot Voorst – Managing Director of National Park *De Hoge Veluwe*

He thanks the organisers for the invitation and introduces himself as the managing director of a private foundation running one of the oldest national parks in the Netherlands, *De Hoge Veluwe*. His park receives around 500.000 paying visitors a year and boasts one of the highest degrees of biodiversity in the Netherlands, hosting many red list species. 35% of the park is protected habitat and a further 25% is potential habitat. Furthermore, the park includes three museums, including the renowned Kröller-Müller. In terms of revenue, only 10% comes from public authorities, with the rest coming mostly from paying visitors. The economic spinoff is roughly 70 million euros.

He describes the management of the park as active and practical. The foundation intervenes into nature to protect biodiversity through hunting and organising the right habitats. However, this leads to a problem with the current Birds and Habitat Directives, especially paragraph 3 of article 6 of the Habitats Directive that establishes the precautionary principle. This principle has been interpreted very strictly by the ECJ, meaning that all changes to the habitat, for example to update tourist infrastructure, should be preceded by complete scientific studies removing all doubt that the works go against the goals of the directives. This leaves very little room for a balanced approach, as the long experience of private owners is not recognized to be scientific. As a result, owners often have to hire expensive scientific bureaus. Therefore, he would argue that this article (6) needs to be amended to incorporate the value of the landowners' experience. There should be scope for landowners' to make their own management plan and submit that to the competent authorities for certification. In addition, a system of notifying the relevant authorities after the act would be helpful, as that would allow quicker responses to protect biodiversity and put the responsibility where it belongs, with the landowner.

Furthermore, he argues that there are elements in the different directives that are contradictory. Also, he notes that there are big differences in implementation between the different countries, with the Netherlands keeping a much more limited list of species that can be hunted. Besides this, he notes that very strict laws limiting hunting to the preservation of nature inhibit the landowners' property rights.

Philippe Plisson – Member of the French National Assembly

He notes that he comes from a family of hunters and received his hunting permit at age 16. Since then, there have been many changes in hunting and agriculture affecting biodiversity. He would say that the agricultural changes have had a more detrimental effect on species than hunting. Therefore, he would argue in favour of more comprehensive agriculture legislation, taking into account the many externalities that have a negative

effect on habitats. Currently hunters, who are actively involved in protecting animals and their natural habitats, are heavily affected by the reduction in biodiversity and the dwindling numbers of animals.

He stresses that hunters are not barbarians wishing to destroy all species. Furthermore, he notes that for many disadvantages people in the rural areas of Europe, hunting is not just a recreational activity, but rather a way of life. The way in which the hunting directive has been implemented across Europe is one of the reasons these people are losing trust in public authorities and vote for extreme right parties like the Front National.

He extensively discusses the example of the Greylag Goose which, according to the Birds Directive, cannot be hunted during its migration period. France first allowed the hunting on birds that had not started their migration period, but the ECJ struck this down on the basis that the migration period starts once the first bird of the species has started its annual migration. This extensive protection dates from a time when it was still an endangered species. However, nowadays it is no longer endangered, it flourishes. In some regions there are even so many that they have to be gassed to protect habitats. Sometimes the French government has tried to win votes by granting hunters a few more days to hunt after the start of the migration period (which often overlaps with the election cycle). However, the *Conseil d'état* argued this is an illegal practice.

Up until now, attempts to change this situation have been opposed by ecologist groups, but he is still preparing a report on the issue, with the hope of coming to a more lenient interpretation of the birds directive. He notes that the directive dates from 1979 and that habitats and species have changed since. He also notes that migration patterns have changed considerably due to climate change. He would like the whole directive to be renegotiated to gain clarity on these issues. He is convinced that it would be possible for all stakeholders to find a consensus on this as they all have a common interest, the protection of species.

Wouter Langhout – EU Nature Policy Officer at BirdLife Europe and Central Asia

According to him, current nature legislation is 'fit as a fiddle'. He believes the current directives have all elements required for nature conservation in the future. He notes that BirdLife Europe has members in all EU member states and has a long history of working on the birds and habitats directives. He follows the questions of the Fitness Check in presenting BirdLife's opinion on the directives:

Firstly, he believes the current directives are effective. Data from the member states shows that many species protected by the directives are doing better, even though the climate is changing. He argues that this comeback of wildlife in Europe is driven by the legal protections in these directives.

Secondly, he considers the directives to be efficient. The ECJ has established a clear legal framework through its rulings (multiple rulings on some articles). Furthermore, many sectors have embraced the objectives of the directives and learned to work with them. BirdLife has a long standing cooperation with the Renewables Grid Initiative, the cement industry, port developers and FACE.

Thirdly, he argues that the directives are relevant. They are among the most popular pieces of EU legislation. More than 520,000 people answered to the consultation following the '#naturealert' campaign. He argues that the reason for this high response rate is that people realize that nature is part of Europe's common heritage and that many species cross national borders. It makes sense for the EU to act on this.

Fourthly, he believes the directives are coherent as they are well supported by environmental policy in the fields of water, air, environment, crime, etc. He argues that improving these other directives would be more efficient than revamping the Birds Directive. The directives under discussion could also be supported by the Common Fisheries Policy 2014-2020 if it is designed to be coherent with existing legislation.

He does, however, recommend three possible improvements to the directives:

Firstly, he sees an issue of enforcement. Not enough resources are available for this at the level of the European Commission, as well as in the member states. As a result, parts of the directive are not being enforced and 25 million birds can be killed illegally every year. He sees potential in minimum standards on environmental inspections, better access to environmental justice and the use of modern technologies.

Secondly, he argues that more investment needs to be unlocked. Currently, only 10-20% of funds for the management of Natura 2000 areas are actually available and not enough is being done to unlock the economic potential of these areas for rural communities.

Lastly, he claims for the reform of other policies. Firstly, the Common Agricultural Policy that he considers to be the biggest threat to nature in the EU. He argues that there is need to move to a system where farmers are paid for preserving habitats. Furthermore, he singles out some energy policies, especially with relation to the production of (first generation) bioenergy.

Karl-Heinz Florenz agrees that agricultural policy plays a big role, but argues that farmers also face problems due to low prices. Economic systems need to be changed so that farmers can get further profits.

4. Discussions

Filippo Segato – Secretary General FACE

First of all, he thanks the representation of North Rhine-Westphalia for hosting the intergroup. He notes that FACE represents 7 millions hunters, all citizens with a great concern for Europe's nature. His organisation has a very clear stance regarding the fitness check and the directives and brought this forward in the consultation. They also had many individual stakeholders contribute.

In discussions with its members, FACE agreed to support the directives, despite certain differences of opinion. Overall 4% of the participants to the consultation declared to be hunters, while 22% declared to have an interest in hunting. He notes that it is important that hunters are recognized as stakeholders, they have clear interest in Europe's nature.

Even though they support the directives, they are not completely satisfied with the current situation. He notes that that there are considerable problems in the implementation

of the directives. However, this should not be an excuse for the Commission to shift blame; they could start infringement procedures.

He discusses the example of the case of the Swedish wolf, noting that its population is increasing; As a result, the explanation for why the European Commission should pursue Sweden is not understood at the local level, and actually not even by the government.

Furthermore, he notes problems in the evolution of case law and jurisprudence. Philippe Plisson quoted the very strict ECJ jurisprudence on the closing date of hunting.

He notes that implementation is mostly flawed because it remains limited to the listing of species, not taking into account social and economic considerations. More attention for these factors could lead to improved habitats and a more durable coexistence between large carnivores and humans. He also sees a problem in terms of information exchange here. One day FACE sits together with the Commission, and the next day they hear there is an infringement procedure against one of its members.

He underscores the importance of article 9 of the Habitats Directive on derogations, noting that only 1% of hunting happens under cases of derogation. Nature can perfectly well adapt to this, and even more these derogations are important for the life of citizens in areas with wildlife.

With regards to article 19, which foresees changes in the list of protected species in the case of technological progress, he notes that he does not know of a case where a species was moved from annex 4 to annex 5. Furthermore, he hopes that the Commission will amend this article to include socioeconomic aspects, arguing that a balance needs to be found between a “museographic” approach and the fact that people’s livelihood is sometimes hampered by stringent environmental protection.

On a closing note, he reminds the audience that the preservation of nature is hunter’s primary objective. It ensures the sustainability of the practice. FACE believes the current legislative framework is adequate for this purpose.

Konstantin Kostopoulos –Adviser and Chief Operating Officer for the Wildlife Estates Label project at the European Landowners’ Organization

He starts by thanking the representation of North Rhine-Westphalia for hosting the intergroup. He represents the European Landowners’ Organization, which is actively engaged in Brussels and on the national level. More specifically, he works on the Wildlife Estates Label project, which represents 191 estates in the EU, with a total surface of over a million hectares. About 50% of this surface is subject to Natura 2000 regulation, mainly under the Habitats Directive.

ELO remains wholly supportive of the objectives of the Birds and Habitat Directives, but believes the implementation across the EU could be improved. That is why they welcome the Fitness Check and hope that it will lead to better representation of social and economic factors.

To attain this they propose five goals:

Firstly, the Commission needs to expand its publication of clear guidance documents, which detail the practical application of the Directives. Furthermore, there is a need to raise awareness of the existence of these guidance documents. The “Guide to Sustainable Hunting under the Birds Directive” could prove as an example in this.

Secondly, he notes that the administrations of member states often take an overly cautious approach due to a lack of understanding of the full scope and potential of the Directives. He notes that especially article 2 of the Habitats Directive, on socio-economic requirements, is often ignored to the detriment of landowners and managers.

Thirdly, flexibility is needed in the light of changing circumstances (e.g. climate change) if the system of strict protection imposed under article 12 of the Habitats Directive is to be met.

Fourthly, he stresses that landowners and managers need to be consulted to gain a proper understanding of the site and the owner’s aspirations for it. Not doing this properly leads to a lack of legitimacy of the directives for landowners. Farmers and landowners with adjacent areas should also be consulted.

Fifthly, he notes that there are not enough funds allocated to the directive. The Common Agricultural Policy is the principle source of funding for the implementation and this should be kept in mind when changing the CAP. He suggests that Rural Development Funds should be better integrated with the goals and aims of the Directives so as to provide a broader financial base. Moreover, administrative management and monitoring costs should be covered by the relevant public authorities. He notes that, even though programs like LIFE+ and some other projects can cover direct investment costs, there is a need to develop a mechanism enabling land managers to absorb long-term or permanent loss of income due to restrictions imposed by Natura 2000 regulations. If this is not done well, landowners will be hesitant to engage in the management of Natura 2000 areas.

To sum up, he argues that proposals following the Fitness Check should be made in cooperation with stakeholders. Overall, he believes no new legislation is needed as long as better use is made of the existing flexibility in the current legislation.

Questions from the public

What has FACE done in the last 12 months to protect nature?

Filippo Segato answers that its 7 million members invest a lot of resources to protect nature. His organisation is not asking for money, they are investing their own energy and time. Hunters play a big role in managing wildlife, and are financially responsible for any damages to the habitats. The exact financial contribution is hard to quantify, but the amounts involved are rather large. Hunters only target a few species, but there is a cascade effect to others if populations are managed properly.

A person from the *Deutscher Bauernverband* argues that farmers are already very much implicated in applying the regulation related to water and Natura 2000 areas. However, he believes more flexibility is needed in case there is a good population of a certain species in the area or when there are constructions projects going on.

Karl-Heinz Florenz replies that hunters and farmers need to work together. With regards to greening measures, he sees that there can be problems and that it is worth considering if real greening is actually possible and he doubts that all funds dedicated to this are invested properly. He argues that farmers should position themselves as a service provider in discussions on nature conservation. They provide a service by maintaining the environment.

Annie Schreijer-Pierik (MEP, EPP) continues on this relation between farmers and nature legislation. She notes that farmers also want to protect nature, but that it is important that socio-economic needs are taken into account for this. She notes that the directives leave room for this and that leaving these considerations out is a political choice at the implementation level. She sees the risk that very strict implementation of the directives will bring Europe back to the prehistory, when there were only animals, but no humans. She quotes examples of farmers who had to move their business because protected plants start growing on their land. The result, she argues, is that farmers cannot be farmers anymore; they are strangled by legislation.

Karl-Heinz Florenz replies that the directives used to be treated very liberally, but that implementation is becoming stricter. He argues that the current implementation is not what was originally intended in 1979. People should be protected against their own legislators on this.

A partner of BirdLife Europe asks the speakers what changes they would propose to the 'nice and flexible' texts of the directive.

Seger van Voorst tot Voorst answers that he mostly sees problems with regards to the implementation. For example, the Dutch implementation is considerably stricter than the original directives. He says that he can live with the directives as they are, but that national authorities need to entrust the landowners with the management of their own estate. Landowners have experience that goes further back than most 'green organisations'. He argues that if national parks have problems with regulation, something is absolutely wrong. He hopes that the Commission will take into account that circumstances have changed in the 20-30 years since the directives were written.

To this Nicola Notaro replies that it is easy to say that something needs to change, without giving real proposals. It is important that people are familiar with the text if they want to comment on it. More generally he notes that it is impossible to have perfect legislation, conflicts will always remain. Furthermore, he notes that the directives only establish a broad framework, they do not go into the details. With regards to private landowners he notes that they should accept that there will always be some limitations from legislation. He argues that the precautionary principle is the very basis of good nature legislation. Experience counts, but scientific proof is much stronger. He notes that the Commission is ready to work with member states and show them where there is room for flexibility in the directives.

Conclusion

Karl-Heinz Florenz closes the debate. He notes that many points have been mentioned and that especially the issue of flexibility came back several times. This is a very large term that can pose conflicts. It is important to have good discussions surrounding this, and this intergroup session was only the beginning.

He invites everyone present to his farm, so people can discover what farmers are doing to preserve nature. Before there were no directives regulating their work, but they did a good job of protecting natural elements on their land. Nowadays, especially in France and the Netherlands, there is a tendency by public authorities to intervene. He argues that this undermines the credibility of the European Union.

He thanks all participants for their presence and commends the representation of North Rhine-Westphalia for hosting the intergroup.

END



For more information: Please contact Delphine Dupeux
delphine.dupeux@elo.org
+32(0)2 400 77 00



Co-Secretariat
ELO - European Landowners
Organization
67 rue de Trèves, B-1040 Brussels
Tel: + 32 2 234 3000 - Fax: +32 2 234 3009
www.elo.org