

II

(Preparatory Acts)

ECONOMIC AND SOCIAL COMMITTEE

Opinion on the proposal for a Council Directive on the protection of natural and semi-natural habitats and of wild fauna and flora⁽¹⁾ and on the Supplementary Annexes⁽²⁾

(91/C 31/01)

On 26 September 1988 the Council decided to consult the Economic and Social Committee, under Article 130S of the Treaty establishing the European Economic Community, on the abovementioned proposal and on the supplementary Annexes.

The Section for Protection of the Environment, Public Health and Consumer Affairs, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 4 September 1990. The Rapporteur-General was Mrs Robinson.

At its 280th plenary session (meeting of 18 October 1990) the Economic and Social Committee adopted unanimously the following Opinion.

1. Introduction

1.1. The EEC environmental action programmes make provision for measures regarding nature conservation, of which the protection of habitats and wild fauna and flora forms a part.

1.2. The primary aim of the present proposal is to provide a legal requirement for the protection of the habitats of the rare, endangered and threatened species in the Community. The specific object of the proposal is to establish by the year 2000 a network of protected wildlife areas throughout the Community, thus ensuring a more effective implementation of the Berne Convention on wildlife and natural habitats. The proposal seeks to achieve this objective by:

i) providing a general framework of Community law to require Member States to take the necessary measures to maintain species and habitats. The effect would be to require the ratification and adoption of the Berne Convention through Community law. The details of implementation are to be left to the Member States, following the principle of 'subsidiarity'.

ii) identifying, within a series of Annexes, those species and habitats which should be protected;

iii) providing, within the Annexes, some general principles of wildlife management;

iv) requiring, where habitat safeguard is essential for threatened habitats or the habitats of threatened species, environmental impact assessment of SPA (Special Protection Areas under Article 5(2) of the Commission's proposal).

1.3. While the Committee approves of the principle aim of the Directive, it considers that the present proposal is not well-designed to achieve its aims and objectives. It is essential that a revised text is produced, together with a more precise set of annexes which would more clearly define the precise scope of the Community's role and the role of the Member States in nature conservation. The revised text should clearly identify the European dimension of habitat and species conservation. It should also be more precisely worded, clearly defining terms, so as to avoid the many areas of legal uncertainty which could arise were the present proposal to be adopted unamended. These requirements are essential if the proposed Directive is to be effectively implemented. Furthermore, the lack of any estimates of the costs of implementation (which will have to be borne by the taxpayers, farmers and industrialists of the Member States), is a serious shortcoming.

⁽¹⁾ OJ No C 247, 21. 9. 1988, p. 3.

⁽²⁾ OJ No C 195, 3. 8. 1990, p. 1.

2. General comments

2.1. The Economic and Social Committee supports the aim of protecting habitats of endangered fauna and flora of European importance. It believes that Community action in this sphere is desirable.

2.2. The Committee is mindful of the Convention on the conservation of migratory species of wild animals (Bonn Convention), the Convention on the conservation of European wildlife and natural habitats (Berne Convention) and the Convention on wetlands of international importance especially as waterfowl habitat (Ramsar Convention)⁽¹⁾. It notes with regret that some Member States have failed to ratify the Berne Convention or fully to implement its provisions.

2.3. The Committee is mindful of the Directive on the conservation of wild birds⁽²⁾. It notes with regret that the Directive is not fully implemented in the majority of Member States and urges that full implementation is achieved by 1 January 1993.

2.4. Bearing these facts in mind the Committee has serious reservations about the form and content of the proposed Habitats Directive. It would help if the proposed Directive contained a clear statement of aims from which operational objectives could be derived. It would further help if the proposed Directive defined more clearly the operational limits of subsidiarity with respect to the roles of the European Community and the Member States in habitat and species conservation. As it is presently drafted the proposed Directive is too vague and unfocussed.

2.5. The proposed Directive should be clearly directed to the conservation of habitats of European significance together with their threatened species. The appendices should therefore be as short as possible and very clearly focussed on the European significance of the habitats and species listed.

2.6. The importance of establishing clear aims and objectives cannot be overestimated. Without such aims and objectives the Directive may suffer from a fate similar to that of the Birds Directive. An ineffective Directive is worse than no Directive at all. The Directive must be capable of being made to work, and of being seen to work. It should be integrated with the work of the European Environment Agency to ensure a strong monitoring system and any lack of progress should be widely publicised. A realistic time limit should be set on implementation and achievement of objectives (reference to comments on the Birds Directive in paragraph

2.3 above). The implementation and operation should be overseen by an Advisory Committee which is able to recommend clear action should the objectives not be fulfilled.

2.7. There are many terms used in the proposal which require definition to provide for legal certainty. For example, the term 'wild' itself requires definition as does 'Protected' and 'Management Plan'. An extra Annex should be provided containing the definition of terms used in the instrument.

2.8. The adoption of the proposed Directive will have implications for the operation of a number of the Community's financial instruments. It will also have implications for a number of major Community policy areas such as agriculture, regional policy, transport and industry. A statement of the full implications of the proposed Directive on other policies of the Community is necessary for the Committee to take a favourable view of the proposal.

2.9. The proposal has no financial statement attached to it. However, if it is to be effective it will require substantial funding. It would be appropriate to find funds for many of the rural habitats from the funding of the Common Agricultural Policy (for farmers who would be obliged by the Directive to protect insects, etc.) and for the urban habitats from the Community's development funds (for industry whose plans for development and expansion may be adversely affected by the adoption of the Directive). At all events, the funding of all development schemes by the European Community must contain a reference to the effect on habitats of wild fauna and flora (*cf.* Article 7 of Regulation (EEC) No 2052/88 which states that all measures financed by the Structural Funds or receiving assistance from the European Investment Bank must be 'in keeping with ... Community policies, including those concerning ... environmental protection').

2.10. In view of the geographical location of many habitats and species, the Committee believes that the Directive should be amended so that it can be used throughout the wider Europe. This is particularly important for alpine habitats, for virgin and near-virgin forests and for wetlands and clean fresh water.

3. Detailed comments

3.1. Structure of comments

The proposal consists of a number of Articles grouped into sections. The Committee's detailed comments are therefore directed to the sections of the proposal rather than to its specific Articles.

⁽¹⁾ See 'The State of the Environment in the European Community 1986' (ISBN 92-825-6973-X, catalogue number: CL-NO-10-633-EN-C).

⁽²⁾ Directive 79/409/EEC (OJ No L 103, 25. 4. 1979).

3.2. *General provisions (Articles 1-3)*3.2.1. *Articles 1 and 2*

For the purpose of this Directive, it needs to be made clear that wild fauna and flora are taken to refer only to species or subspecies in the plant or animal kingdoms. Species and subspecies are important as they are scientifically recognized units incorporating considerable genetic diversity. It should be explicitly stated that the Directive does not relate to species of micro-organisms, including bacteria, viruses or most species of fungi (these may be protected in individual Member States).

3.2.2. *Article 3*

It is important to define clear objectives for this Directive. The purpose of the proposal is in part to implement the Berne Convention⁽¹⁾. Accordingly, a satisfactory definition of the 'conservation status' of habitats should be given, and it is proposed that this should be based on the wording used in Article 1 of the Bonn Convention⁽²⁾.

Therefore, insert an additional Article 3(f) in Article 3 of the proposal, as follows:

'(f) 'satisfactory conservation status' of a species is defined as follows:

'Conservation status' means:

the sum of the influences acting on the species that may affect its long-term distribution and abundance.

'Conservation status' will be taken as 'satisfactory' when:

(1) population dynamics data indicate that the species is maintaining itself on a long-term basis as a viable component of its ecosystems;

(2) the geographical range of the species is neither currently being reduced, nor is likely to be reduced on a long-term basis;

(3) there is, and will be in the foreseeable future, sufficient habitat to maintain the population of the species on a long-term basis.

'Conservation status' will be taken as 'satisfactory' if all three conditions in sub-paragraphs (1)-(3) are met; and as 'unsatisfactory' if any, one or more, of the conditions set out in sub-paragraphs (1)-(3) is not met.'

3.3. *Protection of Habitats (Articles 4-9)*

General

The Committee believes that this element of the proposal is vitally important because it is in the conservation of habitats where the major problems in the implementation of the Birds Directive and of existing international conventions occur.

3.4. *Environmental Impact Assessment (Articles 10-11)*3.4.1. *Article 10*

It is not only the policies which affect the habitats of flora and fauna but also the methods and procedures of government at all levels (EC, national, regional and local). For example, in many Member States agricultural and forestry activities are either excluded or relieved from normal planning control of land use. Methods of planning procedures and control of land use may have as significant consequences as overall policies. This may be particularly disadvantageous for habitats, e.g. a small stream in which wild watercress grows can be destroyed by a farmer who uses the adjacent land for a crop for a single year. There are many larger-scale examples such as lack of adequate control measures to ensure appropriate forms of re-forestation or the permitted installation of drainage for agriculture or other economic purposes which severely degrade many wetland habitats. Development controls and planning procedures are dealt with in different ways in Member States.

A particular problem may arise from conflict of aims between this Directive, which seeks to protect habitats, and other Community instruments which seek to promote economic development, e.g. the European integrated programmes.

Environmental protection needs to run through planning and development procedures at all levels of government including decisions regarding the use of land for the needs of national security.

The Habitats Directive will impose new constraints upon land use and planning decisions. These constraints, particularly in respect of practices which are environmentally sensitive (e.g. limitation of fertilizer use), should be compensatable through Community financial instruments. There should be mechanisms to ensure that financing for habitat protection does not duplicate other compensation schemes.

⁽¹⁾ Convention on the Conservation of European Wildlife and natural habitats — 1979 (OJ No L 38, 10. 2. 1982).

⁽²⁾ Convention on Migratory Species of Wild Animals (OJ No L 210, 19. 7. 1982).

3.4.2. Article 11

Because the Environmentally Sensitive Area (ESA) scheme is already running in a number of Member States, it is important that this Directive should work in concert with existing ESA schemes for habitat and species protection and not in competition with or against them.

3.5. Protection of species (Articles 12-18)

3.5.1. Articles 12 and 13

Provision needs to be made in this Article for the periodic review in Annexes I, II and III, and habitats listed in Annex IV. The Committee recommends that this be done at least on a quinquennial basis.

3.5.2. Article 14

Add to Articles 14.3 and 14.4:

‘the need to guard against the taking of seeds in the wild, or trade in wild-taken seed, of plants listed in the Annexes (except by licensed conservation organizations)’.

3.5.3. Article 15

In the Annex listing prohibited weapons, a specific exclusion should be made for those authorized for veterinary purposes. The aim of the Annex should be to prevent indiscriminate methods of killing whereby a protected species is killed accidentally when an unprotected species is being killed legally.

3.6. Information (Article 19)

Article 19

Article 19 (2) says:

‘The final version of the report shall be published by the Commission and forwarded to the Member States, the Parliament and the Council.’

The Economic and Social Committee should be added to this list.

3.7. Research (Article 20, together with Article 24)

The Committee considers that the Articles on Research and Monitoring should be combined into one section. Article 24 should therefore be brought forward and incorporated with Article 20.

Research priorities should include the identification of ecologically key species (species that many other species depend on) and the monitoring of indicator species (species that indicate the ‘health’ of wildlife in Europe).

3.8. Amendment procedure (Articles 21-23)

With reference to the Advisory Committee referred to in Article 23, a copy of the draft measures submitted by the Commission to the ‘Section 23 Committee’ should, at the same time, be sent to the Economic and Social Committee for an Opinion.

3.9. Supplementary provisions (Articles 25-27)

3.9.1. General

Reference needs to be made to the CITES Convention⁽¹⁾. It is important in the supplementary provisions to clarify the relationship between the Habitat Directive and the CITES Convention on the trade in endangered species.

Non-governmental organizations historically have had a leading role in the formulation of conservation policy within Member States and currently are active in implementation. The Committee considers that their role in relation to the Habitats Directive should be made explicit.

3.9.2. Article 25

A definition of ‘native species’ needs to be given. The Committee considers that a time-scale is an important ingredient in such a definition, since many species have altered their geographical ranges since the last ice age.

The Committee advises that the procedures relevant to the release of genetically engineered organisms be considered.

4. Comments arising from the Annexes

4.1. Annex I lists species whose habitats are threatened; the Committee believes that a preparatory note should be included giving the criteria used to compile this list. Annex II lists species which are themselves threatened; again the criteria used in the compilation of this list should be made explicit. The Committee believes that logically all species included in Annex I should also be included in Annex II. Annex II should therefore have a prefatory statement indicating that it

⁽¹⁾ Convention on International Trade in Endangered Species of Wild Fauna and Flora (Reg. 3626/82).

includes all Annex I species together with extra species listed in a revised Annex II.

The Annexes do not yet provide an adequate analysis of the species actually threatened in Europe and the countries in which they are threatened.

The Economic and Social Committee understands that further work is underway to define the scope of the Annexes (see also 3.5.1) and welcomes this development as necessary for the effective implementation of the Directive.

4.2. The animals listed in Annex I do not have full names as do plants in Annex II. The Committee recommends full naming, notwithstanding the precedent of the Berne Convention.

4.3. Since the proposal is based upon the principle of 'subsidiarity', the practical use of including this term 'Management Plan' in Annex III is not clear. The term 'Management Plan' will mean different things in different Member States.

4.4. Some species listed in Annex III are extremely common, or even invasive, in some parts of the Community and are in no need of management plans in those areas. Examples of this are *Ilex aquifolium* (holly) in Ireland and the United Kingdom and *Tamus commu-*

nis (black bryony) in the southern part of the United Kingdom (see the illustrations attached; these are copied from Perring & Walters, 1962). Similar comments would also apply to species of wild animals, such as the lynx and the polecat, that are traditionally hunted in some Member States. Species included in Annex III need to be regionalized, the Annex giving information on where in Member States the management plans are required.

4.5. It is necessary to amend the text of the Directive (see 4.4 above) to ensure legal certainty with respect to the local duty of protection. Annex IV is to be welcomed, but it is not clear what 'protected' means.

4.6. Terms in Annex VII such as 'bodies of water' are extremely vague. This Annex should be rewritten with greater precision to make it clear that the Annex refers to areas of natural and semi-natural habitat that provide corridors between special protected areas.

4.7. Since this Directive is primarily concerned with flora and fauna (excluding birds), the logo showing only birds is particularly inappropriate. Should a symbol such as a tree be added? The logo should be 'down to earth rather than up in the sky'.

4.8. In Annex XI (point 10) 'teledetection' should be replaced by 'remote sensing'.

Done at Brussels, 18 October 1990.

The Chairman
of the Economic and Social Committee
François STAEDLIN



