

Overview of management of protected species in extractive sites

The Habitats Directive (FFH-Directive)) and the Birds Directive are an important contribution to the protection of biodiversity in the EU Member States. The objective of the protective system established by the Directives is to ensure a uniform and high degree of protection.



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Situation in Germany:

Practical experience with the applicable European species protection laws in Germany shows that reforms are necessary - which is partly due to the way the requirements of Habitats and Birds Directive are implemented and applied in Germany, but which is also directly due to the provisions of the Directives, themselves.

1. Prohibition of killing: Difficulties of protecting individual specimens

The Habitat and the Birds Directive provide for the protection of specimens and their development phases.

In Germany, at least, the courts interpret the species protection prohibition of killing and harming under Art. 12, para. 1, lit. a) of the Habitats Directive and Art. 5, lit. a) of the Birds Directive to the effect that **protection must be assessed at individual level.**



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According to the courts, the assessment of a situation of conflicting interests regarding species protection objectives must be based on the question whether the form of projection in question might lead to a **significant increase of the „general risk inherent to life“** for the potentially affected specimens that are eligible for species protection.

MIRO-Position:

- In many cases, the strategy of protecting species eligible for species protection at specimen level does not make sense for biological reasons because it ignores the reproductive biology and development strategies of numerous species.
- From a biological point of view it makes no sense, at least for species where the loss of part of the population is part of the survival strategy, to promote the protection of specimens. For these species, the protection or support of suitable habitats is much more important. In these cases, **protection should relate to populations.**



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It could be advisable to open up species protection rules to the protection of specimens and their development stadiums in cases in which the protection of specimens would have an adverse effect on the population concerned rather than advantageous ones.

2. Temporary Nature conservation

Temporary Nature must be discussed at European Union-level through corresponding judicial decisions of the European Court of Justice or by corresponding guidelines of the Directives. For, under current law, it is contentious whether and within which limits the Member States have any discretionary leeway to find practical and balanced solutions.



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If industrial brownfields and other **unused spaces are temporarily not exploited** economically, the population with and breeding of protected animals and plants, and the creation of types of natural habitats as listed in the Annexes to the Habitats and the Birds Directive, should be permitted. In times in which the owner does not use the site, it would serve nature protection purposes and, at the same time, make sense economically, if said land owner, or the lease-holder, etc., did not fight such a population.

At the level of national nature protection law, for example, Sect. 4, para. 2 no. 1 LG NRW, or Sect. 30, para. 5 and 6 BNatSchG relating to biotope protection, the possibility of „temporary nature protection“ already exists. These provisions, however, do not apply to projects on Natura 2000 sites but merely to impact rules of national nature conservation law, which are not shaped by EU law (Sect. 4, para. 2, no. 1 LG NRW), or to equally purely national statutory biotope protection provisions (Sect. 30, paras. 5 and 6 BNatSchG).



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It would be recommendable to find a solution at EU level that determines the general framework for the conditions under which improvements are not prevented by the approval of projects in the sense of a „temporary nature“ principle.

In Germany we have now a research project of the Federal Agency for Nature Conservation:

“Determining the legal and nature conservation conditions of the concept “nature of time”, in particular the possibility of resumption of land use”

Number 3516810800, BfN (I 2.1)

We expect results after 5 years! The time factor is too long

What we need: **Creating more biodiversity through flexibility**



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