

## **A Cocktail of Mis-fit and Politicisation: The Tortuous Implementation of the Habitats Directive in Ireland**

### **Abstract**

This paper analyses the implementation of the 1992 Habitats Directive (92/43/EC) in Ireland. In so doing it sheds light on the politicisation of European issues at the domestic level as a result of implementation of EU legislation. The implementation of the Habitats Directive proved highly contentious and prolonged in Ireland and involved a considerable degree of politicisation at the European, national and local levels. The concept of 'mis-fit' is used to identify the policy, legal and institutional challenges posed by the Directive in Ireland. By tracing the process of implementation through three phases – transposition, application and re-steering – this paper analyses the methods used to mediate the political conflict generated and to facilitate implementation of the Directive, as well their effectiveness.

**A Cocktail of Mis-fit and Politicisation: The Tortuous Implementation of the  
Habitats Directive in Ireland**

**Introduction**

Since Ireland became a member of the European Union (EU) in 1973, it has transposed and applied thousands of European directives into the law of the land. The implementation and application of the 1992 Habitats Directive has proved deeply problematic. It has confronted successive governments and conservation authorities with obstinate challenges during implementation. On 19 December 1997, Ireland was sent a reasoned opinion by the Commission and the European Court of Justice (ECJ) pronounced judgement against Ireland on 11 September 2001. A follow-up Article 228 letter was sent to the Irish Government on 21 December 2001 and at the time of writing the case is continuing. The National Forum on Europe, set up following the defeat of the Nice referendum in June 2001, included a section on the habitats directive in its second report, the only directive that received public attention during its discussion of European issues around the country (National Forum on Europe, 2002). The Forum reported that ‘strong concerns were expressed about the impact of implementation in Ireland of the EU Habitats Directive’ (National Forum on Europe, 2002, 31). According to some speakers at Forum meetings, the habitats directive had ‘alienated thousands of rural farmers and their families not only from their land but also from Europe’ (National Forum on Europe, 2002, 31). The aim of this paper is to analyse the implementation of Council Directive 92/43/EEC of 21 May 1992, the Habitats Directive, in Ireland. Habitats proved neuralgic in the Irish context, as it has in many other member states.<sup>1</sup> It certainly hit home but important social forces,

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<sup>1</sup> France, Germany, Belgium, the Netherlands, Spain, Portugal, Austria, Greece and Italy have also failed to adequately implement the Habitats Directive. See further:

particularly farmers, did not like it. How then did the national authorities manage their legal obligation to implement European law, on the one hand, and the opposition of sections of their own electorate, on the other?

### **Implementation and Compliance**

The Union's policy process can be disaggregated into three phases, pre-negotiation, negotiation and implementation. The third phase occurs when the EU has agreed to a particular policy or law that must be transposed into national law and applied by national authorities. Directives are a particular instrument of European law that establish the outcome that must be achieved rather than specifying how the particular directive should be implemented. Directives unlike EC regulations have a discretionary element. However, there is no discretion with regard to the legal obligation to transpose and apply a European directive. Notwithstanding the legal requirement for compliance, we should not expect implementation to be either smooth or automatic. Implementation is an important part of the policy cycle. Barrett and Fudge claim that implementation should be regarded 'as a process of interaction and negotiation, taking place over time, between those seeking to put policy into effect and those upon whom action depends' (Barrett and Fudge, 1981, 4). Three features of this definition contribute to the analytical framework of this paper. First, the emphasis is on *process* rather than a once off decision point. In this paper, the implementation cycle is broken down into three phases: transposition, application and re-steering. Transposition involves the conversion of the directive into national law. Application is the move from formal compliance to practical compliance, from output to outcome.

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[http://europa.eu.int/comm/secretariat\\_general/sgb/droit\\_com/index\\_en.htm#infractions](http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#infractions) 11 November

03.

This phase of the process is an adaptive one in which actors both public and private bargain about the actual application of a piece of legislation. Re-steering or review of the implementing measures may then take place, depending on the degree of controversy generated. Second, the definition above emphasises interaction and negotiation between different actors in the process. National authorities do not seek to implement European directives in a hierarchical manner. Rather they negotiate with the affected groups in the domestic polity. Third, the definition emphasises the time frame for implementation. Part of the governance model in European directives is the use of the calendar technique, which means that specific dates are included in the directive by which member state authorities must transpose and report to the Commission. The calendar technique is an important instrument for the Commission in its monitoring of national compliance.

Implementation research tends to fall into either a 'top down' or a 'bottom-up' rubric. 'Top-down' approaches focus on how the objectives and aims of the decision makers are translated into policy outputs and policy outcomes. 'Bottom-up' approaches, on the other hand, focus on those who implement policy on the ground, the street level bureaucrats. Analysis of the implementation of the habitats directive requires both a 'top-down' and a 'bottom up' perspective. The top-down element of the analysis focuses on the role of the Commission in monitoring domestic compliance with European directives. The Commission's responsibility as 'guardian of the treaties' for monitoring legal compliance endows it with an important role in the implementation process at domestic level. Infringement procedures against a member state consist of four steps; if compliance is secured following any one of these steps, the infringement process is terminated. Step one consists of informal contact between the Commission and the member state if the Commission has detected a possible case of non-

compliance. Step two consists of a *letter of formal notice*, which is sent by the Commission to the member state asking it to submit its views. This could be likened to an early warning system. Step three consists of the Commission sending a *reasoned opinion*, which sets out the key legal argument and is a prelude to a full court case. Step four, the judicial phase, consists of a *referral to the ECJ*. The sanctions element of the infringement process was strengthened in the Treaty on European Union when provision was made for the imposition of financial penalties on a member states if it disregarded a judgement of the ECJ. The phased approach has been described by Tallberg as a ‘sanctioning ladder that progressively raised the pressure and the costs of non-compliance, thereby inviting bargaining between the parties’ (Tallberg, 2003, 64). The infringement process has an administrative/political element and a sanctions/enforcement element. The administrative/political phase is characterised by bargaining between the Commission and the member states on how to solve the compliance problem before resorting to the judicial phase in the ECJ. Both the Commission and the member states have an interest in terminating the infringement process as quickly as possible. If an infringement process ends up in the ECJ or more importantly if there is a second referral to the ECJ, this suggests that there is a major implementation problem at domestic level.

The concept of ‘goodness of fit’ has emerged in the literature on Europeanisation to capture the manner in which European policies and laws are translated into the domestic system. According to Börzel and Risse, ‘there must be some degree of ‘misfit’ or incompatibility between European level processes, policies and institutions, on the one hand, and domestic-level processes, policies and institutions, on the other hand. The degree of fit or mis-fit constitutes adaptational pressures’ (Börzel and Risse, 2000, 2). Implementation problems can be expected if there is a

high degree of mis-fit. Mis-fit has been variously categorised as consisting of a policy mis-fit, an institutional mis-fit, a legal mis-fit, and a politics-polity mis-fit (Falkner, 2003, 3-5). Mis-fit offers a useful first cut that provides an indication of potential implementation difficulties and the challenges that must be overcome if a directive is to be transposed and applied at national level. Just how these challenges are mediated at domestic level however requires attention to the process of implementation over time and the manner in which actors interact in the domestic institutional setting. In addition, attention must be paid to how national governments interact with the Commission during the compliance game. A key factor influencing implementation is the nature and extent of politicisation during this phase.

### *Politicisation*

The policy-making literature on the dynamics of EU policy making has paid relatively little attention to politicisation, particularly politicisation at domestic level. This is partly to do with the technocratic and expert driven nature of EU policy making and the degree to which depoliticisation is a deliberate strategy in the Union's system of public policy making. The neo-functionalist strategy for integration was to insulate EU policy making from domestic controversy and to keep as much control as possible in the hands of officials rather than political actors. Analysis of the implementation of the habitats directive in Ireland throws light on the politicisation of European issues at domestic level and on the mediation of conflict. Once an issue becomes politicised it has the following characteristics:

- Emergence on the political agenda;
- Conflict and controversy;
- Attention from interest organisations;

- The issue is driven up the political hierarchy to engage government office holders and not just officials;
- Attention from parliament and media.

In summary, when a policy or law becomes politicised, it involves a wider number of societal actors and receives considerable political attention in parliament and the media. It is driven up the political hierarchy for political resolution. The dynamics of politicisation are as important to the implementation process as the degree of mis-fit. More importantly, politicisation affects the manner in which mis-fit is addressed. Matland, in an analysis of the impact of conflict and ambiguity on implementation, offered a fourfold classification of the characteristics of implementation under different conditions. See Figure 1.

Table 1: Impact of Conflict and Ambiguity on Implementation

	Low Conflict	High Conflict
Low Ambiguity	<i>Administrative Implementation</i> (Resources)	<i>Political Implementation</i> (Power)
High Ambiguity	<i>Experimental Implementation</i> (Context)	<i>Symbolic Implementation</i> (Coalition strength)

Source : Matland reproduced in Hill and Hupe. 2002.

The implementation of the habitats directive in Ireland falls into the high conflict-low ambiguity category. While there is always a degree of ambiguity associated with a policy or law, the habitats directive set out in relatively clear terms what was to be achieved by the member states. The fact that it was accompanied by a high level of

conflict, suggests that the post-decision phase would be characterised by political implementation and power politics.

### **The Habitats Directive**

The Commission issued a proposal on the conservation of natural habitats and wild fauna and flora in September 1988. Formally speaking, it was supposed to allow the EC as a whole to implement the 1979 Bern Convention, to which individual EC states had already signed up and which had been implemented via national measures. The objective of the 1992 Habitats Directive was ‘to contribute towards ensuring biodiversity through the conservation of natural habitats of wild fauna and flora’ in the European territory of the European Union member states (Council Directive 92/43/EC). The Directive established a European ecological network known as ‘Natura 2000’. The network comprised ‘special areas of conservation’ designated by Member States in accordance with the provisions of the Directive, and special protection areas classified according to the 1979 Birds Directive (Council Directive 79/409/EC). The aim of the Natura 2000 network was to assure the long-term survival of Europe’s most valuable and threatened species and habitats. The Habitats Directive identified over 200 habitat types and 700 species of plants and animals of Community importance. The key instrument of the habitats directive is known as a *special area of conservation (SAC)*. An SAC is a site of Community importance (SCI) designated by the member states through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated. Annex I (Natural habitat types of Community interest – presenting outstanding examples of typical

characteristics of one or more of a number of biogeographical regions)<sup>2</sup> and Annex II (Animal and plant species of Community interest) of the Directive list the habitats and species whose conservation requires the designation of SAC.<sup>3</sup> See Box 1 for a list of the tasks that had to be undertaken by the member states, the most important of which was SAC designation.

Box 1: Measures involved in implementation of Habitats Directive

Member states must:

- designate special areas of conservation (sites which include endangered natural habitats and wild fauna and flora according to priority);
- take all necessary measures to guarantee the conservation of habitats in these special areas of conservation, and to avoid their deterioration. The Directive provides for the co-financing of conservation measures by the EU;
- encourage the management of features of the landscape which are essential for the migration, dispersal and genetic exchange of wild species;
- take the requisite measures to establish a system of strict protection for those animal and plant species which are particularly threatened (Annex IV) and study the possibility of reintroducing those species on their territory;
- prohibit the use of non-selective methods of taking, capturing or killing certain animal and vegetable species (Annex V);
- report, every six years, on the measures they have taken pursuant to the Directive.

Taken from: Scadplus, <http://europa.eu.int/scadplus/leg/en/lvb/128076.htm>, 13 October 2003.

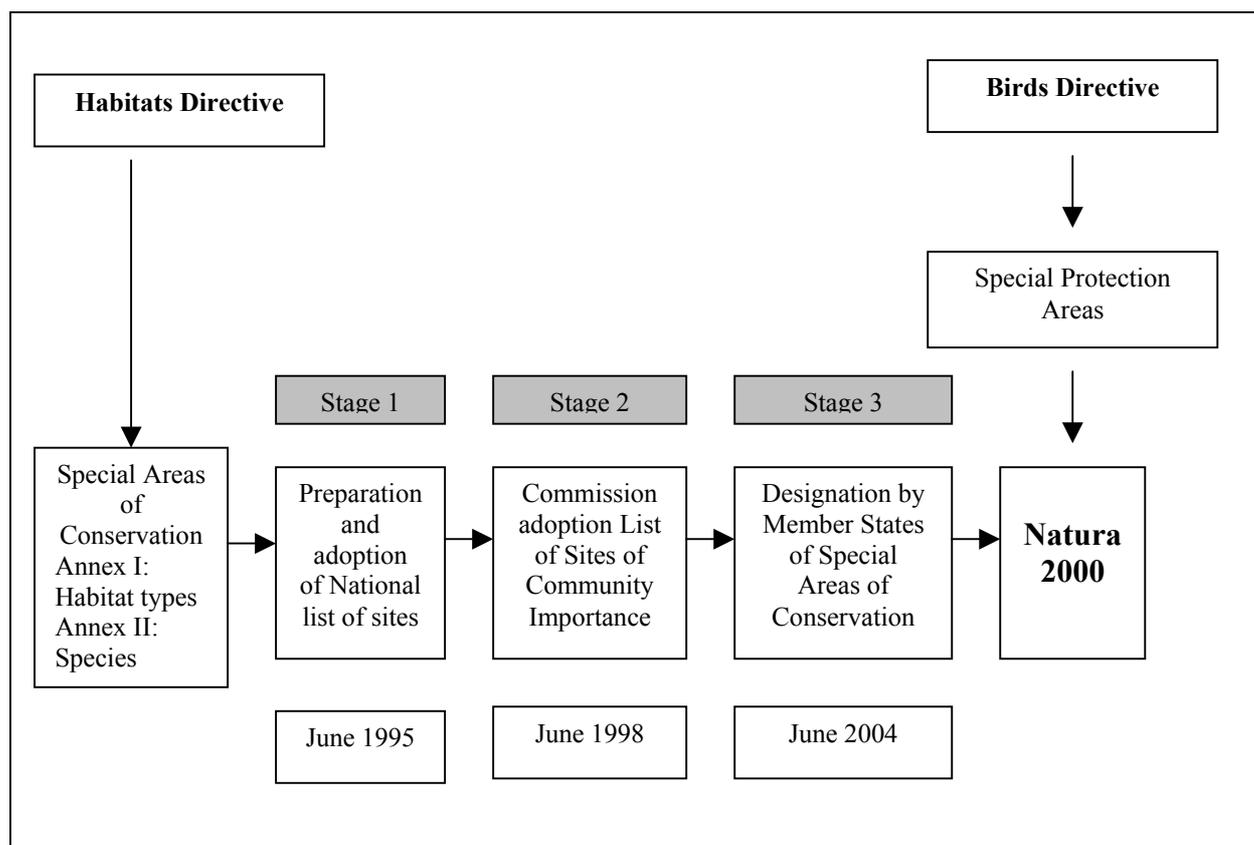
The timetable for designation in three stages was set out in Article 4 of the Habitats directive. See Figure 1 for an outline of the designation process.

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<sup>2</sup> The biogeographical regions for EU25 are: Alpine, Atlantic, Boreal, Continental, Macaronesian, Mediterranean, Anatolian, Black Sea, Pannonian and Steppic.

<sup>3</sup> The Directive was amended by Council Directive 97/62/EC which updated the scientific information contained in the annexes.

Figure 1: Framework for the Designation of Natura 2000 sites



Source: Taken from Natura 2000 Nature Newsletter 1996, Issue 1, DG Environment.

Following the criteria set out in the annexes, each Member State had to draw up a list of *proposed sites of Community importance*, which included natural habitats and wild fauna and flora. All lists should have been submitted to the Commission within three years of notification of the Directive, i.e. on or before 4 June 1995. No Member State met this deadline. The Directive did not lay down in detail the consultation process to be followed for the selection of sites. As a result, the procedures varied considerably between Member States in accordance with their political and administrative systems. In some cases, owners and users of sites were consulted extensively regarding the identification of the sites. In other member states little or no consultation took place.

The Commission and in particular the Environment Directorate General (DG), was not formally involved at this stage of implementation and had no power to intervene in the different procedures followed in member states (Commission, 2002, 4). However, in order to ensure that the information on each site was standardised, the Commission designed a *Natura 2000 form*, which had to be completed for each site and transmitted to the Commission with the national list (Commission Decision 97/266/EC of December 1996).

On the basis of the national lists and by agreement with the member states, the Commission must then adopt a list of *sites of Community importance (SCIs)* in the second stage of the designation process. This stage was to have been completed within six years of the notification of the Directive (i.e. by June 1998). As mentioned above, the list of pSCIs is divided on the basis of the European biogeographical regions map. Ireland is part of the Atlantic region, together with the UK, the Netherlands and parts of France, Belgium, Spain and Germany. On behalf of the Commission, the European Topic Centre on Nature Protection and Biodiversity (ETC/NPB), a topic centre of the European Environmental Agency based in the National Museum of Natural History, Paris, examines the proposed sites. Representatives of the Commission and the ETC/NPB organised biogeographical scientific seminars to discuss the proposed lists with independent scientific experts chosen by the ETC/NPB, European conservation non-governmental organisation (NGO) experts appointed by the European Habitat Forum and representatives of the Member States concerned (Scannell et.al., 1999, 77). Due to delays on the part of all member states in submitting their national SCI lists, the Commission only adopted a definitive list of sites for the first bio-geographical region – Macronesia – in December 2001. The final round of scientific seminars was completed by mid 2003,

and outstanding lists will be adopted in 2004. The third and final stage of implementation is SAC designation. Each Member State concerned must designate the sites of Community importance selected as SACs within six years.

### **Habitats Hits Home**

The Habitats Directive was transposed into Irish law on February 26, 1997, by the European Communities (Natural Habitats) Regulations. Agreement on the Irish regulations was complicated, tortuous and infused with controversy. The habitats directive induced considerable adaptational pressure at domestic level. First, the directive involved a shift in the policy paradigm concerning nature conservation. The first significant piece of legislation dealing with the conservation of natural habitats in Ireland was the 1976 Wildlife Act, which entered into force on 1 June 1977. According to Grist, the 1976 Act anticipated many of the provisions of the EC's 1979 Birds Directive. As well as protecting wild birds, their nests and eggs (subject to certain exemptions for species such as crows, pigeons, rooks etc., which were traditionally considered as pests by the agricultural community, and to open season shooting of specified game birds), the Wildlife Act made provision for the protection of wildlife habitats (Grist, 1997, 87). Under the Act, therefore, all wild species of fauna and flora were given protection. However, the Act did not provide for the conservation of fish species and the habitat/site protection measures included in the Act were relatively weak and were almost completely limited to measures that could be introduced in agreement with landowners (<http://www.duchas.ie>). The habitats directive marked a decisive shift for the conservation authorities from protecting wild life and fauna on state owned property to demanding habitat protection from private landowners. According to one of the senior officials responsible for implementing

Habitats, ‘the habitats directive brought with it a profound shift, and primary conservation activity is now on privately owned land’ (Interview 02, 22.5.2003). Second, the shift in the policy paradigm occurred in a constitutional and legal environment that accorded considerable protection to land owners underlined in a Supreme Court Judgement in 1994.<sup>4</sup> Those responsible for the transposition and application of the national implementing measures were acutely aware of the Supreme Court judgement, which upheld the right of landowners to be granted the opportunity to object to designation. Third, the body responsible for implementing the directive was transferred from the authority of one government ministry to another during the course of implementation. The Regulations nominated the National Parks and Wildlife Service (NPWS), originally part of the Office of Public Works, Department of Finance and subsequently part of the Department of Arts, Heritage and the Gaeltacht as the body responsible for implementing the Directive. This service, re-named Dúchas in 1994, had limited staff to undertake all of the tasks associated with transposing and implementing the directive in Ireland. The shift in the policy paradigm brought with it a shift in the organisation of the wildlife service. According

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<sup>4</sup> In 1989, an application was made for planning permission to develop an airport near Clifden in Connemara, Western Ireland, on an intact blanket bog which had been identified as an Area of Scientific Interest (ASI) of international importance. The owners of the site had not been informed of this designation by the Commissioners of Public Works. Planning permission for the airport was refused on the grounds that it was located on part of an ASI. The landowners and the airport development company applied for judicial review and the Supreme Court held in 1994 that the decision to designate land as ASI without giving the landowners any opportunity to be heard or to object or make representations was against the principle of natural justice (*MacPharthalainn v. Commissioners of Public Works* [1994] 3 I.R. 353).

to one of the responsible officials ‘there were changes in staffing, rangers and management structures. Rangers had previously mainly been involved in specific parks or species protection. There was a reorganisation of how things were done at a fundamental level’ (Interview 02, 22.5.2003). There was thus a policy, legal and institutional mis-fit at domestic level in relation to the implementation of the directive. According to the above official, ‘there was not a good fit between what the habitats directive prescribed and what went on before’ (Interview 02, 22.5.2003). See Table 2.

Table 2: Degree of Mis-fit

Policy paradigm	Legal Context	Institutional Setting
High	Medium	High

The mis-fit that had the most significant impact on the implementation process was the shift in the policy paradigm, particularly, the requirement to designate private property as SACs. This ensured that the implementation of the directive would be contentious and would thus be characterised by political implementation. This altered the working environment of the street level bureaucrats, the rangers in the field. It brought them into direct contact with landowners, many of whom were deeply opposed to designation. In the interviews conducted for this research with the representatives of farmers organisations, landowners themselves, official and political office holders, it was remarkable the number of times that reference was made to a hate figure in Irish nationalist historiography, Oliver Cromwell, who had pushed the Irish off their land during his Irish campaign in 1649-1650. In parliament, Síle De Valera, who became minister in 1997, claimed that the then minister, Michael D. Higgins, was ‘casting himself as some sort of new Cromwell trying to take over land

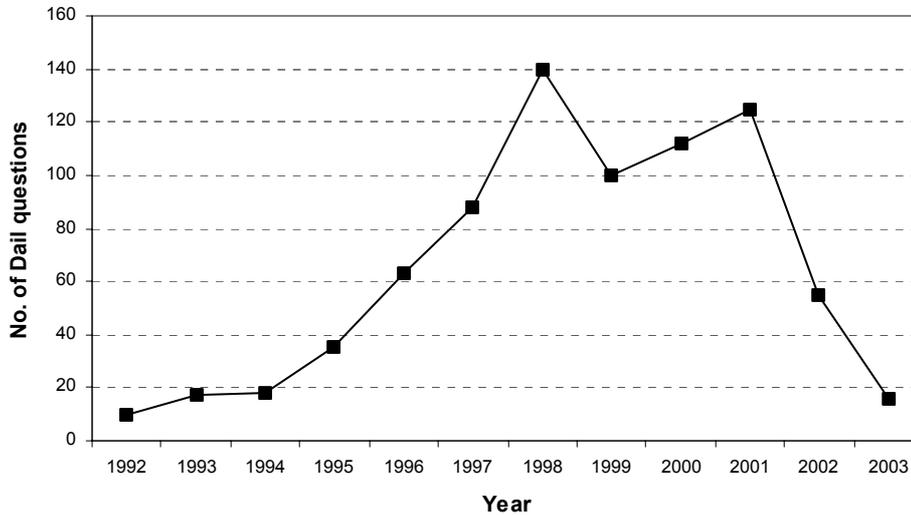
without consultation or compensation' (Irish Parliamentary Debates, 26.11.1996). Those opposing the habitats directive could position their objections in a rhetorical frame that resonated with the pre-history of the Irish state because the battle to own and control land was at the heart of modern Irish nationalism.

The degree of politicisation associated with the transposition and application of the directive was and remains extremely high. Politicisation manifested itself in the sustained mobilisation of the main farming organisations on the issue and the emergence of an issue specific group, known as the SAC Alliance, opposed to the directive. The farming groups became aware of the implications of the habitats directive in 1994-1996 as the core executive began to plan for its transposition. According to officials, 'Farmers and landowners viewed Habitats as an horrific intrusion' (Interview 02, 22.5.2003). The then Minister, Michael D. Higgins, came under considerable criticism by farmers over the Habitats Directive. The Irish Farmers Association (IFA) held a large number of meetings, up to two per week, for their members at regional centres on the issue of SACs, which were reported as being quite heated (e.g. Irish Times, 20.10.1996). According to a senior IFA official, the Directive is 'the most serious issue ever to hit the farming community' (Irish Times, 20.10.1996). Following the transposition of the directive, the IFA and the Irish Creamery Milk Suppliers Association (ICMSA) continued to monitor its application and they are still unhappy with it. Inevitably, the mobilisation of the farming community on the issue alerted the environmental groups to the potential dilution of the directive during transposition and application.

The politicisation of habitats pushed the issue up the political agenda and ensured that it would receive considerable attention in parliament, the media and from senior

political figures. During the period 1992-2003, there were 754 parliamentary questions on the habitats directive. See Figure 2.

Figure 2: Parliamentary Questions on Habitats Directive



1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
10	17	18	35	63	88	140	100	112	125	55	16

Source: Irish Parliamentary Database, <http://www.oireachtas-debates.gov.ie/>. 10 October 2003. Parliamentary Questions examined from 1 January 1992 to 1 October 2003.

Figure 2 demonstrates that the high point of politicisation occurred in the period 1996 to 2001, in the lead up to the transposition of the directive and its subsequent application. This suggests that difficulties with the directive lasted well into the post-transposition phase. In addition, the Joint Parliamentary Committee on European Affairs held a hearing on it on 27 February 2002. The activities of the farming groups and the political interest evident in the parliament guaranteed that the responsible minister in successive governments would pay considerable attention to the implementation of habitats. Senior officials and political advisors were also drawn into the politics of implementation. The difficulties encountered in implementing the directive spilled over into the national political arena. The two Ministers charged

with implementing the Directive in the 1997-2002 government, Minister Síle de Valera and Minister of State Eamon Ó Cuiv both publicly criticised the European Union at the very time they were experiencing difficulties in implementing the Directive. Their pronouncements resonated with soft Euro-scepticism. In September 2000, Minister de Valera caused great controversy with the content of a speech at Boston College. According to de Valera, ‘directives and regulations agreed in Brussels can often seriously impinge on our identity, culture and traditions’. While she was not specific regarding the directives she had in mind and offered no concrete evidence to support her claim, the common understanding was that she was referring indirectly to the Habitats Directive (e.g. Irish Times, 20.9.2000, Garret FitzGerald, Irish Times, 30.9.2000). In the speech, she called for ‘a more vigilant, questioning attitude towards the European Union and more diligence in protecting Irish interests’ (De Valera, 18.9.2000). In justifying why he voted ‘no’ in the first referendum on the Treaty of Nice in June 2001, Minister of State Ó Cuiv criticised the EU for taking:

an inflexible and unreasonable attitude towards implementation of certain policies. This struck me particularly in relation to the Habitats Directive, where the room for manoeuvre to allow people to continue with traditional activities was very limited and where the EU seems very reluctant to facilitate the full compensation of, for example, farmers, who had to de-stock because of the over-grazing of the hills. *No doubt some of the public thought the inflexibility in implementing the directives, such as the Habitats Directive, came from Dúchas, but I can assure them it is not so* (Eamon Ó Cuiv, Irish Times, 22.6.2001, authors’ emphasis).

The Minister was clearly signalling his displeasure with the EU and the Commission and the manner in which it was insisting on the implementation of the directive. How then were the controversies surrounding the implementation of the habitats directive mediated in Ireland and what role did the Commission play in demanding compliance in the face of deeply rooted domestic resistance? The analysis based on process tracing is divided into three phases, the period up to and including the transposition of the directive into national regulations, the application phase and a re-steering phase in the light of the implementation and compliance difficulties.

### **Transposition: period from agreement on the directive to transposition measures**

The transposition period in Ireland lasted from 1992 when the directive was agreed to 1997 when national implementing measures were finally put in place. The period 1992-1994 was characterised by inertia as no preparations were made for the implementation of the directive notwithstanding the 1994 implementation date. Extensive consultations took place in the 1994-1995 period between Dúchas and other departments, particularly Environment and Agriculture, on the form of the Regulations (Grist, 1997, 92). At the same time, members of the farming community became aware of the significant implications that the Directive would have on their ability to make a living from their lands. In order to address these concerns, a three-day workshop was organised by Dúchas in Galway in October 1996 to discuss the implications of the Directive, at which farming and conservation groups were represented, as well as the Commission (Grist, 1997, 92).

In attempting to transpose the directive, the minister had to establish the modalities for site designation, the notification of landowners whose lands were in a designation, and the relationship between the planning process and the protected sites. The

minister also had to find a way of overcoming the opposition of the farming community to EU or state imposed restrictions on their use of land. Buying off the farmers was the key to unlocking the transposition process. Indeed, at the signing of the Natural Habitats Regulations, the Minister drew attention to the number of occasions on which he had deferred implementing the Directive to allow for consultation, indicating that there had been some 15 meetings between his officials and farming organisations in ‘recent months’, as well as meeting with other conservation groups (Grist, 1997, 93)

During the period 1994-1997 when discussions were taking place concerning the transposition of the directive, the key negotiations were held with the farming organisations. Faced with the opposition of their membership, the farming groups sought to influence the manner in which the directive would be implemented. The farmers used their engagement in the macro-process of social partnership, a form of neo-corporatism that evolved in Ireland from the mid-1980s onwards, to press for a deal on habitats. This brought the habitats directive into the heart of public policy making in Ireland as the Prime Minister’s Office is the key co-ordinator of the partnership process. The deal on habitats was included in the Partnership 2000 Agreement hammered out in 1996.

During the discussions on the content of the Regulations, the IFA and ICMSA looked for a comprehensive compensation package for farmers/landowners to take account of devaluation of land values as well as loss of actual and potential income. This amounted to a strategy of seeking a side payment from the state in the form of compensation for losses. There was more consultation concerning the compensation provisions than any other element of the Regulations.

The Regulations make provision for payment of compensation by the Minister to affected landowners. Farmers were entitled to this compensation or additional top-up payments if they were already participants or wished to become participants in the Rural Environmental Protection Scheme (REPS), administered by the Department of Agriculture, Food and Forestry. The preference in the Irish Government was to pay the farmers through the REPS scheme, as this was Brussels not national money. However, if farmers did not want to join the REPS scheme, a national compensation scheme was put in place. This compensation scheme required Commission state aid sanction. Although the Commission had reservations, it finally sanctioned the scheme in September 2003.

In addition to its demands for compensation, the IFA sought an independent appeals board to consider objections to designations and levels of restrictions. Under Section 5 of the 1997 Regulations, a person may object on scientific grounds to a proposed designation of his or her lands. In practice, the landowner is asked to contact Dúchas, where objections are first examined informally by an Appeals Officer. If the matter could not be resolved on an informal basis, the landowner was then advised to make a formal appeal to the Minister who is advised by an extra-statutory Appeals Advisory Board for which there was no provision in the Regulations. Landowners had up to three months after notification to appeal designations. The Minister, in deciding on objections from landowners against the inclusion of land within sites, would be guided by an independent body made up of interest groups involved, e.g. farming organisations (IFA, ICMSA), industry (IBEC), and conservation organisations, as well as persons possessing scientific and biological knowledge. Former Ombudsman Mr Michael Mills was appointed as the first independent chair of the Appeals Board. Its decisions on site designations and changes to site designations, in line with EC

case law, were to be taken purely on scientific and not economic grounds. The establishment of the appeals board was a clear attempt by the ministers to create a buffer between themselves, their ministry and individual farmers. The 1997 Regulations mentioned the possibility of objections to designation but made no provision for an appeals board.

### **Application**

The 1997 Regulations put in place the regulatory framework for the implementation of habitats. The political battle was to continue during the application phase of the directive. This phase was characterised by intense negotiations between the Commission and the Irish government, continuing battles between the Government and farming organisations about the application of the directive, mobilisation of the environmental NGOs in an effort to ensure that the directive would be applied and the occurrence of what can be termed multiple micro-level flashpoints around the country when the directive hit home in terms of affecting bogs, snails, hen harriers, and overgrazing sheep. The minister responsible for the transposition phase left office in June 1997 and was replaced by a minister, Síle de Valera, whose constituency was in a part of Ireland very much affected by site designation. The junior minister responsible for rural policy was her cousin, Eamon Ó Cuív, who was also from the western half of the country. Both were grandchildren of one of the 1916 leaders, Eamon de Valera, who founded Fianna Fáil, the largest and most successful political party in Ireland. By temperament and political location, neither of these office holders was likely to risk alienating their constituencies in order to comply with a European law. They would invest considerable political energy in mediating between Brussels and the farmers and there is no doubt that their sympathies were entirely with the

landowners. One of them simply said, ‘I was one of them’ and that ‘the gun was to my head’ (Interview 03, 25.6.2003). The gun in this case was the Commission’s pressure to speed up the application of the directive in Ireland.

*The Politics of National-EU Implementation*

As noted above, Ireland did not transpose the Habitats Directive until February 1997, which was just less than two years after the deadline for receipt of national lists of sites by the Commission. Because of the lengthy consultation process engaged upon by the Minister, a provisional list of sites was only issued in April 1997 (see Table 3).

Table 3: Habitats Directive, Proposed SCIs for Ireland

<b>Nature Edition Date</b>	<b>Number of Sites Proposed</b>	<b>Total area (Km<sup>2</sup>)</b>	<b>Percentage of total land area</b>
May 1996	0	0	0
April 1997	0	0	0
October 1997	(207 Provisional)	(5,530 Provisional)	
February 1998	(207 Provisional)	(5,530 Provisional)	
September 1998	39 (207 Provisional)	523 (5,530 Provisional)	
February 1999	48	542	
June 1999	103	970	
November 1999	138	2060	2.9
April 2000	259	3007	4.3
September 2000	267	3091	4.4
December 2000	317	6140	8.7
April 2001	362	9907	14.1
May 2002	364	9953	14.2
April 2003	364	9953	14.2

Source: Compiled from successive issues of *Nature*, DG Environment’s Newsletter on Natura 2000 from 1996 onwards.

While all member states had not transmitted lists by the original 1995 deadline, by April 1998, all member states with the exception of Ireland and Luxembourg had sent lists of definitive sites to the Commission. Ireland was thus a laggard with regard to the implementation of habitats. The Irish authorities first received a letter of formal

notice on 24 April 1996 with regard to this matter. In response, Dúchas communicated a list of 207 sites by letter on 28 April 1997 but these sites were only provisionally designated. The Commission issued a second letter of formal notice on 11 July 1997 in which it once again complained that Ireland had failed to transmit a full list of sites and the relevant site information. In reply, by letter of 5 September 1997, Dúchas, as the responsible authority, informed the Commission that the required list would be prepared in three *tranches*, the first consisting of sites hosting priority natural habitat types, the second consisting of sites hosting non-priority natural habitats and species, and the third consisting of marine sites. In January 1998, Ministers de Valera and Ó Cuiv, met officials of DG XI/Environment of the Commission in Brussels and formally outlined this programme. An initial limited list of 39 designated sites (i.e. not provisional) was consequently sent to the Commission in August 1998. However, on the basis of this response, the Commission decided to make an application to the ECJ against Ireland for failing to transmit the full list of sites (along with France, Finland, Denmark, Germany, Luxembourg and the Netherlands). On 11 September 2001, the ECJ ruled against Ireland (Case C-67/99). The primary problem of implementation at this stage was the delayed and inadequate transmission of the list of national sites to the Commission by the Irish authorities. As well as making use of its formal sanction of bringing Ireland to the ECJ, the Commission issued a number of very effective threats to the Irish authorities. In July 1999, the Commission warned the Government that approval for structural and cohesion funds for projects in 2000 were at risk because Ireland was ‘dragging its feet on designating wildlife sites for protection under the 1992 Habitats Directive’ (Irish Times, 17.8.1999). According to former Prime Minister Garret FitzGerald, ‘it appears that, faced with this difficulty, the Minister for Finance, Mr Charlie McCreevy,

promised Commissioner Barnier that the Habitats Directive would be implemented within six months by Ms de Valera's Department' (Irish Times, 30.9.2000). The threat concerning EU funding was viewed in the following terms by one of the ministers concerned, 'Brussels could say that they would not pay the money in premiums, headage payments, REPS- this was a credible threat because they had coercive power because of the money' (Interview 03, 25.6.2003). By issuing the threat to the Finance Ministry, the Commission successfully drew the attention of key players in the core executive to the problem of implementation. This in turn would have led to pressure from Finance and the Prime Minister's Office on the two ministers responsible for habitats. Following assurances from Finance, the Commission subsequently confirmed that EU funding under the Community Support Framework 2000-2006 would not be affected providing the Irish list of candidate sites was formally transmitted to it by November 2000 (Parliamentary Debates, 31.5.2000). As late as April 2003, the Commission judged Ireland's list to be substantial but still incomplete. The information on transmitted sites was also judged to be incomplete (See Natura Barometer, DG Environment). At the same time as the ministry was sending site lists to the Commission to comply with the Directive, it was dealing with the objections raised by landowners and NGOs to these designations.

### *The Continuing Politics at Domestic Level*

The implementation network for the habitats directive involved many actors at European and national level. The structure of the network was generated by one of the key implementers of the habitats directive in Ireland. See Figure 3.<sup>5</sup> Three domestic

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<sup>5</sup> This representation of the actors involved in implementing the habitats directive was generated using NetQuest, designed by Rene Torenvlied of the University of Utrecht. Based on the results of the

ministries had a formal role (see dotted line) in the implementation of the directive. These were Arts, Culture and Gaeltacht (i.e. Dúchas), Environment and Agriculture. The Ministry of Arts, Culture and the Gaeltacht was the implementing authority because Dúchas was under its auspices. Following the General Election of May 2002, Dúchas was transferred from the Department of Arts, Heritage, and the Gaeltacht to the Department of the Environment and Local Government and Dúchas as a brand name was abolished in April 2003. The three ministries had direct formal links (see the dotted lines) to their respective Commission directorates. The interest organisations involved in the implementation of habitats were the framing interests, on the one hand, and the environmental NGOs, on the other. The two main farming organisations, the IFA and the ICMSA, maintained direct contact (thick line) with Brussels (DG Agriculture), the Ministry of Agriculture and Dúchas. An *ad hoc* organisation, the SAC Alliance was set up specifically to oppose the directive. The SAC Alliance claimed to represent more than 7,000 farmers and landowners, mostly based in the west of Ireland, i.e. bog-owners directly affected by the Habitats Directive. The Alliance acted on behalf of a number of farmers in the appeals process, campaigned for a No vote in the Second Nice Referendum and was much more militant than the mainstream farming organisations. Its existence underlined the politicisation of the issue and the potential for local activism on habitats. The farming organisations did not engage in direct contact with the environmental groups.

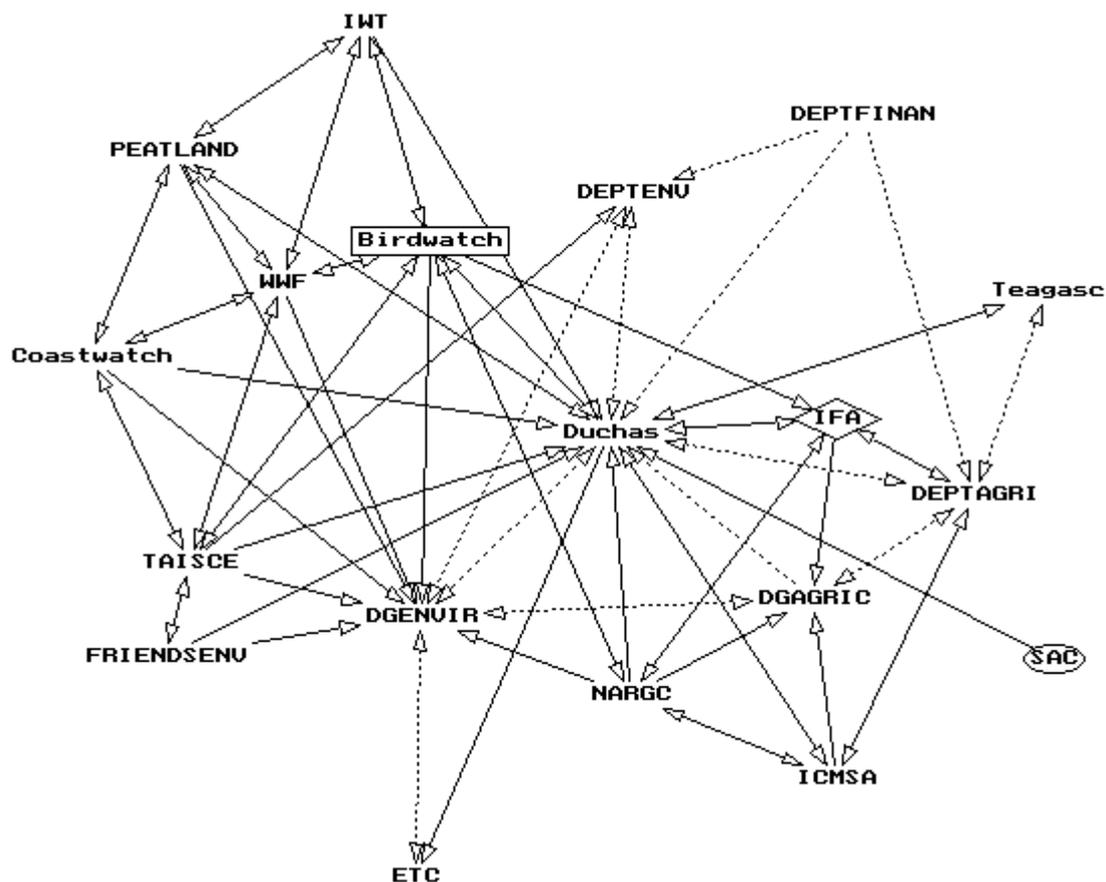
Six environmental conservation groups were active in the network. These included An Taisce, Birdwatch Ireland, the Irish Peatland Conservation Council (IPCC),

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questionnaire filled in by the identified expert, multi-dimensional scaling analysis was used to picture the official (represented by dotted line) and informal (represented by thick line) contacts between actors in the network.

Coastwatch Ireland, Irish Wildlife Trust, Friends of the Irish Environment and the National Association of Regional Game Councils (NARGC). They maintained contact with each other although Birdwatch Ireland and An Taisce appear to have the most extensive links with other groups in the network. All of the environmental groups had contact with DG Environment in Brussels and with the World Wildlife Fund (WWF) in addition to their links with the national implementing authorities. Their strategy of multilevel engagement reflected their relationship with DG Environment in Brussels and the manner in which they could hope to use the Commission as a counterbalance to the influence of the farming groups at domestic level.

Figure 3: Habitats Implementation Network<sup>6</sup>



<sup>6</sup> Habitats Implementation Network - EU level: DGENVIR= DG Environment, DGAGRIC= DG Agriculture; National level: Dúchas – national implementing body; DEPTENV= Department of the

While the representation in Figure 3 illustrates the number of actors in the implementation network and the official and informal relations between them, it does not show the depth of contact between each of the actors, in particular the degree of farmers' involvement in the implementation process and the resources at their disposal to achieve their strategic aims. As mentioned above, the farming organisations continued to have problems with the directive in the application phase. It became clear during this phase that the objections of the farmers had not been bought off with the compensation package. According to one minister involved, 'The IFA thought it had 'it done' because of solving the money issue but this was not the case' (Interview 03, 25.6.2003). This was confirmed by another interviewee who claimed that 'there was strong grassroots pressure on the IFA over Habitats and considerable mobilisation at that level. The wording of the regulations weren't quite what the farmers thought they had got' (Interview, 02, 22.5.2003). During the application phase the IFA continued to press for changes in the level of consultation, appeals and compensation. The appeals process of designations was lengthy and controversial, particularly in the western part of the country. Considerable time and effort was required to inform farmers and landowners that their land was being designated as candidate sites. In December 2000, Minister de Valera estimated that

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Environment and Local Government, DEPTAGRI= Department of Agriculture and Food, DEPTFINAN= Department of Finance, Teagasc= Irish Agriculture and Food Development Authority; NGOs: IFA= Irish Farmers Association, ICMSA= Irish Creamery and Milk Suppliers Association, SAC= SAC Alliance, Taisce= An Taisce (Irish Heritage Trust), FRIENDSENV= Friends of the Environment, Birdwatch= Birdwatch Ireland, IWT= Irish Wildlife Trust, Peatland= Irish Peatland Conservation Council, Coastwatch= Coastwatch Europe, NARCG= National Association of Regional Game Councils, WWF= World Wildlife Fund, ETC= European Topic Centre for Nature and Biodiversity.

her Department had directly notified over 13,000 individual landowners (Parliamentary Debates, 14.12.2000). Considerable administrative resources were required to deal with the objections to site designations but the number of staff available to deal with these objections was small.<sup>7</sup> As of 8 November 2001, a total of 756 appeals on site designations were lodged. The vast majority of these were resolved through internal review by Dúchas staff (620 out of 756) with approximately half being either granted or partially granted (Ireland, Report under Article 17 of Habitats Directive, December 2001).

The SAC alliance in the western half of the country was concerned particularly with the designation of extensive areas of peatlands which meant that bog-owners would have to cease cutting turf, one of the traditional sources of fuel in that part of the country. Going to the bog to cut turf was part of the rhythm of summer in that part of Ireland. In response to pressure from the SAC, bog-owners were given compensation by the Minister. Given the fact that significant areas of blanket and raised peatland were affected by the designations, financial compensation was seen as the only means of softening the conflict. The state purchased turbary rights from those cutting bogland for their own use as they were obliged to cease cutting immediately and compensation was also available for commercial cutters.

The six conservation groups were concerned with site designation and the appeals process during the application phase. Unlike in the transposition phase, there was increased conservation NGO mobilisation in the application phase of implementation.

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<sup>7</sup> There are 90 conservation rangers working to protect birds and habitats in Ireland (national territory of 7 million hectares). In addition, there are 30 district wildlife officers who are employed by the Department through the services (Select Committee on the Environment and Local Government, 13.2.2003).

In the period 1996-7, these NGOs were informed of progress on drafting the transposition regulations but unlike the farming organisations, were not directly involved in their negotiation. Conservation NGOs in Ireland are small in size, have limited financial resources and do not have a significant domestic political constituency, unlike the farming organisations. As figure 5 shows, as well as trying to press their concerns to Dúchas at the national level, Irish conservation NGOs maintain regular contact with the Commission. They make full use of the Commission's complaints procedure and such complaints may result in formal notices and reasoned opinions from the Commission to the Irish authorities. While the farmers groups concentrated their efforts on the domestic level, the conservation NGOs also focused on the European level as it helped them maximise their access to the implementation process in spite of their limited resources. From 1997 onwards, a group of five NGOs (Birdwatch Ireland, IPCC, An Taisce (National Trust for Ireland), Coastwatch Europe and the Irish Wildlife Trust) began to closely monitor Irish SAC and SPA designation. In 1999 they obtained a wildlife grant from the Irish Heritage Council in order to identify additional sites to ensure Ireland's habitats and species are adequately designated. With the help of this grant, they were able to employ a conservation expert and in October 2000 they presented a shadow candidate list to the Commission which identified additional candidate sites left out by Dúchas (almost 600) compared with the 364 then proposed by the Irish authorities (Irish Times, 7.9.2000). Officials from Dúchas and the Minister met with representatives of these NGOs on a number of occasions in the run up to the second Atlantic biogeographical seminar held in the Hague in 2002 to discuss the shadow list and extensive discussions took place before and after this meeting on the content of the national list. A representative from the IPCC itself was also present at the second biogeographical seminar and was able to

present the Irish NGO case to the Commission and European Topic Centre. At the same time as the shadow list was being prepared by the NGOs, Green Party members of parliament acted as a bridge between the conservation groups and Dúchas, by highlighting the inadequate implementation of the Directive in parliamentary debates and questions.

The conservation NGOs also had concerns about the national appeals process. While the NGOs were granted the right to sit on the Appeals Board in the formal stage of the appeals process, they were not involved in the informal or internal phase. They feared that candidate sites were being either de-designated or boundaries decreased to suit developers, farmers, tourism interests and other interest groups (Irish Times, 22.3.1999). A prominent conservationist, Shirley Clerkin of An Taisce, called for the informal appeals mechanism to be discontinued as: ‘at the moment, many changes and de-listings are made for un-documented reasons and it can be difficult both for conservationists and farmers to see how decisions are being made. There are no records of scientific surveys to back up these informal boundary changes and de-listings’ (Clerkin, 2000).

### *Flashpoints*

The interaction between the planning process and habitats conservation was a continuous source of controversy during the application phase. Highly localised controversies, flashpoints, contributed to the politicisation of the directive. Flashpoints erupted regularly between landowners, developers and the planning authorities over proposed development projects, on the one hand, and between farmers/landowners and local authorities over one-off housing projects, on the other. Such disputes were widely reported in the local and national media because of the

degree of controversy generated over the granting or withholding of planning permission. The bodies responsible for planning permission, the local authorities and An Bord Pleanála, the planning appeals board, found themselves in a difficult position as they were the bodies nominated to protect designated SAC sites in the planning process and were at the same time under significant pressure to facilitate economic and rural development. Tensions inevitably occur when conservation laws meet development pressures. Politicians and ministers are well aware of these flashpoints. Examples of such planning flashpoints include the re-routing of a major by-pass just outside the capital in order to protect snails and the refusal of planning permission to set up wind farms in the South West of Ireland because of the presence of hen harriers, a protected species. Another highly controversial development on a proposed candidate site was the Doonbeg Golf Resort, in the West of Ireland. Golf champion Greg Norman was appointed to design the golf links. Although the Doonbeg site is an example of abundant marram-covered fore dunes, was on the original draft list submitted to Brussels, planning permission was granted for the golf resort. In April 2002, the then Minister for the Marine and Natural Resources called for the Habitats Directive to be re-negotiated based on the controversies related to planning permission. According to the Minister, the operating system relating to environmentally sensitive areas was 'too restrictive' and causing 'huge delays in planning' (Irish Times, 03.4.2002).

### **Re-steering**

Given the ongoing controversy about the habitats directive and the fact that it has not become a routine conservation measure, has meant that the government is under considerable pressure to re-visit the 1997 regulations. The farming organisations have

formally engaged in a process of demanding a re-steering of the directive. Re-steering involves review or re-negotiation of the national implementing measures and is most likely to occur when a directive is implemented by political means. As we saw in the previous section, the farming organisations were trenchant in their demands for a review of the 1997 Habitats regulations. Indeed, in December 2002, one of the main farming organisations, the IFA, organised a 'Keep Out Campaign' to prevent access by Dúchas personnel to SAC sites owned by 15,000 farmers throughout the country in order to highlight their continued opposition to the existing regulations (IFA Press Release, 12.12.2002). The farming organisations received a commitment by the new Fianna Fáil/Progressive Democrat Government for a review of the regulations in the most recent Social Partnership agreement, Sustaining Progress 2003-2005. Habitats has re-emerged as an issue in the process of social partnership. This review began in September 2003 with meetings between the two farming organisations, the IFA and ICMSA and officials from the National Parks and Wildlife Service (formerly Dúchas) of the Department of the Environment. As was to be expected, the most contentious issue of the review is compensation for designation with farmers seeking compensation for loss of value in land (Irish Farmers Journal, 31.8.2003). While negotiations on re-steering proceed, those responsible for applying the directive are attempting to put in place management plans for ensuring the conservation of the designated sites. One assessment acknowledged that, 'site conservation and management has suffered from a lack of both human and financial resources' (Otte, 2003, 216).

## **Conclusion**

This paper addressed the post-decisional phase of EU policy making, the phase during which European laws are internalised in the domestic legal systems of the member states. The analytical framework for the case study identified the importance of mis-fit as providing a first cut in analysing problems of implementation. The concept was disaggregated into three dimensions, policy, legal and institutional mis-fit. Although mis-fit assists in identifying the challenges of implementation, it does not provide a framework for analysing how these challenges are mediated at national level. The paper focused on politicisation, an under-researched dimension of public policy in the Union. The paper began from the premise that the application of an EU policy characterised by high conflict and low ambiguity would involve political implementation. Political implementation in the context of the habitats directive consisted of a nested game at domestic level between the Government and the key social interest affected by habitats, the farmers and two connected games between the Commission and the Irish Government, one the one hand and between the Commission and the Environmental NGOs, on the other. The Irish Government was very responsive to the farmers and effectively made a side payment to buy their acceptance of the directive. This was only partially successful as the farmers demanded a re-steering of the national implementing measures. The negotiations between the Irish Government and the farmers took place in the shadow of DG Environment. The Commission used its political, administrative and enforcement powers to nudge the Irish Government in the direction of implementation. Having exhausted the political route, it resorted to judicial sanction by referring the Irish Government to the ECJ. Moreover, its threat about budgetary transfers was taken very seriously in Dublin. The connected game between the Commission and the

environmental NGOs reflected the manner in which the latter used the political space opened up by the Union's multileveled processes to increase their influence on policy outcomes. The habitats directive has not as yet become an accepted and stable element of Ireland's conservation policy in Ireland.

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**Diagrams Included:**

Figure 1: Framework for the Designation of Natura 2000 sites  
Figure 2: Parliamentary Questions on Habitats Directive  
Figure 3: Habitats Implementation Network