

Species protection rules under the Birds and Habitats Directives: how effectively are they integrated into sectoral policies?

TASK 2 – Case Study *Denmark*

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Draft

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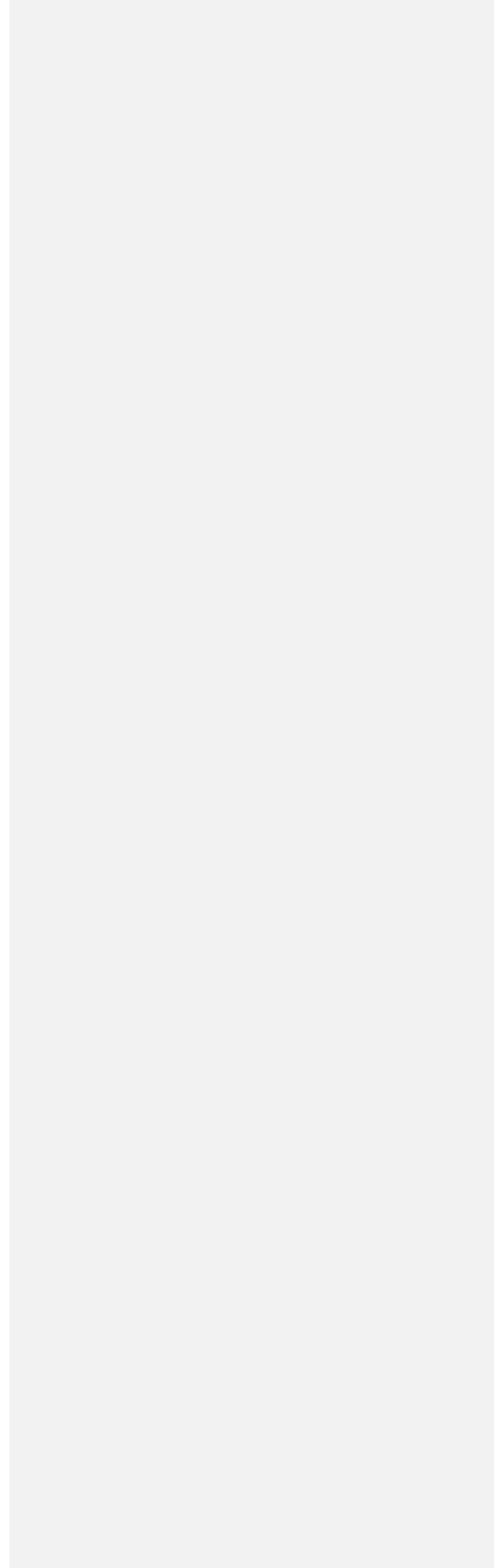
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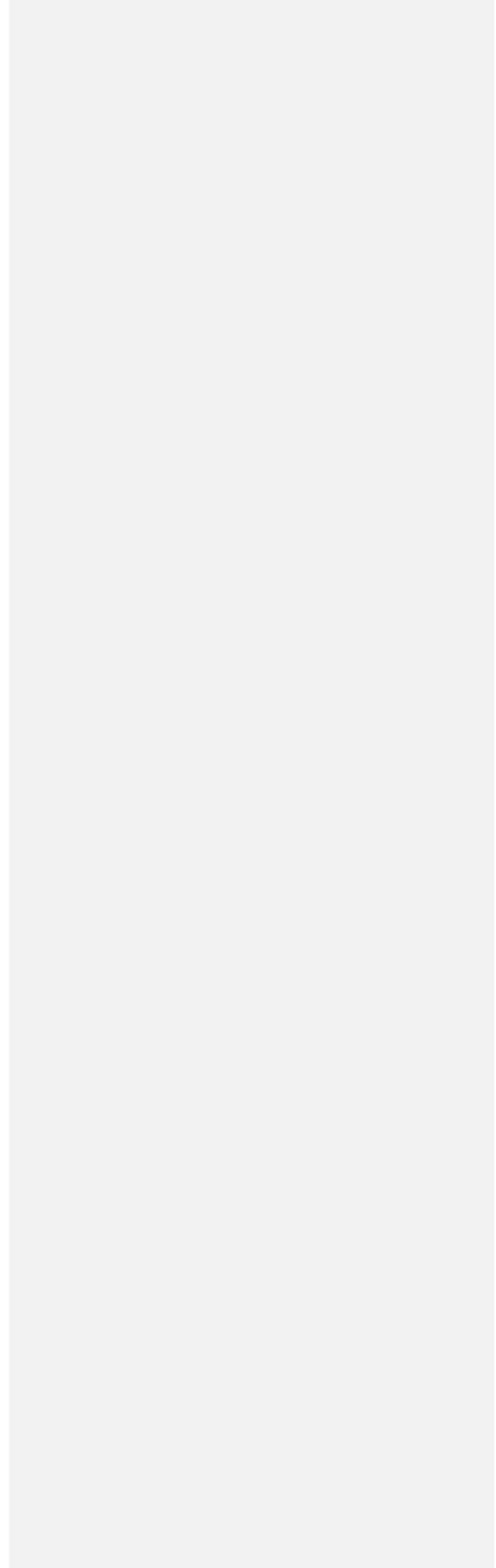
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ABBREVIATIONS

Art.	Article
CAP support	Common Agricultural Policy support
TOC	Table of Concordance
BEK	Bekendtgørelse - Statutory Order
DEPA	Danish Environmental Protection Agency
EIA	Environmental impact Assessment
GAEG	Good Agricultural and Environmental Status – In Danish GLM – God Landbrugs og Miljømæssig stand
IE	Industrial Emissions
KO	krydsoverensstemmelse (Danish) = Cross Compliance
LBK	Lovbekendtgørelse – Consolidated Act.
Lbst	Danish Agriculture Agency
MOF	Ministerial Board on Environment and Food (Historic – Ministries have been split)

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1 INTRODUCTION

1.1 GOVERNANCE

The Danish Minister of Environment holds the overall responsibility for the protection of species according to Art. 5 of the Birds Directive and the Art. 12 and Art. 13 of the Habitats Directive. The Danish Environmental Protection Agency (DEPA) and the Water and Nature Agency are responsible for management and supervision of the Danish species protection legislation that implements Art. 5 of the Birds Directive and Art. 12 and Art. 13 of the Habitats Directive.

The 98 Danish municipalities are responsible for inspection and control related to IPPC (Integrated Pollution Prevention Control) permits concerning livestock. The municipalities are responsible for decisions on dispensations from the Nature Protection legislation in Natura 2000 sites and other protected areas; and also for Environmental Impact Assessment (EIA) when required in connection with a farmer's application for exemptions from the general prohibitive requirements in the Nature Conservation Act.

The Minister of Food, Agriculture and Fisheries holds responsibility for CAP support to farmers and landowners. The Danish Agricultural Agency is responsible for management and control of various agricultural related tasks, including CAP support and cross-compliance. Five regional Agricultural Agency offices (of the Danish Veterinary and Foods Administration) carry out inspection and control of agricultural production and areas that are CAP supported, including cross-compliance checks.

1.2 PROTECTED SPECIES

Denmark has a total area of 42,943 km² and a mostly flat landscape covered with unique and valuable nature and around 26,000 km² of agricultural land.

According to the agricultural species classifications¹, 62 % of the species protected under Annex IV of the Habitats Directive are either directly (around 15%) or indirectly (around 47 %) dependent on agricultural management.

For wild birds in Denmark, 10% of the wild bird species protected under the Birds Directive are classified as farmland birds – according to the Common Birds indicator for agriculture (CFoBI). A list of wild birds present in the Danish Agricultural area is at Appendix 1 below.

Two Annex IV mammal species are important in an agricultural context - *Muscardinus avellanarius* (dormouse)² and *Sicista betulina* (birch mouse)³. The mouse species is rare and included in the IUCN red lists and thus the particular focus of occurrence data, environmental assessments and specific protection initiatives.

¹ Article 12 and Article 17 species classification is based on the current State of Nature Report 2020 (EEA 2020). While the classification for Annex species relies on the definition from Halada et al. 2013 (only available for Article 17), the birds classification refers to the classification from the Common Bird Indicator classification for birds with ecological preferences for forest (CFaBI).

² In Danish – hasselmus. Forest habitats and agricultural habitats close to forest environment are suitable for the mouse.

³ In Danish - birkemus. The mouse prefers agricultural areas /occasional observed in forest environments.

<https://mst.dk/natur-vand/natur/international-naturbeskyttelse/eu-direktiver/naturbeskyttelsesdirektiver/tilskud-bilag-iv-arter/>

2 LEGISLATION AND RULES ON SPECIES PROTECTION ON AGRICULTURAL LAND

The core of Danish legislation transposing Art. 12 and 13 of the Habitats Directive and Art. 5 of the Birds Directive is the Danish Hunting and Game Management Act and a Statutory Order on Conservation of Certain Animal and Plant Species and Injured Game. The Statutory Order on Determination and Administration of International Conservation Areas and Certain Protected Species, includes maps of designated NATURA 2000 areas in DK (habitats and Special Protection Areas (SPA))⁴

Also relevant is legislation related to CAP support cross-compliance, EIA, and livestock farming approval and permits. EIA rules may apply in connection with applications for livestock farming permits outside Natura 2000 sites and for agricultural (project) developments inside Natura 2000 sites. Assessment of the presence or the likely presence of Annex IV species and wild birds forms part of the permitting framework set out in legislation as well as municipal formats for application, approval and permitting of livestock farming. In terms of conditions included in livestock approvals and permits, one or more conditions may refer directly to Annex IV species and wild birds likely to be present on the property.

At the individual farmer's level deliberate actions or purposive omissions in relation to killing of wildlife and destruction of and damage to nests and eggs are subject to sanctions under the Criminal Law Act.

The Danish cross-compliance requirements on nature protection were criticised by the EC Commission in 2017, which led to the adoption of stricter Danish cross-compliance legislation in 2018. Statutory Orders on cross-compliance are issued once a year. GAEC 1.23 on habitat protection refers to § 3 of the Nature Conservation Act that applies to protected areas both inside and outside Natura 2000 sites. § 3 may under certain circumstances be of relevance for farmer's compliance with the Danish provisions transposing Art. 5 of the Birds Directive and Art. 12 and 13 of the Habitat Directive. .

2.1 LEGISLATION TRANSPOSING ARTICLES 12 AND 13 OF THE HABITATS DIRECTIVE AND ARTICLE 5 OF THE BIRDS DIRECTIVE

Habitats Directive:

The Danish Hunting and Game Management Act⁵ and Statutory Order on Conservation of Certain Animal and Plant Species and Injured Game⁶ include the main part of the provisions transposing Art. 12 and 13 of the Habitats Directive. The Statutory Order is issued by the Minister of Environment on as a means of enabling provisions in the Nature Conservation Act⁷ and Hunting and Game Management

⁴Statutory Order on Determination and Administration of International Conservation Areas and Certain Protected Species, (BEK nr 1595 af 06/12/2018) – Habitatbekendtgørelsen
<https://www.retsinformation.dk/eli/ta/2018/1595>

⁵ Act on hunting and game management (Consolidated Act - LBK no. 265 of 21/03/2019 – Jagt og vildtforvaltningsloven)
<https://www.retsinformation.dk/eli/ta/2019/265>

⁶ Statutory Order on conservation of certain animal and plant species and injured game (BEK no. 521 of 25/3 2021) – Artsfredningsbekendtgørelsen
<https://www.retsinformation.dk/eli/ta/2021/521>

⁷ Act on Nature Conservation

Act.

The phrasing of the Danish provisions implies that general prohibitive protection schemes are established, and specific texts encompass the elements included in Art. 12 and Art. 13 of the Habitats Directive except for Art. 12(1), b). Annexes included in Danish legislation refers to Annex IV of the Habitat Directive and set out animal species and plants present on Danish territory. For evaluation of the Danish transposition status – see the table below,

Habitats Directive – Art.	Danish Provisions	Compliance - transposition
12 (1) a), 13(1) a) Deliberate capture or killing Deliberate picking, cutting, excavation, and destruction.....	Statutory Order no. 521 of 25/3/2021 Prohibitive provisions §10, no. 1) reference to Annex IV animals and specific text Section 10 (2) Reference to Annex IV plants – and specific text	Yes The national measure encompasses all elements of the provision of the Directive, which is therefore considered to be fully transposed.
12 (1) c) Deliberate destruction or taking of eggs from the wild....	Statutory Order no. 521 of 25/3/2021 § 10, no. 2) Text reflecting 12(1) c)	Yes The national measure encompasses all elements of the provision of the Directive, which is therefore considered to be fully transposed.
12 (1) d) deterioration or destruction of breeding sites or resting places.	Consolidated Act no. 265 of 21/03 2019 § 6a Text reflecting 12 (1) d)	Yes The national measure encompasses all elements of the provision of the Directive, which is therefore considered to be fully transposed.
12 (1) b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration	Consolidated Act no. 265 of 21/03 2019 Section 7. The animal species mentioned in Appendix 1 may not be intentionally disturbed with detrimental effect on the species or population.	(Yes) The text of Section 7 of the Hunting and Game Management Act does not include specific reference to the breeding and rearing situations – however such situations are intended to be included in the scope of Section 7 according to comments in the law preparation process. ⁸ Subject to the Danish regulation is the population and/or specific animal species. The Danish provision has to be interpreted in light of Art. 12(1) b) in order to take all relevant elements into consideration.
12(2), 13 (1), b) ...Keeping, storage, transport, trade or exchange, offerings for sale or exchange, transfer,	Statutory Order no. 521 of 25/3/2021 Section 11 – refers to	Yes

The Danish Nature Conservation Act includes a general prohibition clause that applies to all (farm)

(Consolidated Act - LBK no 240 of 13/03/2019 – Naturbeskyttelsesloven)

<https://www.retsinformation.dk/eli/ta/2019/240>

⁸ Note prepared by Professor Peter Pagh, University of Copenhagen in connection with hearing in January 2018 concerning amendments to Statutory Order on cross-compliance – see p. 16 – Ref. MOF – Common Part – annex 468 (in Danish language)

land/property that includes protected areas described in § 3 of the Act.⁹ Farmers' activities such as filling in waterholes constitutes a violation of Section 3 and Section 29 a (1) and/or (2) of the Nature Conservation Act if Annex IV species are present or likely to be present nearby (if no dispensation has been granted). Violation of § 3 may constitute violation of the Danish provisions transposing Art. 12(1) b, and Art. 12 (1) d too. (Order on Conservation and Hunting and Game Management Act) GAEC 1.23 may also be violated.

BOX 1

Protected habitats, etc.

Lakes, streams, heaths, bogs, salt marshes, beach marshes, fresh meadows, grasslands, etc.

§ 3. No change may be made to the habitat condition¹⁰ of natural lakes whose area is more than 100 m², or of watercourses or parts of watercourses that have been designated as protected by the Minister of the Environment and Food¹¹ on the recommendation of the municipal council. However, this does not apply to usual maintenance work in watercourses.

§ 3 (2) No changes may be made to the habitat condition of

1) honor,

2) bogs and the like,

3) beach meadows and beach swamps as well

4) fresh meadows and biological pastures,

when such habitat types individually, together or in connection with the lakes mentioned in Section 3 (1) 1, are larger than 2,500 m² in contiguous area.

§ 3 (3). The condition of bogs and the like that are less than 2,500 m² shall not be altered when they are connected to a lake or watercourse that is covered by the protection in subsection (1). 1

The Nature Conservation Act includes similar provisions in § 8 concerning dune protected areas and in § 15 concerning coastal areas.

§ 29 a. The animal species mentioned in Annex 3 to the Act (Annex IV species present in Denmark) may not be intentionally disturbed with detrimental effect on species of animals or population. The prohibition applies in relation to all life stages of the animal species covered.

§ 29 a. (2). Breeding or resting areas for the species listed in Annex 3 to the Act must not be damaged or destroyed.

Kommenterede [SL(1)]: Can you please explain how this section 3 is linked to art 5 BD and art 12/13 HD?

Kommenterede [SL(2)]: How is the "condition" defined in DK law?

Kommenterede [SL(3)]: How is the "condition" defined in DK law?

Kommenterede [SL(4)]: Art 12(1)(b) does not refer to the impact on the population. so this would be a case of bad transposition

Birds Directive

The Danish transposing provisions relating to Art. 5 of the Birds Directive are inserted into the same Danish Legislation and in parallel with the provisions transposing Art. 12 and 13 of the Habitats Directive.

The Danish legislation transposing Art. 5 of the Birds Directive is included in the Danish Hunting and Game Management Act and Statutory Order on Conservation of Certain Animal and Plant Species and Injured Game. Furthermore, transposing provisions concerning eggs from wild birds is found in a separate Statutory Order.¹²

The Danish provisions concerning deliberate destruction of eggs and nests (Art. 5 (b)) and disturbance of birds in breeding and rearing season (Art. 5 (d)) are found in both the Act on Hunting and Game Management Section 6a (2) cf. Section 7 (2) and Section 6 of Statutory Order. The Danish provisions

⁹ Consolidated Act no. 240 af 13/03/2019

¹⁰ The Danish phrasing: Der må ikke foretages ændring i tilstanden af naturlige søer (translated as '.. no change may be made to the habitat condition of ...')

¹¹ Now Ministry of Environment

¹² Statutory Order no. 936 of 27/6 2016

on felling of trees hosting nests are to a certain extent similar and overlapping. Section 6a of the Hunting and Game Management Act relates to individual birds, their nests and eggs, while Section 7(2) and Section 6 of Statutory Order on Conservation of Certain Animal and Plant Species and Injured Game relate to groups of species as such and to populations. See the table below for compliance status evaluation and also the main

Birds Directive – Art. 5	Danish Provisions	Compliance - transposition
Art 5 (a) Deliberate killing ...	Statutory Order no. 521 of 25/3 2021 Section 4 referring to Section 1(1) Prohibition Section 4 (2) Exemptions	Yes The national measure encompasses all elements of the provision of the Directive, which is therefore considered to be fully transposed.
Art. 5 (b) deliberate destruction - damage nest and eggs – removal	Consolidated Act no. 265 of 21/03 2019 Section 6a Statutory Order no. 521 of 25/3 2021 Section 6 Felling of trees in breeding and rearing seasons for various birds	Yes The national measure encompasses all elements of the provision of the Directive, which is therefore considered to be fully transposed.
Art 5 (c) – taking eggs...	Statutory Order no. 935 of 27/6 2016 Section 1 and Section 2	Yes The national measure encompasses all elements of the provision of the Directive, which is therefore considered to be fully transposed.
Art. 5 (d) deliberate disturbance	Consolidated Act no. 265 of 21/03 2019 Section 7(2) – wild birds (reference to Section 7 and Birds Directive) may not be intentionally disturbed with detrimental effect on the species or population. (parallel for Annex IV species Section 7)	Yes The text of Section 7 (2) of the Hunting and Game Management Act do not include specific reference to the breeding and rearing situations – however such situations are intended to be included in the scope of Section 7 (2) according to comments in the law preparation process. ¹³ Subject to the Danish regulation is the population and/or specific birds species. The Danish provision has to be interpreted in light of Art. 5(d) in order to take all relevant elements into consideration.
Art. 5 keeping birds ..	Statutory Order no. 521 of 25/3 2021 Section 4 referring to Section 1(1) Dispensations Section 9 – very strict	Yes The national measure encompasses all elements of the provision of the Directive, which is therefore considered to be fully transposed.

The Nature Conservation Act Section 3 as cited above under section ‘Habitats Directive’ is also of

¹³

importance in the context of the Birds Directive. Cultivation of grassland may disturb wild birds so farmers have to notify even very small plots of grassland that is to be used for a new purpose/activity.

2.2 SUBSIDIARY LEGISLATION DERIVED FROM OR REFERENCING THE TRANSPOSING LEGISLATION

This study focuses on the implementation of Art. 5 of the Birds Directive and Art. 12 and 13 of the Habitats Directive in context of the agricultural sector in Denmark. The focus of the study is directed towards the general and direct protection of animal and plant species covered by the EU Directives and the selected provisions.

Farmers' agricultural activities and management of cultivated and un-cultivated areas (and changes hereto) must be carried out in respect of Birds and Habitats Directives protection rules. The legislative frameworks in which farmers carry out, monitor and follow up on their activities do usually address species and plant protection indirectly.

CAP support/EU subsidies available to landowners with agricultural activities/cultivating land/ are regulated by an Act on CAP support and a Statutory Order on Cross-Compliance.¹⁴ This Danish Statutory Order is amended/adjusted once a year.

CAP cross-compliance

Over the years proposals for new cross-compliance Orders have been subject to disputes between the Minister for Foods, Agriculture, and Fisheries and Danish agricultural organisations concerning the environmental and nature protection requirements in cross-compliance. The latest, in 2018 applied stricter rules for wild bird protection, in response to criticism from the EC in 2017. The Commission critique emphasised that the Danish cross-compliance requirements on nature protection did only apply to farmers outside Natura 2000 areas.

The cross-compliance Statutory Order includes two relevant GEAC: 1.23 on Protected Habitats and Section 3 Nature Conservation Act, and 1.38 on prohibition concerning pruning of trees and bushes in birds' breeding season was inserted into the Statutory Order in 2015.

GAEC 1.23 refers to the Danish Nature Conservation Act § 1 (see Box 1 above) applies to farmland with § 3 protected habitats regardless of location of the land inside or outside Natura 2000 areas.

Farmers inside Natura 2000 area must comply with stricter requirements and approval/dispensation rules than their colleagues outside. This distinction was however not taken sufficiently into consideration when the Danish 2018 cross compliance order was implemented - resulting in equal 1.23 cross compliance requirements for farmers regardless of their location.

The Agricultural Agency have, only in November 2020, made interpretations distinguishing between farmers located inside and outside Natura 2000 area, respectively.

Professor in Environmental Law Peter Pagh, of the University of Copenhagen, made a response on behalf of the organisation 'Sustainable Agriculture' in the ordinary hearing process for the 2018 Statutory Order on Cross-Compliance. The note he prepared emphasises different problematic aspects of the Danish implementation of the Habitats and Birds Directives and inconsiderable matters can be traced back to 2004 or even earlier. It is furthermore demonstrated how the Danish implementation may have an unintended impact on farmers' opportunities for complying with the 2018 cross-compliance order – GAEC requirements 1.23, 1.24., 1.25, 1.26 and 1.29.¹⁵

Peter Pagh, as part of the note, concludes that Art. 6(1), (2), and (3) of the Habitats Directive and Art. 3 and Art. 4 of the Birds Directive are within the scope of cross-compliance, but Art. 12 and 13 of the

¹⁴Act no 115 of 06/02/2020 on CAP support and Statutory Order no 1861 of 07/12/2020 on Cross Compliance-2021

¹⁵ Ref. MOF – Common Part – annex 468 (in Danish language)

Habitats Directive and Art. 5 of the Birds Directive fall outside cross-compliance¹⁶.

The Danish cross-compliance legislation and requirement 1.23 do however imply that the Directive provisions in focus in this project - living conditions for species - are of relevance for Danish farmers' cross compliance efforts.

The GAEC 1.38 on management of bushes and trees on farmland, which is of relevance to this study, was inserted in cross-compliance Statutory Order in 2015.

Environmental Permits – Livestock production

The Statutory Order on Approval and Permitting of Livestock Farming, and Statutory Order on Livestock Manure form the main regulatory framework for granting environmental permits to farmers with livestock and/or crops production and/or management of uncultivated areas.¹⁷

The application, approval and permitting processes include elements where the presence or likely presence of Annex IV species and protected wild birds on the farmer's property are directly addressed. Large scale livestock farming must go through a comprehensive permitting process including EIA. The Danish legislation implementing the IE (Industrial Emissions) Directive must be followed, while smaller farms and smaller changes to existing facilities must comply with less strict requirements. However, the vulnerability of the nature surrounding a farm project is decisive in deciding which requirements that must be complied with. The conditions set out in environmental permits may include precautions targeting protection of Annex IV species or wild birds likely to be present on the farmland. Such precautions may e.g. include activity restrictions in animal species breeding seasons (relevant in context of the provisions transposing Art. 5 (1), a) and d) of the Birds Directive and Art. 12(1) b) and d) of the Habitat Directive)

A ban on fertilization, spraying and conversion of farm land with § 3 protected habitats (Nature Conservation Act) will enter into force on 1 July 2022. The ban applies regardless of such activities previously having been allowed as part of cultivation activities. A compensation scheme may be developed.

2.3 SPECIFIC RULES APPLICABLE AT FARM LEVEL UNDER THIS LEGISLATION

Destruction of or damage to birds' nests or eggs

The Hunting and Game Management Act (Consolidated Act no. 265 of 21/03/2019) includes a chapter on sanctions (under the Criminal Law Act) that apply if Section 6a on deliberate destruction of ground nests¹⁸ and trees hosting nests has been violated by owner/operator on purpose; or if unlawful action has been carried out on purpose; or if the owner actively refrains from taking action (e.g. through lack of instruction of a third person or contractor).

The Order on Conservation of certain species¹⁹ addresses seasons for prohibition of felling of specific sorts of trees hosting nests (Section 6) – the provisions included are violated if the actions or omissions of the owner can be classified as negligence.

The trees hosting specific bird nests and birds are the following:

Felling of trees with birds nests

¹⁶ Ibid. p. 16

¹⁷ Statutory Order no. 2256 af 29/12/2020 on Approval and Permit of Live Stock Farming and Statutory Order no. 1176 of 23/07/2020 on Livestock Manure

¹⁸ The Environmental and Foods Board of Appeal has in a decision of 31. May 2021 on withdrawal of building permit (gas pipe located on agricultural land) emphasised that precaution regarding damage to birch mouse nests must be taken, including restrictions relating to ploughing. <https://mfkn.naevneneshus.dk/afgoerelse/233aa491-335e-4606-8509-2a82debbc924?highlight=baltic%20pipe>

¹⁹ Statutory Order no. 521 of 25/3 2021

Section 6. Colonial birds' nesting trees may not be felled during the period 1 February - 31 July.

(2.) The nesting trees of birds of prey and owls may not be felled during the period 1 February - 31 August, cf. (3)

(3) The nest trees of eagles, black storks and red kites must not be felled. (Section 6 (3) constitutes an exemption rule (eagles' nests) to the general Section 6 (2) rule concerning stipulated prohibition period for felling of trees hosting birds of prey nests)

(4) Hollow trees and trees with woodpecker holes may not be felled in the period 1 November -31 August.

(5.) Dike swallow nests must not be destroyed during the period 1. April-31. August

CAP support and Cross Compliance

The cross-compliance Statutory Order includes as already described above two relevant GEAC: 1.23 on Protected Habitats and Section 3 Nature Conservation Act, and 1.38 on prohibition concerning pruning of trees and bushes in birds' breeding season was inserted into the Statutory Order in 2015.

Farmers can determine if their property includes habitats that are within the scope of Section 3 of the Nature Conservation Act, using municipal maps and on-line system that is 'locked' on 1 November for the coming year. The following provisions of the Statutory Order are relevant:

BOX 2

§4 (7) cross-compliance Statutory Order 2021

GAEC 1.38

1) In the period from 15 March to 31 July no pruning of hedges and trees may be carried out on areas located in field lots.

1.38 – prohibition concerning pruning of trees and hedges in birds' breeding season

Verifiable standards are found in cross-compliance 2021 Guidance and Controlling of cross-compliance 2021 – Instructions for Professionals.²⁰

Applies to farmers inside and outside Natura 2000 areas

GAEC – 1.23

1.23 Protection of Habitats – Nature Conservations Act § 3

- cross-compliance requirement applies to farmers inside Natura 2000 area and covers requirements on both Annex IV species (Habitat Directive Art. 6(3), (4) and Birds Protection (Birds Directive Art. 4(1) cf Art. 3)

- Cross compliance requirement applies to farmers outside Natura 2000 area and covers requirements on birds protection (Birds Directive Art. 4 (2)(specific presence) The reference to Nature Conservation Act § 3 establishes however a broader Danish cross compliance framework than the Danish legal framework that embed the provisions transposing Habitat Directive art. 6 (1), (2), (3) and the Birds Directive Art. 3 and Art. 4 that are subjects to cross compliance. The scope of Nature Conservation Act § 3 is set out in the above BOX 1. In case of violation of § 3, the Danish provisions transposing Art. 5 (1) b), Art. 5(1), d) of the Birds Directive and Art. 12 (1) b) and Art. 12 (1) d) of the Habitats Directive may be violated too.

The Danish Cross Compliance Guidance in force from 30. August 2021 makes the following interpretation of application of GEAC1.23 outside Natura 2000 sites :

'....For violations of § 3 of the Nature Conservation Act outside Natura2000, only the following activities constitute a cross compliance violation: - Changes to § 3 protected area (habitat status) in the form of filling or drainage of a lake or bog. Changes to § 3 protected areas (Habitat status) in the form of soil cultivation, including plowing, harrowing, milling, and / or sowing.

²⁰ Guidance for Farmers 2021 – 1 – (includes environment)

<https://lbst.dk/landbrug/krydsoverensstemmelse/vejledning-og-instrukser/#c82995>

Controlling – Instructions – professionals 2021 (263 p.)

Source: GLM (Good Agricultural and Environmental Condition) (GAEC)

God Landbrugs- og Miljømessig stand

The SMR Section 4 (7) 1 stipulated that between 15 March and 31 July no pruning of shrubs and trees may be carried out on land located in field blocks. Cross compliance requirement (GAEC) 1.38 concerning pruning of trees and bushes in birds' breeding season is specified in verifiable standards that use numbers/volume of trees/bushes pruned as measurement tools.

Example (in Danish) – Cross compliance control 2021 instructions to inspectors/professionals (the below table in Danish language is still missing)

SKEMA af krav 1.38, delkrav 1 – Buske eller enkeltstående træer

KARAKTER KRITERIUM	1 MEGET LILLE BETYDNING I FORHOLD TIL FORMÅL MED KRAVET	2 MINDRE BETYDNING I FORHOLD TIL FORMÅL MED KRAVET	3 VÆSENTLIG BETYDNING I FORHOLD TIL FORMÅL MED KRAVET	4 MEGET STOR BETYDNING I FORHOLD TIL FORMÅL MED KRAVET
ALVOR	Let beskæring.	Kraftig beskæring	Beplantningen er ryddet Eller: Et eller flere træer er fældet	Beplantningen/flere træer er kraftigt beskåret eller ryddet og der kan konstateres tab af reder, æg eller unger.
OMFANG	10 m-100 m Eller: 1-9 træer	100 m- 249 m Eller: 10-29 træer	250 m til 499 m Eller: 30-49 træer	Mere end 500 m. Eller: Mere end 50 træer
VARIGHED	Karakteren for varighed følger karakteren for alvor	Karakteren for varighed følger karakteren for alvor	Karakteren for varighed følger karakteren for alvor	Karakteren for varighed følger karakteren for alvor

Very few farmers have violated the cross compliance requirement 1.38 above, according to a specialist at the Danish Agricultural and Food Council. The Council did some lobbying in 2015 in order to ensure that the 1.38 cross compliance requirement was easy for farmers to manage. During control visits farmers must explain and afterwards remediate any violations of cross compliance requirements. If the remediation requirements are not complied with to a set deadline, the farmers may be sanctioned by deduction in CAP support for the year.

Municipality approval and permits for Livestock Farming

In terms of approval and permit of Livestock farming various conditions concerning animal species and plants and wild birds present on the property may be applied.

Example of application for change of use of existing barn facilities

'... Change use of building with pig breeding/rearing and slaughter pigs implying increased volume of ammonia emissions.

Consultants report and evaluation concerning - Annex IV species

The ammonia disposition is viewed in light of Natura 2000 area 5 km² away

No Annex IV species are close to the building – the farm is however located in distribution/range areas for Annex IV species – e.g. the rare birch mouse.

The presence or the likely presence of the Annex IV species is screened, and species present or likely to be present on the arable land surrounding the building are assessed specifically. Annex IV species such as large salamander (evaluation: water holes are not likely to dry out) sand lizard (increased emission level is not seen as a threat to the range of lizards present), and likely effect for more bat species are assessed.

The conditions of the permit do in this case do not give rise to precautions in the context of Annex IV species.

<https://www.mors.dk/media/7115/ringsborgvej-10-enderlig-miljoegodkendelse.pdf>

(in Danish Language).

Plan and projects within and outside Natura 2000 Areas

If farmers located in Natura 2000 areas want to carry out a project that entails change of activities that alter the nature status according to Habitats Directive Art. 6 (3) have to carry out an EIA assessment as the basis for seeking permits and dispensations. The EIA and the associated permitting takes place in the framework of the Environmental Assessments Act.²¹

The Danish environmental assessment rules, requires that animalspecies and plants relevant to a certain project are taken into consideration as part of assessment. Developers will often have to bring in a specialist in the field of Annex IV species, plants and wild birds in order to ensure that the impact assessment fulfil the requirements on scope and content of impact assessments set out in appeal board practice sufficient. The consequence of e.g disturbance of birds and nests at ground level must be mitigated by application of appropriate measures – establishment of areas suitable for moving of nests or establishment of new nests.

The EIA legislation applies to both Livestock Framing permitting process (IE Directive installations) and farmers' projects inside Natura 2000 areas. In case of IE Directive permits the Environmental Protection Act and associated Orders provide the route to be followed, while the Natura 2000 farmers' projects follow the route set out in Nature Conservation legislation.

²¹ Consolidated Act no. no. 973 of 25/06/2020

3 GOVERNMENT ADVICE TO FARMERS ON IMPLEMENTATION OF LEGAL REQUIREMENTS ON SPECIES PROTECTION

The main governing bodies in terms of advising farmers on implementation of legal requirements on species protection are DEPA, the Water and Nature Protection Agency, the Agricultural Agency and Danish Municipalities.

Up-dated on-line guidance relevant to farmers' implementation of species protection requirements are found on ministerial and municipal web-sites. Such information should be seen as entry point to advice, and the web-sites usually include names and phone numbers of relevant contacts and experts.

The Agricultural Agency has developed a very informative site/portal '*Markliv*' (Field Life) in co-operation with several organisations including SEGES, an advisory body under Danish Agriculture and Food Council, the largest branch organisation in Denmark that seeks and has substantial influence in both political and legislative processes.

The 'Field Life' advisory portal for farmers

The website²² is described as a knowledge portal and the intention is to inspire farmers on how to handle cultivated land and the wildlife on site.

Introductory text



Cultivated open land is home to a large number of wild animal and plant species. As a landowner, you can make a big difference to the nature that is on your property, among other things by creating more variety in the plant cover and protecting the permanent structures in the landscape, e.g. windbreaks, game traps, etc. On this page, you can find inspiration for what opportunities you have to create more habitats in the landscape, just as you can find a collection of the various guides and fact sheets that are available in the area. **Markliv.dk** has been created in collaboration with a number of organizations, the agricultural industry, research institutions and authorities.

[The following example is a guide on how to avoid to injure wild life during harvest (including nests, birds, Annex IV species and eggs)]

Beware of wildlife when harvesting

In May, the first harvest begins, and in the period from early May to late July, there are areas where there is a significant risk that there are animals in the field that could be harmed when you harvest.

In our guide on avoiding harming game at harvest, you can find tips for a number of specific measures that you can take before and during the harvest, so you can avoid harming game.

Go to the guide "Avoid harming game during harvest"

The purpose of the guide is to provide farmers with tools to avoid damage to game during the harvest and thus protect wild game, preserve the feed value of the crops, create a better working environment for machine operators and increase the hunting value.

²² <https://lbst.dk/landbrug/markliv/>

The following tips are provided concerning birds ground nests and brooding birds (grass land and cultivated land with harvest season primo May –ultimo July)

- How could birds nests be located: varied not too tight vegetation (grass land) all over cultivated land (be aware when harvesting)
- Apply harvest patterns allowing for escape – brooding birds are stuck to nest and are not likely to escape – consider delay of harvest
- Application of practical and technical solutions proved to spare brooding birds and their nests

If you want to know more about game-friendly harvests, you can also contact SEGES, Aarhus University, the Danish Society for Nature Conservation or the Danish Hunters' Association, which participated in the preparation of the guide.

[The page provides names and phone numbers for expert contacts]

Guidance on cross-compliance 2021

The Agriculture Agency's website on cross-compliance is comprehensive and includes detailed explanations of the concept, processes, control etc. There is a section with frequently asked questions (FAQ)²³, and for cross-compliance requirement 1.23 on protected habitats, guidance is provided for farmers to find out if they have Section 3 habitats on their land (box below).

Self service for farmers on location of Section 3 protected habitats on individual farms²⁴

You can stay up to date with the protected areas:

You can see in IMK (Internet Markkort) whether you have Section 3 areas, which are covered by cross-compliance requirement 1.23, on your fields - and whether they are within or outside a Natura 2000 area. The Section 3 areas are registered for guidance. If you want to be sure whether an area is Section 3 protected, you must contact the municipality. You can also apply to your municipality for a dispensation or to deregister the area as Section 3 protected.

The IMK is only accessible via farmers log.in – a feature launched in September 2021 includes a red, yellow, green that determines the likely status of cultivated farmland and grass land in context of CAP support eligibility

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DEPA and Nature Agency²⁵

DEPA/Water and the Nature Agency has more sites and publications displayed on their web that address agriculture and Annex IV species. Some publications are quite dated, e.g. back to 2011, but they do include important information that is still relevant. For example, 'The Habitat Guidance' (updated in 2020) focuses on livestock farming and describes the connection between nature conservation rules and rules included in the Act on Livestock farming, concerning Annex IV species²⁶. 'The Habitat Guidance' sets out and explains how e.g. scientific knowledge on certain types of damage to protected species will lead to rejection of application for permission to expand farm activities or refusal of changed area use. Ammonia disposition is addressed as a specific important issue in context of farming in Natura 2000 sites.

²³https://lbst.dk/fileadmin/user_upload/NaturErhverv/Filer/Landbrug/Krydsoverensstemmelse/Vejledning_om_krydsoverensstemmelse_2021_omraade_1_-_til_hjemmesiden.pdf

²⁴ <https://lbst.dk/nyheder/nyhed/nyhed/landbrugsstyrelsen-praeciserer-krydsoverensstemmelses-krav-til-naturbeskyttelse-uden-for-natura-2000/>

²⁵https://lbst.dk/fileadmin/user_upload/NaturErhverv/Filer/Landbrug/Planteavl/Undgaa_at_skade_vildt_ved_hoest.pdf

²⁶ <https://www2.mst.dk/Udgiv/publikationer/2020/12/978-87-7038-248-9.pdf>

Other tools for identification of protected areas and Annex IV species and birds populations ²⁷

For on-site determination of Section 3 protected area (Nature Conservation Act) an app can be used by farmers inside the borders of their property to determine if any Section 3 protected areas are present (but this app cannot be used for identification of Annex IV species)²⁸

For guidance on how to determine Annex IV species and wild birds populations on specific plots of land, a different app can be downloaded, and a specific guide is provided²⁹.

Municipalities

Most of the 98 Danish Municipalities have websites providing information for farmers regarding environmental permits and dispensations from Nature Conservation legislation. Nearly all municipalities encourage applicants to learn about the status of the land on their property and the presence of Annex IV species and wild birds before contacting the municipal authority. Reference is made to the DEPA apps and the Nature Data database.

For one-to-one advice see Section 4 below.

²⁷ https://naturstyrelsen.dk/media/nst/Attachments/Naturen_i_Landbruget2.pdf

²⁸ <https://mst.dk/natur-vand/natur/national-naturbeskyttelse/naturpleje/naturplejeguiden/naturbeskyttelseslovens-paragraf-3/>

²⁹ <https://mst.dk/natur-vand/natur/national-naturbeskyttelse/naturpleje/naturplejeguiden/bilag-iv-arter/>

4 ENFORCEMENT OF LEGAL REQUIREMENTS FOR SPECIES PROTECTION ON AGRICULTURAL LAND

The inspection and control systems for Art. 12 and 13 of the Habitats Directive and Art. 5 of the Birds Directive as transposed and implemented in Danish legislation involves several different authorities.

Environmental Inspection – (Livestock) Farms and compliance control concerning Section 3 (Nature Conservation Act)

The main inspection and control is conducted by municipal environmental inspectors (several municipalities may cooperate). This set up involves inspection of livestock farms' compliance with environmental permits and the conditions set. The municipal inspections cover 22,000 (livestock) farms in Denmark.³⁰ Statutory Order no. 1536 of 9/12/2019 sets minimum requirements for inspection frequency. Municipalities make their own inspection plans, and the minimum requirements are, for example, related to new developments and first inspection; general inspections; ; selected inspections; and the timing of inspection after reports or knowledge of violation of permit conditions.

Inspection Plan for Municipality of Aarhus 2017-2021 – second biggest municipality in Denmark

General inspection every 3rd year – all 210 farms.

Every year 40% of the 210 farms (IE permits).

A data base provides access to the inspection reports.

Danish municipalities are also responsible for checking compliance with nature protection rules that apply to farmers located in Natura 2000 sites and other protected areas. Compliance with Section 3 of the Nature Conservation Acts concerns many farmers, since the classification of agricultural land inside the borders of a farmer's property is to a certain extent dynamic, and Annex IV species may enter the area unexpectedly.

Larger projects may be inspected and controlled by DEPA – see Baltic Pipeline case below or the Water and Nature Agency.

Cross-compliance system – inspection and control

Farmers receiving CAP support must carefully report according to guidance for development of control report for the calendar year (2021).

Control is carried out by random selection of 1% of all applicants, and all 105 elements subject to cross compliance are controlled by two inspectors – one veterinarian and one with an agricultural/environmental background. After their visit the farmer receives a control report³¹.

Requirements for remediation in case of violation of specific provisions/EU standards are clearly stated in a pamphlet directed towards the farming community receiving CAP support³²

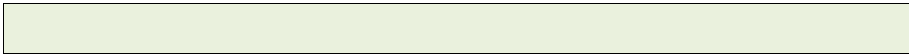
³⁰ <https://mst.dk/erhverv/industri/miljoetilsyn/tilsynsindsats/kommunernes-tilsyn/>

³¹ The control process is carefully described under this link <https://lbst.dk/landbrug/krydsoverensstemmelse/kontrol/#c7372> (in Danish Language).

³² https://lbst.dk/fileadmin/user_upload/NaturErhvervSandkasse/KO_Folder_2018_Publikation_M65_Designguide.pdf

Reporting to the Police – Violation of Hunting and Injured Game Act and Statutory Order on Conservation of Certain Animal and Plant Species

At the farmer’s level, deliberate actions or purposive omissions in relation to killing of wildlife and destruction of and damage to nests and eggs are subjects to sanctions (Criminal Law Act). However, the burden of proof lies on the Police (fines) or the prosecutor. Episodes with poisoned birds of prey have been reported, but the resources to take cases through the police and prosecution system seems to be a problem and no court case have been identified as part of this study.



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5 ASSESSMENT AND AUTHORISATION PROCEDURES FOR AGRICULTURAL ACTIVITIES WHICH MIGHT AFFECT THE PROTECTED SPECIES

Please see the relevant sections above for:

- Environmental Permitting – livestock production (section 2.2. and 2.3)
- Plan and projects in Nature Conservation Areas – EIA (section 2.3) and Illustrative case brought before the Environmental and Foods Board of Appeal against outcome of EIA concerning Annex IV species (Section 4)

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6 OVERALL ASSESSMENT OF SPECIES PROTECTION ON AGRICULTURAL LAND

The Danish Hunting and Game Management Act³³ and the Statutory Order on Conservation of Certain Animal and Plant Species and Injured Game³⁴ include the main part of the provisions transposing Art. 12 and 13 of the Habitats Directive and Art. 5 of the Birds Directive. Furthermore, transposing provisions concerning eggs from wild birds is found in a separate Statutory Order³⁵.

The overall majority of the transposing Danish provisions and measures are evaluated to fully transpose Art 5 a), b), c), e) of the Birds Directive and Art. 12 (1) a), c) and d), Art. 12(2). Art. 13 (1) a) and Art. 13(1), b) of the Habitat Directive.

The provisions transposing Art. 5, d) of the Birds Directive and Art. 12(1) d) seem however not to encompass all elements of the directive provisions.

The Danish understanding and interpretation of the transposing provisions of the latter directive provisions has been subject to discussion in connection with revision of the Danish conservation and hunting legislation in 2018. The conclusion was that the Danish provisions are considered being in harmony with the rationale of the directive provisions, and no change to phrasing of the provisions were considered necessary.

The legal framework establishes direct and general protection rules applying either to individual birds/specific annex IV species, their products and habitats, or to species of animals or plants and populations thereof and their preferred areas.

More legislative frameworks have enabling functions in bringing protection of wild birds and Annex IV species into play in the regulation of agricultural activity.

Environmental approval and permitting of livestock farming as well as prohibition against change of habitat conditions in protected areas combine, on one hand farmer's needs for business activity and developments, and on the other hand the protection of environment and nature/biodiversity, including certain animal and plant species.

In the process of environmental permitting, municipalities encourage farmers are to use available DEPA apps for determination of Nature Conservation Section 3 protected areas on their property and the likely presence of Annex IV species and wild birds. Such background information provides the basis for issuing of life stock farming permits, including conditions that must be complied with. Municipal maps may also constitute a starting point for determination of the status of specific farmland. Farmers are in general aware of the likely presence of the amphibian *Triturus cristatus* (great crested newt), which is quite common in waterholes and ponds. Also, the reptile *Lacerta agilis* (sand lizard) is well-known to farmers. Environmental permitting conditions may include precautions targeting protection of Annex IV species or wild birds likely to be present on farmland. Such precautions may e.g. include activity restrictions in animal species breeding seasons and thus support farmers compliance with the provisions transposing Art. 5 (1), a) and d) of the Birds Directive and Art. 12(1) b) and d) of the Habitat Directive)

An example of violation of Section 3 protected habitats, the condition of which may not be changed, could be a farmer filling in a waterhole hosting e.g. great crested newts. In addition to violation of Section 3, the prohibitive rules on disturbance of Annex IV species as set out in Order on Conservation Section 10 are likely to be violated too (Art. 12 (1), b) and d).

Another example relating to wild birds is change of use of grassland on a farmer's property. The use of both cultivated and other areas are addressed in permit for livestock farming. Cultivation/change to

³³ Consolidated Act no. 265 of 21/03 2019

³⁴ Statutory Order no. 521 of 25/3/2021. The recent Statutory Order includes an Annex 1 that have been up-dated by a number of Papiliones/butterflies, which have been given conservation status.

³⁵ Statutory Order no. 936 of 27/6 2016).

habitat conditions of even small areas of grassland with the likely presence of wild birds must be notified to permitting authority.

The Nature Conservation Act in particular provides a legal framework that focuses on the protection of Annex IV species and the protection of wild birds.³⁶ Natura 2000 requirements have been implemented in Danish nature conservation legislation and have a strict focus on activities inside Natura 2000 areas. Especially problems relating ammonia dispositions are carefully addressed in context of animal species and wild birds to be present in the area in focus.³⁷

The 98 Danish municipalities, directly and indirectly, play a major role in establishment of farmers' compliance with the requirements set out in Art 5 of the Birds Directive and Art 12 and 13 of the Habitats Directive on 22,000 Danish farms. The municipalities are competent authorities for environmental permitting and for issuing of dispensations, exemptions, approvals etc. from prohibitive nature conservation rules.

The Danish inspection and control systems function well for authorised projects on livestock farms – these are inspected at the latest 6 months after establishment/conduction of major changes, and inspection frequencies should at least be every 3rd year for all farms and around 40% of the total number of farms should be selected for inspection every year.

The Danish legal framework that implements the EU CAP support and cross-compliance system is complex and includes statutory requirements, cross-compliance requirements (GAECs) and verifiable standards (SMRs). Some uncertainties concerning Danish cross-compliance requirements on protection of habitats, focusing on Section 3 of the Nature Conservation Act have recently been sorted out. The Ministry of Food, Agriculture and Fisheries has acknowledged that protection rules on wild birds must be applied to different background conditions for farmland inside and outside Natura 2000 areas. The relevant cross-compliance requirement is not directly linked to the transposing provisions of Art. 5 of the Birds Directive. The Danish GAEC 1.23 sets a broader scope than anticipated by EU determined nature protection cross compliance provisions. The Danish Cross Compliance Guidance in force from 30. August 2021 makes the following interpretation of application of GAEC1.23 outside Natura 2000 sites:

'...For violations of § 3 of the Nature Conservation Act outside Natura2000, only the following activities constitute a cross compliance violation: - Changes to § 3 protected area (habitat status) in the form of filling or drainage of a lake or bog. Changes to § 3 protected areas (Habitat status) in the form of soil cultivation, including plowing, harrowing, milling, and / or sowing.'

The new GAEC 1.23 guideline is evaluated to support compliance with the measures on wild birds and Annex IV species protection set out in the Danish provisions transposing Art. 5 of the Birds Directive and Art. 12 and Art. 13 of the Habitat Directive.

A cross-compliance requirement on pruning/cutting of hedges and trees in the breeding season of protected species is of direct importance to protection of Annex IV and wild birds. (EU nesting birds and bats in particular) Cross compliance requirement 1.38 was inserted into the cross-compliance Statutory Order in 2105, and a new cross-compliance order is issued once a year³⁸. Cross-compliance control is in the responsibility of the Agricultural Agency and well defined and structured control processes are carried out by 5 regional Veterinary and Food Administrations. Two inspectors (with different expertise) carry out planned but un-announced inspections on the ground, of a small sample of farms every year based on random selection and risk assessments made by the Agriculture Agency.

The level of information on protection of wild birds and especially Annex IV species and plants provided

³⁶Consolidated Act no. 240 af 13/03/2019

³⁷ Statutory Order no. 2256 af 29/12/2020 and Statutory Order no. no 1176 of 23/07/2020

³⁸ Statutory Order no 1861 of 07/12/2020

by Ministerial agencies is high. Both DEPA, the Nature Agency and the Agriculture Agency provide comprehensive guidance on various issue of importance for protection of Annex IV species and wild birds.

The effectiveness of the transposing legislation and its implementation in practice is evaluated to be dependent on a well-functioning environmental permitting and inspection system. The agricultural sector is not target group to control/enforcement carried out by the Nature Agency and DEPA according to the Order on Conservation and the Hunting and Game Management Act that include the provisions transposing Art. 5 of the Birds Directive and Art. 12 and 13 of the Habitat Directive.

This conclusion is based on the following assumptions:

Livestock farming and related agricultural activities are regulated by way of permits that include conditions relating to farming activities taking into consideration nature conservation and species protection. Both environmental inspections carried out by the Danish municipalities and Cross Compliance Inspection carried out by regional branches of the Agricultural Agency are evaluated to ensure high level of farmer compliance with wild birds and Annex IV protection rules. assumptions: .

- The intermediate Danish legislation that facilitates the implementation of Art. 5 of the Birds Directive and the Art. 12 and Art. 13 of the Habitats Directive includes well-established permitting, inspection and control systems;
- The structures of the environmental permitting and nature protection systems have been developed and built upon since the 1970s;
- Denmark is a country with agricultural traditions and history and the damaging side effects of agricultural production have been subject to public awareness for many years;

Both governmental and farmers organisations cooperates and provide valuable information and guidance to farmers on 'good practice' relating to protection of wild birds and animal species.

- Also, the Danish population have (relatively) high respect for authority and the acceptance of regulations is also high.

These factors imply that no major regulatory barriers seem to exist. However, the behavior and detailed practice of the farmer population in context of species protection cannot be determined on the basis of the analyses carried out in this study.

APPENDIX 1 – PRESENCE OF WILDLIFE - DANISH AGRICULTURE

Habitats Directive – Danish reporting according to Art. 17 – Agriculture

Ophiogomphus cecilia	Arthropods	Y	S
Leucorrhinia pectoralis	Arthropods	Y	S
Maculinea arion	Arthropods	Y	P
Triturus cristatus	Amphibians	Y	P
Bombina bombina	Amphibians	Y	S
Pelobates fuscus	Amphibians	Y	P
Hyla arborea	Amphibians	Y	S
Rana dalmatina	Amphibians	Y	S
Rana arvalis	Amphibians	Y	S
Lacerta agilis	Reptiles	Y	P
Barbastella barbastellus	Mammals	Y	S
Pipistrellus pipistrellus	Mammals	Y-HTL	S
Nyctalus noctula	Mammals	Y-HTL	P
Eptesicus nilssonii	Mammals	Y-HTL	S
Myotis daubentonii	Mammals	Y-HTL	S
Pipistrellus nathusii	Mammals	Y-HTL	S
Myotis brandtii	Mammals	Y-HTL	
Myotis nattereri	Mammals	Y-HTL	S
Myotis bechsteinii	Mammals	Y	S
Eptesicus serotinus	Mammals	Y-HTL	P
Myotis mystacinus	Mammals	Y-HTL	S
Vespertilio murinus	Mammals	Y-HTL	S
Sicista betulina	Mammals	Y	P
Lutra lutra	Mammals	Y	S
Botrychium simplex	Vascular plants	Y	S
Apium repens	Vascular plants	Y	S
Cypripedium calceolus	Vascular plants	Y	S
Pipistrellus pygmaeus	Mammals	Y-HTL	S
Epidalea calamita	Amphibians	Y-CTC	S
Bufotes viridis	Amphibians	Y-CTC	S

Birds Directive – Danish reporting according to Art. 12 of the Birds Directive – 2013 2018 DK reporting

Presence of protected birds – Agriculture

Ciconia ciconia	B	Ciconiiformes
Falco tinnunculus	B	Falconiformes
Vanellus vanellus	B	Charadriiformes
Streptopelia turtur	B	Columbiformes
Galerida cristata	B	Passeriformes
Alauda arvensis	B	Passeriformes
Hirundo rustica	B	Passeriformes
Anthus campestris	B	Passeriformes
Anthus pratensis	B	Passeriformes
Motacilla flava	B	Passeriformes
Saxicola rubetra	B	Passeriformes
Saxicola torquatus	B	Passeriformes
Sylvia communis	B	Passeriformes
Lanius collurio	B	Passeriformes
Corvus frugilegus	B	Passeriformes
Sturnus vulgaris	B	Passeriformes
Passer montanus	B	Passeriformes
Serinus serinus	B	Passeriformes
Emberiza citrinella	B	Passeriformes
Emberiza calandra	B	Passeriformes
Linaria cannabina	B	Passeriformes
Limosa limosa limosa	B	Charadriiformes
Perdix perdix all others	B	Galliformes

APPENDIX II - TABLE OF CONCORDANCE – HABITATS DIRECTIVE

Art 12(1) prohibiting: (a) all forms of deliberate capture or killing of specimens of these species in the wild Art 13(1) prohibiting: (a) the deliberate picking, collecting, cutting, uprooting or destruction of such plants in their natural range in the wild	Art 12(1)(c) prohibiting: (c) deliberate destruction or taking of eggs from the wild	Art 12(1)(d) prohibiting deterioration or destruction of breeding sites or resting places.	Art 12(1)(b) prohibiting: b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration	Art 12(2) and Art 13(1)(b) prohibits the keeping, transport and sale or exchange and offering for sale or exchange of specimens taken in the wild, except for those taken legally before the Directive is implemented
<p>Statutory Order no. 521 of 25/3 2021</p> <p>Conservation of animals and plants covered by the Habitats Directive, Annex IV</p> <p>Prohibition § 10. For wild animals which occur naturally in Danish nature and which are covered by Annex IV of Council Directive 92/43 / EEC of 21 May (Habitats Directive), cf. Annex 1 to this Order 1) All forms of intentional capture and killing are prohibited</p> <p>§10(2) For wild-growing plants in nature, which are covered by Annex IV of the Habitats Directive, cf. Annex 2 to this Statutory Order there is a prohibition on intentional picking, collection, cutting, excavation or uprooting or destruction.</p>	<p>Statutory Order no. 521 of 25/3 2021</p> <p>§ 10. For wild animals which occur naturally in Danish nature and which are covered by Annex IV of Council Directive 92/43 / EEC of 21 May (Habitats Directive), cf. Annex 1 to this Order 2) Intentional destruction or collection of eggs in the wild are prohibited</p>	<p>Consolidated Act no. 265 of 21/03 2019</p> <p>§6a Breeding of resting areas for mammals mentioned in Annex 1 may not be disturbed or damaged</p>	<p>Consolidated Act no. 265 of 21/03 2019</p> <p>§ 7. The mammals mentioned in Appendix 1 may not be intentionally disturbed with detrimental effect on the species or population. The prohibition applies in relation to all life stages of the covered animal species</p> <p>(§ 7 does not include specific reference to the breeding and rearing situations- however such situations are intended to be included in the scope of § 7 according to comments in the law preparation process cf. Ministerial note from 2012)</p>	<p>Statutory Order no. 521 of 25/3 2021</p> <p>§ 11 For animals and plants that are continuously covered by Annex IV of the Habitats Directive, cf. Annex 7 to this Executive Order.....(reference to the Bern Convention).....storage, transport, trade or exchange, offerings for sale or exchange, transfer,</p>

APPENDIX III - TABLE OF CONCORDANCE - BIRDS DIRECTIVE

Art 5 a) deliberate killing or capture by any method.	Art 5 (b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;	Art 5 (c) taking their eggs in the wild and keeping these eggs even if empty	Art 5 (d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive.	Art 5 (e) keeping birds of species the hunting and capture of which is prohibited;
<p>Statutory Order no. 521 of 25/3 2021</p> <p>§ 4 For birds covered by § 1(1) it is prohibited to intentionally kill or capture them, regardless the method used, and be in possession of live birds.</p> <p>§ 4 (2) – Exemptions according to Order on Birds in captivity</p>	<p>Statutory Order no. 521 of 25/3 2021 on conservation of certain animal and plant species</p> <p>Consolidated Act no. 265 of 21/03/2019 on Hunting and Game Management</p> <p>§ 6 a. (2). Bird's nests must not be intentionally destroyed, damaged or removed. Eggs must not be intentionally destroyed or damaged. (3) Enab les Minister of Environment to issue Order on felling of trees and further rules on birds nests protection</p> <p>Statutory Order no. 521 of 25/3 2021 Felling of trees with birds nests</p> <p>§ 6. Colonial birds' nesting trees may not be felled during the period 1 February-31. July. (2.) The nesting trees of birds of prey and opwls may not be felled during</p>	<p>Statutory Order no. 935 of 27/6 2016 on Eggs from wild birds</p> <p>Scope/coverage</p> <p>§ 1 This Statutory Order covers eggs from wild birds, which are naturally occurring in Danish nature and eggs from other wild birds, which are at all times covered by Article 1 of the Directive of the European Parliament and of the Council of 30 November 2009 on protection of wild birds (2009/147 / EC), as well as subspecies of these species, whether or not the subspecies are naturally occurring in EU Member States.</p> <p>(2.) The provisions of this Executive Order also apply to empty eggs as well as parts and products of eggs.</p> <p>Prohibition</p>	<p>Consolidated Act no. 265 of 21/03/2019</p> <p>§ 7 (2) Birds must not be intentionally disturbed to the detriment of the species or population</p> <p>(supplements § 6a, (2) and (3), that focus on removal of nests and eggs, while § 7(2) focuses on birds themselves .</p> <p>(§ 7 (2) does not include specific reference to the breeding and rearing situations- however such situations are intended to be included in the scope of § 7 (2) according to comments in the law preparation process cf. Ministerial note from 2012)</p>	<p>Statutory Order no. 521 of 25/3 2021</p> <p>Hunting and capture of species of birds is prohibited according to Statutory Order no. 521 of 25/3 2021 §1 (1) cf. § 4</p> <p>Dispensation §9</p> <p>9) Capture and keeping of birds Under strict conditions specified by the Environmental Protection Agency</p>

Full reference and links to the relevant Danish legislation

Statutory Order on conservation of certain animal and plant species and injured game (BEK no. 521 of 25/3 2021) – Artsfredningsbekendtgørelsen
<https://www.retsinformation.dk/eli/ta/2021/521>

Stutory Order on Game Injuries (derogations rules on regulation of certain species) (BEK nr 1006 af 14/06/2020)
 Vildtskadebekendtgørelsen
<https://www.retsinformation.dk/eli/ta/2020/1006>

Statutory Order on eggs from wild birds and registration of egg collections (BEK no. 936 of 27/6 2016)
 Bekendtgørelse om æg fra vilde fugle og indsamling heraf
<https://www.retsinformation.dk/eli/ta/2016/936>

Statutory Order on birds in captivity
(BEK no. 848 of 27/06/2016)
Bekendtgørelse om hold af fugle i fangenskab
<https://www.retsinformation.dk/eli/lt/2016/848>

Act on hunting and game management (Consolidated Act - LBK no. 265 of 21/03/2019 – Jagt og vildtforvaltningsloven)
<https://www.retsinformation.dk/eli/lt/2019/265>

Act on Nature Conservation
(Consolidated Act - LBK no 240 of 13/03/2019 – Naturbeskyttelsesloven)
<https://www.retsinformation.dk/eli/lt/2019/240>
Supplementing legislation :

CAP Support Act
LBK no 115 af 06/02/2020
Landbrugsstøtteleven
<https://www.retsinformation.dk/eli/lt/2020/115>

Consolidated Act on Rural Area Districts Fund
LBK no 114 of 06/02/2020
Lov om landdistriktsfonden

Statutory Order on Cross Compliance-2021
BEK no 1861 of 07/12/2020
<https://www.retsinformation.dk/eli/lt/2020/1861>

Statutory Order on Approval and Permit of Live Stock Farming
BEK no. 2256 af 29/12/2020
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