

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 125 final

Brussels, 11 May 1990

Proposal for a
COUNCIL REGULATION (EEC)
on action by the Community relating to nature conservation (ACNAT)

(presented by the Commission)

I. EXPLANATORY MEMORANDUM

1. Background

1.1 On 23 July 1987 the Council, acting on a Commission proposal, adopted Regulation (EEC) No 2242/87 on action by the Community relating to the environment¹, replacing the previous Council Regulation (EEC) No 1872/84² and extending its scope.

1.2 This action also answered a call from Parliament, which had entered appropriations specially for this purpose in the Community budget in 1983.

1.3 The basic idea behind this scheme was the recognition that legislation was only one component of a dynamic, effective policy to protect and improve the environment and quality of life. Any rational policy must include a preventive side too, employing other methods and back-up or supporting schemes.

2. With this purpose in mind, Council Regulation (EEC) No 2242/87 opens the door for the Community to grant financial support in six priority areas:

- (a) demonstration projects aimed at developing new clean technologies, i.e. technologies which cause little or no pollution and which may also be more economical in the use of natural resources;
- (b) demonstration projects aimed at developing techniques for recycling and re-using waste, including waste water;
- (c) demonstration projects aimed at developing techniques for locating and restoring sites contaminated by hazardous waste and/or hazardous substances;
- (d) demonstration projects aimed at developing techniques and methods for measuring and monitoring the quality of the natural environment;
- (e) projects providing an incentive towards the maintenance or re-establishment of seriously threatened biotopes which are the habitat of endangered species and are of particular importance to the Community under Directive 79/409/EEC;
- (f) projects providing an incentive towards the protection or restoration of soils threatened or damaged by fire, erosion and desertification.

1 OJ No L 207, 29.7.1987, p. 8.

2 OJ No L 176, 3.7.1984, p. 1.

3. The Commission proposal not to limit action on nature conservation to biotopes and, in this context, to birds was not adopted by the Council.
4. Area (e), concerning the maintenance and re-establishment of biotopes, was adopted for the following reasons:

Community action in this field is essential in order to avert irreversible damage to the Community's genetic diversity, part of the Community's common heritage which it is in everyone's interest to conserve in a spirit of solidarity. The Community's responsibility is all the greater considering that protection of the natural habitat cannot be divorced from economic activity, whether or not directly covered by the Community scheme. In any case, the Community has special responsibilities for sites covered by the Directive on the conservation of wild birds, the Berne and Bonn Conventions, and the Protocols to the Barcelona Convention, to which the Community is a contracting party.

5. Regulation (EEC) No 2242/87 adopted by the Council on 23 July 1987 contains a financial estimate of ECU 24 million for the whole 4 year period (Article 1(2) of the Regulation), that is considerably less than the needs identified by the Commission.

As regards the period of application of the Regulation, Article 13(2) states that, before the end of the third year of the application period laid down in paragraph 1, the Council, acting unanimously on a proposal from the Commission, shall decide whether to amend this Regulation.

6. Need for a specific financial instrument for nature conservation

- 6.1 Previous ACE Regulations were always applied separately to demonstration projects (areas (a) - (d) of the Regulation in force) and to projects providing an incentive for biotope protection. The procedures for submitting applications for financial support are totally different (in one case, any natural or legal person following calls for proposals; in the other, the Member States at any time), as is the evaluation of applications; the Advisory Committee holds separate meetings and the Member States' representatives are different; the Commission's decisions on projects providing an incentive must follow a model which is unlike the one adopted for demonstration projects. There is also a much closer link between action on biotopes and implementation of Community legislation on nature conservation than between demonstration projects and the implementation of legislation in the areas concerned by them.

- 6.2 On 16 August 1988 the Commission presented to the Council a proposal for a Council Directive on the protection of natural and semi-natural habitats and of wild fauna and flora³. Although generally in favour, most of the Member States consider, with good reason, that the possibility of implementing satisfactory legislation and using the Community's financial resources are connected. The Commission, which until now had been intending to present a proposal for financing implementing measures after adoption of the Directive in question, therefore feels obliged to propose financial measures now relating to the sections of the ACE Regulation on biotopes and species and announced this intention at the Environment Council meeting of 28 November 1989.
- 6.3 To go at least some way towards meeting the Member States' concerns, a specific instrument should be created for Community action relating to nature conservation, with a large enough appropriation to enable financial support to be granted to the most urgent projects.
- 6.4 All those in a position to know agree that action taken under Regulation 1872/84 and then Regulation 2242/87 is helping to maintain a large number of biotopes of major significance for the conservation of birds in the Community. It has repeatedly been restricted, however, by the blatant inadequacy of resources to meet actual needs. The report on implementation for 1987 and 1988 (4) shows that the applications submitted by the Member States amounted to more than five times the overall budget set aside for the whole period of application of the current Regulation. It is clear that extending its scope to the species and types of habitat covered by the proposed new Directive will make a commensurate increase in appropriations essential.

And there is no getting away from the fact that - mainly as a result of rapid economic development, not least in the region with the richest genetic diversity - much more conservation work is needed, and must be put in hand as a matter of urgency if an irreversible impoverishment of Europe's natural heritage is to be avoided.

Where conservation needs exist in zones of agricultural and forestry activity, interventions will so far as possible be in harmony with the possibilities offered by Regulations (EEC) n° 797/85 ("article 19" in environmentally sensitive areas) and 3529/86 (Protection of the Community's forests against fire).

7. Conclusions and proposal

- 7.1 In view of the success of Community action on the environment so far, it is essential to maintain and increase the scope for using financial instruments under Community policy on the environment. On the other hand, given the completely different nature of demonstration projects and projects providing an incentive under the current ACE Regulation, their completely different procedures and the need to introduce an upgraded instrument in view of the new Directive on the protection of natural and semi-natural habitats and of wild fauna and flora, the

³ OJ No C 247, 21.9.1988, p. 3.

⁴ Doc. SEC (89) 1240 final.

Regulation on Community action on the environment should not be renewed in its present form but replaced when it expires by separate regulations, one of which for Community action for nature conservation.

7.2 The need to create incentives for better nature conservation in the Community, in particular in regions with only very limited indigenous resources for the purpose, and the need to give a real chance of implementation to the future Directive on the protection of natural and semi-natural habitats and of wild fauna and flora mean in turn that the proposed instrument should channel financial support under the two Directives to projects providing an incentive aimed at:

(a) biotopes or habitats which are of particular importance for the Community,

(b) implementation of measures to conserve or restore endangered species.

7.3 Compared with the amount which had been thought necessary for projects under the current ACE Regulation and which was already clearly inadequate, a much larger appropriation will be needed for the specific instrument to be created by the proposed Regulation so that major Community nature conservation measures can be carried out.

Nor is the Commission ignoring the need to concentrate these Community measures on priority and highly urgent projects, at the same time maintaining the requisite budgetary discipline.

7.4 From a procedural point of view, the proposal no longer foresees the communication of decisions of the Commission to the European Parliament, to the Council and to the Member States before being applicable.

8. A financial memorandum is attached to this proposal.

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Proposal for a
COUNCIL REGULATION (EEC)

on action by the Community relating to nature conservation (ACNAT)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,
and in particular Article 130s thereof,

Having regard to the proposal from the Commission,¹

Having regard to the opinion of the European Parliament,²

Having regard to the opinion of the Economic and Social Committee,³

Whereas, pursuant to Article 2 of the Treaty, the Community has as its task inter alia to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion and an increase in stability;

Whereas, pursuant to Article 130R(4) of the Treaty, the Community shall take action relating to the environment to the extent to which the objectives of this action can be attained better at Community level than at the level of the individual Member States, and, without prejudice to certain measures of a Community nature, the Member States shall finance and implement the other measures.

Whereas action by the Community relating to the environment should have as its objective to preserve, protect and improve the quality of the environment, to contribute towards protecting human health, and to ensure a prudent and rational utilization of natural resources;

Whereas, in order to ensure the full achievement of the objectives set out

1 OJ No

2 OJ No

3 OJ No

in the 1973,⁴ 1977⁵ and 1983⁶ action programmes of the European Communities on the environment and in the 1987 action programme⁷ whose general guidelines were approved by the Council and the representatives of the Governments of the Member States, it is necessary that the Community contribute financially towards certain specific measures under this Regulation;

Whereas it is important that the Community should be able to make a contribution towards the maintenance and re-establishment of seriously threatened biotopes of endangered species, pursuant to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds⁸, as last amended by Directive 86/122/EEC⁹, and towards the maintenance and re-establishment of seriously threatened habitats, pursuant to Council Directive .../.../EEC of on the protection of natural and semi-natural habitats and of wild fauna and flora;¹⁰

Whereas it is necessary for the Community to be able to participate in the implementation of measures for conserving or re-establishing endangered species pursuant to the aforementioned Directives, and completing actions undertaken with the same aim in the Community research programmes;

Whereas it is necessary that the Community should, within the limits of the funds available in the budget for these purposes, grant financial support to measures to conserve nature protection zones of Community importance and endangered species, in the context of the implementation of Directive 79/409/EEC and Directive .../.../EEC;

4 OJ No C 112, 20.12.1973, p. 1.

5 OJ No C 139, 13.6.1977, p. 1.

6 OJ No C 46, 17.2.1983, p. 1.

7 OJ No C 328, 7.12.1987, p. 1.

8 OJ No L 103, 25.4.1979, p. 1.

9 OJ No L 100, 16.4.1986, p. 22.

10 OJ No L

Whereas for reasons of budgetary discipline Community action on the environment must be focused on priority and highly urgent projects;

Whereas it is necessary to create incentives for better nature conservation in the Community, in particular in regions with only very limited capacity to ensure conservation measures with their own resources.

Whereas, in the absence of applications from a Member State, the Commission should, in exceptional cases, be able to take the initiative and propose measures to counter threats of extinction or direct risks of disappearance, to meet needs which transcend frontiers or to deal with particularly urgent problems in the context of the Berne Convention¹¹ or the Bonn Convention;¹²

Whereas an Advisory Committee should be set up to assist the Commission in implementing this Regulation and in particular in selecting the projects for which financial support may be granted;

Whereas application of Council Regulation (EEC) No 1872/84¹³ and Council Regulation (EEC) No 2242/87¹⁴ on action by the Community relating to the environment has demonstrated the benefits of a Community system to support action relating to the environment, in this case the field of nature conservation;

Whereas the latter Regulation should therefore be replaced, as regards the part concerning nature conservation, taking account of new requirements,

HAS ADOPTED THIS REGULATION:

11 OJ No L 38, 10.2.1982, p. 1.

12 OJ No L 210, 19.7.1982, p. 10.

13 OJ No L 176, 3.7.1984, p. 1.

14 OJ No L 207, 29.07.1987, p. 8.

Article 1

1. The Community may grant financial support for:

(a) projects providing an incentive towards the maintenance or re-establishment of:

- seriously threatened biotopes of endangered species and are of particular importance to the Community under Directive 79/409/EEC,

or:

- seriously threatened habitats which are of particular importance to the Community under Directive ../.../EEC;

(b) projects providing an incentive towards the implementation of measures to conserve or re-establish endangered species pursuant to Directive 79/409/EEC or Directive ../.../EEC;

2. The necessary funding shall be entered annually in the general budget of the European Communities.

3. The financial support may be:

(i) normally, not more than 50% of the cost of the projects;

(ii) by way of exception, not more than 75% of the cost of projects concerning:

- biotopes or habitats of species threatened with extinction in the Community,

or:

- habitats in danger of disappearance in the Community,

or:

- populations of species threatened with extinction in the Community.

Article 2

1. To be eligible for financial support, a project shall be of interest to the Community and of interest in terms of protection of the environment and/or the management of natural resources.

The level of the Community's contribution shall depend on the extent to which it is shown that the project concerned corresponds to such interests.

2. Financial support for the projects referred to in Article 1(1)(a) shall be commensurate with the importance of the area to the Community, with the very limited capacity of certain regions to ensure conservation measures and with the urgency of the need for the financial support in question.

3. Financial support for the projects referred to in Article 1(1)(b) shall be commensurate with the urgency of the need to implement the measures and of the need for Community financial support and shall take particular account of their incentive effect in the Community.

Article 3

1. Applications for financial support for projects shall be sent to the Commission by the Member States and shall contain:

- for the projects referred to in Article 1(1)(a), the information specified in the Annex;
- for the projects referred to in Article 1(1)(b), the information needed to justify action at Community level.

2. In the absence of suitable applications from a Member State, the Commission may, in exceptional circumstances, take the initiative to propose measures:

- (a) relating to species directly threatened with extinction in the Community or relating to habitats directly exposed to the risk of disappearance in the Community,

- (b) relating to biotopes or habitats transcending frontiers,
- (c) contributing to the solution of particularly urgent problems in the context of the Berne Convention or the Bonn Convention.

Article 4

1. An Advisory Committee consisting of representatives of the Member States and chaired by a Commission representative is hereby set up. The Committee shall draw up its rules of procedure.
2. The Commission shall consult the Advisory Committee on, inter alia:
 - (i) the general conditions governing submission of the applications for financial support referred to in Article 3;
 - (ii) any additional criteria to be applied in selecting projects for which applications for financial support have been submitted or in selecting projects falling within the scope of action proposed by the Commission;
 - (iii) the selection of projects for which financial support is to be granted in accordance with Article 5;
 - (iv) the levels of financial support to be granted to projects;
 - (v) the priorities to be adopted within the scope defined in Article 1.
3. The Committee shall deliberate on requests for its opinion from the Commission. When seeking an opinion from the Committee, the Commission may set a time limit by which the opinion is to be delivered. No vote shall be taken at the end of the Committee's deliberations. However, a Committee member may require that his opinion be recorded in the minutes.

Article 5

1. The Commission shall decide whether to grant or refuse financial support for projects after consulting the Advisory Committee referred to in Article 4 and on the basis of the opinions delivered by that Committee.
2. The Commission shall negotiate and conclude the necessary contracts.

Article 6

Financial support may be granted to natural persons, or to legal persons constituted in accordance with national law, who are responsible for the project.

If the creation of a legal entity with the legal capacity to carry out a project involves additional costs for the participants, the project may be carried out simply by cooperation between natural or legal persons. In that case, responsibility for complying with the obligations resulting from Community support shall be specified in the contract to be concluded with the Commission.

Article 7

Recipients of Community financial support shall send the Commission, each year or as stipulated in the contract, a report on the fulfilment of the commitments towards the Commission, and in particular on the progress of work in relation to project and the expenditure incurred in its performance.

Article 8

The Commission shall present an annual report on the implementation of this Regulation to the European Parliament, the Council and the Economic and Social Committee.

Article 9

A list of the measures for which Community financial support has been granted shall be published annually in the Official Journal of the European Communities.

Article 10

1. This Regulation shall enter into force on the day following that of its publication in the Official Journal of the European Communities.

It shall apply for five years.

2. The Council, acting by qualified majority on a proposal from the Commission, shall decide whether to extend or amend this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the Council

The President

ANNEX

**List of particulars to be provided under Article 3 for
the projects referred to in Article 1(1)(a)**

- The location of the site in question and, where necessary, a map showing the boundaries of the area covered by the project.
- The importance of the site to the Community for the conservation of nature and, as appropriate, the degree of the risk to the biotopes and species concerned.
- The nature and extent of the problems which the project is intended to resolve, and in particular the nature and gravity of the threat.
- A detailed description of the project, and in particular of the organization of its management and of the results expected.
- The timetable for carrying out the project.
- The cost of the project, its viability and the financing arrangements proposed.
- The extent to which Community financial support is urgently needed in order to implement the project.
- Any other evidence in support of the application.
- The protection provided for the site in question at present and the protection planned.
- The proposed method of disseminating the results of the project.

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