



Varying practices of implementing the Habitats Directive in German and British forests

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ABSTRACT

The European Habitats Directive is a cornerstone of the EU's nature conservation policy. It is based on two pillars: a network of protected areas and a species protection regime. Implementation of both requirements has been a troublesome and contested undertaking for EU member states, not least because of potentially significant implications for on-going land uses like forestry. Even twenty years after its adoption, the Habitats Directive's political and practical implications continue to be a source of contestation. Domestic implementation is characterised by differentiation and emerging varying practices. This article applies a ground-level perspective explaining differential implementation resulting from the spatially and temporally specific interplay of structure and agency. It moves beyond structural and actor centred accounts applying a strategic-relational perspective. Implementation processes in the UK and Germany are studied comparatively focusing especially on the crucial role of local administrations for specific operationalisations of ambiguous requirements.

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1. Introduction

The Habitats Directive (HD)¹ embodies the core of the EU's nature conservation policy. It obliges member states to contribute to the ecological Natura 2000 network by designating Special Areas of Conservation (SAC) for certain species and habitats. Additionally, the HD requires the creation of a system of strict species protection. Implementing both requirements was contested and resulted in differential implementation practices within member states. Even twenty years after the HD's adoption its political and practical implications are still evolving. The HD continues to be of scientific interest, as its protracted implementation is the rule rather than an exception to EU environmental policies' implementation (Knill, 2008) and local differentiation (Versluis, 2007). While differentiation across member states regarding the HD's implementation is well described (van Apeldoorn et al., 2009), few studies explain its emergence from a local perspective.

Scholars suggested numerous approaches to analyse implementation (Falkner et al., 2007; Knill, 2006; Knill and Lenschow, 1998; Mastenbroek, 2005; Treib, 2008) undoubtedly contributing to a better understanding of what drives the national implementation of EU legislation. However, as research predominantly focuses on 'upstream' implementation stages and politico-administrative levels, analyses of

local implementation practices are rare. Prevailing approaches privilege either structural or agency based arguments and consequently struggle to perceive of ground-level implementation as simultaneously shaped by practices of interdependent actors and multi-levelled, institutional contexts, in which actors are embedded (Paavola et al., 2009).

Understanding these linkages and their practical implications is crucial, as differential implementation emerges through specific domestic applications of instruments, procedures or responsibilities and spatially and temporally distinct implementation practices (Versluis, 2007) and as the HD significantly affects local land-uses. This paper comparatively analyses the HD's ground-level implementation in Germany and the UK using embedded case studies in both countries as an example. For all cases the implementation of the HD's management and species requirements into forest management practices has been studied. The analysis seeks to explain the emergence of differential implementation within specific spatial and temporal constellations of strategies and contexts. It focuses especially on the decisive role of local administrative officers in decision-making and the shaping of distinct practices.

The article proceeds as follows. In the following section a theoretical framework is presented linking implementation routes with emerging differential practices on the ground. This explains differential operationalisations of the HD's management and species requirements into implementation practices as a result from the interplay of strategically selective contexts and strategic, context-oriented action. The framework will then be applied to compare the implementation processes of the requirements within six German and British forest SACs.

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¹ Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

2. The role of street-level-bureaucrats and structure and agency for implementing EU Directives

EU Directives generally outline broadly defined legal provisions without targeting specific groups or confined behaviour. Since they are only binding with regard to certain results, further national negotiations are needed to achieve practical applicability (Nugent, 2006). This delegates administrative and formulation competencies to the member states and inserts additional regulatory processes between the adoption of European rules and their practical domestic realisation (Treib, 2003, 507). The HD is no exception to this. It constitutes a complex policy process evolving erratically since its adoption in 1992.

To implement the HD's management requirements states had to designate Special Areas of Conservation (SACs) for species and habitats (Art. 3 HD). Art. 6 HD requires introducing conservation measures to maintain or restore a favourable conservation status of the habitats and species for which a SAC became designated and to prevent activities significantly disturbing species or deteriorating habitats. The article is important, as it "most determines the relationship between conservation and land use" (EC, 2000, 9). Additionally, the HD outlines a species protection regime (Art. 12ff HD) that prohibits the deliberate disturbance of species, the deliberate destruction or taking of eggs, and the deterioration or destruction of breeding sites or resting places. The provisions of Art. 12 HD are effective for all species populations also beyond SACs. Integrating both requirements into local land uses like forestry proved challenging, especially as their ambiguous definitions bestow substantial leeway on local administrations, who eventually have to operationalise (Schofield, 2004) the various requirements.

While the HD has received considerable scientific attention, a number of theoretical and practical problems generally limit generalisations. Due to the complexity of the HD, research usually singles out and focuses on certain aspects or policy fields only (Wurzel, 2008), for example management (Ledoux et al., 2000), area designations (Alphandery and Fortier, 2001), species protection (Hiedenpää and Bromley, 2011), participation (Rauschmayer et al., 2009; Feindt and Oels), planning (Beunen et al., 2009). The multi-level character of the HD has prompted many authors to study implementation by focusing on certain policy levels (Paavola et al., 2009; Keulartz and Leistra, 2008; Weber and Christophersen, 2002), usually the European, national, sub-national. The long implementation process favoured a focus on certain formal implementation steps, as transposition or area designations. Finally, many factors have been discussed in detail yet usually from a "technical" perspective and seldom regarding political implications (Mehtälä and Vuorisalo, 2007). While comparative studies have been carried out (see e.g., Ferranti et al., 2010), the actual impact of differential implementation on local management practices and how management plans become implemented has been rarely addressed. This is partly due to the fact that area designations have only recently been finalised and actual site management is just beginning to emerge with many sites still in need of management schemes. As attention regarding the HD is turning to management practices, a better understanding of local operationalisations of species and management requirements is needed.

Two features generally characterising implementation research will be problematised in the following. First, as EU implementation studies generally focus on upstream implementation "stages" (Milio, 2010; Treib, 2008) practical ground-level implementation has not received similar attention. Versluis (2007) concluded with regard to EU implementation research that "Whereas considerable attention is paid to transposition into domestic law (the 'law in the books'), the practical implementation (the 'law in action') remains to a large extent a black box" (50). While a number of articles have recently been published on the local implementation of the HD (Ledoux et al., 2000; Beunen and de Vries, 2011; Sumares and Fidelis, 2011), research has so far not addressed the specific role of street-level-bureaucrats for implementation and more specifically for the translation and operationalisation of ambiguous policy requirements into action.

Hupe and Hill (2007) stress that as street-level-bureaucrats work under "(1) relatively high degrees of discretion; and (2) a relative autonomy from organisational authority (...) public employees who interact with citizens behave in ways that are unsanctioned, sometimes even contradicting official policy, because the structure of their jobs makes it impossible fully to achieve the expectations of their work" (280). Originally Lipsky (2010) argued that local administrative officers usually "experience the following conditions in their work. 1. Resources are chronically inadequate relative to the tasks workers are asked to perform. 2. The demand for services tends to increase to meet the supply. 3. Goal expectations for the agencies in which they work tend to be ambiguous, vague, or conflicting. 4. Performance oriented toward goal achievement tends to be difficult if not impossible to measure" (27–28).

Facing these characteristics street-level bureaucrats develop individual coping strategies and have "to learn a range of often new and detailed techniques in order to implement what are often ambiguous policy directives" (Schofield, 2004, 283). These "individual actions add up" to shape public policy and that in fact the crucial role of local public employees "regularly permits them to make policy with respect to significant aspects of their interactions with citizens" (Lipsky, 2010, 13). Thus, street-level bureaucrats are not merely at the receiving end of a hierarchy yet actively fulfil decision-making functions as they flexibly and pragmatically interpret and operationalise ambiguous policy requirements through negotiations with other actors. In these situations "street-level workers do not describe their decisions and actions as based on their views of the correctness of the rules, wisdom of the policy, or accountability to any hierarchical authority or democratic principle. They base their decisions on their judgement of the worth of the individual citizen client" (Maynard-Moody and Musheno, 2000, 329) and on their relations to colleagues and the "micro-networks" in which they work (Hupe and Hill, 2007). These shape policy preferences and ideas of how to interpret and apply requirements in the absence of clear rules and models.

Thus administrators rationalise tasks to cope with increasing demands and keep stability. Schofield (2004) concludes that by routinising "solutions into job tasks and procedures (...) a policy initiative is operationalised" (283). Coping and rationalisation do not necessarily translate institutional and organisational rearrangements, as for example triggered by the HD's implementation, into actions which adhere to prescriptions made at higher policy levels. On the contrary research provides ample evidence that such rearrangements have hardly any effects on how a policy becomes implemented (Meyers et al., 1998). Potential role conflicts of street-level workers and policies or clients contribute to this. Whereas the former emerges when a certain behaviour prescribed by a policy requirement conflict with professional values and attitudes of street-level workers, the latter occurs in case of incongruences between expectations and demands of clients and perceived or real policy requirements (Tummers et al., 2012).

Second, studies usually privilege either structural, institutional or actor centred approaches to explain differential implementation processes. Yet, analytically separating structure and agency is troublesome. While "both perspectives may be valuable (...), they separately fail in analysing policy implementation (...). Actor and structure can be distinguished analytically, but, in reality, agent and structure presuppose and influence each other in implementation processes" (Terpstra and Havinga, 2001, 97). Addressing these problems, the Strategic-Relational-Approach (SRA) (Jessop, 2008, 2005) attempts to move beyond structural or agency centred accounts positing a "genuine duality (...). by dialectically relativising (as opposed to mechanically relating) both analytical categories" (Jessop, 2008, 41). SRA suggests to analyse "structure in relation to action, action in relation to structure" (Jessop, 2008, 48). Against this background, the specific institutional contexts, in which actors are placed, enable and constrain a range of available strategies setting margins for potential translations of abstract provisions into action. Contexts "operate selectively; they (...) are always temporally, spatially, agency- and strategy-specific" (Jessop, 2008, 41)

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