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HVNP Position Paper - Natura 2000 and  
Bill on Nature Conservation

# Memorandum

## TABLE OF CONTENTS

INTRODUCTION .....	4
HVNP'S VISION .....	4
2.1 Introduction.....	5
2.2 Mission.....	5
2.3 Vision.....	6
WHAT IS THE EU'S POSITION?.....	8
NATURA 2000.....	9
4.1 Introduction.....	9
4.2 Current Nature Policy and Legislation .....	9
At the National Level.....	9
Integrated Approach to Nitrogen (IAN) .....	10
At the Provincial Level.....	11
4.3 Bottlenecks.....	12
Government Vision.....	12
The IAN.....	14
Role of the Government.....	14
HVNP's Proposal .....	18
4.4 Conclusion .....	19
THE NATURE CONSERVATION ACT .....	19
5.1 Introduction.....	19
5.2 Current Legislation .....	20
5.3 The Nature Conservation Bill .....	20
5.4 Bottlenecks.....	21
5.5 Conclusion .....	27
CONCLUSION .....	28

## **EXECUTIVE SUMMARY**

Imminent changes in Dutch nature conservation legislation have motivated the Hoge Veluwe National Park ("HVNP") to state its position on the issue. This memorandum contains the result of its considerations.

Where nature is concerned, HVNP is committed to three key themes: (1) the landowner's own responsibility; (2) active nature management; and (3) high biodiversity. It is against these three themes that HVNP has reviewed current and future nature conservation laws and regulations in the Netherlands.

In doing so, HVNP has identified a number of bottlenecks, the most important of which is that the Dutch legislature does not seem to recognize the landowners' own responsibility. Whilst existing Dutch rules on nature conservation are already characterized by a high level of government regulation, the new Nature Conservation Bill further reinforces this trend. HVNP foresees that its policy of engaging in active nature management will suffer as a result, at the expense of biodiversity.

HVNP advocates in a different approach, particularly through the introduction of a qualified regime that will permit parties with a proven record of good nature management to conserve the nature on their land at their own discretion, with the government conducting supervision from the sideline.

HVNP believes that there is room under European nature legislation for expert landowners to take on more responsibility. That is why HVNP hopes this memorandum receives support at the European level and can contribute to better nature legislation in the Netherlands.

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## INTRODUCTION

### Scope

Stichting Het Nationale Park De Hoge Veluwe ("**HVNP**") has drawn up this memorandum to state its position about nature legislation in the Netherlands. The reason for writing this memorandum is the legislative amendment proposed by the Government to harmonize the Dutch laws currently in force with European nature legislation.

HVNP closely monitors the process in its capacity as owner and manager of Hoge Veluwe National Park. The park hosts a large variety of protected plants, animals, and habitats, so that all nature conservation rules have a direct impact on the park. Against this background, HVNP is in a good position to identify existing and future problems in Dutch nature legislation, in relation to both European nature legislation and otherwise. HVNP's analysis of the situation is set out below in this memorandum.

### Structure

HVNP will confine itself in this memorandum to two subject-matters: Natura 2000 and the new Dutch Nature Conservation Bill. Although the Bill is intended in part to implement Natura 2000 in the Netherlands, Natura 2000 is in and of itself of such significance to HVNP as to warrant a separate discussion in this memorandum.

This memorandum is structured as follows. It starts with an introduction of the Hoge Veluwe National Park, following which HVNP explains its vision on what active nature management on its land entails (*paragraph 2*). HVNP then provides a very brief summary of the nature protection policies of the European Union ("**EU**") (*paragraph 3*). The body of this memorandum is made up of HVNP's views on Natura 2000 and the Bill on Nature Conservation in the Netherlands (*paragraphs 4 and 5*). The document closes with HVNP's conclusions (*paragraph 6*). The text has been updated to reflect the situation as at 9 June 2015.

With this memorandum, HVNP endeavours to provide a better understand of the bottlenecks posed by the Dutch legislation in practice and to contribute to the policy-making and legislative processes in the field of nature.

## HVNP'S VISION<sup>1</sup>

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<sup>1</sup> Large parts of the Dutch text of this paragraph have been copied from the policy plan adopted by Stichting Het Nationale Park De Hoge Veluwe on 11 December 2009, entitled: "Comprehensive Plan for 2010 - 2020, Investing in Planning and Quality, Capturing Developments in Spatial Planning".

## 2.1 Introduction

Hoge Veluwe National Park is the largest unbroken, actively managed protected area in the Netherlands. The park is made up of approximately 5,400 hectares of nature uniquely combined with architecture and art. Its extended natural landscape of forest, heathland, and drift sand provides a habitat for a large variety of special biotopes and rare plant and animal species protected by European legislation. A good example of the special architecture is Jachthuis Sint Hubertus, built near the edge of the park as a '*Gesamtkunstwerk*' (a synthesis of the arts). Jachthuis Sint Hubertus is a national monument and one of the pinnacles in the work of the renowned Dutch architect, H.P. Berlage (1856-1934).<sup>2</sup> The Kröller-Müller Museum, a national museum named after the founders of Hoge Veluwe National Park, brings many aficionados of the arts to the park. Located in the centre of the park, the museum is home to an internationally renowned collection of Van Goghs. It is not for nothing that former Prime Minister Balkenende called the national park 'the green treasure-house of the Netherlands'.<sup>3</sup> In policy papers of the Province of Gelderland, Hoge Veluwe National Park is called 'the Heart of the Veluwe', not just because of its ecological value and location at the heart of the Veluwe, but also because of its appeal to visitors and its economic spin-off.

The entire park is privately owned. HVNP, the park's owner and manager, was formed in 1935 to preserve the inheritance of the founding fathers, the Kröller-Müllers. HVNP has successfully acquitted itself of this task for 80 years now!

## 2.2 Mission

HVNP wishes to be a pioneer, both nationally and internationally, in many an area. Apart from endeavouring to be a role model in active nature management, HVNP focuses on issues of sustainability, security, and creating a balance between ecology and economy. HVNP's mission is three-pronged:

1. To engage in sustainable management and open up the park to visitors, offering and organizing a broad range of modern-day activities and facilities;
2. To inspire as many visitors as possible and to make sure that they can relax and enjoy the simplicity and authenticity of the park's

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<sup>2</sup> H.P. Berlage's design of Jachthuis Sint Hubertus was also inspired by English, American, and German architects.

<sup>3</sup> J.P. Balkenende, former Prime Minister, in his preface to "The Hoge Veluwe Book", 2010 WBOOKS, Zwolle, 2<sup>nd</sup> edition 2012, p. 7.

nature and landscape, art and architecture, and history;

3. To invest sustainably in maintaining, strengthening and renewing: (i) nature and the landscape, (ii) cultural history, art, and architecture, and (iii) visitor flows.

In doing so, HVNP must operate within the scope of the Dutch nature laws adopted to implement European legislation. Those Dutch laws are about to change. The Government has presented a new Nature Conservation Bill to Parliament, the purpose of which is to replace the nature legislation currently in force in the Netherlands. We will return to this issue later on in this memorandum.

### **2.3 Vision**

HVNP endeavours to preserve the best in the Veluwe landscape. To do so, HVNP has pursued a policy of consistent and active nature management since its inception: consistent in that the basic principles of nature management have not changed much since 1935; active in that HVNP constantly intervenes in nature by cutting down trees, hunting, cutting peat and grass, etc.

#### Active management

It is HVNP's experience that an active management of the characteristic Veluwe vegetation is an absolute necessity. More specifically, active management means that landscape variety is preserved. The Hoge Veluwe is made up of semi-natural landscapes, varying from sand drifts, dry and wet heath, forests, to land used for intensive agriculture. HVNP's active management has resulted in high biodiversity. The National Park provides a habitat for eight out of the ten protected bird species for which the Veluwe has been designated as a Natura 2000 area. Thirty-five percent of the park qualifies as a special area for conservation, and another twenty-five percent has the potential of achieving the enlargement targets for special conservation areas. Furthermore, the National Park is home to a large number of red list species, including viper's grass, bog asphodel, nightjar, Eurasian hobby, moor frog, adder, sand lizard, heath fritillary, and sooty copper. Red list species are species of plants and animals that are threatened, but are not always protected by law. For many species that are typical of the Veluwe type of landscape, such as the wart-biter cricket, the dark green fritillary, and the marsh gentian, Hoge Veluwe National Park is one of the last habitats in the Netherlands, sometimes even in Europe, in which they still occur. Preserving these vulnerable and rare species requires a very special kind of management, and HVNP regularly carries out nature restoration projects to that end.

### Natura 2000

In conformity with the Natura 2000 targets, HVNP focuses on enlarging and improve the quality of sand drifts, drift-sand heathlands with heather vegetation, dry and wet heathlands, and *Nardus* grasslands. To prevent weeds and grass encroaching on open types of landscape as a result of natural succession and high nitrogen deposits, active intervention is required. This is done in the form of nature management measures and nature restoration projects. Projects are targeted, for example, at opening up drift-sand landscapes by removing solitary Scots pines or at restoring drift-sand vegetation by removing the upper soil layer or removing invasive species such as heath star moss to give vulnerable species more space. In exceptional cases, new sand drifts are created. To prevent grass and trees encroaching on heathlands, approximately 15 hectares of heather must be cut each year. Other management measures are taken as well, including mowing grass and burning heathlands. Acting in collaboration with research institutes and universities, HVNP also works on nature restoration projects in heathlands, including experiments with growing buckwheat or scattering heather clippings. Another example is the system restoration project in which biodiversity is maintained by remineralizing the soil by means of rock dust.

### High biodiversity

The preservation of a variety of landscapes and the associated vegetation ensures high biodiversity. By intervening again and again, open landscapes are kept open and the large variety of landscape types and their characteristic vegetation are maintained. The largest ecological wealth of plant and animal species in the National Park can be found in the open areas.

This is why HVNP has made smoother transitions from open areas to forests part of its forest management policy. In terms of spatial planning, HVNP focuses on maintaining and even enlarging open landscape areas and, where possible and appropriate, interconnecting the individual open areas. Interconnections are important to the exchange of plant and animal species. The applicable Natura 2000 objective is to at least maintain and, where possible, enlarge open landscape areas and to interconnect these. In this way, the park has laid an important foundation for the exchange of species throughout the park and thus contributes to the implementation of the Natura 2000 objectives in terms of biodiversity. The intervention does not pay itself back, however, and forces HVNP to resort to external funding. A continuation of this active management is absolutely necessary, however, to maintain and further develop biodiversity in the park.

### Balance between ecology and economy

HVNP distinguishes itself from other national parks by the park's strong

cohesion and the balance that has been created between ecology and economy. HVNP has opted for a balance-based approach, meaning that, on balance, the qualities of the park must not be compromised. Planning developments in the park are based on zoning. By looking at the individual developments as a whole, HVNP seeks to safeguard a proper balance between ecology and economy. The balance-based approach makes it possible to improve both ecological values and economic interests in a balanced manner. The zoning policy guarantees that visitors can enjoy the park optimally but that the vulnerable flora and fauna are protected at the same time. Too much pressure, particularly on vulnerable spots, will affect the park's special ecological and historical cultural values. This is why HVNP's zoning policy is based on the most important ecological values, identified not so much in desk studies but rather by HVNP's own staff in the field. As stated before, the open landscapes provide the most vulnerable sources of wealth. Therefore, the zoning policy is to draw flows of visitors to the most crowded areas and boost the natural environment of the quiet areas.

### **WHAT IS THE EU'S POSITION?**

On its website, the European Commission refers to Natura 2000 as the "centrepiece of EU nature & biodiversity policy".<sup>4</sup> The intention of Natura 2000 is to preserve Europe's most valuable and threatened animal species for the long term. According to the European Commission, the focus in the management of Natura 2000 areas on privately owned land is to be on ensuring that future management is sustainable, both ecologically and economically. In its resolution on the EU biodiversity strategy to 2020, the European Parliament stated that it deplored the fact that the EU had failed to meet its 2010 biodiversity target and recalled that the United Nations had declared 2010-2020 the Decade on Biodiversity.<sup>5</sup> The European Commission has defined biodiversity as an essential contribution to human wellbeing and economic prosperity. One of its targets is to halt the deterioration in the status of all species and habitats covered by EU nature legislation. Nature should be conserved and restored.<sup>6</sup> HVNP sees in these statements support for its active management of the land it owns, particularly because this active form of management helps preserve biodiversity. The ecological results in the Hoge Veluwe National Park are not so much the direct result of (ever more) protective legislation, but have been achieved by HVNP through its consistent and active nature

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<sup>4</sup> See: [http://ec.europa.eu/environment/nature/natura2000/index\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/index_en.htm). Most recently consulted on 4 May 2015.

<sup>5</sup> European Parliament resolution of 20 April 2012 on our life insurance, our natural capital: an EU biodiversity strategy to 2020 (2011/2307 (INI)).

<sup>6</sup> Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions: *Our life insurance, our natural capital: An EU biodiversity strategy to 2020*, Brussels, 3 May 2011, COM(2011) 244 final.



management based on a balance between ecology and economy (see paragraph 2 above).

## NATURA 2000

### 4.1 Introduction

Natura 2000 is an European ecological network established to restore or conserve the EU's most valuable natural habitats and species. Hoge Veluwe National Park is part of that network. In March 2000, the Dutch State Secretary of Agriculture, Nature Management and Fisheries (now the Ministry of Economic Affairs) designated 'de Veluwe', the area comprising the National Park, as a special protection area under the Birds Directive.<sup>7</sup> Then, in May 2003, the Netherlands reported 'de Veluwe' to the European Commission as a special area of conservation under the Habitats Directive, following which the European Commission included 'de Veluwe' in the list of sites of Community importance for the Atlantic biogeographical region.<sup>8</sup> In 2014, the State Secretary for Economic Affairs definitely designated 'de Veluwe' as a Natura 2000 area.<sup>9</sup>

In the paragraphs below, we first summarize the Dutch policy on nature and biodiversity. We then list the problems with that policy as identified by HVNP and suggest possible solutions.

### 4.2 Current Nature Policy and Legislation

#### At the National Level

In April 2014, the Dutch Government laid down its nature policy for the Netherlands for the next 10 years in its policy plan entitled 'The Natural Way Forward: Government Vision 2014' ("**Government Vision**"). The Government Vision does not cover all policies on nature in the Netherlands, but is limited largely to policies for areas for which the Government is responsible.

Most of the responsibilities for nature policy have been delegated to the Provinces under the Nature Pact of 18 September 2013 concluded between the State Secretary for Economic Affairs and the Provinces.<sup>10</sup> The Nature Pact sets out the ambitions in the fields of nature development and nature management in the Netherlands for the period up to and including 2027. The ambitions have been phrased in general terms, leaving it up to

<sup>7</sup> *Staatscourant* (Dutch Official Gazette), 31 March 2000, no. 65.

<sup>8</sup> Commission Decision 2004/813/EC of 7 December 2004.

<sup>9</sup> *Staatscourant* (Dutch Official Gazette) of 26 June 2014, no. 17732.

<sup>10</sup> Full title: Nature Pact on the Development and Management of Nature in the Netherlands (*Natuurpact ontwikkeling en beheer van natuur in Nederland*).

the Provinces to work out the details of their nature policy. This means that the Provinces make their own nature policies.

The Government Vision defines a general framework for the policy on nature and biodiversity, which is to take more specific shape in consultation with the Provinces and the Municipalities. The understandings between the Government and the Provinces are not free of obligations. Evaluations of the situation, conducted every three years, may give rise to newly phrased ambitions and understandings. The Government remains accountable to the European Commission for compliance with all European obligations.

The Government Vision expects much from local communities in this regard. According to the Government, people's valuation of nature will be done full justice by recognising their interest in nature and the benefits nature brings to local communities, trusting their judgment skills and problem solving capacity (Government Vision, page 18). One of the consequences of the new policy according to the Government Vision is that it the nature it helps develop is able to take some wear and tear (Government Vision, page 23). The Government aims to develop nature that is robust and that will thrive under human influence and can develop and adapt to changing circumstances (Government Vision, p. 46). Furthermore, the Government believes that outdoor recreation and tourism provide excellent opportunities for nature and economic activities to positively influence one another (Government Vision, p. 31). The Government Vision also focuses on creating a dynamic form of nature which is less dependent on human management (Government Vision, p. 51).

### **Integrated Approach to Nitrogen (IAN)**

Out of the 160 Natura 2000 areas in the Netherlands, 117 suffer from the presence of excessive nitrogen levels (ammonia and nitrogen oxides). These excessive levels form a major obstacle for the Netherlands to achieve the Natura 2000 objectives and has also made it more difficult for authorities to grant licences and permits to engage in economic activities in and around the Natura 2000 areas.

To solve the problem, the Government has adopted a plan to reduce nitrogen deposition and, at the same time, open up the possibility for new developments. The plan, called the Integrated Approach to Nitrogen (*Programmatiese Aanpak Stikstof*), is scheduled to come into force on 1 July 2015.

The IAN is a total package consisting of the following integrated

measures:

1. At-source measures to reduce nitrogen deposition;
2. Measures to restore nature that is vulnerable to nitrogen;
3. Measures to create room for developing economic activities.

With this plan, the Government is seeking a balance between ecology and economy: a lowering of nitrogen levels, restoration of nature, and using part of the 'benefit' achieved by providing room for more nitrogen emissions by businesses or for the launch of new projects. Expectations are that, on balance, the IAN will ensure a reduction of nitrogen deposition in the Netherlands. The environmental effects of the IAN have been assessed by the Commission for Environmental Assessment, which concluded in its preliminary advisory report of 26 March 2015, however, that the IAN was too vague and overly optimistic about the positive effect of the nature restoration measures. The Government will incorporate the conclusions of the Commission in its final draft of the IAN.

The legal basis of the IAN is the 1998 Nature Conservation Act (*Natuurbeschermingswet 1998*; "NCA"). The NCA provides that the IAN is valid for a period of six years and that a new IAN must be adopted every six years. No permit or licence under the NCA will be required if a new activity falls within the scope of the development plans and has an effect on nature only through nitrogen deposition. The competent authorities must ensure that appropriate at-source measures and nature restoration measures are taken. They can do so by imposing on the nitrogen polluter an obligation to take the following action within a specific term set:

- To take all necessary preventative or restoration measures with due observance of the instructions of the competent authorities;
- To cease or limit the activity causing nitrogen deposition;
- To provide information on any such activity.

This procedure ensures that the authorities can monitor the IAN with a view to achieving the IAN objectives.

### **At the Provincial Level**

Save for some exceptions, the Provinces have the task of enforcing the Dutch implementation of the Birds Directive and the Habitats Directive. In the Netherlands, the Birds Directive and the Habitats Directive have been implemented in the Flora and Fauna Act (*Flora- en faunawet*; "FFA") – protection of plant and animal species – and the 1998 Nature Conservation Act (*Natuurbeschermingswet 1998*; ("NCA") – protection

of habitats. The designated competent authority in each of the Provinces is the Provincial Executive.

Under the FFA, the Provincial Executive may reduce populations of protected animal species (Section 67) or grant exemptions from the ban on killing, disturbing, etc. protected animal species (Section 68). These protected species may also include species protected under the Birds or Habitats Directive.

The Provincial Executive must adopt a nature management plan for Natura 2000 areas after consultation with the owners and users of the areas and other stakeholders. Based on the species conservation objectives, the management plan must describe which conservation measures are taken in the relevant areas (Section 19a NCA). The Provincial Executive is also the body authorized to grant licences or permits for projects and other activities that may affect the quality of the natural habitats and the habitats of species found in a Natura 2000 area or that may have a distorting impact on the species for which the area has been designated (Section 19d NCA). Where any of the areas fall in whole or in part under the responsibility of the Government, however, the relevant powers are vested in the Minister instead of the Provincial Executive.

The Province of Gelderland is responsible for the area comprising Hoge Veluwe National Park. The nature management plan for the Veluwe is near completion and will presumably be available for inspection in mid-2015. The HVNP was involved in the plan's drafting.

### **4.3 Bottlenecks**

The main bottleneck perceived by HVNP is the lack of consideration for the relevance of practice based on the landowner's or manager's own responsibility for their estate. We would like to illustrate this point with reference to the Government Vision, the IAN, and the role played by Dutch public authorities. HVNP will then make suggestions on how to resolve those bottlenecks.

#### **Government Vision**

As HVNP sees it, the Government Vision does not sufficiently consider the benefits of practice. Nature management is basically a practical field and an on-going challenge for managers because of the constantly changing circumstances inherent in nature. HVNP is not, in principle, opposed to the involvement of people and local communities in the development of nature, as the Government advocates, provided that primary considera

tion is given to problem solutions offered by professionals in the field. The Government Vision does not consider this possibility. Dutch nature policy focuses on participation rather than experience, which is a problem because people often have an opinion without actual in-depth knowledge of the underlying problem. More and more often, the basic idea in the Netherlands is that nature belongs to us all. But there is little reflection in all this on the consequences of such an assumption or the fact that nature may be privately owned. HVNP finds that the situation in practice is generally disregarded and that the specialist requirements demanded of nature managers are to a great extent ignored. HVNP believes that the responsibility for nature management should rest on the owner/manager of the area, who deal with nature on a day-to-day basis, rather than on any third parties or public authorities.

HVNP subscribes to the idea of a robust nature that is able to take some wear and tear. Following an area-specific approach, habitat banking would be an appropriate means to do so. Habitat banking means focusing on a nature reserve as a whole rather than aiming at nature conservation per square foot. The overall aim is to conserve and, where possible, improve nature, without prescribing the method of achieving that aim. Habitat banking ensures an integral approach to nature reserves, i.e. an approach that facilitates sustainable nature management and creates a proper balance between ecology and economy. Habitat banking provides flexibility for entrepreneurs and managers, ensures that nature is a factor in plans and is conserved in a well-considered manner.

The fact that recreation and nature go well together has been duly proven by HVNP ever since its inception in 1935. What HVNP misses in the Government Vision, however, is a proper consideration of what nature areas can handle in terms of recreation. The smaller, privately owned estates (<500 hectares), in particular, threaten to be swamped by visitors, and finding a solution to that problem is absolutely necessary. Furthermore, HVNP believes that proper attention should be paid to the drawback of recreation and tourism, i.e. the potential negative impact on nature by visitors disturbing and agitating protected animal species and habitats. The Government Vision does not make any mention of this problem. Added to this is the fact that day trippers and tourists enjoy nature, but do not contribute in any way to the management costs. Moreover, the Government Vision forgets that owners/managers of a nature reserve are their own masters. They can demand, for example, that hiking on public roads and footpaths is permitted only with their consent. Nature and recreation can only go hand in hand if all these aspects are taken into account. Hosting approximately 500,000 visitors per year, Hoge Veluwe National Park can be regarded as an expert par excellence in the field.

HVNP has great doubts about the Government Vision where it aims at creating a dynamic form of nature which is less dependent on human management. Recent research has shown that red list species are disappearing by uncontrolled excessive grazing. HVNP is a strong advocate of active nature management. Nature traditionally depends on human interference. Without human interference, many protected animal and plant species would have become extinct, especially in densely-populated areas such as the Netherlands. As HVNP sees it, leaving nature to run its own course is not a good idea at all.

### **The IAN**

HVNP considers the IAN to be the product of too drastic a form of government control of privately owned land. By introducing mandatory restoration measures, the government misappreciates the fact that the landowners/managers are primarily responsible for their own property. Mandatory restoration measures limit their freedom of action.

Moreover, HVNP is very much concerned about the fact that the list of restoration measures is not in accordance with practical experience. The list of restoration measures is a static list of action to be taken. HVNP takes measures on the basis of years of experience and by paying attention to the processes going on in nature. Political decisions are not leading for HVNP. If HVNP is hampered by the IAN in any way, the negative impact on biodiversity will surely make itself felt in the Veluwe habitat.

HVNP is also concerned about the fact that landowners have no say in how the room for development they themselves have created is allocated. In other words, landowners benefit too little from their own investments. HVNP is prepared to create room for development for other entrepreneurs, provided that HVNP can also claim a right to make use of the opportunities so created. The IAN does not provide for any such possibility.

### **Role of the Government**

As HVNP perceives it, decisions on nature management in the Netherlands are almost fully controlled by the public authorities. This system poses a number of risks:

1. Nature management is reduced to a political process.
2. Nature management is reduced to a legal process.
3. Nature management is reduced to a theoretical process.

## Political Process

When saying that nature management is reduced to a political process, HVNP refers to the politicization of nature policies. What HVNP means to say is that nature management decisions are strongly influenced by the party political majority of the moment. The ruling parties in office want to give full effect to their – mostly short-term – political programme to honour the commitments made to their rank and file. Active government measures are often the outcome of a compromise among the political majority of the moment. Such an outcome reflected in governmental measures is not by definition the best solution to nature and is most certainly not robust. The Environmental Assessment Agency (*Planbureau voor de Leefomgeving*) observed as early as 2001 that nature policy in the Netherlands had politicized.<sup>11</sup> The new Nature Conservation Bill is a good example of politicization: the present Bill, proposed by the Rutte II Cabinet (VVD/PvdA), is different from the previous draft proposed by the Rutte I Cabinet (CDA/VVD).

HVNP regards the politicization of nature management as a risk. Politicians generally lack knowledge and experience in the field of nature management and often weigh their opinions against voters' support of those opinions. Moreover, politicians are generally not aware of the costs that nature management involves for landowners/managers. Another risk of politicization is indecisiveness. When politics become involved in nature management, the lack of clear decisions pose a risk to the preservation of biodiversity. Nature management is a long-term affair which requires long-term vision and professional expertise. Constantly changing short-term views on nature management can result rapidly in a deterioration of rare animal populations, habitats, and biodiversity. Cutbacks by the Government often exacerbate the process.

To give an example, HVNP refers to the Otterlo Forest (Otterlose Bos) directly adjacent to the Hoge Veluwe National Park. The Otterlo Forest is part of 'de Veluwe', which has been designated a Natura 2000 area, and is also owned by HVNP. A great many paths have been created in the forest over time and the Otterlo Forest is a popular area for hikers and cyclists. It appears from an expert study conducted at the request of HVNP that protected animal species suffer as a result and that it is impossible to sufficiently preserve the protected habitat because deer no longer visit the habitat to graze. To change the situation, HVNP wished to integrate the Otterlo Forest into the Hoge Veluwe National Park so as to be able to

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<sup>11</sup> Bert de Wit, Keimpe Wieringa, Maarten Hajer, 'Natuurbeleid als strijdpunt: Veranderende politiek-maatschappelijke context en de Natuurverkenning', in: *Landschap* 4, 2011, p. 163-173. The Environmental Assessment Agency is "the national institute for strategic policy analysis in the fields of the environment, nature, and spatial planning" (see <http://www.pbl.nl/en/aboutpbl>).

manage the forest in accordance with HVNP's nature management policy (by controlling visitor flows, zoning, grazing, active management). That would have been possible only, however, if the forest was closed to the general public, which required permission by local authorities. The local authorities denied the application for permission, but did so without properly weighing the interests of conserving nature. The local authorities regarded the Otterlo Forest as an important recreational area for local people and received support for its view by a petition organized by a local lobby group. Over 1,500 people signed the petition.

The primacy of politics finds easy grounds in a small-size country like the Netherlands. HVNP perceives a loss of the sense of reality, however. Politicians should not interfere in detail in matters of nature management. It simply is not their expertise. The primacy of nature management should rest on the landowners/managers.

### **Legal Process**

When saying that nature management is reduced to a legal process, HVNP refers to the danger of nature management becoming ever more dependent on legal instruments. The new Nature Conversation Bill in the Netherlands is a good example. Leaving aside the proposed licence/exemption system, the Bill narrows down the room for practice-based interventions to frameworks for codes of conduct and programme-based approaches. A programme-based approach permits developments that have a negative impact on nature, provided that the resilience of nature is improved by other measures countering that negative impact. That approach has so far been translated into highly detailed and very complex technical provisions. Codes of conduct permit managers to engage in specific activities without a permit or licence. However, such codes of conduct must be approved by the authorities and may also be revoked by them. It is government policy that lies hidden behind the codes of conduct and programme-based approaches, which are in fact instruments implementing that government policy. In her paper on the new path taken in nature policy, Ms Y. Feddes, Chief Government Advisor on Nature from 2008 to 2012, observed as early as 2012 that the drawbacks of nature policy in the Netherlands were *run-away legislation* and *administrative control of the types of nature objectives*.<sup>12</sup> The new Nature Conversation Bill does not appear to change any of this.

HVNP takes the position that the rules should support practice rather than control nature management. Nature changes constantly and cannot be

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<sup>12</sup> Ytje Feddes, 'Koers voor het nieuwe natuurbeleid', in: *Voorbij de EHS, Koers voor het nieuwe natuurbeleid*, report on the debate & drafting workshop during the Green Wavelength Manifestation (*Manifestatie De Groene Golfengte*) held from 5 to 8 September 2011 on Radio Kootwijk, March 2012.



captured in pre-defined schedules. Or in codes of conduct. In essence, the proposed system appears to be based on a sense of distrust of landowners/managers and consequently endeavours to control nature management. HVNP advocates more room for practice and professional expertise. The owners/managers have the requisite knowledge and skills, based on experience. HVNP perceives a lack of appreciation for the landowners' and managers' own responsibility in Dutch nature policy and nature legislation. Properly qualified parties, like HVNP, are well capable of managing nature on their own land without external interference.

Juridification is a known problem in the Netherlands. In its annual report for 2012, the Advisory Division of the Dutch Council of State ("**Division**")<sup>13</sup> observed that it consistently called to mind the ground rule for legislative policy in any and all of its advisory reports to the Government, i.e. that new legislation or changes to legislation should only be considered if there was a proven necessity for such legislation and after less invasive alternatives had been explored. The Division noted in its report for 2012 that it had singled out a number of Bills which regulated activities of citizens, businesses and public authorities to the very last detail, without an eye for the citizens' own responsibility, but of which the effectiveness and efficiency were very questionable.<sup>14</sup> HVNP sees little or no change in this trend.

### **Theoretical Process**

When saying that nature management is reduced to a theoretical process, HVNP refers to the fact that nature management is becoming ever more scientific. Theoretization can be described as: *the increased use of scientific knowledge as an alternative to traditional and experience-based knowledge*.<sup>15</sup> As a result, expertise and practical experience are pushed to the back in favour of (conceived) patterns, hypotheses, and systems. HVNP also notices that available cash flows often define the mindset of researchers. What HVNP means is that there are cases in which fundamental research based on objective measurements is omitted for lack of money. Research is oftentimes limited to the conduct of desk studies. The Environmental Assessment Agency observed as early as 2011 that nature management as the product of nature policy was becoming more and more theoretical, at the expense of support for specific types of nature management.<sup>16</sup> The landowners/managers with their vast practical

<sup>13</sup> The Advisory Division of the Council of State advises the Government and Parliament on legislation and governance.

<sup>14</sup> Annual Report for 2012, April 2013, p. 46.

<sup>15</sup> Geert Vissers (Researcher at Radboud University Nijmegen) and Ben Dankbaar (Professor at Radboud University Nijmegen), 'Clusterabsentie in de planten-biotechnologie', ESB 96(4606), 18 March 2011, p. 182.

<sup>16</sup> Bert de Wit, Keimpe Wieringa, Maarten Hajer, 'Natuurbeleid als strijdpunt: Veranderende politiek-maatschappelijke context en de Natuurverkenning', in: *Landschap* 4, 2011, p. 166.

knowledge and experience in the field of nature management were losing voice and influence. HVNP's objection to this process is that scientists are not responsible for nature and do not feel the costs of nature management. The landowners/managers do.

### **HVNP's Proposal**

HVNP has been advocating the introduction of a qualified regime in the Netherlands for some years now. A qualified regime means that parties who are properly qualified, i.e. have expert knowledge, are permitted on their own land to engage in nature management at their own discretion. The owners/managers can be certified based on their nature management plans, with certain activities in the plans being made subject to a reporting obligation. Certification and a reporting obligation should enable the competent authorities to monitor quality and to exercise limited control. A qualified regime allocates responsibility to the appropriate parties: the landowners/managers. Qualified parties should be trusted to manage nature as it should be done. The authorities can continue to use a stricter regime for unqualified nature managers. HVNP believes that the current stringent regime that is applied to all nature managers alike is harmful to professional organizations. Such stringent rules are unnecessary and, in fact, onerous for parties with a proven record of professional nature management.

The introduction of a qualified regime will also remove the bottleneck of nature management plans being adopted by the government, i.e. the Provincial Executive. It is HVNP's experience that the government is inclined to overly consider the interests of one-issue parties when drafting nature management plans. The number of lobby groups largely exceeds the number of landowners/managers. HVNP has repeatedly noticed that lobby groups do not sufficiently take into account the financial considerations and the costs incurred by owners and managers to implement a nature management plan. A qualified regime would recognize that responsibility by giving the primacy to the landowners/managers.

Another advantage of a qualified regime is that landowners/managers can take direct measures if and when necessary. They need not first involve the authorities, which will save a great deal of time and expense. Moreover, the focus of the qualified regime is on ensuring an integrated management of land, which leads to the preservation of biodiversity at an affordable price (see HVNP's views as laid down in paragraph 2 of this memorandum).

HVNP would like to add here that the cause of the decline in populations

of many species is the changed agricultural practice in the Netherlands. When working the land, farmers kill farmland breeders, hares, and deer calves unnecessarily. They mow grass and inject fertilizer after sunset, when those animals need rest. They blind the animals with their headlights which prevent the animals fleeing. Solutions would be to stop mowing grass and injecting fertilizer after sunset, to use wildlife saving devices on machines and to make it mandatory for farmers to mow from the inside out in order to provide animals with an escape route. These measures might be introduced on a wide scale by means of an agricultural code of conduct, which works well in forestry and nature management.

#### **4.4 Conclusion**

HVNP takes the position that active management of a Natura 2000 area is a guarantee for the preservation of biodiversity. This position is based on HVNP's own experience at Hoge Veluwe National Park. A condition would be for the landowners/managers to be given primary responsibility for the management of their land. This system will facilitate an integrated approach to nature management taking account of nature in all its aspects.

As HVNP understand it, the Government does not operate on the assumption that landowners/managers should be primarily responsible. The Government also appears to have no eye for active nature management. On a more general note, HVNP fears a politicization, juridification, and theoretization of nature management when it comes to the implementation of nature policy in the Netherlands. HVNP believes that professional expertise and experience should take first place in nature management.

HVNP advocates the introduction of a qualified regime in which duly qualified and certified landowners draft their own nature management plans, with the government exercising limited control. Such a regime would solve the bottlenecks in government policy whilst at the same time leaving primary responsibility for the land to the landowner/manager, thus promoting active nature management and preserving biodiversity.

### **THE NATURE CONSERVATION ACT**

#### **5.1 Introduction**

Nature conservation law in the Netherlands is about to change drastically. On 10 September 2012, the Government presented to Parliament a legislative proposal for a new Nature Conservation Act.<sup>17</sup> The Bill in question proposes to amend the existing nature conservation laws. The purpose is

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<sup>17</sup> Parliamentary Records: TK 2011-2012, 33348, no. 2.

to simplify nature legislation in the Netherlands.

When the Rutte II Cabinet (VVD/PvdA) assumed office in 2012, the new Nature Conservation Bill underwent a number of changes that were laid down in a Memorandum of Amendment (*Nota van Wijziging*) dated 19 June 2014.<sup>18</sup> On 17 December 2014, a second Memorandum of Amendment was presented to Parliament.<sup>19</sup> The new Nature Conservation Act was initially scheduled to come into force in 2015, but it is uncertain whether that deadline can be met.

## 5.2 Current Legislation

Dutch nature legislation is embodied in three Acts: the Nature Conservation Act of 1998 (NCA), the Flora and Fauna Act (FFA), and the Forest Act. In summary, the NCA protects nature reserves, the FFA protects plant and animal species, and the Forest Act protects timber. In a broader sense, the Act on the Conservation of Natural Beauty of 1928 (*Natuurschoonwet 1928*; "ACNB") can also be considered part of Dutch nature legislation. The ACNB gives estate owners a tax credit for conserving the natural beauty on their estate. However, the ACNB is primarily a tax law and does not contain any nature protection system comparable to the NCA, the FFA, or the Forest Act. This is why the Government has not included the ACNB in its proposal for new nature legislation.<sup>20</sup>

## 5.3 The Nature Conservation Bill

The Government believes that the NCA, the FFA, and the Forest Act combined do not meet current standards. The Government has given four reasons (stated in summary below) to substantiate that position:<sup>21</sup>

1. Dutch nature legislation has evolved into a complex, multi-layered and inaccessible system of legislation. That process can be explained historically: the original nature laws had to be amended to comply with new European standards. But the Government now regards the resulting complexity and multi-layered character of Dutch nature legislation as a risk for a proper implementation of the Birds Directive and the Habitats Directive in the Netherlands. To eliminate that risk, European legislation is taken as a basis for the national reform of nature legislation. Where European legislation is insufficient, the Bill proposes additional national nature conservation rules.<sup>22</sup> The basic principle in the new Nature Conservation Act is that all nature de

<sup>18</sup> Parliamentary Records: TK 2013-2014, 33348, no. 5.

<sup>19</sup> Parliamentary Records: TK 2014-2015, 33348, no. 10.

<sup>20</sup> Parliamentary Records: TK 2011-2012, 33348, no. 3, p. 32.

<sup>21</sup> Parliamentary Records: TK 2011-2012, 33348, no. 3, pp. 11-13.

<sup>22</sup> Parliamentary Records: TK 2011-2012, 33348, no. 3, p. 6.

2. serves to be protected, even if the European rules do not provide protection.<sup>23</sup>
3. The Netherlands is small in geographical size and the land is used intensively, so that a proper balance is required between nature and residential, industrial, infrastructural, and recreational use. The Government considers the nature legislation currently in force to be an inhibiting factor in creating that balance. The new nature legislation is to create a better fit with practice and to facilitate development and innovation where possible.
4. According to prevailing opinion, administrative powers should be concentrated as much as possible into one governance layer that is dovetailed to the size of the problems to be managed and that is as close to the people as possible. Accordingly, in the new nature legislation, the Government intends to delegate the powers in the field of nature conservation to the Provinces.
5. The Government wishes to improve the enforcement of nature legislation. To that end, the Nature Conservation Bill introduces the instrument of an administrative fine which competent authorities may impose on violators of the law as a punitive sanction.

The Bill is intended to contribute to a restoration and preservation of the many values in the fields of nature and nature conservation that are currently under pressure in the Netherlands.<sup>24</sup>

#### **5.4 Bottlenecks**

HVNP supports the Bill's basic principle that new legislation must effectively protect nature and provide room for initiatives of interested citizens and businesses. This basic principle gives voice to HVNP's own endeavour to ensure a balance between ecology and economy.

HVNP does not, however, support the way in which the Bill proposes to work out that basic principle. In the Bill, HVNP loses ground to the government when it comes to its own responsibility. HVNP is convinced that having a responsibility of its own in nature management guarantees the preservation of high biodiversity on its land. The Bill affects the achievement of the biodiversity objectives set by the EU.

In short, what HVNP misses is a right for landowners to advise on the

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<sup>23</sup> Parliamentary Records: TK 2011-2012. 33348, no. 3, p. 13.

<sup>24</sup> Parliamentary Records: TK 2011-2012. 33348, no. 3, p. 13.

provisions of nature management plans for their own land. HVNP also disagrees with the proposal to limit the wildlife list to five animal species and to limit hunting to the extent that hunting is necessary for purposes of nature management and damage control under a fauna management plan to be approved by the government. Furthermore, HVNP opposes the proposed compulsory membership of a fauna management unit is very much against a broadening of the powers of government to impose access restrictions, or even a ban on access, or to perform concrete acts on privately owned land. HVNP will explain all this in greater detail below.

### **Nature Policy**

By expressly referring in the Bill to a number of interests to be taken into account in nature conservation policy, the Government also defines objectives for privately owned land, including the Hoge Veluwe National Park with its sizeable surface area of 5,400 hectares. The Bill does not contain any provision stating that expert landowners/managers like HVNP should be asked for advice on proposed nature management strategies. HVNP regards this lack of an advisory right for landowners/managers as a hiatus in the Bill. Giving landowners an advisory right guarantees a critical assessment of the practical feasibility of proposed policies. An advisory right also means that the views of landowners cannot simply be ignored. Deviations from advisory opinions should be allowed only on the basis of reasoned decisions. The lack of an advisory right for landowners illustrates that the Bill does not take sufficient account of the landowners'/managers' own responsibility for their land.

### **Supervisors**

The Bill confers exclusive power on civil servants to supervise compliance with nature legislation. HVNP believes that its own parks superintendents can perform that task just as well, if not better. It is HVNP's experience that supervision by civil servants is executed based on policy priorities and government resources. Practice shows that supervision in outlying areas is generally not a priority of the government. Moreover, in times of cutbacks, priorities and financial resources are under great pressure, which does not help nature conservation. That is why HVNP proposes to confer supervisory powers on parks superintendents who are in private employment. They work in the field night and day and know the ins and outs of the park, which puts them in an advantageous position compared to civil-servant supervisors. Furthermore, this measure supports the concept of landowners/managers having a responsibility of their own for their land. To date, the relevant proposal by HVNP has not been given any attention in any of the Parliamentary debates on the Bill.

## Wildlife List

Six animal species are currently included in the Dutch wildlife list, i.e. hares, pheasants, partridges, wild ducks, rabbits, and wood pigeons. These animals may be hunted, unless the relevant animal species is included in a national list of critically or especially endangered animal species (red list). The Government proclaims that this is why the hunt for partridges has never been allowed.<sup>25</sup> The Bill reduces the number of animals that may be hunted to five. Partridges are no longer considered to be a wildlife species.

HVNP wonders why the wildlife list does not conform to European legislation and why the partridge has been eliminated from the list. Other European countries use much more extensive wildlife lists. In those countries, a much larger number of animals may be hunted under the terms of the Birds Directive and the Habitats Directive. HVNP wonders if there is any objective reason for allocating such restrictive rights to landowners in the Netherlands. HVNP perceives the restrictions as an attack on its ownership rights. Indeed, the landowners/managers should be considered to be responsible for their land. The shorter wildlife list shifts that responsibility to the government, as hunting other animals will be conditional directly on the granting of an exemption or licence.

The Government recognizes that Germany, Denmark, Flanders, and the United Kingdom, among others, use a more extensive wildlife list than the Netherlands.<sup>26</sup> The Dutch Government takes the position, however, that the Dutch hunting regime is effective exclusively in respect of wild animal populations on which landowners/managers can exert a significant impact on their own hunting grounds. According to the Government, the wildlife species currently listed, i.e. ducks, pheasants, wood pigeons, hares, and rabbits, meet that criterion. The Government is of the opinion that the habitats of these species largely overlap with the hunting grounds. On the other hand, as concerns the management of roe deer, fallow deer, red deer, and wild boars, for example, the Government believes that this is best handled by fauna management units, whose domains exceed the level of hunting grounds. According to the Government, a hunting regime does not add any value in this regard.<sup>27</sup>

HVNP advocates a more extensive wildlife list in the Netherlands, a list that conforms to European legislation and that leaves room for decisions based on the landowner's own responsibility for its land. HVNP does not see any basis for the Government's assumption that licensed hunters can

<sup>25</sup> Parliamentary Records: TK 2014-2015, 33348, no. 9, p. 35.

<sup>26</sup> Parliamentary Records: TK 2014-2015, 33348, no. 9, p. 34.

<sup>27</sup> Parliamentary Records: TK 2014-2015, 33348, no. 9, p. 75.

only significantly influence populations of pheasants, wild ducks, wood pigeons, hares, and rabbits on their hunting grounds. This reasoning does not cut ice, for example, in respect of deer. The habitats of deer are smaller in size than those of ducks and pigeons. According to the Government's own reasoning, therefore, deer should be included in the wildlife list. HVNP does not understand why the Netherlands insist on deviating from the European rules and from practices in other EU Member States. This is clearly a national twist.

### **Hunting**

The Bill allows hunting exclusively for purposes of wildlife management and/or damage control. What is permitted in terms of wildlife management and damage control is to be defined in advance in a fauna management plan. The Bill provides, therefore, that hunting is permitted exclusively in conformity with a fauna management plan. The Provincial Executive evaluates the provisions and the implementation of fauna management plans in terms of their necessity and proportionality. The intention is to put a stop to sport hunting. In the Netherlands, sport hunting is the populist name for hunting for food. HVNP is of the opinion that hunting for food should not be prohibited. It does not lead to any decline in animal species. The main causes of the decline in huntable and protected animal species are predation (particularly by birds of prey, corvids, mustelidae, foxes, and feral cats), agriculture (fertilizer injections, grass mowing by machines without wildlife protection devices or not mowing from the inside out, harvesting after sunset) and increased recreation (disturbance, roaming dogs).

The national hunting rules should be in line with the European rules. European legislation offers sufficient protection and leaves much at the discretion of the landowners/managers. The national legislature should not fill in that discretionary margin for the landowners/managers. As stated earlier, the landowners/managers have the necessary expertise and experience. There is no support within HVNP for creating national powers that are supreme to European legislation. Active management maintains the ecological balance and preserves biodiversity. HVNP does not stand alone in this opinion. The agreement of 12 October 2004 between Bird-Life International and FACE (the Federation of Associations for Hunting and Conservation of the EU) provides that both organizations "*recognize the importance of effective habitat protection and active management for biodiversity conservation.*" At the bottom of the agreement, Margret Wallström, the then Commissioner for the Environment, extended warm congratulations on the signing of the agreement.<sup>28</sup> A lack of active man

<sup>28</sup> [http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/agreement\\_en.pdf](http://ec.europa.eu/environment/nature/conservation/wildbirds/hunting/docs/agreement_en.pdf).



agement shifts the ecological balance and adversely affects biodiversity. The species listed in the Habitats and Birds Directives and the various red list species living in the Oostvaardersplassen (Staatsbosbeheer) and the Deelerwoud (Natuurmonumenten) will be under a pressure if culling is prohibited. Intervening in nature is a socially responsible activity. For example, without periodically chopping wood, cutting reeds, or culling animals certain species would become dominant and suppress and push out other species. A lack of active management causes damage and affects biodiversity and the ecological balance.

Moreover the right to hunt is traditionally inherent in land ownership. HVNP believes that it is important to keep the hunt for food alive in the Netherlands. Taking away the right to hunt for food and assuming the power to make all decisions on hunting wild animals, the Government actually takes away from the landowner/manager's own responsibility.<sup>29</sup> It is the landowners and the hunters who invest in improving biotopes and supervision. If they are prohibited from harvesting what nature offers, they will lose their investments. The costs of fauna management are borne exclusively by the licensed hunters. Outsiders often are lobby groups who are motivated by ideas but who have no intention of paying for the implementation of their ideas. Moreover, HVNP considers it rather striking that the Bill does not treat hunting the same way as it treats fishing. That seems to be a rather biased approach. In essence, fishing is the same as hunting, both activities involving the tracking and catching of animals living in the wild.

According to the Government, hunting has always been subject to public restrictions in the Netherlands. The Government qualifies hunting as a socially difficult subject and takes the position that the Bill does justice to the feelings and expectations of local people based on their affiliation and a perceived responsibility for their own habitat and its management.<sup>30</sup>

HVNP advocates more room for hunting. Hunting must also be allowed outside the scope of a fauna management plan. The Government regards fauna management plans as a regulation of ownership. But the question is whether that perception is accurate, as the Government's policy rather appears to involve an elimination of ownership rights. The Government argues that hunting serves a social purpose and that hunting within the scope of a fauna management plan makes hunting a socially legitimate activity. HVNP disagrees that hunting serves a social purpose. The right to hunt is inherent in the right of ownership and needs no further justify

<sup>29</sup> The literature also observes a shift in responsibilities from hunting by licensed hunters to regulated hunting in the Netherlands. See: W.M. Lambooi, 'Jacht, beheer en schadebestrijding in de Wet natuurbescherming', in: *Tijdschrift voor Agrarisch Recht*, no. 3, March 2015, pp. 179-180, 183. Lambooi calls it a striking shift.

<sup>30</sup> Parliamentary Records: TK 2014-2015, 33348, no. 9, p. 75.

cation. Moreover, animals can be hunted to provide the hunters/owner with food. And, finally, the Government has made no case whatsoever for its contention that hunting threatens to lose its social legitimacy.

### **Fauna Management Units**

Since the Bill introduces an obligation to hunt in accordance with a fauna management unit, licensed hunters should cooperate with other local stakeholders according to the Government. The Government also wishes to regulate how that form of cooperation should be organized. One of the requirements is that licensed hunters operating in the domain of a fauna management unit must become a member of that unit. Under the Bill, membership of a fauna management unit is a condition for obtaining a hunting licence.

HVNP has informed the Government that the proposed obligation for licensed hunters to join a fauna management unit infringes on the fundamental freedom of association as laid down, *inter alia*, in Article 11 of the ECHR.<sup>31</sup> HVNP referred to the judgment rendered by the ECtHR<sup>32</sup> on 29 April 1999 in *Chassagnou and others versus France* (application nos. 25088/94, 28331/95 and 29443/95). The ECtHR held that compulsory membership by a landowner/licensed hunter of a hunters' association was "not necessary in a democratic society". HVNP is also concerned about the fact that the Bill intends to make an exception for site managing organizations (*terreinbeherende organisaties* or TBOs). According to the Government, an obligation for TBOs to join a fauna management unit would add little value, as the size of their sites and the nature of their organization already ensured a cohesive and responsible management. That is why the Bill offers the Provinces an opportunity to exempt TBOs from the obligation to join a fauna management unit.<sup>33</sup> HVNP considers this to be an arbitrary approach which is in breach of the principle of equality of arms.

### **Access Restrictions and Ban on Access**

Another example of how the landowners'/managers' own responsibility is constrained under the new Nature Conservation Bill is the provision stating that access to privately owned estates may be restricted or banned if nature conservation objects for the estate so require. Such access restrictions or access bans do not apply to landowners if the restrictions or ban form a serious obstacle to the property's access.

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<sup>31</sup> European Convention on Human Rights.

<sup>32</sup> European Court of Human Rights.

<sup>33</sup> Parliamentary Records: TK 2011-2012, 33348, no. 3, p. 166.

Although there may be good reasons to close off an area with a view to protecting the area against human influence, the Government allows it only where the area is the home to rare animal or plant species that are vulnerable to human activity such as hiking, cycling, horse riding, mountain biking or walking dogs. The closing period should be as brief as possible, only during breeding seasons, for example, and should be confined to the smallest possible area.<sup>34</sup> All this leaves little room for a zoning policy based on insights of the private landowners themselves. Access restrictions and access bans infringe on property rights and thus constitute invasive measures. HVNP does not believe that such an infringement is in any way justifiable.

The same applies to the obligation imposed on landowners under the new Bill to allow public authorities to perform concrete acts on their land if the nature conservation objectives applicable to Natura 2000 areas so require. HVNP takes the position that public authorities may only so intervene if the owner or user of a Natura 2000 area wrongly omits to take action. The Government is not a nature manager and should leave activities of that kind to the landowners/managers.

Natura 2000 areas obviously deserve to be protected, but the Government uses the argument of protection as a licence to make far-reaching decisions on issues of nature management. EU legislation is used as an excuse for government intervention, whether justified or not. HVNP believes that the introduction of a qualified regime may provide a buffer against such interventions (see paragraph 4.3.4 of this memorandum).

## **5.5 Conclusion**

The Government acknowledges that many values in the field of nature and nature conservation are under pressure in the Netherlands and is of the opinion that Dutch nature legislation does not conform to current standards. The Government intends to resolve the problems with the introduction of a new Nature Conservation Act.

HVNP takes the position that the new Nature Conservation Bill fails to provide a solution to existing bottlenecks and even creates new bottlenecks. One of the existing bottlenecks that is not resolved is the fact that private landowners are not given any statutory power to advise on measures proposed to be taken on their land. Another bottleneck that remains is the adherence to a shortened wildlife list of animals that may be hunted. The Netherlands does not follow EU legislation in this regard. Furthermore, the new Nature Conservation Bill does not provide a solu

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<sup>34</sup> Parliamentary Records: TK 2014-2015, 33348, no. 9, p. 39.

tion to the lack of supervision in nature reserves and a new bottleneck that is created is the prohibition on hunting for food. Again, the Netherlands does not follow EU legislation in this regard. Another new feature is the obligation for licensed hunters to join a fauna management units. Such compulsory membership is in breach of the case law of the ECtHR. Yet another bottleneck is the proposal to impose access restrictions or access bans, as well as an obligation for landowners to allow public authorities to perform concrete acts on their land if intervention is required within a Natura 2000 context. HVNP considers measures of that kind to be excessive and disproportionate as they do harm to the Natura 2000 areas under its management.

HVNP believes that the landowners/managers should be the parties responsible for their land. Carrying responsibility is a condition for active nature management, and active management safeguards biodiversity. The new Nature Conservation Bill does not sufficiently take these aspects into account and thereby jeopardizes the capability of meeting the biodiversity targets in the Netherlands.

## **CONCLUSION**

It is evident that professional expertise is required to manage a Natura 2000 area and maintain biodiversity. HVNP preserves protected habitats and species by engaging in active nature management based on knowledge, skills and years of experience. Active management requires constant interventions in nature.

Natura 2000 is the centrepiece of EU nature and biodiversity policy. According to the EU, Natura 2000 areas must be managed in a sustainable manner. This view strengthens HVNP in its intention to continue to actively manage the park.

HVNP observes that current nature legislation in the Netherlands and the proposed reform deviate on important points from European views on nature policy. In the Netherlands, preserving biodiversity strongly depends on government regulation. However, the government is not a nature manager and, as HVNP sees it, European legislation provides more room for owners and managers of Natura 2000 areas to take responsibility than the Dutch Government allows. According to HVNP, professional expertise and experience should take first place in nature management decisions. The politicization, juridification, and theoretization of nature management in the Netherlands do harm to that principle.

HVNP proposes to introduce a qualified regime in which skilled nature

managers are certified based on the nature management plans they present. The land owners/managers can then proceed to manage their land based on the nature management plan adopted. This will ensure an integrated and active management of Natura 2000 areas and a preservation of biodiversity.

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