

Question for written answer E-006466/2011
to the Commission
Rule 117
Anja Weisgerber (PPE)

Subject: What constitutes killing under Directive 92/43/EEC

Article 12(1) of Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora (the Habitats Directive) requires the Member States, in the interests of conservation, to take measures to prohibit the killing of specific animal species in the wild that are listed in Annex IV of the Directive.

The authorities and to some extent the courts in Germany take the approach that collisions between animals and vehicles on the roads constitute killing within the meaning of this prohibition for the purposes of conservation under the Habitats Directive. They maintain this to be the case at least when a public authority is planning a road, since in the case of public authorities there can be no subjective definition of the facts. Thus under the Habitats Directive the planning decision to build a road may be said to already involve a deliberate intent to kill a protected species if the risk of its being killed is thereby significantly increased.

The Court of Justice of the European Union has also now expressed a view on this issue in its ruling on the Iberian lynx case (Case C-308/08). This decision can be interpreted as meaning that in the Court's view the road upgrading in the Doñana natural park in Spain does not place the Iberian lynx in danger of extinction on the site and in this case does not therefore constitute a killing within the meaning of the Habitats Directive.

1. Does the Commission take the view that so-called road kills do not constitute acts of killing prohibited by the Habitats Directive for the purpose of conservation – either with regard to the planning authority's decision approving the construction of the road or with regard to the use of the road by motor vehicles?
2. Does the Commission share the view of the Court of Justice which in its ruling on the Iberian lynx maintains that road kills do not constitute a deliberate killing?