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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

40th meeting
Strasbourg, 1-4 December 2020

Other complaints

**Border fence construction between Denmark
and Germany**

- COMPLAINT FORM -

*Document prepared by
WWF Denmark & WWF Germany*

**Convention on the Conservation of
European Wildlife
and Natural Habitats**



COMPLAINT FORM

NB: Complaint forms must be submitted in electronic word format, and not exceed 3 pages, including the first administrative page. A maximum 5-page report can be attached. The Secretariat will request additional information on a case-by-case basis.

Please, fill in this form and send it to the attention of:

Iva OBRETENOVA

Directorate of Democratic Governance, Culture and Diversity

Council of Europe

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First name: THOR

Surname(s): HJARSEN

On behalf of (if applicable): WWF DENMARK – co-signed by WWF GERMANY

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Date :

Electronic Signature

23. September 2019

Thor Hjarsen

1. Please state the reason of your complaint (refer also the Contracting Party/es involved and the Articles of the Convention which might be violated).

Case: 70 km long and 1.5 m high coast-to-coast border fence between Denmark and Germany

Contracting Party: Denmark

Articles violated: Articles 4 and 6 of the Convention on the Conservation of European Wildlife and Natural Habitats (the Bern Convention).

Complaint:

In 2018 the Danish government decided to erect a coast-to-coast 1,5 m high fence along the 70 km long shared

Danish-German border. The motivation for the decision is to lower the risk of outbreaks of African swine plague (ASF) in Danish pig farming by stopping natural and northbound migration of wild boar *Sus scrofa*.

WWF Denmark and WWF Germany will by this complaint express our grave concern for the conservation of

wild populations of 13 wildlife species covered by the appendices of the Bern Convention. We have good reasons to believe that the migration and conservation of these species will be negatively affected by the border fence. The fence will according to our biological assessment hinder cross border migration and movement, and thereby cause fragmentation of populations and habitats, in addition to increased disturbance and risk of mortality by road kills of the concerned species. In addition we find that the ecological function of protected habitats will be at risk.

We are concerned about the construction of the fence inside already protected natural areas. The fence will affect areas protected both by national legislation and part of the Natura 2000 network and a UNESCO World Heritage Site (the Wadden Sea).

To sustain and improve sound ecological functions of habitats and connectivity is even more important due to the current and coming stress on species and ecosystems caused by global warming. Without a scientifically based Appropriate assessment as required by EU's Habitats Directive, this aspect can not be ruled out.

The fence is currently being constructed and the design is 2 m high with 0.5 m below ground. The fence is a solid construction with a 5x5 cm metal mesh on metal poles.

According to our information (mid-July 2019), the construction this "wild boar fence" is finalized on 2/3 of the planned 70 km stretch.

The construction of the fence was initiated in the Wadden Sea at the West coast of Jutland in the Natura 2000 area and UNESCO World Heritage Site. The fence is planned to be finalized by November 2019.

With the decision of the fence, the Danish government also implemented a law for the construction of the fence (<https://www.retsinformation.dk/Forms/R0710.aspx?id=201903>). Very unusual, this law has removed all possibilities for making legal complaints about the fence, the procedures and protection of species and habitats. This also includes complaints to national authorities covering species and habitats already protected by the Natura 2000 directives. Thus, we see no other solution than to submit this complaint to the Bern Convention.

During the initial hearing process WWF Denmark has made complaints based on biological assessment to the Danish authorities. And ahead of the adoption of the law together with WWF Germany, we submitted a written complaint expressing our concern to EU Commission, German government and UNESCO (letter enclosed).

WWF Denmark and WWF Germany hereby urge the Standing Committee of the Bern Convention to act and require the Danish government to elaborate scientific and independent adequate assessment of the effect of this fence on habitats and species covered by the Bern Convention.

There is a clear lack for this in the current and insufficient Natura 2000 screening made by the Danish Nature Agency within the Ministry of Environment.

We also urge the Bern Convention to lay upon the Danish authorities to develop a clear plan for ongoing evaluation and ask for annual reporting to the convention on the effects of this Danish border fence on species in concern, populations and protected habitats.

WWF Denmark and WWF Germany hereby refer to the following parts of the Bern Convention:

The conservation of the habitats of wild flora and fauna species, especially this in appendices I and II, and the conservation of endangered natural habitats (article 4, 1), that areas important for wintering, staging, feeding breeding and moulting of the concerned species are sufficiently protected (article 4, 3), prove sufficient coordination for the protection of the natural habitats when these are situated in the frontier areas (article 4, 4), have taken appropriate and necessary legislative and administrative measures in the planning of the fence and after the construction to ensure special protection of the wild fauna species specified in appendix II – in particular (b) the deliberate damage to or destruction of breeding or resting sites and (c) the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation, insofar as disturbance would be significant in relation to the objectives of the Bern Convention (article 6).

To the best of our knowledge the Natura 2000 screening does not assess these conditions of the Bern Convention to a fulfilling and scientifically based level, no matter that this is required by the relevant EU Guidelines.

We have found no scientifically based answers in the Natura 2000 screening for these questions:

How will the fence affect habitats and species in the globally important Wadden Sea (UNESCO World Heritage Site, N2000), and the EU-protected areas Tøndermarsken (N2000) and Frøslev Mose/Jaardelunder Moor (N2000)?

How will the construction of the fence disturb resting and breeding sites of species on the appendices of the Bern Convention?

How will various species in concern react to the physical barrier of the fence and what are the scientifically based conclusions?

Why has relevant and available information from the Danish road authority on barrier effects from fences on wildlife not been included in the Natura 2000 screening?

How will such coast-to-coast 70 km long fence affect gene pools on the long term of relevant mammals?

What is the scientific evidence for free passage of e.g. wolf *Canis lupus* og deer Cervidae?

To what extend will a wolf jump over a very visible fence of this type? Conclusions must be based on scientific evidence and not the anecdotal assumptions as they are made in current Natura 2000 screening.

What is the scientifically based assessment on risks for traffic mortality if species (e.g., European badger *Meles meles*) does not jump over the fence but follow it to the openings planned in connection with roads and highways?

How will the planned small “fauna passages” (20x20 cm holes at ground level at every 100 meters) be maintained free of vegetation and how will this ongoing maintenance disturb e.g. sensitive breeding species such as Eurasian bittern and Common crane – especially inside or in nearby protected areas?

Which mammal species are documented to pass through such 20x20 cm fauna passages?

What is the evidence for young chicks of breeding birds – especially cranes – will pass through such 20x20 cm openings, and at what age can they not pass anymore. What will be the compensating measures after such age?

To what extend will the fence contribute to the current and coming climate change induced stressors on species, populations and habitats?

What are the cumulative effects of the fence of each concerned species and in total for the integrity of concerned ecosystem and habitats also taking effects of climate change in to account?

2. Which are the specific specie/s or habitat/s included in one of the Appendices of the Bern Convention potentially affected? (Please include here information about the geographical area and the population of the species concerned, if applicable)

Species affected:

The following appendix II species:

Gray wolf *Canis lupus*, Eurasian otter *Lutra lutra*, The Eurasian bittern *Botaurus stellaris* and Common crane

Grus grus

The following appendix III species:

Beech marten *Martes foina*, Pine marten *Martes martes*, Eurasian badger *Meles meles*, Stoat *Mustela erminea*,

Western polecat *Mustela putorius*, all species of deer Cervidae (European roe deer *Capreolus capreolus*, Fallow deer *Dama dama*, Red deer *Cervus elaphus*) and potentially Eurasian lynx *Lynx Lynx* (increasing German population, observed just 300 km S of Danish border in 2018)

3. What might be the negative effects for the specie/s or habitat/s involved?

Human disturbance of sensitive habitats important for wintering, staging, feeding breeding and moulting when construction and maintaining the fence and its functions.

Inspection and maintenance will increase human traffic and use of machinery at e.g. breeding sites of water birds and cranes.

Separation of populations of larger mammals caused by the physical barrier of the fence. Badger, otter, wolf will most likely not jump over a fence due to its solid visual impression.

Climate change induced stressors on species, populations and habitats have not been assessed and whether this adds to the cumulative effects of the fence.

Increased traffic mortality of mammals – also other species on the Habitats Directive – if as expected by WWF Denmark, the fence lead animals towards openings at roads and high ways. As an example, of four Danish wolf cubs from the 2018 litter two have already been documented killed in traffic, in Germany. Traffic mortality is therefore a potential risk for the still very small Danish wolf population (6-8 animals and presumed new cubs in 2019). It is well documented that there is an ongoing migration of wolves from Germany to Denmark and vice versa.

In addition, the mortality of the Danish wolf population is already unnatural high, probably due to poaching, so any increase of mortality risk will be unfavorable to the species conservation in Denmark.

According to our information the Danish Road Directorate (<https://www.vejdirektoratet.dk/>) have relevant information from Denmark on barrier effects on native wildlife of road fences and similar constructions. This information has not been used in the Natura 2000 screening.

Based on our biological evaluation we conclude that the assessment of the effects of the fence is insufficient and does not meet the requirements of the guidelines of the EU Commission.

Therefor a complete overview of the negative effects of the fence has not yet been made.

4. Do you know if potentially affected species or habitats also fall under the scope of other international Conventions, (for instance: RAMSAR, CMS, ACCOBAMS, Barcelona Convention, etc) or if the area has been identified as a NATURA 2000/Emerald network site?

The fence will affect habitats and species in the globally important Wadden Sea (UNESCO World Heritage Site, N2000), and the EU-protected areas Tøndermarsken (N2000) and Frøslev Mose/Jaardelunder Moor (N2000).

We find that the Danish authorities have not fulfilled the requirements of the Habitats directive by ensuring a valid and scientifically based non-detrimental screening (Natura 2000 screening) before initiating the construction of the fence. The screening made does not meet the requirements of EU's guidelines and does not make scientific reference as required.

5. Do you know if there are any pending procedures at the national or international level regarding the object of your complaint?

The Danish Environmental Protection Agency has dismissed all complaints made by WWF Denmark during the public hearing.

The national law for the construction of the fence removed all normal procedures for making national complaints even in relation to international protection measures such as the Habitats Directive.

WWF Danmark has during the public hearing complained to the Danish authorities that they have not fulfilled the requirements of the Habitats directive by ensuring a valid and scientifically based non-detrimental screening (Natura 2000 screening) before initiating the construction of the fence. The screening made does not meet the requirements of EU's guidelines and does not make scientific reference as required.

Although this Natura 2000 screening was incomplete and did not use available scientific information, it concluded in all circumstances that the fence will have no effects on wildlife or habitats. Thus, an Appropriate assessment has not been made. WWF Denmark and WWF Germany disagree with the conclusions of the Natura 2000 screening and still call for an Appropriate assessment.

The EU Commission has earlier asked Danish government for status of an Appropriate assessment in accordance with the Habitats Directive, but no direct answer has been made to the Commission.

6. Any other information (existence of an Environmental Impact Assessment (EIA), size of projects, maps of the area, etc)

Enclosed:

WWF Denmark and WWF Germanys letter of concern to EU Commission, Danish and German governments and UNESCO (May 7th, 2018).

Official map of project with N2000 sites (see also: <https://naturstyrelsen.dk/media/234423/20180315-oversigtskort-over-de-vaesentligste-naturlokaliteter.pdf>).

Web pages (in Danish):

Project page of the fence: <https://naturstyrelsen.dk/naturbeskyttelse/naturprojekter/vildsvinehegn/>

WWF Denmark on the fence: <https://www.wwf.dk/rss.cfm?uNewsID=21940>

ANNEX I – Cover letter

**WWF** *for a living planet*[®]

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September 11th, 2019

In 2018 the Danish government decided to erect a coast-to-coast 1,5 m high fence along the 70 km long shared Danish-German border. The motivation for the decision is to lower the risk of outbreaks of African swine plague (ASF) in Danish pig farming by stopping natural and northbound migration of wild boar *Sus scrofa*.

WWF Denmark and WWF Germany will by the enclosed complaint ask the Bern Convention to open a case file on this to ensure that the "wild boar fence" is in line with the requirements of the Convention.

We are concerned for the conservation of wild populations of 13 wildlife species covered by the appendices of the Bern Convention. And we have good reasons to believe that the migration and conservation of these species will be negatively affected by the border fence. We are also concerned about the construction of the fence inside already protected natural areas. The fence will affect areas protected both by national legislation and part of the Natura 2000 network and a UNESCO World Heritage Site (the Wadden Sea).

To sustain and improve sound ecological functions of habitats and connectivity is increasingly important due to the current and coming stress on species and ecosystems caused by global warming. Without a scientifically based Appropriate assessment as required by EU's Habitats Directive, neither this aspect can be ruled out.

WWF Denmark and WWF Germany requests the Standing Committee of the Bern Convention to put upon the Danish government to:

- elaborate a scientifically based and adequate assessment of the effect of this fence on habitats and species covered by the Bern Convention, and to introduce compensating measures, if needs identified,
- develop a clear plan for ongoing evaluation and ask for annual reporting to the convention on the effects of this Danish border fence on species in concern, populations and protected habitats.

Please refer to further details in the enclosed complaint.

Yours sincerely,

Bo Øksnebjerg
CEO WWF Denmark

Christoph Heinrich
CCO WWF Germany

ANNEX II – Open letter from WWF Denmark & WWF Germany



for a living planet[®]

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Prime Minister of Denmark, Mr. Lars Løkke Rasmussen
Minister of Environment and Agriculture, Mr. Jakob Ellemann-Jensen
Speakers of the environment and members of the Danish parliament
EU Commissioner for the Environment Karmenu Vella
Federal Minister of the Environment Germany, Svenja Schulze
Minister of the Environment Schleswig-Holstein, Dr. Robert Habeck
EU Commissioner for the Environment, Mr. Karmenu Vella
UNESCO Director-General, Mrs. Audrey Azoulay

May 7th, 2018

Open letter from WWF Denmark and WWF Germany

WWF Denmark and WWF Germany: The Danish 'wild boar fence' along the Danish-German border is bad news for our shared wildlife and nature

It is with great concern that the national WWF offices in Denmark and Germany have learned about the Danish Government's plans to build a fence along the common Danish-German border between Jutland and Schleswig-Holstein.

Allegedly, the fence is aimed to prevent natural migration of wild boar (*Sus scrofa*) between Denmark and Germany. However, the fence will also have detrimental effects on other species of shared populations of larger mammals in addition to cross-border natural areas and habitats. Many of which are designated N2000-areas and therefore protected by the Habitats Directive.

WWF Denmark and WWF Germany recognise the potential danger of African swine fever (ASF) to Danish pork meat production, however we have seen no documentation yet of the effectiveness of the planned Danish border fence. The spreading of ASF to pig farms is linked to human activities and not to wild boars.

With a fence planned to be 150 cm above ground and 50 cm below, the design and construction will be a physical coast-to-coast barrier to wildlife between our countries.

We are therefore greatly concerned about the impact of this fence and how it will affect the natural cross-border migration of shared populations of mammal species like European otter (*Lutra lutra*), the gray wolf (*Canis lupus*), golden jackal (*Canis aureus*), red fox (*Vulpes vulpes*), European



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hare (*Lepus europeus*), Eurasian badger (*Meles meles*), roe deer (*Capreolus capreolus*) and red deer (*Cervus elaphus*).

In addition, we are also gravely concerned about the impacts of the construction of the planned fence in nature conservation areas of which several are shared between our nations. Examples are the Wadden Sea, the Tøndermarsk, and e.g., Jaardelunder Moor/Frøslev Mose. All of them are Natura 2000 areas protected by the Habitats Directive. The Wadden Sea is in addition also designated UNESCO World Heritage Site and of international importance.

The planned border fence will cut through these important nature conservation areas and we fear it will impair the ecological functions of the areas and divide populations of wild mammals.

Fences are an increasing problem in nature and to wildlife, and Denmark should not add to this problem.

WWF Denmark and WWF Germany urge the Danish government to reconsider the construction of the border fence and instead focus on the 'human factor' already identified by experts. E.g.: desinfection of vehicles, avoidance of food waste in nature, and awareness rising among drivers and hunters.

Bo Øksnebjerg
CEO WWF Denmark

Christoph Heinrich
CCO WWF Germany

NOTE:

WWF Denmark's response to the legislative proposal of the border fence (in Danish):

https://www.wwf.dk/nyheder_og_publicationer/?21681/WWF-vildsvineheqnet-er-helt-i-heqnet