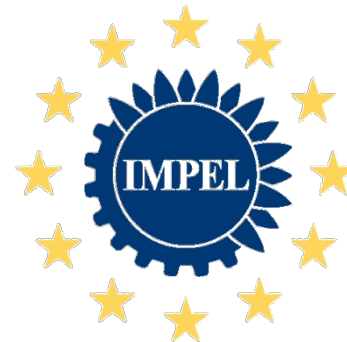


Nature Protection in Permitting and Inspection of Industrial Installations

Gisela Holzgraefe

ECRAN Workshop on
Nature Inspection

22 October 2014



European Union Network for
the Implementation and Enforcement
of Environmental Law

Content of this presentation

- **Background**
- Link between Habitats Directive and IED
- Art. 6(3) and (4) procedure - stage-by-stage approach
- **Results of IMPEL project 2013**
- **IMPEL project 2014**
- Results of COM "Study on Evaluating Art. 6 (3) Permit Procedure"
- EU-Guidance and court decisions
- Relationship between EIA, SEA and AA
- Results from discussion of examples
- Results and recommendations



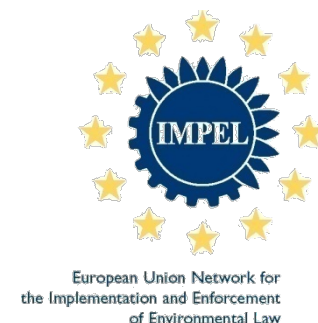
Background - European legislation rules on industrial activities

- Directive on Industrial Emissions (**IED**):
 - rules on integrated prevention and control of pollution arising from industrial activities
 - rules for achieving a high level of protection of the environment as a whole
- Article 6 par. 3 **Habitats Directive** defines further rules concerning industrial activities: a project likely to have a significant effect on a Natura 2000 site – either individually or in combination with other projects – shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.



Background - European legislation

- The national authorities shall agree to the project only after having ascertained that it will not affect adversely the integrity of the site concerned
- The requirements refer to IED-projects as well as to smaller projects
- Examples:
 - project for a new road → noise, loss of habitat, NO₂-immissions etc. may have effect on a Natura 2000 site
 - project for a new LCP → dito plus effects of other pollutants like mercury etc.
 - extraction of cooling water from a protected estuary



Background - national legislation

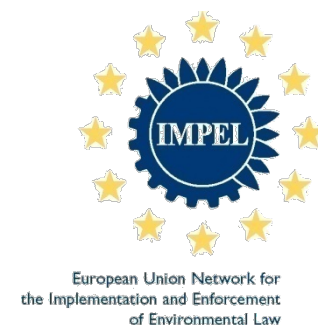
Apart from Natura 2000 sites:

- Permit writers have to take into consideration protected areas under national law and sites of unique value in nature (e.g. bogs and peat fields that are not necessarily declared as protected objects).
- national requirements,
- possibility of compensation (development of new protected area or compensatory payment into a local ecological fund),
- here: concentration on Natura 2000 sites

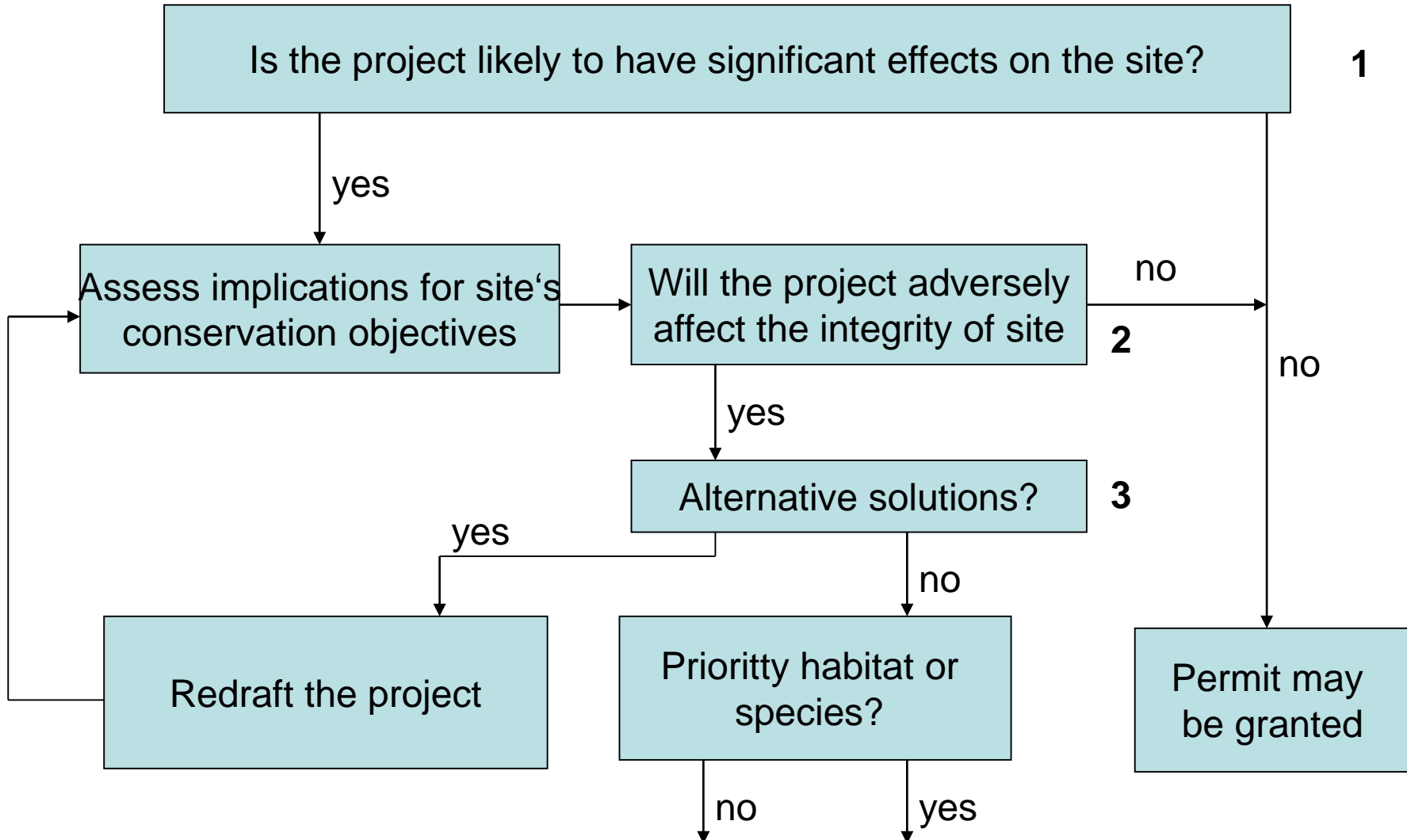


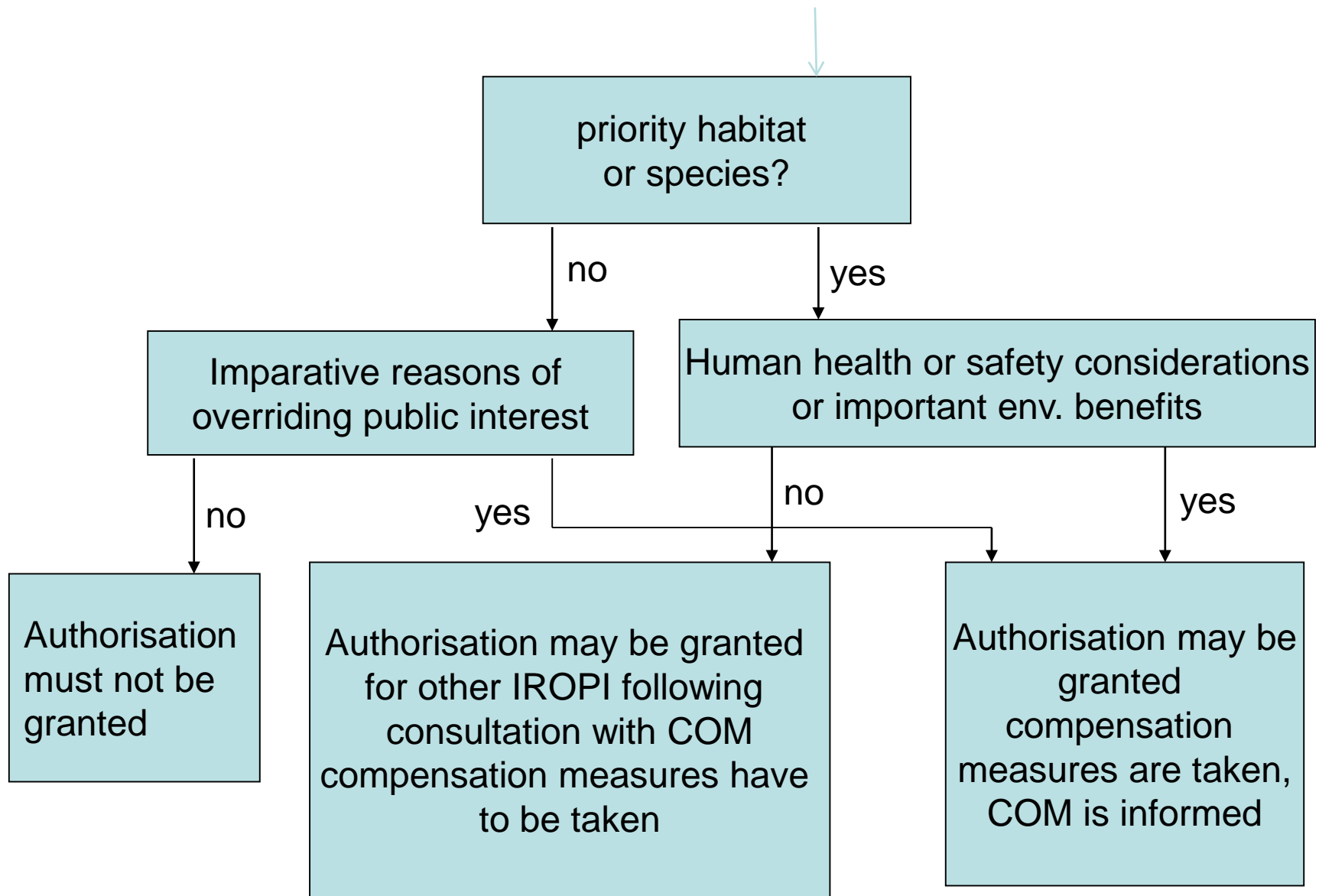
Link between Habitats Directive and IED

- Directive on Industrial Emissions (**IED**):
 - dealing with permitting and inspection of industrial installations (projects)
- Article 6 par. 3 **Habitats Directive** defines rules concerning industrial projects:
a project likely to have a significant effect on a Natura 2000 site – either individually or in combination with other projects – shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.



Flow chart of the Article 6 (3) and (4) procedure





The four stages of the procedure

1. **Screening:** Identification of likely impacts upon Natura 2000 site of a project (alone or in combination with other projects or plans). Are the impacts likely to be significant?

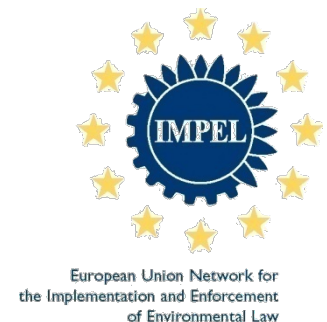
2. **Appropriate Assessment (AA):** Impact of the project on the integrity of the Natura 2000 site (alone or in combination with other pp) with respect to the site's structure and conservation objectives. Adverse impacts: → assessment of mitigation measures

3. Assessment of **alternative solutions:** Examination of alternative ways that avoid adverse impacts on the integrity of the Natura 2000 site

4. Assessment where **no alternative solutions** exist and where adverse impacts remain – assessment of compensatory measures where, in the light of an **assessment of IROPI** the project should proceed

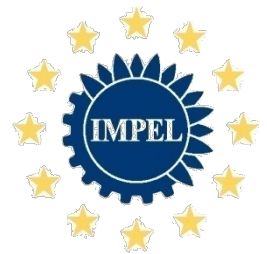
Art. 6 (3) permit procedure in practice

- Focus on permit procedures for industrial installations and on stages 1 and 2
- Art. 6 (3) Habitats Directive (HD) very general
- Competent permit authorities are used to have clear procedures and limit values for industrial installations
- Competent nature conservation authorities are not used to limit values for assessment of „significant effects“, e.g. for loss of site area or of population, effect of certain amounts of NH_3 or NO_x
- → culture clash



Art. 6 (3) permit procedure in practice

- How do permit and inspection authorities handle it?
- How is the situation of permit writers and inspectors?
- Which kind of support is needed?
- IMPEL network carried out two projects on the item in 2013 and 2014
- In 2012 / 2014 the “Study on Evaluating and Improving the Article 6.3 Permit Procedure for Natura 2000 Sites” was carried out for the Commission.



European Union Network for
the Implementation and Enforcement
of Environmental Law

Results of IMPEL project 2013

Situation of permit writers

- COM has provided guidance material that is appreciated by permit writers but there are
- The group identified some challenges. They said that:
 - a set of screening criteria for industrial installations would be helpful
 - lack of scientific studies and concrete criteria for the assessment of “significant” effects
 - supporting advice for setting assessment boundaries would help
 - difficulties in the identification of contributors for the cumulative impact assessment, data on small installations not available or difficult to obtain
 - for assessment of the proposed measures for mitigation a set of acceptable measures for different installations would be appreciated



Results of IMPEL project 2013

Situation of inspectors

- permit conditions and obligations are part of the permit including those deriving from the vicinity to Natura 2000 sites
- technical measures as consequence: IED inspectors will check them
- measures concerning protected sites: joint inspections or inspection carried out by colleague(s) from nature protection authority
- inspectors depend on the correct work of the permit writers → focus on permitting in 2014



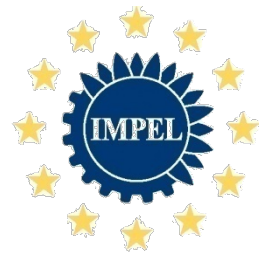
IMPEL project 2014 - methodology

- development of a questionnaire for producing a better overview on the identified problems
- workshop in Berlin 2 – 4 July with:
 1. Discussion of results of Commission „Study on Evaluating and Improving the Article 6 (3) Permit Procedure for Natura 2000 sites“
 2. Overview on EU guidance documents and court decisions regarding Art. 6 (3) HD
 3. Discussion of the interlink between Art. 6 (3) HD, EIA Directive and SEA Directive



IMPEL project 2014 - methodology

4. Presentation of the Czech database of Natura 2000 sites and EIA
5. Evaluation of the answers to the questionnaire
6. Presentation and discussion of examples:
 - farms (pigs and poultry),
 - environmental monitoring of air scrubbers on farms,
 - court decision concerning combustion plant project,
 - windfarm project.
7. Discussion of dealing with cumulative effects



European Union Network for
the Implementation and Enforcement
of Environmental Law

1. results of COM „Study on Evaluating and Improving the Article 6 (3) Permit Procedure for Natura 2000 Sites“

- Only nature authorities were involved in the study
- Answers came from authorities of different levels (national, regional, local)
- The system of competent authorities involved in the Art. 6.3 procedure is very complex
- A big variety of different approaches have been applied in practice
- In total it was found that the Article 6.3 permit procedure is functioning well, but
- MS do not have databases on all screenings or AAs → a full picture does not exist
- There is no information about the percentage of pp that is ruled out before going into the screening or AA procedure

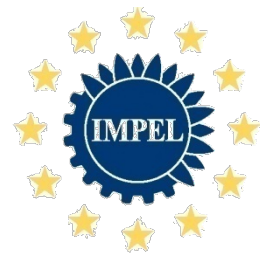


Key recommendations of study (1)

Still room for improvement in Art 6.3 permit procedure, especially in countries where it is not working as well as it should.

It is recommended to give special attention to:

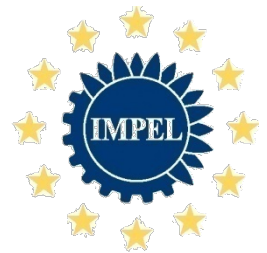
- more **training** on the AA procedure for competent authorities/developers (especially at regional/local levels) to improve the understanding of the AA procedure;
- Provide more targeted, user-friendly **guidance**, forms and checklists for the various stages of the AA; Improving access to data
- Sharing baseline data and improving **access to data** on Natura 2000



European Union Network for
the Implementation and Enforcement
of Environmental Law

Key recommendations of study (2)

- Ensure a more robust and consistent framework for screening plans and projects;
- Encourage early dialogue, planning and working in partnership – eg at pre-application stage - and between authorities



European Union Network for
the Implementation and Enforcement
of Environmental Law

IMPEL project 2014:

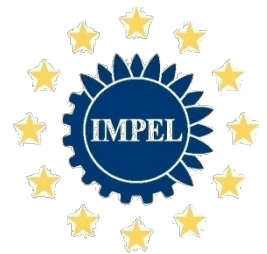
2. EU Guidance - overview

- Managing and protecting Natura 2000 sites - The provisions of Article 6 of the 'Habitats Directive 92/43/EEC (2000)
- Assessment of Plans and Projects significantly affecting Natura 2000 sites (November 2001)
- Guidance document on Article 6(4) of the 'Habitats Directive 92/43/EEC
- European Commission Opinions issued according to Article 6 (4) of the Habitats Directive 92/43/EEC



Sector specific EU guidance - overview

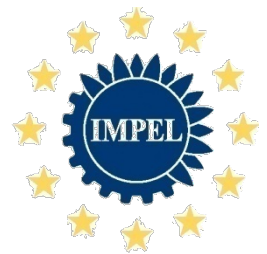
- Guidance on Aquaculture and Natura 2000
- Inland waterway transport and Natura 2000
- The implementation of the Birds and Habitats Directives in estuaries and coastal zones
- Integrating biodiversity and nature into port development
- Wind energy developments and Natura 2000
- Non-energy mineral extraction and Natura 2000



European Union Network for
the Implementation and Enforcement
of Environmental Law

EU guidance – wind energy developments and Natura 2000

- Background
 - Relationship between SEA, EIA and appropriate assessment
 - Potential impacts on nature and wildlife, significant and insignificant effects, cumulative effects
 - Step-by-step procedure for developments affecting Natura 2000 sites
- Main points close to industrial installations (but emissions of chemical substances are not in it).



European Union Network for
the Implementation and Enforcement
of Environmental Law

Relevant decisions of the European Court of Justice (ECJ)

- Decisions of the ECJ may provide important information about dealing with Natura 2000 sites in permit procedures
- Decisions available on the internet, link: http://curia.europa.eu/jcms/jcms/j_6/
- ❖ Relevant: decisions on Art. 6, e.g.
- **Case C-127/02:** Waddenzone NL, Conservation of natural habitats and of wild flora and fauna - Concept of 'plan' or 'project' - Assessment of the implications of certain plans or projects for the protected site.



Decision of ECJ: C 127-02

- assessment implies that all aspects of the project which can, either individually or in combination with other plans or projects, affect the conservation objectives of the site must be identified in the **light of the best scientific knowledge** in the field.
- It is apparent that the plan or project in question may be granted authorisation only on the **condition that the competent national authorities are convinced** that it will **not adversely** affect the integrity of the site concerned.
- where **doubt remains**, the competent authority **will have to refuse authorisation**.



Relevant decisions of the European Court of Justice (ECJ)

- **Case C-98/03**, Transposition of European Directives into German Law - failure of MS to fulfil obligations - Assessment of the implications of certain projects on a protected site - Protection of species.
→ definition of “project” in federal law on nature protection had to be changed
- **Case C-304/05**, Parco Nazionale dello Stelvio (IT) failure of MS to fulfil obligations - Assessment of the environmental impact of works to modify ski runs.



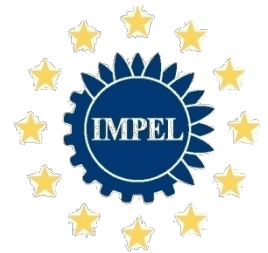
Relevant decisions of national courts

- Federal Administrative Court (BVerwG), Westumfahrung Halle: A simple rough estimation of N-deposition is not sufficient for the assessment, reference to CL made.
- Critical loads (international definition): CL is "a quantitative estimate of exposure to one or more pollutants below which significant harmful effects on specified sensitive elements of the environment do not occur according to present knowledge" (Nilsson & Grennfelt 1988),
- use of CL concept acknowledged by BVerwG



Reaction on Court decisions: e.g. CL for N-deposition

- lists with empirical CL and simulated values have been developed for the Natura 2000 sites (NL, DE,)
- MS have further guidance on dealing with N-deposition in place or work on it.



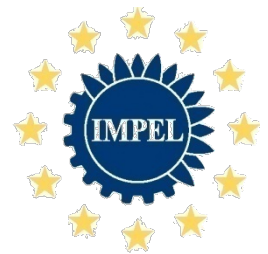
European Union Network for
the Implementation and Enforcement
of Environmental Law

3. Relationship between EIA, SEA and AA

- Many similarities but also important differences (scope, content, implications - see Table)
- Streamlining: Procedures where appropriate can be coordinated and/or jointly run (Art. 2(3), Amended EIA Directive)
- SEA and EIA cannot substitute for the AA
- In all cases the AA must be clearly identifiable, either within the EIA/SEA report or in a separate report, so that its conclusions can be distinguished from those of the overall impact assessment

EIA: Environmental Impact Assessment

SEA: Strategic Environmental Assessment



European Union Network for
the Implementation and Enforcement
of Environmental Law

Comparison of appropriate assessment, EIA and SEA (1)

	AA	EIA	SEA
Which type of development?	Any plan or project likely to have an adverse effect on a Natura 2000 site	Projects listed in Annex I. Annex II projects determined on a case by case	Any Plan or Programme (a) for certain sectors which set the framework for future development consent, or (b) require Art. 6 HD assessment
What impacts need to be assessed relevant to nature?	Assessment in view of the site's conservation objectives (for species/habitats for which site designated)	significant effects on biodiversity , with particular attention to species and habitats protected under the Habitats and Birds Directives.	Likely significant effects on the environment , including on issues such as biodiversity, fauna, flora & interrelationship

Comparison of appropriate assessment, EIA and SEA (2)

	Appropriate assessment	EIA	SEA
Who carries out the Assessment?	Responsibility of the competent authority but developer may need to provide necessary studies & information	The developer provides necessary information to be taken into account by the competent authority * Biodiversity should be taken into account in the screening process (Annex II.a, EIA amendment Directive)	Competent authority for planning
How binding are the outcomes?	Binding . Agreement to the plan/project only if it will not affect the integrity of the site	The result of consultations and information must be taken into consideration in the development consent procedure	The environmental report & opinions expressed shall be taken into account during the preparation of the plan/program

- EIA and SEA: broader scope and application than Natura 2000;
- Extended assessment obligations
- Other consequences

6. Results from discussion of examples

Example pig farms:

- Application documents:

- basic data the same (description of the project / capacity in places, manure storage infrastructure,)
- Differences between ES and DE / NL
 - ES: one main focus on annual manure management plan with identification of land used for manure spreading amount of manure used per ha of land
- DE / NL: one main focus on exact information about ammonia emissions and exact estimations of the deposition in the Natura 2000 site
- Focus seems to be put on the biggest problem of MS
- Is it necessary to adjust the approach? To do both?

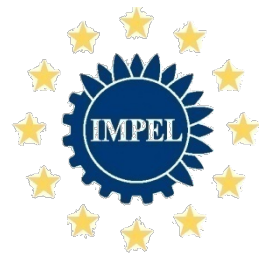


Recommendations (1)

- capacity building

there is need for

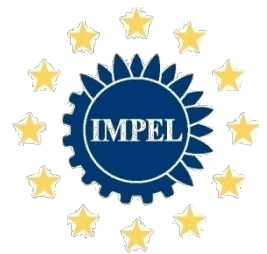
- Improving knowledge about and use of EU guidance – participants did not know EU docs
- Initiating development of new EU guidance, especially sector specific
- Exchange of knowledge about screening criteria and assessment methodologies



European Union Network for
the Implementation and Enforcement
of Environmental Law

Recommendations (2) concerning permitting and inspection

- Integration of information about screening and AA (carried out or not and results/consequences) into the permit
- Integration of inspectable conditions concerning Natura 2000 sites into permits
- Dealing with activities without permits (e.g. small farms)
- Separate IMPEL project on Natura 2000 sites in inspection activities



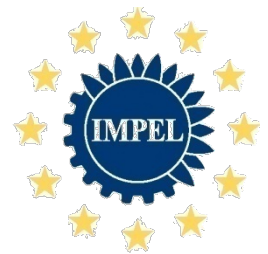
European Union Network for
the Implementation and Enforcement
of Environmental Law

Recommendations (3) for future work of IMPEL

- So far the project dealt with basic knowledge.
- One receipt for all different species and all situations does not exist.
- From now on a step by step approach is necessary.
- The core team recommends to carry out a follow-up project
- New ToR submitted to Cluster I, focus on:
 - Evaluation of the applicability of the EU Guidance Document “Wind energy developments and Natura 2000”
 - Development of a sector specific guidance document on dealing with Article 6(3) HD in permitting of farm projects (pigs and poultry) (or one other sector the project team agrees on)



Thank you for your attention!



European Union Network for
the Implementation and Enforcement
of Environmental Law