



Environment and Climate
Regional Accession Network **ECRAN**

Sub-Regional Workshop on Pilot Appropriate Assessment

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Theory of Appropriate Assessment

EU biological assessments

assessments of impacts of plans & projects on natural phenomena quite common

various types exist at national level;

but only two of them codified by EU law:

- EIA/SEA (EIA and SEA Directives)
- AA (Habitats Directive)

EIA/SEA *versus* AA

- EIA/SEA assesses quantitatively impacts of plans/projects on natural phenomena
Result: *description* and *taking into account* of likely impact
- AA: combination of biological assessment and decision-making process
Result: *decision* on admissibility of plan & project

EIA/SEA *versus* AA

Therefore, AA assessors have much bigger responsibility than the EIA/SEA ones: their conclusion has *direct impact* on both N2K sites as well as the given project

Insufficient or biased AA always leads to either

- irreversible destruction of natural phenomena, or
- “killing” of (often large) development projects

This is why right execution of AA is that important

Legislative background for AA

- 2 sentences of Art. 6(3) HabDir
- 3 sentences of Art. 6(4) HabDir

Art. 6(3) deals with the assessment procedure

Art. 6(4) deals with derogations from that procedure

During *this* workshop, we shall only deal with Art. 6(3)

Legislative background for AA

Is Art. 6 HabDir the only source of instructions for AA?

Legislative background for AA

Is Art. 6 HabDir the only source of instructions for AA?

No, it is not!

*Rulings of the Court of Justice of the EU
complement and interpret Art. 6 provisions*

A few theory on EU law

Primary legislation: the Treaties

Secondary legislation:

- Regulations (Council)
- **Directives** (Council and Parliament)
- Decisions (EC)
- **CJ EU rulings**

A few theory of EU law

CJ EU rulings interpret the Directives and are legally binding:

- once passed they have to be respected by *all EU MS courts*
- if national legislation contradicts CJ EU ruling it must be avoided or amended

CJ EU rulings – published at Curia web page
<http://curia.europa.eu/juris/recherche.jsf?language=en>

A few theory of EU law

- each ruling has its own code (e.g. C-127/02; ...C-521/12)
- until now, 40 rulings on Art. 6 HabDir passed from 1997 by 2014
- they are to be taken into account when preparing national system of AA
- EC booklet with them to be issued (soon)

AA – when is it applicable?

All new EU MS have to have Natura 2000 proposed till their accession

However, AA cannot apply to all sites immediately

AA – when is it applicable?

a) SPAs (Birds Directive)

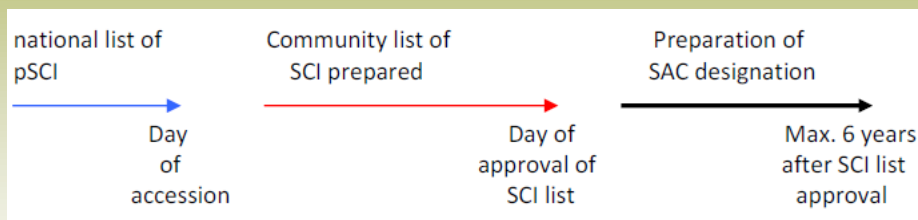
- should be classified by the date of accession (+ notified to the EC)
- once classified, they are subject to AA *immediately* pursuant to Art. 7 HabDir:

„Obligations arising under Article 6 (2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC in respect of areas classified pursuant to Art. 4 (1) ...and Art. 4 (2) thereof, as from the date of ...classification ... under Directive 79/409/EEC...”

AA – when is it applicable?

b) pSCI, SCI, SAC

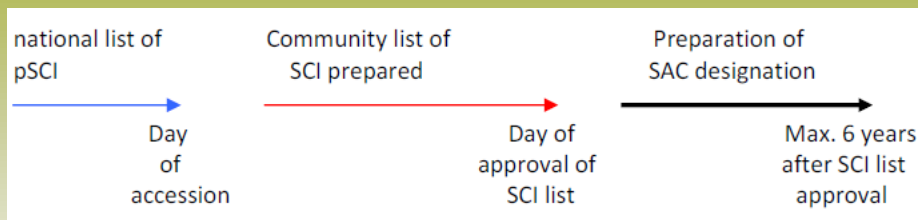
single site – three acronyms:



Art. 4(5):

„As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6 (2), (3) and (4)“

AA – when is it applicable?



What about the **blue** and the **red** periods?
No protection of pSCI possible?

AA – when is it applicable?

A number of rulings on this topic exists
(C-117/03, C-244/05, C-491/08, C-43/10)

- if plan/project permitted **before accession**, AA *must not* be required
- if plan/project **not yet permitted**, *must not affect* “ecological characteristics of the site” – otherwise must not be permitted
- no derogation procedure of Art. 6(4) is applicable → the shorter the **red** period is the better for the investors!

And now – Art. 6(3)!

Challenge:

- 2 sentences only
- each sentence uses different terminology
- almost each word has its own factual and legal meaning

Result: these 2 sentences are very difficult to understand and interpret correctly

But it is feasible!

Art. 6(3)

Sentence No. 1:

„Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives.“

Art. 6(3) - interpretation

- Any = any, not just plans & projects from any lists like in EIA/SEA
- directly connected with the management = management parts of management plans
- necessary to the management = management provisions and conservation measures

but

not necessarily management plans as a whole

Art. 6(3) - interpretation

Example: management plans for National Parks
in the Czech Republic

Each of them contains:

- management section
- section on felling trees for income in the buffer zone: this part of the MP does not correspond to the definitions above and *should be subject to AA*



Art. 6(3) - interpretation

- likely to have = just *likelihood*, not a certainty, triggers the AA
- significant effect on the site = only *significant* effects count; what is “significant” - that is the main point of AA!

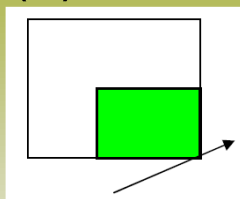
Art. 6(3) - interpretation

- individually or in combination = very important, we are obliged to assess *all* synergic plans & projects
- with other plans or projects = not only plan with plan, project with project, but also *project with plan, plan with project!*
- shall be subject = *obligation*, not an option (and no derogation possible!)

Art. 6(3) - interpretation

- appropriate assessment = appropriate to the size of a project and likelihood of its impact (\neq standardized procedure – *always case-by-case approach*)
- appropriate assessment of its implications for the site in view of the site's conservation objectives = reference level for the assessment are *conservation objectives* of the site, *not just its current state*

Art. 6(3) - interpretation



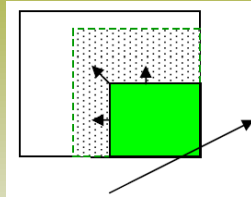
Site A, habitat XY

Conservation objective: just maintenance (Art. 6(2))

AA: new road destroying 0.01 % of the habitat XY

Conclusion: impact not significant, road can go on

Art. 6(3) - interpretation



Site B, habitat XY

Conservation objective: increase by 75 % by 2019

AA: new road **destroying** 0.01 % of today 's habitat XY which is **expected to expand** = conservation objective jeopardized (**decrease** instead of increase)

Conclusion: **impact significant, road must stop**

Art. 6(3) - interpretation

Summary of the sentence No. 1:

- management measures *not subject* to AA
- *any other* plan/project likely to have significant impact on the site *must be subject to AA*
- AA is undertaken against *site conservation objectives*

Art. 6(3)

Sentence No. 2:

„In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.“

Art. 6(3) - interpretation

- conclusions of the assessment = reference to AA from the 1st sentence
- subject to the provisions of paragraph 4 = reference to derogation procedure of Art. 6(4)
- competent national authorities = authorities in charge of AA, i.e., not only central ones (national = state)
 - and *not* nature protection authorities!

Art. 6(3) - interpretation

- shall agree only after... = ban to permit the plan/project unless the further conditions are met:
- after having ascertained = no scientific doubt remains on lack of significant impacts (ruling C-127/02)

Art. 6(3) - interpretation

- it will not adversely affect the integrity of the site = required conclusion of AA: adverse impact on site integrity yes – no?, black or white
- if appropriate = public opinion not obligatory (compare EIA/SEA!)

Art. 6(3) - interpretation

Summary of the sentence No. 2:

- plan/project *must not be permitted* if *scientific doubt remains* that it will adversely affect the site integrity
- opinion of the public *not obligatory*

Stages of AA

Art. 6(3)

- I. Screening – is there a likelihood of significant effect on site? – if yes, then
- II. Main assessment (= proper Appropriate Assessment)
– is the significant effect on site integrity of particular sites likely? - if yes, plan/project must be stopped

Art. 6(4) (when plans/projects stopped due to significant impacts)

- III. Assessment of alternative solutions – if they exist, plan/project must be stopped
- IV. IROPI test and compensatory measures

Stages of AA

This workshop deals with

- theory of AA
- stage I screening
- screening of our pilot project

Stages of AA

Next workshops will deal with

- stage II
- main assessment of our pilot project
- stages III and IV
- EC policy in regard to AA

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