



**Implementation of the Habitats Directive
in EU Member States**
Position Paper Natura 2000
2006



1. Background

Justice & Environment (J&E) is a network of public interest environmental law organisations based in the EU member states - Environmental Law Center (Poland), Environmental Law Service (Czech Republic), Environmental Management and Law Association (Hungary), Estonian Fund for Nature (Estonia), Oekobuero (Austria), and Via Iuris (Slovakia). J&E aims to use law to protect people, the environment and nature. Our primary goal is to ensure the correct implementation and enforcement of EU legislation through using EU law in litigation, educational activities, lobbying and exchanges of information.

In recent years, new EU member states have passed huge amounts of legislation, concerning nature-protection issues. The main EU directives, transposed into national legislation regarding this issue, are Habitats Directive (92/42/EEC) and Birds Directive (79/409/EEC). Implementation and transposition of the Habitats Directive (92/43/EEC) has been chosen by J&E members as one of three first legal areas to be worked on.

By date of accession, the new member states were required to apply Article 6 of the Habitats Directive to proposed Natura 2000 sites. The new members must take appropriate steps to avoid the deterioration of the habitats and species for which the areas have been selected. While there are provisions for providing Community support, including co-financing, the main responsibility for implementation of the Natura 2000 network clearly lies with the Member States themselves. Measures required to be taken in Natura 2000 areas range from adopting management plans for each site to avoid deterioration of habitats as well as disturbance of the species for which the areas have been designated. In addition, all plans and projects likely to affect a Natura 2000 site should be subjected to an assessment of the implications for the conservation objectives of the site. In this year, J&E has been focused on Articles 6.3 and 6.4 of the Habitats Directive, i.e., assessment of projects and plans that may have harmful effects to Natura sites. According to J&E members, the assessment of projects and plans has been most problematic in our home countries.

In 2006, four J&E members have been involved with this subject: Estonian Fund for Nature (Estonia, coordinator of the topic), Environmental Law Centre (Czech Republic), Environmental Management and Law Association (Hungary) and Via Iuris (Slovakia).

2. Problems

J&E member organisations are working daily with environmental cases, trying to develop best practices of EU environmental law. Recently, one of the main problems has been establishment of infrastructure (roads, railways) and buildings that might have a negative impact on sites of the Natura 2000 network, but assessment of which has not been in accordance with the Habitats Directive. In order to detect the main difficulties, J&E members have each presented a case study and carried out the legal analyses to find out whether their national legislation regarding Natura sites is in accordance with EU law.

Failure to meet the requirements in practice

Each of the described cases has been selected by relevant J&E member as the most representative cases in national practice, illustrative of problems with implementation of the Habitats Directive. Looking closer at cases in Member States shows that, during and in the first years after accession to the EU, Member States did not fully acknowledge the importance of guaranteeing integrity in Natura sites and coherence of the entire European Natura 2000 network. The cases show that, although the development projects may be different (a wind

farm in Hungary, a marine port in Estonia, a cableway in Slovakia, a canal in the Czech Republic), the nature of problems is quite similar and commonly recognized in all Member States:

- the environmental impact assessment of the projects does not take into account that the projects are to be carried out on Natura sites - **research about the values and impacts to the sites have been too short and shallow**;
- in the end, **permits for carrying out the projects have been issued** by the authorities, although it is clear that the **protected species or habitats will be harmed** (and in some cases even destroyed, e.g. in case of Slavik Islands in Czech Republic);
- **in none of the cases, were location alternatives considered** that could have resulted in less negative impact;
- **in none of the cases, was overriding public interest proven**, in order to justify damaging the protected sites;
- the projects have been or will be carried out **in the interests of the developer or due to some political will** (e.g. in case of Port of Saaremaa in Estonia);
- in most of the cases, **no compensatory measures** to ensure that the overall coherence of Natura 2000 is protected, were taken by the authorities, or, the offered measures are insufficient.

It is clear from that practice that from accession to at least 2006, the new Member States in question have not taken requirements of the Habitats Directive seriously. Often economic or political interests have been seen as more important than environmental considerations.

Faulty transposition of the Habitats Directive

Whereas, the cases describe the conditions of implementation from previous years (being most representative to the beginning of 2006), the national legislations today do not guarantee that problems will be solved, in spite of the fact that, since 2004, the legal regulations have been substantially improved.

The national legal regulations concerning assessment of projects and plans according to Habitats Directive contain the following problems:

- **narrowing the obligations for assessment down to certain activities and vague requirements for the assessment proceedings** (visible problems in all mentioned Member States);
- the Member States have **illegally widened possibilities to authorise activities**, causing possible harm to Natura sites, conveniently interpreting the Habitats Directives strict rule (that such authorisation can be given only in case of imperative reasons of overriding public interest), to their own benefit, stating that **“public reason” is enough reason for authorisation** (Slovakia);
- the national laws do not clearly state that when **considering alternatives**, economic reasons must not be taken into account (which is stated by interpretation rules of Habitats Directive);
- the national laws do not clearly state that even in case the authorisation is given to a project, **compensatory measures** must be applied, in order to guarantee overall coherence of the European network of Natura sites.

The results of legal analysis show deeper problems than just implementation – the faults originate in levels of transposition and some of them are common to all countries. The current national legislation in the Member States in question allows economic and/or political interests

to prevail over considerations of nature protection. It is also clear that the concept of compensatory measures is highly unclear within the new Member States.

Suggestions

J&E is convinced that for consistent enforcement in the respective member states, the following actions on both national and the EC level are desirable:

1) Amendments to national transposition acts, ensuring that the above-described gaps are rectified, mainly that

- the obligation to assess projects and plans according to Article 6.3 of Habitats Directive should include all activities that could be considered plans or projects in the meaning of the Directive;
- the authorization of harmful activity should be seen as exceptional only, and include only cases of truly imperative reasons overriding public interests;
- when considering alternatives, economic reasons should not be taken into account;
- in cases where authorisation is given to a project, compensatory measures must be applied, in order to guarantee overall coherence within the European network of Natura sites.

2) Changing national practices, especially:

- making sure that the values and impacts to Natura sites have been accurately identified;
- in cases where protected species or habitats will be harmed, permits can only be issued when:
 - there are indeed no alternatives (including location alternatives);
 - there is overriding public interest (not only interests of the developer);
 - sufficient compensatory measures ensure that the overall coherence of Natura 2000 is protected by the authorities.

3) When monitoring transposition and implementation of the Habitats Directive, the European Commission should concentrate especially on the above identified shortcomings and consider preparing guidance documents focused on them.

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