

Nature Conservation in Europe: Approaches and Lessons

Annex AT.1. Strengths and Weaknesses in Austria in the Habitats Directive Article 6(3) Appropriate Assessment Procedures

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With regard to the necessary approval procedures for plans and projects affecting Natura 2000 sites, project applicants are still experiencing difficulties in obtaining the required information on possible or expected conflicts between their projects and the site-level conservation objectives. In this context, a significant improvement could be achieved by offering a nation-wide professional advisory service, as no such service currently exists in Austria. Access to essential Natura 2000 data (for example on the location, extent and ecological condition of protected habitats and species in Natura 2000 sites) also needs to be improved, and standardised for all Natura 2000 sites. Project applicants would, without a requirement for specialised knowledge, gain quick and easy access to all relevant Natura 2000 site data (Getzner *et al.*, 2016).

Between 2010 and 2015, according to the 'UVE database' of the Ministry of Environment, Habitats Directive (HD) Article 6(3) type appropriate assessments took place in the frame of 19 EIAs. In four additional EIAs that should have required an appropriate assessment, the assessment was not carried out. Over the same period, 163 EIAs were recorded in the database of the Federal Environment Agency. Accordingly, appropriate assessments were only carried out in 11% of the EIAs.

The most sensitive areas concern uncertainties in the interpretation of the terms 'significant impact', 'imperative reasons of overriding public interests', 'mitigation and compensation measures' (especially if they must take place and achieve results before the project starts) and 'alternative solutions'. Sensitive issues also arise in relation to the species protection regime under HD Article 12 and Birds Directive (BD) Article 5.

The service provided by the authorities regarding Natura 2000 appropriate assessments varies significantly between the *Länder*. In a study by Getzner *et al.* (2016), a survey was carried out of the frequency of Natura 2000 conditional procedures in Austria, and the proportion of positive (approval) or negative (rejection) results. The survey was conducted both for screening procedures and for appropriate assessments. Amongst the nine *Länder*, only six (Vienna, Burgenland, Styria, Salzburg, Upper Austria, Vorarlberg) were able to provide data for this purpose.

Although screenings of projects and plans are not required under HD Article 6, it is an important means of assisting developers, especially for smaller projects. Such screening is offered by the respective nature conservation authorities in most of the *Länder* (with the exception of Vienna). The results of the screening are communicated by an official letter from the nature conservation authority. Nevertheless, project applicants complain that there is no clearly identifiable contact person in case of difficult questions, especially if they want information about possible points of conflict at the beginning of a project. In most of the nine *Länder*, screening procedures are not officially recorded, and hence no statistics are available. Only three *Länder* (Vorarlberg, Styria, Burgenland) were able to provide results for the survey of screenings carried out for the year 2015 (which comprised approximately 200 screenings in Styria, 36 in Vorarlberg and only four in Burgenland). More than 90% of all the screenings in 2015 concluded that the requirement for a nature impact assessment for the project could be ruled out with certainty.

In the *Länder* Vienna, Burgenland, Styria, Salzburg, Vorarlberg and Upper Austria, altogether approximately 68 HD Article 6(3) assessments were carried out in 2015. All of these assessments were positive (i.e. approved the project), but one procedure in Vorarlberg could only be concluded by applying the exemption provisions of HD Articles 6(4) and 16.

From a project proponent's point of view, the following picture emerges: in the late stages of the project planning process, the developer is often requested to take into account certain protected species, without information being available on them in the site in question. The rather poor state of the available relevant data then leads to substantial delays, in particular when species can only be found at a certain period of the year. The costs incurred are often disproportionately high and they are financed by the developers instead of those institutions responsible for the maintenance of geo-environmental databases in Austria. An improved and more transparent database could thus substantially decrease those costs for investors, since this would enable them to consider conservation objectives at an earlier stage in their project planning.

To improve its understanding on the requirements of the EU Nature Directives, the Austrian motorway operator (ASFINAG) has developed a comprehensive manual with detailed guidance on all topics of EU Nature Directives relevant for the development of large infrastructure (Suske *et al.*, 2016). This manual contains not only a description of the relevant provisions but also a summary of the most important European Commission guidance, findings of the CJEU and recommendations for developers.

References

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