



EUFJE 2010 - Discussion on national reports
First item - Complexity and simplicity
in habitat protection

Introduction – The comparative perspective

1. Habitat protection measures
2. Plans and projects needing an appropriate assessment (art. 6.3 Habitat-directive):
enforcement of the obligation

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1. Habitat protection measures

‘Are there general habitat protection measures, applicable to all special areas of conservation and special protection areas in your country, or are they site specific, or is there a combination of general and site specific measures?’

An issue of regulatory design with impact on enforcement

Art. 6.1 and 6.2 Habitat directive: suggest complexity

1. Habitat protection measures (2)

- MS tend to give priority to site specific protection measures
 - BE – Bxl, FR, DE, NL, SE
- MS also work with a combination of general protection measures and specific protection measures
 - BE – Flanders, BE – Federal ('11th province'), FI, HU, SI
- Rather surprisingly, an approach dominated by general protection measures also exists
 - SK, UK – England and Wales

1. Habitat protection measures (3)

- Elements of complexity
 - Overlap of regimes of legal status
 - BE – Flanders (agricultural land), FI (nature reserves on private lands)
 - Management plans
 - NL: complicated and time consuming, only a few
- Element of simplicity
 - General duty to care
 - BE – Federal, BE – Flanders, NL, NO, SE
 - Freedom of policy
 - + NO (ecosystem approach), - X

2. Plans and projects needing appropriate assessment: enforcement of the obligation

- *‘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. ... the competent national authorities shall agree ... only after having ascertained that it will not adversely affect the integrity of the site concerned ...’*
- Forbidden unless permitted

What type of sanctions can be applied if p or p carried out without the appropriate assessment? Quid if on the more a permit or approval is lacking?

2. Plans and projects needing appropriate assessment: enforcement of the obligation (2)

- If the obligation is integrated in an approval or authorization procedure: procedural sanction – no possibility to get the approval/authorization
 - BE – Flanders, BE - Bxl, BE – Federal, FI, NL, SK, SI
 - If something went wrong: illegal decision - possibility of nullification
 - BE – Bxl, FI, UK, ...
- No assessment + no approval/authorization
 - Remedial sanctions: FI, FR, DE, HU, NL, PL
 - Punitive: DE, NL, PL, SK



2. Plans and projects needing appropriate assessment: enforcement of the obligation (3)

Difficulty:

recognizing when an assessment is needed

- Two step systems
 - BE – Bxl, HU
- If not duly spotted: ‘too late’