

EUFJE 2006  
Helsinki, 15 – 16 September

**Impact of Natura 2000 sites on Environmental licensing**

Jan M. Passer  
Supreme Administrative Court of the Czech Republic

## A. Natura 2000 sites

### 1. Country or area

The Czech Republic is located mostly within the Continental biogeographical region, partly also within the Pannonian one.

### 2. Number and area of sites

*SCI/SAC*

*SPA*

There are 863 proposed SCIs in the Czech Republic (9,2 % of the state territory). The proposed SCIs were evaluated through biogeographical seminars. They resulted in the conclusion that the proposal did not cover habitats and species sufficiently and amendments would have to be made.

Commission has recently issued the first warning letter (art. 226 TEC procedure) to eight member states, including the Czech Republic, for non compliance with the Habitats Directive.

There are 38 SPAs in the Czech Republic (8,8 % of the state territory). Their evaluation seems to be incomplete as well. Here again, amendments might be necessary.

Commission has recently issued the first warning letter (art. 226 TEC procedure) to thirteen member states, including the Czech Republic, for non compliance with the Birds Directive.

### 3. Which authority drafted the national Natura 2000 site list?

The Ministry of Environment entrusted the Agency for Nature Conservation and Landscape Protection of the Czech Republic (technical agency established by the Ministry of Environment) to prepare data and to make first draft lists (separate for SPAs and pSCIs).

Ministry of Environment (that is responsible for the preparation of the Natura 2000) made final drafts for the government.

Sites (both SPAs and pSCIs) were included in the network by Government decrees (separate one for each SPA and the one for pSCIs).

### 4. How were the sites chosen?

*Was there a screening of possible sites and field surveys of competing site candidates? Were existing conservation areas designated as sites? Which authorities participated in the screening process? Did NGOs have a say? Was*

*there a public debate on the criteria for choosing sites? Did (or does) the public have access to the biological data, on the basis of which decisions were made?*

The Czech Republic performed 5-year-long habitat mapping and species distribution survey across the entire country prior to proposing the sites. Specific methodology for proposing sites for particular habitat types/species was developed as well as methodology for the best sites selection.

This screening (of possible sites) was made by the Agency. Agency cooperated with a number of institutions (The Academy of Sciences of the Czech Republic, administrations of existing protected areas, universities, museums, some NGO's, such as Czech Society for Ornithology /SPAs/, etc.). This represented hundreds of experts and cooperators working "on site".

Some 70 % of the territory of pSCIs is within an existing specially protected area.

Some 60 % of the territory of SPAs is within an existing specially protected area.

There is public access to the data, collected during the screening process of sites. However, this access exists only under certain (restrictive) conditions. Presumably, all available data will be publicly accessible (after overcoming technical constraints) since 2007.

#### 5. Which authority decided which sites were to be included in the Natura 2000 network?

The Government made final decision on which sites were to be included in the Natura 2000 network (as for SCIs, the government ruled on the proposal – the final national list).

#### 6. Appeals against the Natura 2000 national network decision

*Which authority decided on the appeals, which parties had legal standing and on what grounds could appeals be lodged?*

Sites (both SPAs and pSCIs) were included in the network by Government decrees (separate one for each SPA and the one for pSCIs). These are acts of general (normative) nature and there is no right of appeal (they can be challenged only by privileged applicants in the Constitutional Court).

However, first proposal of including a site into the network was consulted with land owners and land users in the area, and with locally important institutions too (even if this approach had not been prescribed by the legislation). Moreover, Ministry of Environment consulted other ministries and regional councils, before the final proposal was commented by the government (that is obligatory approach under national law).

## 7. Number and success of appeals

See previous answer.

## B. Conservational status of Natura 2000 sites

### 8. Status of Natura 2000 sites

*Do Natura 2000 sites also have the status of nature reserves, national parks or other nature protection areas?*

Some 70 % of pSCIs have already status of (some of the existing form of) nature protection area.

Some 60 % of SPAs have already status of (some of the existing form of) nature protection area.

SPAs, even if not covered within an existing form of an protected area, represent themselves an area with a special protection. Restrictions for some activities in these areas are generally included in the Act on Nature Conservation and Landscape Protection, and specifically for each area in the government decree creating the area.

Proposed SCIs (not holding status of protected area yet) are going to be declared nature protection area or protected by contract with land owners in the area, after their approval on the Community level. Their protection is ensured through temporary provisions of the Act on Nature Conservation and Landscape Protection, pending the final decision on the EC level.

### 9. Protection of Natura 2000 sites

*How has Article 6 of the Habitats Directive been transposed into national law in your country? By special national law implementing the Directive, by other national law, etc.*

Some articles of the existing Act on Nature Conservation and Landscape Protection fulfilled requirements of the Article 6 of the Directive. The Act has been amended in such way as to fully implement Natura 2000 directives, including the Article 6 of the Habitats Directive (esp. the sub-articles 6.3 and 6.4).

*How is the protection of Natura 2000 sites ensured? Are there site-specific management plans or other rules of conduct regulating activities within the sites?*

There are general rules of conduct regulating activities within the sites, in the Act on Nature Conservation and Landscape Protection. Specific conditions for

activities within a site can be included in a contract with land owner, or regulate a regime in a nature protection area. Management plans will be obligatory under national law, when SCIs will be designated as national specially protected areas. As for SPAs, national legislation gives Ministry of Environment powers to produce a set of recommended measures for conservation of protected birds species.

#### 10. Coverage of implementation

*Do national acts, plans and other rules implement the Habitats Directive fully? Are there types of enterprises, impacts on nature or licensing procedures where the requirements of the Directive are not altogether taken into account?*

Commission has already (July 06, DG Env, press release IP/06/907) issued first warning letter (art. 226 TEC procedure) to eight member states, including the Czech Republic, for non compliance with the Habitats Directive.

#### 11. Assessment of impacts

*Which authority decides on whether an assessment is to be made or not?*

Generally, it is the regional authority (acting in the capacity of an environmental authority) who decides on necessity of an assesment (it is not a formal administrative decision and there is no right of appeal). Exemptions represent existing protected areas (administration of the area is an environmental authority), military zones etc.

*If harmful effects on a Natura 2000 site are probable, which party is responsible for assessing the impacts: Applicant, Environmental authority, Licensing authority, etc?*

An expert with a special authorisation of the Ministry of Environment for assesment of impact of plans and projects on Natura 2000 sites asseses possible impacts on a Natura 2000 site. Only these persons are allowed to assess the impacts. Their assesment forms part of environmental impact assesment.

Thus, an applicant is responsible for asking for the assessment, the EIA authority for following the law, and authorised person for due performance of the assessment.

*How is the appropriateness of the assessment ascertained?*

There are strict conditions for obtaining licence of the Ministry of Environment, duration of licence is limited. Moreover, an assesment does not represent final licensing decision, that is made by a regional authority using an assesment.

There is also a two-steps procedure. One authorised person prepares the documentation and a different one is opposing it.

*If the applicant is required to assess impacts, does he/she have access to the data that prompted the inclusion of the area into a Natura 2000 site?*

An applicant has the access to data under conditions mentioned in the answer A.4.

*How is assessment of impacts caused by projects or plans in combination with other projects or plans safeguarded?*

Each plan should have its own assesment. If there is possibility of impact resulting from combination of plans/projects, assesment of a plan has to take into account such an impact (eg. combined impact). EIA and/or building authority is responsible for assessing synergies of various plans/projects, if available data allow that.

## C. Case examples of how possible impacts on Natura 2000 areas is taken into account in the licensing procedure

### 12. Examples of licensing decisions regarding projects outside or inside Natura 2000 sites, where

*Assessment of impacts was not deemed necessary*  
*Impacts were assessed but not deemed adversely affect the integrity of the site concerned*  
*Impacts were assessed and deemed significant*

There is no relevant case law of the Czech courts so far. Administrative decisions are not publicly accesible.

### 13. Relevance of Community decisions

*What kind of influence has the judicature of the ECJ had on national decisions (e.g. the precautionary principle)*

There is no relevant case law of the Czech courts so far. Administrative decisions are not publicly accesible.

*Relevance of the Commission guidelines on Managing Natura 2000 sites?*

Guidelines were taken into account during preparation of national legislation. The procedure is slightly different nowadays, and guidelines are not used for practical activity by now.

14. Examples of licensing decisions concerning exemptions from protection (Article 6 para 4)

*Which authority decides on exemptions and which authority on appeals?*

It is an environmental authority (see B.11) who decides on exemptions.

*Have exemptions been applied for and have they been granted?*

Administrative decisions are not publicly accessible in the Czech Republic. (However, according to my knowledge, no such exemption has been issued so far.)

*Grounds for refusing and allowing an exemption (alternative solutions, imperative reasons of overriding public interest, opinions of the Commission)*

An alternative solution has always priority if it results in less harmful effects. If there is assessment of probable harmful effects, and no alternative solution exists, exemption may be granted. However, it can be granted only if an applicant proves overriding public interest and recompensation measures are adopted.

In a case of priority habitats, public interest can only mean public health, public security or benefit for the environment. Other public interest than mentioned requires prior positive opinion of the Commission.

*In case an exemption has been granted, how has the incurred loss to protected values of nature been recompensated? How has the Commission reacted?*

To the best of my knowledge, such situation has not yet occurred in the Czech Republic.