

An Cliquet

CV An Cliquet

An Cliquet has a Master in Law (1989) and an Advanced Master in Port and Maritime Sciences (1990). In 2001 she became doctor in Law on the subject of Nature conservation in the marine and coastal environment, with specific reference to the Belgian marine and coastal environment. The research of A. Cliquet is situated in the field of international and national nature conservation law. Research topics include: international conservation of biodiversity; international and national nature conservation legislation; public support for nature policy; international and national legislation on marine nature conservation; integrated coastal zone management. A. Cliquet is teaching several courses at the Ghent University on public international law in general, international nature conservation law and marine nature conservation law. A. Cliquet is a member of several commissions and working groups dealing with nature conservation policy or coastal zone management.

The Natura 2000 network: Managing of sites

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Overview

- General remarks
- Legal basis
- Management measures of sites
- Examples
- Conclusion

General remarks

- Natura 2000 network:
 - Cornerstone of EU nature conservation policy
 - Conservation of sites and species of Community importance
 - Aims at halting the loss of biodiversity
 - ± 17 % of EU territory
- But: protected sites are not nature sanctuaries in which all human activities are forbidden
- Management measures: trying to find a balance between conservation and human uses
- Notwithstanding the strong protection, nature sites can be destroyed

Legal basis

- Article 6 of Habitats Directive 1992
- Interpretation manual by Commission
- Case law by European Court of Justice

Overview of measures

- Positive conservation measures
- Avoid deterioration and disturbance
- Assessment of plans and projects

Conservation measures

- *“For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.”*

Conservation measures

- Application:
 - Apply to Special Areas of Conservation (SAC's) (Habitats Directive sites)
 - For Special Protected Areas (SPA's) (Birds Directive) analogue obligations exist in the Birds Directive
 - Applies to **all** SAC's (including all annex I habitat types and annex II species in those sites).
- Financial means are possible (Life instrument and Life+)

Conservation measures

- Measures:
 - Positive and pro-active measures
 - Aim: maintaining or restoring the favourable conservation status of habitats and species (result obligation)
 - Conservation measures have to correspond to ecological requirements (based on scientific information)
 - Measures have to be appropriate (in respect of the general objectives of the directive)
 - 2 types of conservation measures:
 - (If necessary) management plans: specific or integrated into development plans
 - Statutory, administrative or contractual measures

Avoid deterioration and disturbance

- *“Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.”*

Avoid deterioration and disturbance

- Application:
 - Applies to SAC's (Habitats Directive sites) and SPA's (Birds Directive sites)
 - Protection of habitats and species for which the protected area has been designated
 - Protection of habitats and species *within* the SAC's or SPA's:
 - Effects should be within sites
 - Measures can be taken outside the sites!
- Prevention principle (*avoid* deterioration or disturbance)
- Result obligation: trying is not enough!

Avoid deterioration and disturbance

- Measures:
 - Implies measures relating to existing activities, including activities that do not require a prior authorisation
 - If existing activities can lead to a deterioration of conservation status, those existing activities should be limited or forbidden
 - Avoid deterioration of habitats
 - Avoid disturbance of species with significant effect
 - Measures must be appropriate (in respect of the general objectives of the directive, in achieving a favourable conservation status)

Assessment of plans and projects

- *“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. 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.”*

Assessment of plans and projects

- Application:
 - Applies to SAC's (Habitats Directive sites) and SPA's (Birds Directive sites)
 - Assessment of **new** projects or plans
 - Also applies to plans or projects outside the sites with a likely effect within the site
- Broad definition of plans and projects: plans include spatial planning instruments (Court of Justice Commission vs. France) and sectoral plans
- Appropriate assessment: can be Environmental Impact Assessment or other appropriate assessment

Assessment of plans and projects

Plan or project with *likely* significant effect on SPA or SAC:



Appropriate assessment



In case of a negative assessment



Plan of project is not allowed

Assessment of plans and projects

- *“If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.*
- *Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.”*

Assessment of plans and projects

- Exception: project is allowed under following conditions:
 - Only for imperative reasons of overriding public interest (including social and economic reasons)
 - For priority habitats or species: only for reasons relating to human health, public safety or the environment or on advice of Commission for other reasons
 - No alternatives possible
 - Compensation is required

Assessment of plans and projects

- For sites which were formally not designated as SPA (Birds Directive), but should have been designated, art. 6 does not apply.
- For those sites: no loss of sites for economic reasons (Court of Justice - Basses Corbières)

Court of Justice: cocklefisheries in Waddensea

- Cocklefisheries: is a project under art. 6
- Appropriate assessment is necessary if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site
- Where a plan or project is likely to undermine the site's **conservation objectives**, it must be considered likely to have a significant effect on that site
- The competent national authorities, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects

Germany: motorway A 20 through Peene Valley

- Project for construction of highway (A 20 Lubeck – Stralsund – Stettin)
- Partly through a SPA Peenetal (Mecklenburg-Vorpommern): rich alluvial alkaline fens, bog woodland, alluvial forests, bird species...
- Art. 6 applies:
 - Alternatives (4 alternative route plans)
 - Imperative reasons of overriding public interest (economic reasons)
 - Priority species: advice of Commission is required
 - Compensatory measures
- Advice of Commission (1995): proposed route is the less damaging; imperative reasons of overriding public interest is justified

Belgium: Port of Zeebrugge

- Port area of Zeebrugge: contains unique polder grasslands
- Strategic plan: polder grasslands will be used for port development
- In 2000: part of the SPA and SAC loses its protected status + ‘paper’ compensation
- Complaint to Commission (conditions of art. 6 not fulfilled)
- In 2005: only small part of the polder grasslands will lose its protected status; measures are agreed for active compensation

Germany: Daimler Chrysler Aerospace Airbus

- Project for extension of the site of Daimler Chrysler Aerospace Airbus (along Elbe in Hamburg), 171 ha
- Mühlenberger Loch is SPA and proposed as Site of Community Importance (SCI), including several habitats and species and 1 priority species
- Project will affect the site
- Art. 6 applies:
 - No alternatives
 - Imperative reasons of overriding public interest (economic reasons)
 - Compensatory measures
- Advice of Commission (2000): negative implications are justified by imperative reasons for overriding public interest

Germany: industrial and commercial area Siegerland

- Project for new industrial and commercial area Siegerland of 140 ha within former military training area Trupbach
- SAC Heiden und Magerassen Trubbach: including several habitats and bird species
- Project will affect the site
- Advice of Commission (2003):
 - Assessment of alternatives was not satisfactory
 - No imperative reasons of overriding public interest
 - Negative effects are not justified

Germany: master plan Prosper Haniel Colliery

- Master plan of Prosper Haniel Colliery: extension of underground coal mining activities
- Two sites SCI: Kirchheller Heide und Hiesfelder Wald and Gartroper Mühlenbach, including several (priority) habitats
- Project will affect the sites
- Art. 6 applies:
 - No alternatives
 - Imperative reasons of overriding public interest (economic reasons)
 - Compensatory measures planned
- Advice of Commission (2003): adverse effects are justified

Netherlands: Mainport Rotterdam

- Project: Mainport development Rotterdam: extension of port (including 2500 ha land reclamation at sea)
- Sites: SPA Voordelta, several SCI's, including several habitats and species
- Project will affect the site
- Art. 6 applies:
 - No alternatives
 - Imperative reasons of overriding public interest (economic reasons)
 - Compensatory measures
- Advice of Commission (2003): adverse effects are justified; condition: compensatory measures must be taken on time

Spain: La Breña II Reservoir Project

- Project new dam La Breña II on River Guadiato, occupying 626 ha of protected site
- Site Sierra de Hornachuelos (SPA and SCI), including several habitats and species
- Project will have an effect on the site, especially on habitat of Iberian lynx
- Art. 6 applies:
 - No alternatives
 - Imperative reasons of overriding public interest (socio-economic reasons)
 - Compensatory measures
- Advice Commission (2004): adverse effects are justified on condition that necessary compensatory measures are taken in good time

Austria: golf-course

- Case Court of Justice Commission v. Austria (2004)
- SPA site of Corn crake in Stiermarken (Worschacher Moos)
- Development of golf-course
- Court: no imperative reasons of overriding public interest
- Austria was convicted

Germany: expansion of Karlsruhe/Baden-Baden airport

- Project: expansion of Karlsruhe/Baden-Baden Airport
- Site: SCI Baden Airport (225 ha), including several habitats such as open grassland, dry heaths; SCI Stollhofener Platte
- Project will affect the site
- Art. 6 applies:
 - Alternative solutions
 - Imperative reasons of overriding public interest (growing number of passengers)
 - Compensatory measures
- Advice Commission (2005): project can be executed on condition that all necessary compensatory measures are taken in good time

Spain: new port of Granadilla (Tenerife)

- Project: construction of a new port in Granadilla
- Sites: Sebadales del Sur de Tenerife and Montaña Roja, including habitat for loggerhead turtle
- Project will have an effect
- Art. 6 applies:
 - No alternatives
 - Imperative reasons of overriding public interest (economic and social development)
 - Compensatory measures
- Advice Commission (2006): adverse effects are justified, on condition that compensatory measures are taken in good time

Portugal: motorway through Castro Verde

- Project: motorway A 2 (Lisbon – Algarve)
- Site: SPA Castro Verde, 17 annex 1 bird species
- Negative environmental impact assessment
- No demonstration of absence of alternative solutions
- Court of Justice (2006): Portugal did not fulfil its obligations under art. 6

Conclusion

- Management regime tries to find a balance between ecology and economy
- Despite the strict regime, most projects with an adverse effect can take place
- Problems with compensation:
 - Is compensation possible?
 - Will compensation measures be executed?
 - Will compensation measures lead to the required result (maintaining favourable conservation status and thus halting the loss of biodiversity in Europe)?