STUDY ON EVALUATING AND IMPROVING
THE ARTICLE 6.3 PERMIT PROCEDURE
FOR NATURA 2000 SITES

Contract N° 07.0307/2012/623211/SER/B3

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EC Study on evaluating and improving permitting procedures related to Natura 2000 requirements under Article 6.3 of the Habitats Directive 92/43/EEC

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The views expressed in this report are entirely those of the contractors and do not necessarily reflect the view of the European Commission

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1. PURPOSE OF THE STUDY

1.1 Context

The full and effective implementation of EU Nature legislation is central to achieving the EU biodiversity targets for 2020. Article 6 of the Habitats Directive in particular provides an important tool for ensuring the right balance is struck between economic developments and the need to preserve Europe’s endangered biodiversity.

There have, however, been claims that ‘the provisions of the Habitats Directive on the appropriate assessment and permitting of plans and projects (Article 6.3) potentially affecting Natura 2000 sites places a major burden on Europe’s economic development, causing substantial delays to permitting procedures and generating a high administrative and financial workload for administrators and economic operators. In some cases it can result in a total ban of developments in Natura 2000 areas’ (European Commission contract terms of reference).

The Commission decided to launch the present study in order to examine further the validity of such claims. The overall objective of the study was to gather and review information from a variety of sources, in particular from the Member States nature authorities, on the perceived nature, extent and significance of the problems and burden attributed to the permitting procedure under Article 6.3.

The study should also formulate recommendations on how economic development can be better reconciled with the effective implementation of EU nature legislation, and in particular how the implementation of Article 6.3 might be improved, in light of good practice experiences across the EU.

1.2 Methodology

The study was undertaken for DG Environment by Ecosystems LTD, Brussels and consisted of four key elements:

a) A literature review of published sources to gain an insight into the perceived problems associated with the Article 6 permit procedure, and the measures that have been taken to reduce/ overcome these.

In total around 60 publications¹, reports, articles and reviews were analysed, coming from a range of sources, including the European Commission, the Member States (eg government or non government reviews and guidelines on Article 6.3 permit procedure, various industry sectors, conservation NGOs and international organisations as well as relevant articles in scientific journals.

¹ See reference list at the end of this report
b) The second element involved a **survey** of Member State authorities, economic sectors and conservation NGOs. More specifically this consisted of:

- An **on-line survey of nature authorities in the Member States** (at federal, regional/local level).
- **Structured interviews with the nature authorities and other decision-making authorities in 10 Member States.**
- **Interviews with representatives active at EU level** of key economic sectors and NGOs.

The purpose of the on-line survey was to obtain feedback from Member State nature authorities on the perceived problems associated with the appropriate assessment procedure and possible solutions for reducing its burden. The survey contained 35 questions (see annex I). Respondents were assured a degree of anonymity when replying (they were only asked to indicate the country and administrative level at which they operated).

Altogether, 59 completed surveys were sent in by nature authorities from 22 of the 28 EU Member States (no replies were received from Austria, Cyprus, Greece, Lithuania, Luxembourg, Slovakia). Just over half were filled in by nature administrations at national level; the other half came from nature authorities at lower regional or local administrative levels. Most countries sent in just one reply whilst some sent 3 - 9 replies.

The results provide a first snapshot of the opinions of 59 nature authorities across 22 Member States on the effectiveness of, and perceived problems with, the Article 6.3 permit procedure. Nevertheless, the findings should be treated with caution as they may not be representative of the situation across the EU due to the limited response rate (especially from the lower regional or local administrative levels) and the lack of feedback from 6 countries.

It is also inherently difficult to identify questions that are likely to be meaningful across all EU countries. As chapter 3 illustrates the way in which Article 6.3 is implemented varies greatly from one country to another and even from one region to another in the same country, which means that some questions may not have seemed that relevant in some countries.

The structured interviews were designed to go into more depth in ten of the 28 EU countries and to also gather the views of other sector authorities involved in Article 6.3 permitting (see annex II). Every effort was made to select a representative range of countries (geographically, small or large, centralized or devolved..). In the end authorities were interviewed at regional and/or national level in the following countries: Austria, Czech Republic, France, Germany, Ireland, Netherlands, Slovenia, Spain, Sweden, UK.

A number of countries initially contacted had refused to be interviewed despite our assurance of anonymity. As a result it may be that the findings are somewhat biased towards countries that are more actively working on ensuring the full and efficient implementation of Article 6.3, as opposed to countries where there are known to be systemic failings with implementation.

The final element of task 2 concerned interviews of representatives active at EU level of key economic sectors (contacts were made with EWEA, ESPO, Euromines, UEPG, UNICEM, ..) and NGOs (Birdlife, WWF, EEB)
**Overview of the structured interviews undertaken in the ten Member States:**

<table>
<thead>
<tr>
<th>Country</th>
<th>National authority</th>
<th>Regional nature authority</th>
<th>Sector authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovenia</td>
<td>Ministry of the Environment and Spatial Planning, Section for Nature Protection + Section for Spatial Planning; and Nature Protection Institute of the Republic of Slovenia (23.11.2012)</td>
<td>(Combined with national authority)</td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>Ministère de l’Ecologie et du développement durable (16.1.2013)</td>
<td>DREAL Picardie (4.2.2013)</td>
<td>(combined with DREAL)</td>
</tr>
<tr>
<td>Netherland</td>
<td>Directie Regio &amp; Ruimtelijke Economie (RRE) Directoraat Generaal Natuur &amp; Regio Ministerie van Economische Zaken, Landbouw en Innovatie (19.3.2013)</td>
<td>(same organization as RRE)</td>
<td></td>
</tr>
</tbody>
</table>
c) The third aspect of the contract involved the compilation of a series of case studies on the practical implementation of the Article 6.3 permit procedure. A total of 12 such case studies were investigated covering different types of plans and projects involving a variety of sectors in different countries. They were deliberately chosen to reflect the wide range of plans and projects that go through an appropriate assessment (from small localized projects to truly strategically nationally important infrastructures) as well as the variety of approaches that have been used to ensure a smooth appropriate assessment procedure.

Only short extracts of the case studies are presented here. The full description of the 12 case studies is available in a separate report accompanying this final review (see annex III).

d) The final element of the contract was the preparation of the present Analysis Report which aims to bring together the key findings gathered in the course of the study. It also makes a series of recommendations on how the implementation of Article 6.3 might be further improved, based on good practice experience from across the EU.
2. BACKGROUND

2.1 The Habitats and Birds Directives, and the Natura 2000 network

In 2010 the EU Heads of State and Governments set themselves the following target for biodiversity conservation in the EU: "To halt the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, restore them in so far as feasible, while stepping up the EU’s contribution to averting global biodiversity loss."

The Commission’s EU 2020 Biodiversity Strategy, adopted in May 2011, sets out six main targets and twenty actions to ensure this overall objective is achieved. One of the targets is to ensure the full and effective implementation of EU nature legislation.

The Birds and Habitats Directives are the cornerstones of the EU’s biodiversity policy. They enable all 28 EU Member States to work together, within a common legislative framework, to conserve Europe’s most endangered, rare and representative species and habitat types across their natural range within the EU.

Whilst the Birds Directive covers all naturally occurring wild birds present in the EU, the Habitats Directive focuses on a sub-set of ca 1500 other species, as well as ca 230 habitat types in their own right.

The two directives require Member States to ensure that the listed species and habitat types are maintained and/or restored to a favourable conservation status throughout their natural range within the EU. The fact that a habitat or species is not facing a direct extinction risk does not necessarily mean that it is in a favourable conservation status.

To achieve this objective, the directives require two types of provisions:

- **Site designation and management measures**: aimed at conserving core areas for species listed in Annex I of the Birds Directive and regularly occurring migratory birds, including internationally important wetlands (Special Protection Areas - SPAs) as well as habitat types and species listed in Annexes I and II of the Habitats Directive (Sites of Community Interest – SCIs);

- **Species protection measures**: involving the establishment of a general system of protection for all wild bird species in the EU and for species of special conservation interest listed in Annex IV and V of the Habitats Directive. These species protection measures apply across the entire natural range of the species in the EU and therefore also outside protected sites.

The first set of provisions has led to the creation of **the Natura 2000 Network** which currently contains over 26,000 terrestrial and marine sites across 28 EU countries. The SPAs and SCIs are often referred to collectively as Natura 2000 sites.
2.2 Protecting and managing Natura 2000 sites

Article 6 is the article that defines how Natura 2000 sites are managed and protected. As such, it sets out the relationship between the site’s conservation requirements and wider land use policies and spatial development activities in the area.

Paragraphs 6.1 and 6.2 apply to all Natura 2000 sites. They require Member States to take positive and protective measures for the sites. In particular they must:

- Take the necessary conservation measures to maintain and restore the habitat types and species for which the site has been designated to a good state of conservation, in accordance with their ecological requirements (Art 6.1).

- Avoid the deterioration of habitat types and habitats of species as well as the disturbance of species for which the site is designated, in so far as such disturbance could be significant in relation to the objectives of the Directive (Art 6.2).

It is largely left up to the Member States to decide how to implement these provisions. In the case of the necessary conservation measures, they may use statutory, administrative or contractual measures and, if need be, management plans which are either specifically designed for the sites or integrated into other development plans. The measures must also take account of economic, social and cultural requirements and regional and local characteristics.

There is however no ‘one size fits all’ model for managing Natura 2000 sites. Much will depend on the species and habitats for which the site is designated, their threats and conservation status as well as the different land uses and stakeholders operating in the area. The site’s conservation objectives and measures are therefore usually best defined on a case-by-case basis.

2.3 The Article 6 permitting procedure for plans and projects

In contrast to paragraphs 6.1 and 6.2, which apply to all Natura 2000 sites without exception, paragraphs 6.3 and 6.4 only come into play if a plan or project is proposed that is likely to have a significant negative effect on a Natura 2000 site, either individually or in combination with other plans or projects. Article 6.3 sets out the procedure to follow in such cases.

Thus, any plan or project, which is likely to have a significant effect on a Natura 2000 site and is not necessary for its management, must undergo an Appropriate Assessment (AA) of its implications for the site in view of the site’s conservation objectives. The aim is to determine the kind of negative impacts the plan or project might have on the habitat types and species for which the site is designated (often referred to as ‘target features’), and whether these will in turn adversely affect the integrity of the site.

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2 According to Art. 7 of the Habitats Directive, obligations arising under Article 6.2, 6.3 and 6.4 of this Directive shall replace any obligations arising under the first sentence of Article 4.4 of Directive 79/409/EEC in respect of areas classified as SPAs. Except for Art. 6.1, all other provisions of Art. 6 are directly applicable to SPAs. As regards the management of SPAs the other provisions of Art. 4 of the Birds Directive continue to apply.

3 The Directive builds upon the assumption that plan or projects securing directly the site’s management are by their nature positive for meeting the site’s conservation objectives. However, this must not be confused with plans or projects serving site’s management but containing also other provisions capable to contradict the site’s conservation objectives.
Article 6.3 and 6.4

1. 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.

2. 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.

Competent national authorities can only agree to the plan or project if it is concluded that it will not adversely affect the integrity of the site concerned. The onus is on demonstrating the absence of adverse effects, rather than their presence.

A derogation procedure is nevertheless available under paragraph 4 which allows a plan or project to go ahead in exceptional circumstances, in spite of a negative assessment pursuant to Article 6.3, provided there are no alternative solutions and the plan or project is considered to be necessary for imperative reasons of overriding public interest (IROPI). In such cases the Member State must take appropriate compensatory measures to ensure that the overall coherence of the Natura 2000 Network is protected.

Thus, unlike strict nature reserves of the past, Natura 2000 sites are not ‘development exclusion zones’. New developments are entirely possible provided that they are done in a way that does not negatively impact on the habitat types and species for which the site has been designated, or if they are required for imperative reasons of overriding public interest (in accordance with Article 6.4 – see box).

Another important aspect of the Article 6.3 permit procedure is that its outcome is legally binding on the competent authority and conditions its decision. This contrasts with the impact assessments carried out under the EIA and SEA Directives where the findings merely have to be ‘taken into account’. Thus, the Article 6.3 procedure is more than just an ecological assessment – it is, in fact, an assessment combined with a legally binding decision-making process.
Figure: Flow chart of Article 6(3) and (4) procedure (based on Commission Article 6 methodological guide)

Stage 1: Screening

- Is the plan or project (PP) directly connected with, or necessary to the management of the site for nature conservation purposes?
  - No
  - Is the PP likely to have significant effects on the site?
    - Yes
    - No

Stage 2: Appropriate assessment

- Assess implications in view of the site’s conservation objectives.
- Assess cumulative and in-combination effects with other plans and/or projects.
- Can it be concluded that the PP will not adversely affect the integrity of the site?
  - Yes
  - No
  - Can the negative impacts be removed e.g. through mitigation measures?
    - Yes
    - No
    - Authorisation must not be granted.

- Redesign the plan or project
  - Yes
  - No
  - Are there alternative solutions?
    - Yes
    - Authorisation must not be granted.
    - No

Stage 3: Derogation: Article 6(4)

- Does the site host a priority habitat or species?
  - No
  - Yes
    - Are there imperative reasons of overriding public interest?
      - No
      - Authorisation must not be granted.
      - Yes
      - Are there human health or safety considerations or important environmental benefits?
        - No
        - Authorisation may be granted
        - Yes
        - Authorisation may be granted for other imperative reasons of overriding public, following consultation with the Commission. Compensation measures have to be taken.

Source: Commission Guidance document on inland waterway transport and Natura 2000, 2012
Unlike most permitting procedures in other sectors which are often highly schematic, the Article 6.3 procedure requires a case-by-case approach. This is because each Natura 2000 is different and may be influenced by a unique range of intrinsic and extrinsic factors. As a result, the same development may have totally different impacts on various target features present in different sites.

Although this means that the results of the assessment are not always ‘predictable’, it does really offer a chance for plans and projects with no impact to go ahead. The AA can help to identify tailor-made mitigation measures which could remove the impacts or at least reduce them to a level where they become insignificant, thereby enabling the plan or project to be approved (along with the mitigation measures).

Nevertheless, because Natura 2000 sites aim to conserve the most important core areas for Europe’s most endangered, rare and representative habitats and species, it follows that the procedures for approving developments that might affect such sites are sufficiently rigorous to avoid undermining the overall objectives of the Birds and Habitats Directives.

The Article 6.3 permit procedure is also important in terms of the EU’s wider sustainable development objectives since it establishes a common legal permitting framework across all 28 EU countries. This safeguards against individual Member States gaining a competitive advantage over others through the adoption of lower environmental standards and ensures that the efforts of one Member State to conserve endangered species and habitats of EU importance is not undone or wasted by the unchecked development activities of another Member State.

Commission Opinions on Article 6.4 derogations

Under Article 6.4, Member States must ask the Commission to issue an opinion on whether a plan or project which has been found to have an adverse affect on a priority habitat and species in a Natura 2000 site can still be allowed to proceed on the grounds of imperative reasons of overriding public interest (IROPI).

Only 20 such Commission Opinions have been issued in the last 20 years. As each of these illustrates, where there is a case to be made on the grounds of Imperative Reasons of Overriding Public Interest, the Commission’s opinion has been largely supportive of such projects provided the compensatory measures are appropriate and the arguments for IROPI are sufficiently robust.

So far only one of the 20 requests for Commission Opinions received a negative opinion.

Example of the project on A20 Motorway, Germany

In 1995, Germany planned to build the A 20 motorway linking Lübeck, Stralsund and Stettin in Mecklenburg-Western Pomerania. The route would intersect a Natura 2000 site which hosts priority habitat types. As the motorway was considered to be necessary for imperative reasons of overriding public interest, the Government asked for the Commission’s opinion accordance with Article 6.4.

First, the Commission had to ensure that adverse effects on a site were only accepted in the absence of alternative solutions. Due to its length and location, it was not possible to avoid crossing the Natura 2000 site altogether, but there were four alternative routings proposed. It was concluded that the updated version of the original route, which would

ensure the A20 crosses the river Peene close to an existing crossing, was deemed the least damaging. By situating the route close to the existing crossing on an national road, an unspoiled part of the river valley could be avoided, and the negative effects could be added to the existing strain on the area coming from the nearby village, the existing bridge and industrial uses.

The Commission also carefully scrutinized the justifications for IROPI. At that time Mecklenburg-Western Pomerania, which is located in ex East Germany, suffered from an exceptionally high unemployment as well as a very low GDP. The Commission was already giving it special attention under the Structural Funds and the A 20 was to be part of the EU’s trans-European road network. The IROPI reasons were therefore considered justified.

Finally, the Commission examined the compensation and mitigation measures proposed to ensure they were sufficient. Once these were considered satisfactory, the Commission issued a positive opinion on the project concluding that “adverse effects on the protection area ‘Peenetal vom Kummerower See bis Schadefähre’ through the planned A 20 motorway east of Jarmen were justified by imperative reasons of overriding public interest”.

Source: COMMISSION OPINION of 18 December 1995

Commission guidance documents on Article 6

To assist in the understanding and correct application of the Article 6 procedure, the Commission (like most Member States) has produced a number of general interpretative and methodological guidance documents on specific provisions of Article 6.3 and 6.4. These include the following:


The Commission has also more recently produced a series of sector-specific guides in a number of areas of relevance for EU policy. Developed in response to requests from the industry and the sector authorities on the implementation of Article 6.3 permit procedure, they aim to improve the understanding of how to apply the Article 6.3/6.4 procedure in each of these specific sectors.

The following sector-specific guides on Article 6.3 and 6.4 have been issued to-date:

- Aquaculture and Natura 2000 (2012)
- Inland waterway transport and Natura 2000 (2012)
- Wind-energy developments and Natura 2000 (2011)
- Non-energy mineral extraction and Natura 2000 (2011)
- Implementation of the Birds and Habitats Directives in estuaries and coastal zones (2011)

In addition, the Commission has published a review of the ECJ Rulings on Article 6 which summarises the legal jurisprudence that has been built up over the years.

\[6\text{http://ec.europa.eu/environment/nature/legislation/caselaw/index_en.htm}\]
2.4 Natura 2000: preserving Europe’s natural capital

In addition to preserving rare and endangered habitat types and species, the Natura 2000 Network also plays a major role in safeguarding Europe’s remaining healthy ecosystems. These provide a range of important benefits to society and the economy via the flow of valuable ecosystem services (such as water storage, flood prevention, carbon fixation, improvement in air and soil quality).

According to recent Commission studies (IEEP, 2012), the benefits that flow specifically from the Natura 2000 Network are estimated to be in the order of €200 to 300 billion/year. Although this is only a first rough estimate, the figures indicate that the economic benefits of a fully functional Natura 2000 Network compares very favourably to the costs associated with managing this important resource (estimated at around €5.8 billion/year for the EU-27).

A fully operational Natura 2000 Network can also encourage a more coherent spatial planning approach in which different, yet complementary, land uses that help support healthy ecosystems are encouraged to join forces. As stated in the new 7th EU Environmental Action Programme: protecting, conserving and enhancing the EU’s natural capital requires tackling problems at source through, inter alia, better integration of natural capital objectives into other policies, ensuring that policies are coherent and deliver co-benefits.

It is also why the Commission has opted for an integrated approach towards the co-financing of Natura 2000 under the EU’s major Funding Instruments (Structural Funds, CAP, EFF, LIFE) to ensure that the management of Natura 2000 is part of the wider land management policies in the EU.

Examples of the economic benefits of the Natura 2000 network

STORING CARBON: Many Natura 2000 sites protect ecosystems (e.g. forests, wetlands, peatlands, grasslands, marine and coastal areas…) that are important current stores of carbon and offer significant opportunities for further carbon sequestration. It is estimated that the Natura 2000 Network currently stores around 9.6 billion tonnes of carbon, equivalent to 35 billion tonnes of CO₂, which is estimated to be worth between €600 and €1,130 billion depending on the price attached to a ton of carbon.

It can be expected that in the future these carbon values will increase, especially if the conservation status of the Network improves. Onsite measures that positively affect carbon fluxes include the restoration of wetlands, peatlands and agro-forestry ecosystems. On the contrary, policies that encourage land conversion from grassland to cropland will cause the release of stocked CO₂ into the atmosphere.
NATURAL HAZARDS: Natural hazards cause significant damage across the EU. For the period 1990–2010, the value of economic losses from natural disasters in the EU25 amounted to around €163 billion. Protected areas, such as Natura 2000 maintain healthy, robust ecosystems which play a vital role in mitigating the impacts of disasters (such as floods, landslides) and reducing the overall vulnerability of communities to these disasters.

Although the benefits arising from natural hazards risk reduction are very site-specific, well-functioning ecosystems can offer efficient mitigation services, often at a much lower cost than man-made measures. For instance, in the Kalkense Meersen Natura 2000 site, in Belgium, it has been estimated that the restoration of the original river landscape by means of wetlands and estuarine habitats restoration can bring flood mitigation benefits of between €640,000–1,650,000 per annum.

From: Commission factsheet on economic benefits of Natura 2000, 2013
3. IMPLEMENTATION OF ARTICLE 6.3 IN THE MEMBER STATES

3.1 Differing administrative set ups for handling the Art 6.3 procedure

Articles 6.3 and 6.4 outline the legal procedure that must be followed for plans or projects that are likely to have a significant effect on a Natura 2000 sites, but leaves it up to the Member States to decide how this should be implemented in practice. A Directive is binding as to the result to be achieved upon each Member State to which it is addressed, but leaves the choice of form and methods to the national authorities.

It is clear from the work undertaken for this study that the way in which the Article 6.3 permit procedure has been applied varies greatly from one country to another, and even from one region to another within a Member State. According to our estimate there are more than 70 different AA approaches underpinned by either national or regional legislation across the EU. Because of the very diverse ways in which the Art 6.3 procedure operates it is extremely difficult to obtain a full overview of how it is being implemented across the EU.

Due to the limited size of the present study, it was not possible to investigate how Article 6.3 operates in every country and region of the EU. This would require a much more in-depth and detailed analysis of the administrative set-ups and transposing legislation in all 28 countries and at all the relevant administrative levels. Instead, the present study relies on the literature review, the online survey results and feedback from structured interviews with selected bodies in ten MS and at EU level to build up a picture of how Article 6.3 is being implemented in different parts of the EU.

From this it became clear that the way in which Article 6.3 is implemented is heavily conditioned by a number of key pre-determining factors, including the following in particular:

- The basic constitutional structure of the countries concerned (whether it is a devolved or centralised government structure);
- The distribution of administrative responsibilities and competences for environmental issues amongst the different authorities (eg whether shared among development sectors or exclusively in the hands of environment authorities; whether the permit procedure is integrated into other consent procedures or treated as a stand alone procedure);
- The traditional administrative practices and cultures (eg in terms of cooperation and dialogue between different administrative bodies, the role of spatial planning for development and land use policies);

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8 Article 288 of the Treaty on the Functioning of the European Union (TFEU)
9 Also analysed in more detail in Backes et al, 2006 A comparative law study on the implementation of art. 6 Habitats Directive in some member states. ([Rechtsvergelijking onderzoek implementatie artikel 6 Habitattrichtlijn])
• The type and level of detail of the transposing legislation for the permit procedure as well as margin of discretion left to the authorities when implementing the legislative provisions.

It is important to be aware of these fundamental differences in application of Article 6.3 and to take them into account since they will have a major influence on the nature and extent of possible problems that can arise during this implementation, even within the same country.

It is also useful to bear in mind that when transposing the Habitats Directive no Member State seems to have put in place an entirely new or distinct administrative system to deal specifically with the Article 6.3 permit procedure. Instead each has tended to ‘graft’ the process on to already existing permit procedures (eg existing EIA/SEA procedures, or other forms of planning consent) which are generally designed for other purposes and often have different objectives and approaches.

3.1.1 Different levels of administrations responsible for Article 6.3

The level at which the decisions are taken as regards the Article 6.3 permit procedure depends greatly on the constitutional framework of the countries concerned. In fact all levels of competent authorities have been found to be involved in the Article 6.3 procedure, from the municipality to the Minister (Backes et al, 2006).

In highly federalized countries like Austria, Belgium, Germany and Spain, the responsibility for implementing Article 6.3 lies essentially with the regions. Some countries, like Austria and Spain, are so autonomous that the regions have each adopted their own (differing) laws transposing Article 6.3.

Others like France, Germany, Netherlands, Poland and Sweden have transposed Article 6.3 into national law which provides a common legal framework across the country, but, due to their existing governance structures, they have passed most of the decision-making powers onto the lower administrative levels (eg the County Administrative Boards in Sweden, the Provincies in the Netherlands, DREAL in France…). The federal authorities in these countries are nevertheless often still responsible for the more strategic, nationally important infrastructure plans and projects for which they have either the full decision making powers or are the ‘statutory advisors’.

Some countries have, on the other hand, a much more centralised administrative system to deal with nature protection and the Article 6.3 consent procedure. This tends to be especially the case for countries with a smaller territory where the delegation of powers from the central authorities to local counterparts would be difficult due to lack of capacity outside the capitals (e.g. Baltic countries, Cyprus, Luxembourg, Malta, Slovenia).

The level of coordination and interaction between the national, regional and more local administrative bodies responsible for the article 6.3 procedures tends also to vary greatly from one country to another. Several national authorities have indicated that they have ‘no idea’ about how the regions are implementing the procedure. Others play some kind of more or less formal coordinating role, organizing annual meetings to exchange experiences, issuing guidance notes and acting as sounding boards for advice.
The diversity of the different administrative levels involved in the Article 6.3 permit procedure was also reflected in the AA online survey. 46% of the respondents indicated that it was the national authorities who were mainly responsible, 42% said the responsibility lay at the level of the regions (35%) or the municipalities/local authorities (7%). 12% said that is was a combination of the above depending on the type of plan or project being assessed.

![At what administrative levels are AA procedures mostly implemented](image)

*Source: The AA online questionnaire survey 2012.*

### 3.1.2 An integrated or stand alone procedure

Countries can also sometimes be distinguished according to who is the competent - and ultimately the decision-making authority for the Article 6.3 permit procedure.

In a number of countries (e.g. France, Germany, Ireland, UK..) the AA process is ‘integrated’ into other consenting procedures and the competent authority is the authority responsible for the sector in question (e.g. forestry, marine, energy, land use planning…). They are the ones who make the final decision as to whether a plan or project can be approved, based on the opinion of the statutory advisor – i.e. the relevant nature conservation authority - whom the competent authority is required to consult before making a decision.

In other countries (like Denmark, Malta, Slovenia) the procedure is more ‘centralised’ in that it is a single body (e.g. the State Institute for Nature Conservation in Slovenia, the Danish Nature Agency in Denmark, the Malta Environment and Planning Department….) who is responsible for the AA procedures and for issuing the consent for the plan or project.

### 3.1.3 Relationship with EIA /SEA procedure

Because of the nature and similarity of the Appropriate Assessment, the relationship between the AA and EIA/SEA procedures can play a key role in the implementation of the former. The way in which the AA procedure interacts with the EIA/SEA procedures varies from one country to another. The majority of the respondents to the AA online survey stated that the Article 6.3 procedure is integrated into the SEA/EIA procedure when the SEA/EIA is required and, if not, then it is carried out as a stand alone procedure.
Only 9 said it was always done independently of the SEA/EIA. Some respondents also signaled that whilst the AA/SEA/EIA procedures may not be ‘integrated’ as such they are often ‘coordinated’. However, the nature of the survey did not allow us to elaborate on this ‘coordination’ nor to mention some other factors influencing that interplay which may be very simple but decisive.

Nevertheless, during the structured interviews some interesting additional remarks were made on this aspect. For instance, in one of the member states where AA is carried out within the EIA procedure, EIA cases at the central level are dealt with by a department having a staff of 48 people. All the EIA studies go subsequently to the nature protection department where they are checked by a single person only. No wonder that there are delays in processing of these EIA studies.

Many also pointed out that whilst merging the AA and EIA/SEA procedures undoubtedly has a lot of advantages, especially in terms of streamlining the various environmental permits required, it can also cause confusion. For instance, the final EIA assessment may not provide a specific analysis of impacts on the habitat types and species of the Natura 2000 site as required under the AA procedure. Instead, it looks at potential impacts on ‘nature and biodiversity’ in general and in a much more generic manner. This lack of understanding of the AA procedure can also lead to delays, because the permitting procedure has to be put on hold until the AA has been carried out correctly and reaches clear conclusions as to the potential impacts on the integrity of the Natura 2000 site.

The fact that the EIA requires the assessment of a whole range of potential environmental impacts as well as an obligatory public consultation exercise also means that the EIA can sometimes be a lengthy process. Consequently, when the EIA is combined with the AA, there is a tendency to ‘blame the AA’ for blocking or delaying developments when in fact it has nothing to do with the AA procedure itself but rather with the requirements of the EIA Directive (for instance the AA does not require systematic public consultation).

### 3.2 Different types of plans or projects

The Article 6.3 permit procedure may also be strongly influenced by the size and nature of the plans or projects under scrutiny. For instance, the smaller more localised plans and projects tend to be dealt with by lower levels of administration who are ‘closer to the ground’ whereas the larger nationally important infrastructure projects and strategic plans are more often dealt with at the national administrative level, even in highly federalized countries.

There is also often a clear link to EIA in the sense that certain types or categories of projects subject to EIA (those larger and with higher potential impact) are often assigned to higher authorities, whilst the others not listed in the EIA Directive are assigned to regional or municipal levels. In this way the AA procedure simply mirrors this existing set up for EIA (e.g. the Czech Republic, Slovakia, France).

In this context it is also apparent from the findings of the study that more and more Member States recognize the importance and sheer volume of small projects (and activities traditionally not considered “projects”) and their potential risk to Natura 2000 sites (‘death by a thousand cuts’).
While the large infrastructure projects usually do not raise any doubts as to the need for AA, small-scale projects, especially those not subject to EIA and linked to land management issues, might pass unnoticed, especially if there is no consistent framework in place to screen these projects for their potential impact and need for a full AA (see chapter 5).

Part of the problem may lie in the fact that authorities are still somewhat confused about the definition of a plan or project (see Section 5.3.5) despite the clarifications made by the European Court of Justice (but which may not be known by the authorities responsible). This might be a problem in federal countries where one can hardly expect the provincial authorities to study and understand the ECJ jurisprudence while at the same time not being informed/educated by their central nature authorities.

Another important element of handling major infrastructure developments under Article 6.3, is that there may well be more than one competent authority involved, including in some cases the promoter of the development itself. This diversity of competent authorities involved in such large-scale projects, as well as the important number of different permits that are required to be obtained, has also been known to cause confusion and frustration for developers due to its complexity.

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List of competent authorities and statutory advisers in England in relation to the Habitats and Wild Birds Directives:

Competent authorities include, but are not restricted to:

- Local Planning Authorities;
- The Environment Agency (England and Wales);
- Harbour Authorities;
- Marine Management Organisation (England and Wales and UK offshore);
- National Park Authorities;
- Forestry Commission (England);
- The relevant Secretary of State, including when a Government Department has proposed a plan or project, which may impact on a European site.

Statutory Nature Conservation Bodies (sometimes referred to as statutory advisers)

- Natural England, for terrestrial and inshore (up to 12 nautical miles) activities;
- Joint Nature Conservation Committee (JNCC), for UK offshore marine area activities.

4. THE NATURE AND EXTENT OF PROBLEMS WITH THE ARTICLE 6.3 PROCEDURE

4.1 Introduction

This chapter examines the evidence gathered during the course of the study on the potential nature and extent of the problems associated with the implementation of the Article 6.3 permit procedure. In particular it attempts to answer the following questions: to what extent is Article 6.3 seen to be problematic, are these problems systemic or case/country related? How much of an administrative burden is it for those concerned, does it generally lead to a ban on developments in Natura 2000 sites? Does it systematically cause long delays in the permitting process...

These issues are explored further in the present chapter using the information gathered from the on-line survey, structured interviews and the literature review. Chapter 5 goes on to explore the underlying causes of these perceived problems.

4.2 To what extent is the implementation of Article 6.3 considered a problem? Are these problems systemic or case/country related?

4.2.1 Findings on the on-line survey

The AA online survey, undertaken for the present study, asked nature authorities 'how well does the AA procedure operate in your country/region overall'? An overwhelming 89.5% of respondents considered that ‘the AA procedure operates well – some difficulties occur, but it is usually possible to deal with them’. Only 7% (ie 4 authorities) considered that it doesn’t operate well, all were from local level administrations and two were from the same country. The survey is based on replies from 22 countries, it does not therefore provide a full picture for all 28 countries.

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The survey is based on replies from 22 countries, it does not therefore provide a full picture for all 28 countries.
4.2.2 Findings from the structured interviews in ten countries

The structured interviews undertaken for this study supported this overall positive view of the Article 6.3 procedure. The majority of the authorities in the ten countries interviewed (both nature and sector orientated) consider that the Article 6.3 procedure is generally working well in their country/region, and is providing a robust but stable legislative environment for developers.

A number pointed out that there had indeed been serious teething problems at the start and that it took some time for all concerned to get used to the new system, accept it and learn how to apply it correctly but most of these initial problems have since been largely overcome in many of the countries interviewed and, overall, the permit procedure is now running smoothly for the majority of plans or projects.

This is not to say that there are not still occasions where problems and delays occur from time to time, especially with the larger infrastructure plans and projects, but these tend to be linked to individual cases rather than being a problem across the board.

Also many of those interviewed indicated that the AA procedure clearly underwent a marked improvement in their country following a major ECJ ruling on Article 6 (eg France, Germany, Ireland, Netherlands, UK…). This required them to adjust their national legislation to ensure that the procedure was fully transposed into national law and was clear from a legal standpoint.

It also led to more resources and effort being made to improve and streamline the methods of implementation, eg through better, more consistent, frameworks for screening projects for AA, or ensuring a sufficient quality of the AA reports, or by improving the understanding and skills of authorities and developers via training courses, guidance documents etc… or encouraging greater collaboration and dialogue between developers and authorities over the AA, or, eventually taking Natura 2000 requirements better into account earlier on in the decision-making process and at a more strategic planning level.

However, some countries/regions (eg, Austria, Czech Republic, Slovenia, Spain, Sweden…) reported that there is still an overall lack of understanding of, or willingness to accept, the Article 6.3 procedure amongst certain authorities and/or sectors. This has caused difficulties in its implementation which has lead to more frequent delays, inconsistencies in application and frustrations amongst both the developers, authorities and NGOs.

It seems that this is especially a problem at a lower administrative level (especially in countries with federal structure) and in countries where the competent authority is not the nature authority. In such cases there can be a lack of skills, resources and basic understanding of the requirements of the Article 6.3 procedure which renders its application more problematic and inefficient.

Several reported that there was still a real need to set up a more systematic and consistent framework for assessment, provide skills training and locally adapted guidance (including for instance checklists and pro forma forms) for both the project or plan proponents and the competent authorities and in particular to encourage a

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11 In the outputs of the structure interviews we decided to explicitly list particular countries. However, as we had only interviewed 10 out of 28 EU MS, these lists should serve as an illustration of conclusions made by us but by no means can be seen as exhaustive “positive” or “negative” lists of countries.
more constructive dialogue between the plan and project proponents and their counterparts in the nature authorities.

The latter was strongly emphasized as one of the key factors to help improve the AA procedure. However, the roots of these problems usually lie in the national administrative structure and information sharing from top to bottom.

**Several countries also indicated that small projects can in fact sometimes be more problematic to handle than large scale ones.** First there is the issue of the sheer volume of these types of plans and projects which can sometimes run into their thousands even at a relatively local level; then there is the question of whether they fall within the remit of Article 6.3 or not and if so how to screen them for AA in a consistent and efficient way (e.g. forestry or fisheries plans, small scale changes in land use, local restoration or small infrastructure projects like building a wood shed or clearing out a ditch…).

Some types of plans or projects can also be more problematic than others – for instance in the case of marine projects or plans where there is a dearth of baseline ecological information and experience in assessing impacts, or in the case of large scale development or infrastructure plans in an area or region that is already heavily developed and where the margin for manoeuvre is now very limited, or in case of plans or projects that require different types of approval from a wide range of different authorities.

But again, those interviewed indicated that this was essentially a case by case problem and not reflective of more systematic problems with the overall Art 6.3 permit procedure.

In conclusion, like the on-line survey, the structured interviews indicate that overall the AA procedure is generally working well. There are still problems but these tend to be linked to specific plans or projects, individual countries or regions as well as types of authorities, rather than being a systemic problem with the AA procedure as such (see details in chapter 5).

### 4.2.3 Feedback from representatives of economic sectors and NGOs at EU level

The views of the key economic sectors operating in Brussels were rather more mixed. Some considered that, whilst Natura 2000 was definitely an additional administrative burden for them, they are now accustomed to the procedure, and it is no longer a big issue for them as it is usually possible to find a solution that allows the project to go ahead whilst safeguarding the interest features of the Natura 2000 sites.

However the mere presence of a Natura 2000 site can sometimes act as a real deterrent for their business. Because of the time consuming nature of the AA procedure and the uncertainty of the outcome, some companies will actively avoid proposing projects in or near Natura 2000 sites unless they can be sure of a reasonable chance of success.

Whilst this may be manageable for some industry sectors where the resources they wish to exploit are relatively widespread, it can be much more of a problem for industries working with rare resources (such as metal ores…) where there are only a finite number of locations available or where the company may have acquired extraction rights long ago before the site became Natura 2000.
Several also pointed out that some competent authorities responsible for issuing Art 6.3 permits are clearly less well versed in some countries than in others, especially at the local level and that this results in more frequent and systematic delays and costs. Authorities may for instance take an inordinate amount of time to respond to the request for a permit (or not reply at all) or may rely too readily of the precautionary principle when reaching their decision on whether to issue the permit or ask for too much information in terms of baseline studies and impact studies.

Also, they object to the fact that they are expected to pay for expensive baseline surveys on Natura 2000 sites, which should have been collected by the nature authorities during the designation process and made available to them for free. Countries that do provide good data on N2K sites in an easily accessible manner also benefit the developers as they can more easily estimate the potential consequences of placing their projects in or around Natura 2000 sites.

Another problem stems from the fact that some countries and regions have decided to impose stricter rules than foreseen under the Habitats Directives for certain types of development activities, eg for instance by issuing a complete ban on wind farms in Natura 2000 sites. Although it is permitted for Member States to adopt stricter national rules, it does significantly alter the perception in those countries since people are rarely aware of the finer legal distinctions between EU and national legislation.

Most sectors do however recognize that the AA procedure does work relatively smoothly and efficiently in those countries where efforts had been made to install a clear and transparent AA system which is applied in a consistent manner across the country or region and where there is an ‘open door’ policy towards developers which encourages early and active dialogue during the entire AA process.

These were also often countries that have adopted a more integrated land use planning approach that takes into account different potential interests and land uses at a strategic planning level early on. The sectors interviewed welcomed this approach because it also provided them with an opportunity to bring their interests to the attention of decision makers and to have a ‘seat at the table’.

However it was also pointed out that spatial planning varies significantly from one country to another. Several countries have sector or spatial plans that are still too single focused and sector orientated. As a result they do not facilitate the AA process and may even make it more complicated. Potential conflicts are then only addressed at the level of individual projects when there is less flexibility and fewer options available to satisfy different interests.

Overall, the key economic sectors consider that whilst the AA procedure is generally accepted the way it is implemented in certain countries can still cause significant problems, additional costs and delays for their business.

The EU guides produced for their sectors were all very welcome because they provided clarity and consistency as regards the various steps to be undertaken under the Article 6.3 process. They also send out a very clear message from the Commission that sectoral activities are not a priori forbidden in principle and that there can be developments in Natura 2000 sites so long as they are done in a way that does not adversely affect the features for which the site was designated.
However, whilst the guides are useful for the sector itself (many had also produce their own guides to ensure the AAs were done to a consistently high standard), they considered it much more important that they by applied fully and correctly by the competent authorities (especially at a local level) responsible for issue Art 6.3 permits. Several sectors expressed a strong concern over the poor promotion and distribution of the Commission guides amongst the competent authorities across the EU. This has resulted in a very limited uptake.

Feedback from NGOs indicate that they too consider that, after some difficult years at the beginning, the Article 6.3 process is generally operating more effectively and offering a robust framework for development at least in a number of countries. However, there are still in their view serious systemic problems with its implementation in a number of countries, especially in those that were not interviewed as part of this study\(^\text{12}\).

The NGOs consider that businesses in these countries have an unfair advantage due to the widespread lack of application of the AA impact assessment. Entire sectors (eg forestry/ farming/fisheries) may not be going through the AA procedure at all despite the risk of their development activities causing potentially significant impacts on Natura 2000.

The screening process for reviewing the likelihood of impacts can also be so lax and unclear that all sorts of plans or projects that could potentially have a significant impact on a Natura 2000 sites are not subject to an appropriate assessment. The NGOs would like to see a more systematic and indepth investigation by the Commission of the way in which AA procedure is being implemented in these countries (for Italy the NGOs sent in their own complaint to illustrate systemic failings with Article 6.3 in that country).

The NGOs also recognize however the Article 6.3 process does work effectively and smoothly in several countries and is generally not problematic for the vast majority of plans or projects, especially where there is an open and transparent consultation and assessment procedure and where there is a culture of early and iterative dialogue between industry and the competent authorities and with NGOs and stakeholders.

\subsection{Findings of the literature review}

Only a few governments have carried out a review of the implementation of Article 6.3 in their country. A number of independent technical studies have attempted to examine this issue as well. The key findings of both are presented below.

The UK is one of the few countries to have carried out a review of the implementation of Article 6.3 recently. This was done at the request of the Chancellor of the Exchequer who asked that the way the Habitats and Wild Birds Directives were being implemented in England (and relevant offshore waters) be examined, with particular reference to the burdens placed on business by the authorisation process for development proposals.

\footnote{ As stated in chapter 1, despite several requests authorities in a number of countries refused to accord us interviews, it may well be therefore that the study findings are biased towards countries that are more actively working on ensuring the full and efficient implementation of Art 6.3, as opposed to countries where there are signs of more systemic failings within the system.}
The review\textsuperscript{13} concluded that: \textit{It was clear from the wide range of evidence and views submitted in the course of the Review that in the large majority of cases the implementation of the Directives is working well, allowing both development of key infrastructure and ensuring that a high level of environmental protection is maintained. In those relatively few cases in which problems arise, for one reason or another, there can be unwelcome delays and additional costs for developers, uncertainty for the local communities and the environment, and a risk of clouding the reputation of the Directives as a whole}'.

In 2007, in \textit{Germany}, the Chamber of Commerce expressed concern that the Habitats Directive was blocking development, which prompted calls from MPs to amend the way it was being implemented in Germany. The Minister of Environment and Nuclear Safety responded to these concerns by stating that: \textit{to date the nature conservation Directives have not prevented any single significant economic development in Germany. On the contrary, in many ways processes were accelerated by the use of the systematic instruments available under the Habitats Directive for managing conflicts between ecological and economic factors.}

\textit{In my opinion there are two reasons for the negative feeling in Germany regarding the EU nature conservation Directives: firstly, it is not consistent with the traditional way of handling protected areas in Germany that the Natura 2000 areas are not sacrosanct. Exploitation is not, in itself, ruled out. This embodies the principle of sustainability contained in the Directive, whereby the ecology and economy are to be reconciled by weighing up interests in a considered manner... Popular statements demonising hamsters or bats as the bugbear of industrial development, unfortunately have often not been helpful in conveying this constructive mechanism of EU nature conservation law to the public.}

\textit{Secondly, this negative feeling is based on the woeful way in which the Natura 2000 network was established [in Germany], which featured continuous new notification rounds, seemingly from out of the blue, and the resulting legal uncertainties. This process, which went on in Germany for eight to nine years, has in many ways given the public the impression that it is a helpless victim of the Directive. Unfortunately the Länder made many errors in the start-up process}'. \textsuperscript{14}

In the \textit{Netherlands}, the Dutch high level Social and Economic Council (SER) issued a report in 2006 which asked the following question: \textit{‘Is the Netherlands in a deadlock?’}. It considered in particular whether the application of the Habitats and Air Quality directives meant that building plans for infrastructure, housing, companies and industrial estates have not always been able to proceed as foreseen. It found that many projects were being blocked as a result of court rulings by the Dutch Council of State.

On several occasions, the Council of State ruled that, \textit{in implementing the environmental directives, these administrative bodies had not done their homework well, or that plans could not proceed because they would fail to meet environmental quality standards}. According to SER the key problems were a lack of experience with the implementation procedure of the Habitats Directive and the fact that the Habitats Directive had not been transposed yet into national law in a satisfactory manner as judged by the ECJ (Case C-441/03, ruling from late 2005).

\textsuperscript{13} Report of the Habitats and Wild Birds Directives implementation review, DEFRA, 2012

\textsuperscript{14} These concerns are explored further in chapter 5
SER’s general conclusion therefore was that problems with the implementation of the Habitats Directive are in a first instance due to poor transposition in the Netherlands, which was aggravated by a lack of guidance for the lower public authorities dealing with the necessary permits.

In 2007, a study by Backes et al. concluded that the application of Article 6 in the Netherlands rarely resulted in the rejection of a development planning request. Projects were often delayed, but in most cases only on formal grounds: because the legally required AA had not been carried out, or had been carried out only partly or poorly. With the exception of one case reviewed by the authors, all project development requests had been given a permit in the end.

The study goes on to conclude that: although Article 6 has by now been transposed reasonably well in most countries, this has taken a considerable period of time in almost all the countries and has led to the unnecessary friction, including litigation in the European Court of Justice. In many countries, Article 6 has led to much commotion and heated discussions. In contrast, however, the interests of nature conservation have been given a clearly more distinct role in decision-making and are not easy to push to one side.

Several sources also report that there is a bias in public perception due to the fact that negative cases, such as a delay in permit-granting due to Natura 2000, are reported at length in the media. Although in the end most permits are granted after the necessary assessments or compensations have been made, these cases remain unreported.

Several studies also pointed out that a few negative cases can dominate the debate in the media, resulting in a negative perception of the entire process (Beunen, Duineveld, and Van Assche 2011). Also, in the early years, because of limited understanding of the Natura 2000 jurisdiction the permit process was greatly slowed down which caused irritation.

In summary the findings of the literature review also indicates that, in general, the Article 6.3 procedure is working well and is not as problematic as it is sometimes claimed.

Several of the studies reviewing the problems with Article 6.3 were issued at a time when there was a particularly strong focus on the implementation process and its perceived lack of efficiency (eg 2005-2007). It is interesting to note that many of these studies concluded that the problems were down to such issues as poor transposition, poor guidance, and ‘getting used to the system’.

As the structured interviews also confirmed, such problems have since been largely overcome in the majority of countries analysed (eg France, Germany, Ireland, Netherlands, UK,..) and so the claims that the Art 6.3 permit procedure is overall problematic and causing significant delays in no longer founded in these countries, with the exception of a few high profile plans or projects where problems do arise, albeit for a whole range of reasons.
4.3 Does the Article 6.3 permit procedure generally lead to a ban on developments in Natura 2000 sites? How much of an administrative burden is it for those concerned?

Part of the answer to this first question lies in knowing how many plans and projects are subject to the Article 6.3 and in particular how many are screened out, approved or refused/abandoned or go to Article 6.4.

Unfortunately, it seems that most countries do not keep statistics on how many plans or projects are required to go through the Article 6.3 procedure and what proportion this represents of all the plans and projects involving relevant consent procedures and planning applications. Nevertheless, the literature review and the structured interviews have provided some pieces of information for a number of countries which are summarized here.

4.3.1 Proportion of projects undergoing AA and being approved

- Information gathered during structured interviews and literature review

Bulgaria

The NGO Bulgarian Society for the Protection of Birds, BSPB, currently manages a LIFE-Nature project on the conservation of imperial eagle and saker falcon and their habitats within 10 SPAs in Bulgaria15. As part of this work, it has set up a database to monitor any investment proposals proposed that may potentially affect these SPAs. The information about the plans and projects is collected from a range of sources, including the websites of the relevant state institutions. BSPB staff also regularly check local information boards on local authority buildings for notifications of new proposals.

BSPB follows closely the development of these plans and projects as well as their AA/EIAs, and where deemed necessary, submits statements about potential impacts. From 2009-2012, BSPB reviewed around 1533 investment proposals in and around the ten SPAs. 24 (around 2%) were considered to have a potential threat for the habitat types and species for which the site was designated (mainly involving photovoltaic or wind farm parks inside core areas of the SPA). The project and the AA were carefully analysed and additional research (including field visits) were done for these.

Since the beginning of 2009, BSPB has submitted 1 report and 5 statements to the investors and RIEW presenting arguments against the investment proposals as well as 20 formal complaints to the Ministry of Environment, 1 to the Administrative Court and 2 to the Supreme Court. In 2011 and 2012, six of the projects were reworked as a result of BSPB’s interventions in order to remove any negative impacts on the SPAs, two have been refused permission, and decisions are still ongoing for one project. Three of BSPB’s complaints were rejected and the projects implemented as originally planned.

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15 Save the raptors LIFE07/NAT/BG000068
Germany

In November 2007, The German Environment Minister responded to concerns raised by MPs in the Bundesrat (Upper House of the German Parliament) about the transposition of European nature conservation law in Germany, particularly in light of the recent amendments to the Federal Law on Nature Conservation (Bundesnaturschutzgesetz) following an ECJ ruling. In his letter\(^{16}\), Minister Sigmar Gabriel gave the following statistics regarding the Federal Transport Plan (Bundesverkehrswegeplan) of 2003 which contains 2 600 projects.

‘The compatibility of all these projects with the EU nature conservation Directives had to be checked. This happened without any fuss. From the start, 1 600 projects were able to be excluded from any further consideration because they posed no problem. 800 projects were examined in greater detail. That left approximately 350 projects which pose a very high risk to the environment and have been given a specific nature-conservation planning mandate when it comes to further planning. In this way acceptable solutions could be found very quickly, even for highly controversial and ecologically problematic measures such as the North Hamburg by-pass involving the A20 or the A33 (Tatenhauser Wald). The nature conservation Directives have helped prevent conflicts from arising in the first place by making available very early on in the planning process a choice of suitable options’.

‘…The involvement of the European Commission is only required in a very few cases, essentially where the economic project harms species and habitats in particular need of protection in areas with protected status under the Habitats Directive. In Germany this has happened six times since the Habitats Directive came into force, and on only one occasion did the European Commission issue an unfavourable opinion on account of an obvious failure to follow procedures’.

In Ravensburg County\(^{17}\) (one of the largest counties in Baden Württemberg, Germany covering over 1,600 km\(^2\)) statistics show that of the ca 1,000 plans and projects considered by the nature conservation authority within the county administration in 2006, only about 10% were potentially relevant for Natura 2000. Of these 100 projects, 40 were screened out immediately as they were not considered likely to have a significant effect on a Natura 2000 site.

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\(^{16}\) RSPB 3rd submission to Defra HRR - European Literature Review

The other 60 projects underwent a full appropriate assessment. As most were small-scale projects with only local environmental impacts, the AA was generally no more than 6 pages long. Nevertheless, for 6 out of them a more detailed assessment of the impacts was required. **Finally, only one project was not approved because significant impacts** could not be excluded and alternative solutions were not available.

**Slovenia**

In 2011, the State Institute for Nature Conservation issued 2,820 opinions on plans or projects under the Article 6.3 procedure. 68 % showed no significant impacts and so were given the go ahead, 27 % were approved once appropriate mitigation measures had been amended and 2 % were refused because of their adverse affect on a Natura 2000 site. The statistics for projects for 2007 – 2010 shows very similar figures: 2007 – 92 % of 1,356 cases was without a significant effect (both completely without or after mitigation measures had been prescribed); 2008 – 93 % of 1,785 cases; 2009 – 94 % of 2,285 cases; 2010 – 95 % of 2,587 cases.

**Spain (Extremadura)**

The Department of Agriculture, Rural Development, Environment and Energy, in the Government of the Autonomous Region of Extremadura in Spain, has kept a tally since 2010 of the number of plans and projects it has to deal with under the Article 6.3 procedure.

From their statistics it can be seen that **the vast majority are either screened out or approved. Altogether, around 2% were refused because the AA shows significant effects.** According to that source, the majority of these were reworked and/or mitigation measures were introduced following discussions between the authority and the developer and were therefore eventually approved anyway.

![Projects handled under Article 6.3 in Extremadura, Spain (2010-2013)](source: Consejeria de Agricultura, Desarrollo Rural, Medio Ambiente y Energia,Direccion de Medio Ambiente, Extremadura, (2013))
The provincial Government also noted that the reason why many of the plans and projects were initially refused was because of the poor quality of the AA (usually done by the developer or authority concerned rather than an AA expert) which prevented the authority from making a decision on the grounds of no adverse effects on the Natura 2000 site. When the authority was able to sit down with the proponent and review both the shortcomings of the AA and the possible impacts, solutions could be found in the majority of cases to enable the project to go ahead.

**United Kingdom**

According to the DEFRA’s ‘Habitats and Wild Birds Directives implementation Review’ published in March 2012¹⁸: "Natural England (the statutory nature conservation body whom the competent authority is required to consult before making a decision) receives around 26,500 land use consultations annually; of these they 'object' to less than 0.5 % on Habitats Regulations grounds. Most of these objections are successfully dealt with at the planning stage.'

RSPB¹⁹ has also undertaken a survey of the number of planning applications it has commented on. Over the period 2001-2010 it responded to a total of 2,177 applications in England, less than 0.04 % of the 599,341 submitted per annum during this period, with very few of them resulting in objections.

In the small proportion of cases where comments were submitted, the objections were generally due to ‘flaws in putting the law into practice mostly associated with insufficient environmental information, an inadequate or inappropriate survey base for the impact assessment, inadequate mitigation measures, inadequate justification for IROPI, lack of clarity of engagement in the process and lack of competence and/or capacity in relevant organisations’…(RSPB, 2012)

- **Online survey results**

The on-line survey also attempted to find out what proportion of projects go through the different stages of the AA procedure and, as a result, are approved, reworked or abandoned ²⁰. The results indicate that the majority of projects are screened out because they are considered not likely to have a significant effect on Natura 2000 sites. Of those that do go through a full AA, most are approved because the AA concludes that there is no adverse effect. The majority of the rest are reworked or redesigned and then approved. Only a small proportion of projects are actually abandoned because the AA has concluded an adverse effect and even fewer use the derogation procedure under Article 6.4.

In general, from information gathered during the structured interviews and literature review available, it would appear that the majority of plans or projects subject to Article 6.3, are screened out because they are not considered to pose a risk to a Natura 2000, or are approved following an AA (with or without mitigation measures). By contrast very few are actually abandoned or refused permits; even fewer go through the Article 6.4 procedure.

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²⁰ In hindsight the question was poorly phrased as it did not allow the results to be aggregated but the graph does illustrate a general trend in favour of approval or screening out, as opposed to refusal and abandonment of projects
This would seem to confirm the view that Natura 2000 does not, on the whole, lead to a ban on development within these sites. It is however important to bear in mind that this finding is largely based on partial information and ‘perceptions’ of the authorities interviewed rather than on any consistent and objective statistical analysis of data. Such data is simply not collected in any systematic way in the majority of countries.

This is a significant gap in knowledge. It would be important for Member States to collect such statistics in order to develop a full appreciation of the scale of use and application of Article 6.3 in practice and whether or not it acts as a general block on development.

4.3.2 The administrative burden associated with the AA procedure

In the EU’s contract it is stated that ‘claims have been made that the AA permit procedure generates a high administrative and financial workload for administrators and economic operators and causes substantial delays to permitting procedures’.

There is no doubt that the Article 6.3 permit procedure, like any other permit procedure, creates an administrative workload for those involved and has a financial cost, not just in terms of carrying out or reviewing the AA but because additional baseline surveys may be required, or because the plan or project may need to be reworked and/or suitable mitigation/compensation measures introduced to redress the potential impacts that would be caused by the plan or project.

However, it is extremely difficult to assess this ‘burden’ in any objective way. During the course of the study we were unable to find any accurate information or quantifiable data on the specific cost of the AA procedure itself despite raising this question systematically during the interviews with the competent authorities, NGOs
and EU level key economic sector associations\textsuperscript{21}. The question of keeping records of N\textdegree of AA procedures and their costs was also raised as an issue for discussion at a recent international AA expert meeting held in Mikulov, Czech Republic in October 2013 which was attended by 40 AA experts from both private and public bodies from 8 countries. To their knowledge no country kept such a record of the absolute/relative number of AAs and their associated costs.

It seems that Member States simply don’t collect this kind of information, not even when carrying out a review of the Article 6.3 procedure. One of the reasons for this information gap is that both the competent authorities and investors do not record the costs of AA as a separate item; they usually consider them a part of costs of overall EIA and other environmental considerations (including public consultation), which is because, in most cases, the AA is run within the EIA procedure.

Also, it has to be borne in mind that, because the AAs are so project or plan specific, the costs associated with the assessment can be extremely varied. One might take less than half a day to process, whilst another could take several years and cost significantly more because of the need not only to do the AA but also to implement mitigation or compensation measures.

Whereas the costs of EIA generally increase proportionally in function of the size of the project, this is not necessarily the case for the AA procedure since the cost will be intricately linked to the unique range of intrinsic and extrinsic factors operating within the Natura site in question. Thus, one can well imagine a situation where the costs associated with an AA would be relatively low in one Natura 2000 but much higher in another even though the project is exactly the same in both cases.

Various industry sectors and individual developers have, on occasion, provided some examples of the environmental costs for specific projects but the examples examined were generally related to major infrastructure projects. Not only are these relatively rare compared to all the other types of smaller plans and projects that go through the AA procedure but they are often, by their very nature, also necessarily more complex and more likely to cause impacts, and hence are also likely to be more expensive to assess under Article 6.3.

There is also no consistent approach in these examples as to the way in which the ‘environmental costs’ were estimated. As stated before, they tend to include also the costs linked to all the other permitting procedures (be they for EIA/SEA, local archeological or landscape issues, etc….) and to public consultation (which strictly speaking is not obligatory under the AA procedure).

Moreover, none of the examples considered the economic value, in terms of socio-environmental benefits derived from maintaining healthy ecosystems, of not carrying out the plan or project.

Those interviewed generally confirmed that when estimates are kept of the environmental costs of a plan or project it tended to cover all aspects including the EIA/SEA and other relevant permit procedures (eg for archeological sites) as well as the public consultation exercises, and that there was rarely a distinction made as regards the specific costs of the AA procedure as such.

\textsuperscript{21} We were informed that they did not collect such information at either national or regional level. It would be necessary to go to individual companies to find out if they kept systematic records of the costs of the AA procedure (as a distinct part of the overall project consent procedure and public consultation exercise)
German Government’s response to the ‘cost of environment and nature’ on infrastructure investments (2007)

In December 2007, three MPs of German Federal Parliament (Bundestag) raised an official inquiry about the “costs and use of measures for environment and nature protection within the infrastructure investment. The German Government provided an extensive reply focusing on motorway and road constructions stating that costs of the above measures represent an intrinsic part of the projects as this is prescribed by the legislation and “projects which would contradict the requirement of environment and nature protection would be, due to the environmental awareness of the citizens, hardly implementable”.

The Government said that “there is no duty to separately record the nature protection and environmental protection measures nor to communicate their costs. All the costs are funded from the single account and in the Federal Budget there are no separate records of them. By estimation, usually 2 – 5 % of the capital investment costs are spent for the nature protection measures alone. As those measures are usually multifunctional, it is impossible to separate data for particular protected assets as e.g. animal or plant species”.

Nevertheless, the Government provided some data on the above mentioned costs for particular motorways and roads funded from the federal and state budgets. This data clearly show that especially the costs of nature protection requirements vary significantly due to uneven distribution of protected areas and/or assets across the country. A few examples for motorways and federal roads, i.e., the most costly investments where one can expect also higher environmental and nature protection costs, are given below (taken from the German Government’s response).

<table>
<thead>
<tr>
<th>Motorway/federal road project</th>
<th>Costs of environmental measures (mio €)</th>
<th>Total costs (mio €)</th>
<th>Proportion %</th>
</tr>
</thead>
<tbody>
<tr>
<td>A 71 section from B 286 to A 70</td>
<td>2.3</td>
<td>142.5</td>
<td>1.6</td>
</tr>
<tr>
<td>A 73 Coburg – Ebersdorf bei Coburg</td>
<td>2.3</td>
<td>127.8</td>
<td>1.8</td>
</tr>
<tr>
<td>A 73 Ebersdorf – Lichtenfels</td>
<td>4.9</td>
<td>122.5</td>
<td>4.0</td>
</tr>
<tr>
<td>A 94 Ampfing – Winhöring</td>
<td>3.1</td>
<td>66.7</td>
<td>4.7</td>
</tr>
<tr>
<td>A 96 Memmingen – Erkheim</td>
<td>2.3</td>
<td>50.0</td>
<td>4.6</td>
</tr>
<tr>
<td>A 99 Langwied – Unterpfannenhofen</td>
<td>3.6</td>
<td>92.5</td>
<td>3.9</td>
</tr>
<tr>
<td>B 2 OU Stettenhofen</td>
<td>1.4</td>
<td>22.1</td>
<td>6.1</td>
</tr>
<tr>
<td>B 16 relocation Nittenau – Roding</td>
<td>1.1</td>
<td>14.0</td>
<td>8.0</td>
</tr>
<tr>
<td>B 19 new Immenstadt – Kempten BA III</td>
<td>3.0</td>
<td>34.6</td>
<td>8.7</td>
</tr>
<tr>
<td>B 533 OU Schwarzach</td>
<td>1.2</td>
<td>16.7</td>
<td>6.9</td>
</tr>
</tbody>
</table>

Again, however, the nature protection costs are inseparable from those on environmental protection, and similarly there is no record on the costs specifically related to the AA procedure or due to national nature protection legislation.


Although these individual examples do clearly illustrate that the AA procedure has a cost, which can sometimes be quite elevated for some projects, they do not provide enough of an evidence base and are not sufficiently representative of the whole gamut of plans and projects that go through the Article 6.3 permit procedure to provide any clear view on the actual burden of this AA procedure.

The general lack of data also makes it impossible to confirm the claims made by certain sectors that ‘the AA permit procedure generates a high administrative and financial workload for administrators and economic operators’ is accurate and...
based on substantiating evidence. Again, this may be true for some plans or projects but there is nothing to suggest, from the information gathered during the course of this study, that this reflects the overall situation with the Article 6.3 across all countries and types of plans and projects.

Individual, high profile examples, whilst of legitimate concern in their own right, do also have a tendency to polarize people’s perceptions of the AA procedure as being always ‘difficult’ and burdensome when in reality this is mostly not the case. They are also used by politicians and others as examples to try to discredit the Habitats Directive and the AA procedure as a whole.

As the DEFRA reviews said ‘in those relatively few cases in which problems arise, for one reason or another, there can be unwelcome delays and additional costs for developers, … and a risk of clouding the reputation of the Directives as a whole’.

In order to be able to present a more accurate view of its burden and cost to industry/government, it would be necessary to set up a mechanism for gathering further information in a more systematic and objective manner on the actual burden of the AA procedure across a whole range of different types of plans and projects. At the same time these examples should also look into the economic benefits of not carrying out the project eg in terms of safeguarding valuable ecosystems services.

But first it would be important to clarify in advance what is considered to be a ‘high’ or ‘inordinate’ cost or burden (all types of licences have both a purpose and a cost) and when is it to be considered disproportionate with the objectives to be achieved.

The study did identify a number of factors that can influence on the cost of the AA procedure. The underlying causes are discussed further in the following chapter, and examples are given in chapter 6 of how they have been overcome, thereby reducing the cost and burden of the Art 6.3 procedure on all those involved. Briefly, the factors that can influence in the cost and burden of the AA procedure, include:

- **Size and nature of the plan or project**: clearly this has a major influence on the cost of the AA procedure. Because the Article 6.3 procedure is focused on potential impacts rather than on certain types of plans and projects, the range of plans and projects that go through the procedure can vary enormously. It can apply to very large nationally significant infrastructure projects (sometimes crossing several countries) but also to very small localized plans or projects (eg construction of a woodshed, or clearance of a drainage ditch).

The cost of the AA procedure will vary considerably in each case and although it tends to be higher for larger infrastructure projects where there is more risk of impacts, this cost is not necessarily proportionate to the size or cost of the plan or project as a whole. For instance, the cost of an AA and introducing mitigation measures for a large scale project may represent a very small fraction (less than 1%) of the total cost of the project which can be easily absorbed. But in the case of a small local project presenting by an individual landowner (eg building of a wood shed), the proportional costs may be substantially higher.

The type of plan or project is also a key influencing factor. In some cases it maybe very straight forward and inexpensive to avoid or mitigate potential impacts whereas for other types of projects the type of mitigation measures needed may be that much more costly because of the nature of the project and its location (receiving environment).
The nature of the Natura 2000 sites and the sensitivity of their target features to potential impacts from plans and projects: As mentioned earlier the same project can have very different impacts depending on where it is located and which type of EU protected habitat types and species are present. Hence the need to look at each situation on a case-by-case basis. This significantly influences the cost of the AA procedure. Some habitats and species are especially difficult to assess, such as the marine environment or impacts on bats, because of the lack of basic scientific data on these species or habitats as well as lack of understanding of how they react to certain impacts. The inaccessibility of the environment (eg offshore marine sites are notoriously difficult and expensive to study) is also an important cost consideration.

Linked to this is the availability of information on the Natura 2000 site and its target features. In some countries and regions, the sites and their target features have been well documented and readily available to developers and AA assessors. However, in others the baseline data is very scant (and may not go much beyond what is available in the Natura 2000 Standard Data Forms) which means that the AA has to first build up this information before being able to assess the potential impacts of a plan or project.

The quality of the AA assessment and level of dialogue and consultation early on in the decision making process. Experience has shown that, generally, when the AA has been done correctly and to an appropriate standard, and especially when there has been an early dialogue and discussion between the developer and the authorities/ nature experts involved, the AA procedure tends to run more smoothly and lead to a faster decision, which in turn reduces its overall costs. If, however, the procedure is not followed correctly this can lead to substantial delays and additional costs.

Public opinion: Public consultation is not obligatory under the AA procedure, but nevertheless many plans and projects go through a public consultation phase, especially when there is also an EIA/SEA underway at the same time (in which case consultation is obligatory). Dealing with the public consultation phase, and in particular with any objections raised during this process, is necessarily a time consuming and therefore expensive undertaking. Developers often associate the public consultation process as being an 'environmental cost' for the plan or project because the public often tend to object on so-called environmental grounds, rather than social or economic grounds. But this is misleading, especially when it comes to the AA procedure. In our experience comparatively few objections are raised on purely nature conservation grounds linked to the target features of the Natura 2000 site. Instead they tend to focus on much broader environmental and landscape issues (aesthetic value, archeological value, local interests …) and in particular on NIMBY (Not in my back yard) issues which have nothing to do with Natura 2000 conservation as such.

Inefficient and inconsistent AA procedures: it is also clear that the public administrations have a major influence on how efficient and cost effective the AA process is. In some countries and regions particular efforts have been made to reduce the administrative burden of the AA procedure and improve its overall understanding so that it can be done in as efficient and consistent a manner as possible eg through introducing a systematic screening system, preparing pro form templates for AA, making scientific data readily available to proponents,
offering a help desk function, introducing strategic level mitigation measures, increasing and training their staff etc... (see chapter 6 for examples). All of this can greatly facilitate the tasks of all those involved in the AA (proponent, AA experts, local authorities) and so reduce the overall costs and risks of delays and complications.

On the other hand, it is also clear that in countries that have not made such efforts there can be significantly more delays, administrative hurdles and inconsistencies to overcome which can lead to major frustrations and added costs on the parts of the proponents (who sometimes know better how the AA operates than the competent authorities responsible ...).

4.3.3 Potential causes of delays in the AA procedure

When delays occur in the AA procedure this leads to additional costs and administrative work for both the developer and the administrations involved. It is therefore useful to explore the key reasons behind the delays in order to see how best they may be avoided/overcome.

As part of the on-line survey conducted for this project, the nature authorities were asked to indicate the main reasons for delays during the AA procedure. The list of reasons for potential delays used for this question was identified from the literature review and our own experience in different countries. They do not cover all possible reasons, and again, much depends on the kind of the projects and plans under discussion and their context, as well as the administrative set ups in each country.

Nevertheless, the replies allow one to have a first impression of the reasons behind possible delays. In this context, two issues stand out in particular: the lack of sufficient ecological data on the site and potential impacts (57.1% said this was always or often the case), as well as the poor quality of the AA report (48.2% said this was always or often the case).

Public opposition to the plan or project was considered ‘sometimes’ a cause of delays (according to 48.2% of the respondents) but a further 35.8% considered this was ‘rarely’ or ‘never’ a delaying factor. The other causes are more difficult to interpret. 46.4% of respondents considered that delays were ‘rarely’ caused by the lack of understanding of terminology (eg adverse effects, IROPI etc.). On the other hand a further 30.4% said this was ‘sometimes’ the cause of delays.

Similarly, opinions seem to be divided equally between those who thought that delays were caused by the lack of expertise and capacity at the level of the competent authority. 40% thought this was indeed ‘sometimes’, ‘often’ or ‘always’ a problem but more than 50% thought is was ‘rarely’ or ‘never’ a problem.
Delays caused by a difference of opinions between competent authorities and nature authorities (where they are not one and the same) were generally not considered to be an issue (58.2% said it was ‘rarely’ or ‘never’ a problem). Nevertheless, 32.4% still said it was ‘sometimes’ a delaying factor.

In summary, it is clear that the AA procedure, like any other administratively regulated permitting procedure, is a kind of burden on those involved, which increases if it is not correctly implemented. But the general lack of data makes it impossible to confirm the claims made by certain sectors that ‘the AA permit procedure generates a high administrative and financial workload for administrators and economic operators’ is accurate.

It may be true for a number of individual plans or projects but there is nothing to suggest, from the information gathered during the course of this study, that this reflects the overall situation with the Article 6.3 across all countries and types of plans and projects.
5. AN OVERVIEW OF THE UNDERLYING CAUSES OF THE PROBLEMS WITH THE ARTICLE 6.3 PROCEDURE

5.1 Introduction

This chapter examines the underlying nature of problems that have been encountered in implementing the Article 6.3 permit procedure in different Member States and regions, based on the findings of the literature review, the online survey and the structured interviews undertaken for the study.

A key element of the present analysis work involved teasing out those problems that are country or region or project specific, and/or are due mainly to the way in which Article 6.3 has been transposed and applied, from those that reflect more general types of difficulties. As stated before it is very clear that the way in which the Article 6.3 has been applied at the level of the individual Member States and regions has a major influence on its effectiveness, and on the potential difficulties and burdens associated with its implementation.

It is also useful to note that some of the challenges identified are now considered largely ‘historical’ in the sense that they were deemed to be a problem in the early stages of implementing Article 6.3 and, indeed, in setting up the entire Natura 2000 network, but they have since been addressed, at least in most of the countries examined as part of this study, and are no longer as significant a problem as they used to be (legacy of the past). Other problems are nevertheless still considered an issue today, albeit in varying degrees.

Through the AA on-line survey we asked the respondents to identify which problems they most frequently encounter during the AA. The list of potential problems was selected on the basis of those most frequently mentioned during the literature review and from our own diverse experiences with the AA procedure in different countries. The aim was to see if these would be corroborated or not by the nature authorities.

From the replies we can see that the most notable problems include: the lack of sufficient field surveys to assess the impacts properly, the poor quality of the AAs, the lack of attention to cumulative effects, insufficient or inappropriate use of mitigation measures and the fact that the AA are sometimes done by experts with a poor understanding of Natura 2000.
5.2 ‘Historical’ problems – putting the system in place

The following describes the main problems encountered during the establishment of the AA procedure. As stated before they have since been largely addressed and are therefore no longer considered a problem, at least for the majority of the ten countries that were interviewed as part of this study.

They are however included in this review a) because they are sometimes still incorrectly highlighted as a problem in these countries, even though they have been largely overcome, and b) because they can nevertheless still be very real and actual problems for a number of other countries which are known to have more systemic problems with implementing the AA procedure (eg in counties we were unfortunately not able to interview for this study).

5.2.1 An uncertain legal framework caused by slow designation of sites

Because of the sheer scale and ambition of the Natura 200 Network, a substantial effort was required on the part of each Member State to survey, map and collect data on the EU protected species and habitat types present on their territory in order to identify core sites to be incorporated into the Natura 2000 network. These pSCIs were then checked by the Commission. If the list of sites was not deemed to be sufficient, the latter would formally ask the Member State concerned to propose further sites in order to complete the Network.22.

The Directive initially foresaw 6 years for this site selection process but, in the end, it took much longer for a variety of reasons. According to the Commission’s Natura

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22 The process of classifying SPAs according to the Birds Directive is different and purely “national” without a biogeographical review stage, which has caused a lot of problems due to an absence of any guidelines prior to explanatory rulings of ECJ (see further in the text).
2000 barometer, in 1998, 5,022 pSCIs had been proposed by the 12 original EU Member States. By 2002 (ten years after the adoption of the Directive) it had risen to 9,948 pSCIs and, in 2012, it was up to 11,714 pSCI (for EU-12). In the meantime the EU had expanded to 15, then 25, 27 and now 28 Member States. The new Member States were all expected to designate their Natura 2000 sites at the time of accession, but most lists were incomplete and further sites had to be submitted by these Member States after their biogeographical seminars.

This long designation had a significant impact on the application of the Article 6.3 procedure creating considerable regulatory uncertainty for developers, both in terms of knowing where the sites are located and what conditions are attached to their conservation and protection.

This was further complicated by the fact that the protection provisions applied to SPAs that had not been designated (but should have been according to the Commission), were in fact stricter than for those already designated (‘Basse Corbières’ ECJ Ruling C-374/98). According to the ECJ ruling only areas classified as SPAs fall under the scope of Article 6.2, 6.3 and 6.4 of the Habitats Directive. If they are not classified, then only the protection regime under Art 4.4 of the Birds Directive applies which does not allow for any derogations.

In other words, these 'potential' SPAs have a much stricter protection regime because Member States cannot apply the permitting procedures foreseen under Articles 6.3 and Article 6.4 and the sites are in essence 'untouchable' as regards to new developments. The European Court of Justice stated that 'a country may not derive an advantage from its failure to comply with its Community obligations'.

As a result of this Ruling, many of the same people who had earlier prevented the classification of certain SPAs were now pushing the nature authorities to complete the proposals and submit them for adoption as quickly as possible (see box on Baden Airport). This was particularly notable in Germany\(^{23}\) and Austria. Most of the designation problems have since been resolved, but insufficiencies still exist here and there which may still cause local problems with potential development initiatives (eg in some provinces in Austria).

\(^{23}\) See German Environment Minister’s statement on page 26
Designating a Natura 2000 site to aide development – Baden-Baden airport

The Karlsruhe/Baden Airport case in Germany illustrates the importance that individual economic operators attach to planning security. In this case, planning for expanding the airport was refused as large areas of the airfield were covered by Annex I habitats but were not on the list of proposed SCIs. To overcome this situation, the airport operator itself tried to submit the potential SCI to Brussels.

Once the nature authorities had finally designated the site as a pSCI, an AA was carried out. It concluded that the development project would have a negative effect on the site’s target’s features (including priority features) but because, it was considered to be necessary for Imperative reasons of Overriding Public Concern, the proposal was submitted to the Commission for Opinion under article 6.4. Having checked the case for IROPI, the lack of alternatives, and the sufficiency of the mitigation and compensation measures, the Commission gave a positive verdict and the project was approved by the Regional Government. The lack of designation is said to have delayed the project by 13 months.

5.2.2 Getting used to new procedure

For any authorisation system to work effectively in practice, it is important to ensure that the procedure itself is easily understood, accessible and as efficient as possible, thereby providing a transparent and consistent legislative framework for development. As the DEFRA Review of 2012 has pointed out, many problems arose as a result of this not being the case. Many of the actors involved (e.g. project developers and authorities) were unfamiliar with the Birds and Habitats Directives and their precise implications. They either did not know that they had to work with these directives, or they did not know how to work with them.

It has been reported on several occasions that careless decision-making was one of the main reasons why the courts annulled many of the earlier planning decisions in the Netherlands (Bastmeijer & Verschuuren, 2003; Kistenkas & Kuidersma, 2004). Cancelled and delayed projects also gained a lot of attention in the press.

The same general message came through during the structured interviews. Many countries considered that there was indeed an initial upheaval in the Article 6.3 procedure, due to having to get used to the new system, as well as understanding and applying it properly.

Integrating the AA procedure in the Irish planning system

In Ireland, little attention was paid to the AA procedure until the country was condemned for lack of application through an ECJ ruling (C-418/04). Suddenly developers and authorities alike became concerned about the consequences for their development activities and whether existing permits might be revoked for not conforming to Art 6.3. The Article 6.3 procedure has since been fully integrated into the Planning and Development Amendment Act 2010. As a result, it is ‘hard wired’ into the planning regulations but it took a couple of years for the various competent authorities to become familiar with this new legal system. The National Parks and Wildlife Service (the statutory nature authority) did what it could to run information and training courses for authorities and developers, and to provide general support to facilitate its implementation.

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25 NABU report /EEB report add ref details
26 Governance of nature: R Beunen, 2010, University of Wageningen
Another major new aspect of the Article 6.3 procedure is its binding character and its specific focus on Natura 2000 target features, rather than biodiversity or nature in general. Yet, in the beginning, many people continued to believe that the AA was essentially the same thing as an ‘EIA’ (especially since the AA was in essence grafted onto the EIA procedure in many countries). As the EIA procedure had been in place in many countries since the 1970s already, developers and authorities were used to this way of working, and could not understand why the AA required something different.

As a result, there were numerous ‘false starts’ and delays with the AAs and the permits. AAs were being rejected for not focusing sufficiently on the species and habitats for which the Natura 2000 site in question had been designated, and permitting decisions challenged because they had not followed the correct procedure for AAs. This caused a lot of frustrations and an extra administrative burden for all those concerned. It also generated an increasing negative perception of EU nature legislation as a whole.

The legally binding nature of the new AA procedure also met with some strong resistance from developers, politicians and sector authorities (unlike the EIA which merely needs to be taken into account, the AA findings are binding on the competent authorities and conditions the final decision of whether or not to grant a permit). Many found it difficult to understand why nature had been given ‘so much legal power’ and how this fundamental change in mindset and legal approach had come about. They felt they had been ‘caught by surprise’ with this new procedure.

This resistance is still felt but the structured interviews also indicated that, in some countries and with some sectors, there was a growing acceptance that the AA procedure ‘works’ and does provide at stable, consistent albeit somewhat vigorous legislative framework for development, if it is properly implemented.

Another aspect that may have exasperated the initial situation was the apparent lack of information and awareness about the Natura 2000 sites themselves. Developers, landowners and politicians had already objected to the fact that they had not been consulted during the selection process (according to the Habitats Directive the initial site selection is done on purely scientific grounds and cannot take account economic considerations). But, even once the sites had been selected, they were not well publicized and it provided difficult to get information on them in some countries. This lack of transparency also led to heavy criticism of the AA process.

Source: RSPB 2nd submission to DEFRA review, 2012

Quote from RSPB:
‘We have noted a cycle in relation to the various industry sectors that we have worked with as they learn how to work with the Regulations. The early phase is marked by generally difficult discussions and often objection/inquiry into specific proposals, is followed by greater understanding and smoother outcomes, as better spatial planning, location or design leads to the integration of development and natural environment objectives...’
5.2.3 Poor or incomplete transposition into national law

From the review of the 45 ECJ Rulings issued so far on Article 6 it would appear that many EU countries, especially in the original EU-15 had transposition problems with the AA procedure (almost a third of all rulings concerned non transposition of Article 6.3 - see box with examples).

The European Court had made it clear, in one of its rulings, that ‘in the context of the Habitats Directive, which lays down complex and technical rules in the field of environmental law, the Member States are under a particular duty to ensure that their legislation intended to transpose the directive is clear and precise’ (ECJ C-6/04). Unfortunately, this was not always the case and it took some countries up to ten years to finally fully transpose Article 6.3 into their national laws.

According to RSPB (2012) much of the uncertainty that has arisen in the decision-making systems) results from inadequate government transposition and implementation of the legislation, and a lack of clear guidance for both state nature conservation bodies and developers to assist their understanding of the legislative requirements.

Examples of ECJ rulings on non-transposition of Article 6.3 and 6.4:

- **Commission v Germany** (C-83/97): all relevant provisions of the Directive have to be transposed into the national law
- **Commission v France** (C-256/98): Art 6.4 procedure must not be omitted in national law, otherwise the rights of developers guaranteed by the Community law would be damaged
- **Commission v Luxemburg** (C-75/01): missing transposition of Art. 6(3) and 6(4) is a clear breach of the Community law and is inadmissible
- **Commission v Belgium** (C-324/01): incomplete transposition of 6.4: absence of a provision in national law which lays down adequately detailed rules concerning information on compensatory measures
- **Commission v Italy** (C-143/02): it is insufficient to subject to Art. 6.3 procedure only projects subject to EIA
- **Waddenvereniging and Vogelbeschermingsvereniging** (C-127/02): definition of project referring to recurring activities, too; plans subject to Art. 6.3 are not only those covered by the SEA Directive
- **Commission v Germany** (C-98/3): activities outside Natura 2000 and not covered by the WFD cannot be systematically exempted from Article 6.3
- **Commission v UK** (C-6/04): direct reference to the Directive without transposition is not admissible at national level; transposition must be faithful; land use plans as well as any other framework plans must also be subject to Article 6.3, not just projects
- **Commission v Ireland** (C-418/04): assessments carried out under EIA/SEA directives cannot replace the procedure under Article 6.3. Definition of project too narrow, failure to take account of cumulative effects
- **Commission v France** (C-241/08): works covered by Natura 2000 management plans cannot be systematically excluded from Art 6.3 if they are not necessary for the management of the site; neither the activities subject to declaratory schemes
- **Commission v Belgium** (C-538/09): certain activities and installations subject to declaratory schemes cannot be systematically excluded from Article 6.3
- **Commission v Ireland** (C-418/04): all plans likely to affect Natura 2000 sites must be subject to the appropriate assessment.
Understandably, the industry and other sector authorities have also been frustrated by the perceived constant ‘moving of goalposts’ (caused by incomplete transposition), which created an uncertain and unstable legal environment for their activities and sometimes resulted in considerable delays and extra administrative work for all concerned in the Article 6.3 permitting process.

According to a report by F.J. Mink of the European Dredging Association (2007): The lack of transposition of Article 6.3 into national law resulted in many court cases on the Directive in the Netherlands and was probably the reason why the ruling of the Dutch Administrative Court had a very strict interpretation of Article 6 (which ruled against two projects that the Commission had already given a positive opinion on under article 6.4). It was not until 2005 that Dutch law incorporating the Habitats Directive came into force and the procedure started to be notably less problematic.

Apart from correcting mistakes in the transposition of Article 6 into national law, the ECJ rulings have also been instrumental in providing important clarifications and jurisprudence on key provisions of the Directive, which will undoubtedly have helped with its subsequent smoother implementation. The following are some examples of clarifications provided:

- On the issue of alternative solutions. The Commission insisted in several cases that Member States include in their AA legislation an obligation to carry out not only an assessment of impact of the proposed project but also, at the same time, of its alternative solutions. The Court definitively rejected this (Case C-441/03 Commission v Netherlands, Case C-241/08 Commission v France), stating that elements of the Art. 6.4 procedure must not be required at the stage of Art. 6.3. This has brought clarity and security to developers who can be assured that they do not have to spend precious resources on finding alternatives and making AA of their impacts on Natura 2000 sites, unless they intend to go for the derogation procedure under Article 6.4.

- Interpretation of the second sentence of Art. 6.3 obliging the competent national authorities to agree to the plan or project only “after having ascertained that it will not adversely affect the integrity of the site concerned”. In several rulings the Court stated that such a situation may occur “if no reasonable scientific doubt remains as to the absence of such effects”. This helped to clarify what constitutes an adequate information upon which to issue a permit under Article 6.3 but it also set the bar high (Case C-127/02 Waddenvereniging and Vogelbeschermingsvereniging).

- Clarification of the mutual relationship between Article 6.3 and 6.2 and their applicability in time. The Court stated that the Article 6.3 procedure can only be applied to the sites adopted as SCIs on the Community list (Case C-117/03 Dragaggi; Case C-244/05 Bund Naturschutz). Therefore, if the procedure for authorisation of a plan/project was formally initiated prior to the date of accession of the given Member State to the EU, the obligations under the Article 6.3 do not apply (C-209/04 - Commission v Austria). However, the provisions of Article 6.2 have no relationship to the time when the plan/project was approved: so even if a project is authorized before accession (i.e., not requiring the AA) the provisions of Article 6.2 still need to be respected regarding non-deterioration of the site (Case C-404/09 Commission v Spain).
A further indication that the problems with transposition and correct application of the Article 6.3 are abating is reflected in the overall number of complaints submitted to the Commission under the Habitats and Birds Directives in the last few years. This has diminished steadily in the last 5 years.

![Graph showing number of infringements for 'nature' submitted to DG Environment](source: DG ENV)

In summary, according to the structured interviews and literature review, the problems mentioned in this section were particularly acute during the early stages of implementation of the Habitats Directive but most have since been resolved, paving the way for a much more stable legislative environment in most of the ten EU countries interviewed.

Nevertheless, these early difficulties are interesting in themselves, not least because they help explain why there was so much frustration and bad press with Article 6.3 in the first 10-15 years of the Directive. This legacy of the past unfortunately remains set in many people’s minds today, even though many of the initial problems have since been resolved.

### 5.3 ‘On-going’ problems

This next section examines the actual, on-going problems that have been identified through the structured interviews, online survey and literature review.

#### 5.3.1 Poor quality of the AA

As mentioned already in chapter 4, the poor quality of the AA reports, and the fact that the AA does not give clear conclusions, is still considered by several nature authorities to be an important problem. Around a quarter of the respondents to the online survey said that this was always or often a problem.

Experience has shown that delays and problems often occur because the AA report was not complete or was not sufficiently robust to conclude with certainty that there would not be any adverse effects on the integrity of the Natura 2000 site. Without clear conclusions, the authorities are forced to go back to the proponent for further analysis before they can decide whether to approve the permit, or simply refuse the project on the grounds of lack of evidence as to adverse effects.
Since the onus is on proving that there are no adverse effects, the competent authorities are liable to be taken to court or to an appeals procedure if the evidence upon which they base their decision is not sufficiently clear or robust.

To find out why these reports were considered ‘inappropriate’ or incomplete, the on-line survey asked respondents to identify which aspects of the AA were most often missing. According to the replies it would seem that only a quarter (24.6%) of the AA reports ‘always’ provide clear conclusions as to whether the project has an adverse effect. 43.9% of the respondents state that the AA ‘often’ provides clear conclusions.

The lack of assessment of cumulative effects in particular is still considered a major gap in most AA reports: 41.4% of respondents state this is ‘rarely’ or ‘never’ done. The analysis of the significance of the effects and of effective mitigation measures is also ‘sometimes’ a problem (33.3% and 40.4% of the cases respectively).

When asked if there is a review procedure in place to check the quality of the AA reports, almost 2/3rds of the respondents said yes (61.8%). It would seem therefore that there is clearly room for improvements in a number of countries/regions to bring the AA reports up to a satisfactory standard.

How often do AA reports in your country include the following?

<table>
<thead>
<tr>
<th>Description</th>
<th>Always</th>
<th>Often</th>
<th>Sometimes</th>
<th>Rarely</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td>Details of all possible N2000 sites that might be affected</td>
<td>21</td>
<td>10</td>
<td>11</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Sufficiently detailed description of baseline conditions for N2000 features</td>
<td>30</td>
<td>35</td>
<td>24</td>
<td>19</td>
<td>3</td>
</tr>
<tr>
<td>Sufficiently detailed analysis of potential impacts on core objectives</td>
<td>19</td>
<td>19</td>
<td>19</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>Sufficiently detailed explanations as regards significance of impacts</td>
<td>19</td>
<td>19</td>
<td>19</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Serious evaluation of cumulative effects</td>
<td>13</td>
<td>12</td>
<td>11</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Serious analysis of effective mitigation measures</td>
<td>21</td>
<td>19</td>
<td>23</td>
<td>6</td>
<td>2</td>
</tr>
<tr>
<td>Clear conclusions whether PP has an adverse effect on site integrity</td>
<td>8</td>
<td>8</td>
<td>8</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: AA online survey, 2012

This problem was discussed further during the structured interviews. The majority of those interviewed from both nature and other authorities considered that the AA reports were ‘much better than they used to be’ (but is still a general problem in some countries, eg Spain, where the quality of most AA reports remains low and varies considerably from one region to another).

This improvement in AA report was considered to be largely due to the increasing familiarity with the reporting process amongst developers, consultants and authorities; the issuing of targeted guidance and the learning experience gained from permits being challenged by NGOs when the evidence base was considered insufficient.
The interviewees also noted that whilst the AA reports produced for the larger and middle size developers were generally of a good quality (in most but not all countries), there was still nevertheless a general problem with the AA reports for smaller local plans and projects.

These small projects in fact make up a very significant proportion of the projects that undergo the Article 6.3 procedure, at least at a local or regional level. But because of their small size the proponents often do not have the skills and knowledge, or the funds, to be able to do the AA report. Instead of hiring consultants many attempt to do the AA themselves which can lead to problems, especially if there is a need for scientific expertise.

The more local level competent authorities may also lack the necessary expertise to be able to assess correctly the AA reports which can also lead to delays and frustrations for the developer.

### Appropriate assessments: Shortcomings and improvements in Finnish practice

A study undertaken by Tara Söderman, University of Helsinki reviewed 73 Appropriate Assessment reports and 70 official opinions given on them by regional environmental authorities from 1997 to 2005. The findings of the study demonstrate typical shortcomings of ecological impact assessment: a weak information basis for assessment outcomes and lack of proper cumulative impact assessment with respect to ecological structures and processes. The quality of reporting has improved over time with respect to direct impacts on individual habitat types and species and detailed mitigation measures.

Regional environment centres considered one fifth of the AA reports to be inadequate because of lacking data. In most cases the regional environment centres demanded a change of plan or project, added mitigation measures, choice of only one alternative for further planning or a new completed assessment with additional information in order to be able to evaluate the significance of the effects. The study underlines the need for iterative planning practices in which the preparation of a plan or project with alternative options goes hand in hand with the impact assessment equipped with sufficient data.

The quality of the environment assessment report has been identified as a key problem for the EIA Directive. The new draft proposal for the EIA Directive attempts to reinforce quality of the Environmental reports through a range of measures (eg mandatory scoping and quality control of information, guidelines and checklists specifying the contents of the EIA report, accreditation scheme for EIA consultants…).

However several interviewees, especially from the EU level economic sectors, were concerned that these changes would not improve the EIA process, but rather render it more administrative and time consuming/costly. They would rather see the use of more practical tools and techniques to facilitate and streamline the EIA process.

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27 ref to EC proposal for new EIA Directive, conclusion of high level conference and public consultation 2010, COWI study on application and effectiveness of the EIA Directive 2009
In the past, problems sometimes occurred when the EIA/SEA was combined with the AA. In these cases, the specificity of the AA assessment was sometimes overlooked and the assessment focused too much on impacts on ‘nature and biodiversity’ in general rather than on those of the habitat types and species for which the Natura 2000 site has been designated. The online survey asked whether this continued to be a problem but 80% of respondents said no, and that in most cases the assessment of potential impacts on Natura 2000 target features and conservation objectives is analysed and reported on separately. It may still sometimes cause confusion or difficulties but this is now more on a case-by-case basis or specific to certain countries.

The role of guidance documents

The vast majority of respondents (80.4%) to the on-line survey stated that guidance documents had been produced to assist those involved in the Article 6.3 permit procedure. These tend to range from a simple translation of the Commission’s Article 6 guide to more detailed methodological guides, complete with checklists and detailed significance criteria.

There is no doubt that guidance has been very useful and has helped considerably to improve the implementation and understanding of the AA procedure. But some of the guidance is now no longer up-to-date or may have become too voluminous.

The Commission’s own Article 6 guide was published some time ago (in 2000), at a time when there was little practical experience with the AA permit and little jurisprudence from the ECJ. Yet, despite their age, the online survey reveals that the Commission’s general guides on Article 6.3 and 6.4 are considered to be ‘extremely helpful’ or at least ‘helpful’ (according to 68-72% of the respondents). So there would seem to be considerable merit in the Commission updating these general guides.

How useful are the EU guidance documents?

Source: AA online survey, 2012

However, several respondents also said they had never heard of the Commission guides, especially the sector guides, around a third of the respondents (30-36.2%) did not even know they existed. This may be because they have not been informed about the guides or they are not in their language (or too poorly translated to be understandable). Or they may not have considered it that relevant to their local context.
### 5.3.2 Lack of skills/knowledge/capacity on the Article 6.3 procedure

The poor quality of the AA and ensuing delays and extra burden this may bring is also often linked to the level of knowledge, skills and capacity of those undertaking the AA or involved in the permitting procedure.

There are in fact a wide range of people who may be responsible for carrying out the AAs. According to the online survey, there is no single group that stands out clearly. The biggest group seems to be 'the proponent themselves' with over a third of respondents (35.6%) saying they were the ones usually carrying out the AA. Again, the results should be treated with caution as the choice of body doing the AA is likely to be highly dependent upon the type of plans or projects involved.

[Source: AA online survey, 2012]

The lack of skills/knowledge/capacity can have serious repercussions on the time and costs involved in getting a plan or project approved under Article 6.3. For instance, they may lead to poor quality AA reports which have to be redone. Alternatively it may be that the reports are adequate but the competent authority dealing with the permit procedures has not the capacity or training to go through them effectively and efficiently before reaching a decision.

From the feedback received during the structured interviews it is evident that the problem can arise amongst all those involved - whether with the developer, the AA consultant or the authorities. In the case of the consultants, they may not have the scientific expertise needed to do the impact assessment correctly (relying on experience in doing EIAs is not sufficient) and, because they are often paid by the developers, there have also been criticisms regarding their lack of independence. On the other hand, some consultants have been also criticized for being 'too green' and not helping to find solutions or making the mitigation measures particularly strenuous (eg in Slovenia).

Public procurement procedures sometimes force the proponents to hire the cheapest consultant even if they know in advance that they do not have the necessary skills to produce a good enough quality report. Several authorities interviewed said that they usually know in advance which consultants produce good quality reports and which ones need to be given special scrutiny.
The lack of knowledge and understanding on the part of the developers can also cause major delays and frustrations. Some still consider that they can ‘force’ a permit out of the authorities without doing the AA correctly or by submitting a sub-standard AA. Or that they consider that don’t need to ‘waste time’ discussing their initial project proposal with the (nature) authorities. Time is then lost as the developers are told to redo or complete their AA reports.

This can be especially a problem with the smaller local developers and proponents who have much less experience with the AA procedure and who often attempt to carry the AA out on their own to save on costs. On the other hand, larger companies that work regularly with Article 6.3 have, in many cases, become very familiar with the process and have taken the necessary measures to ensure that it runs as smoothly as possible.

A number of developers have indicated that whilst they uphold their end of the process, they are sometimes frustrated by the lack of capacity and skills in the competent authorities to handle the AA permits. This not only causes delays in the issuing of their permits but leads to inconsistent applications of the permit procedure (with some authorities imposing stricter conditions than others).

This has been particularly noticeable where the final decision on a large infrastructure project rests with several local authorities across different regions. The Spanish electricity-distributing company (REE), for instance, has come across situations where the same project for an electricity pylon in a Natura 2000 site is treated differently depending on which side of the administrative border the pylon is situated. In one region the project permit procedure may run smoothly, whilst in the other it is bogged down by delays and requests for extra information.

To try to overcome this, REE has even resorted to funding training courses for local authorities on the AA procedure in order to improve the authorities knowledge and understanding of the process. They have also sought early consultation with the NGO community, not only to help provide technical advice on potential impacts but also the help them get the project approved by the local authority.

A similar situation has arisen Austria, where ASFINAG, the state engineering company in charge of implementation of all motorways in Austria. It has its own environmental planning department and is now very skilled in the AA procedure. But, as there is no federal counterpart on the nature side, it has to submit its projects to each of the provinces for approval under Article 6.3 with varying results.

5.3.3 Poor /inadequate knowledge base on which to assess impacts

According to the on-line survey and structured interviews there continues to be a problem over the lack of knowledge and baseline information on Natura 2000 sites and their target features for the impact analysis. Over 80% of the respondents to the on-line survey considered that there were insufficient field surveys done during the AA process to assess the impacts correctly.

As stated earlier the AA procedure puts the onus of demonstrating that there are no adverse effects on the Natura 2000 site, rather than proving that they exist. In its Waddensea ECJ Ruling (C-127/02) the European Court of Justice concluded that: “a plan or project [...] may be granted authorisation only on the condition that the competent national authorities are convinced that it will not adversely affect the integrity of the site concerned. Where doubt remains as to the absence of adverse
effects on the integrity of the site linked to the plan or project being considered, the competent authority will have to refuse authorization. [...] the competent national authorities are to authorise (a plan or project) 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."

The habitat types and species for which a Natura 2000 site is designated are influenced by a wide range of intrinsic and extrinsic factors (nature is inherently dynamic) which means that the assessment of impacts has to be studied on a case by case basis and must be supported by good baseline knowledge. This requirement has caused difficulties for a number of development sectors, especially for those dealing with certain environments, like the marine environment. The difficulties can be split into two main categories: the lack of sufficient baseline data on the specific Natura 2000 site concerned and the lack of general scientific knowledge on the interest features in that site.

The first concerns the lack of ready access to basic data on the Natura 2000 sites (eg maps, Standard Data Forms accompanying the sites at the time of designation, information on the site’s Conservation Objectives). This means the developer or its consultant has to spend time looking for this data, and if necessary update it as part of the AA. This comes at a cost and takes time to collect.

The DEFRA Review 2012 concluded that: uncertain or weak data can potentially lead to extra surveys being required and/or a more precautionary approach being taken on license decisions, license conditions and mitigation measures. This can lead to increased costs and delays for developers. Improving the evidence base and making the data more accessible could potentially deliver significant improvements for developers, reducing uncertainty in the system and costs. It also enables regulators to make more informed decisions that support the robust environmental objectives of the Directives.

A number of developers have confirmed that they consider it ‘unfair’ to have to pay for obtaining basic scientific data features in particular site and that some Natura 2000 sites seemed to have designated on very scant scientific information. The collection of up-to-date baseline data should be the government's responsibility.

The authorities should also provide clearer guidance at the start of the AA process on the nature and extent of the studies and impact assessments required for ensuring a sufficiently sound evidence base. Some interviewees from the economic sectors stated that they experience of situations where they put considerable sums of money into surveys in the lead up to the AA which can sometime run over several years, only to be told that the data had to be repeated because it was now a few years old.

It is nevertheless important to distinguish between the baseline information that accompanies site designation and management, and the information required for impact assessments. Even if the information on a Natura 2000 site and its target features is complete and readily available, there it is still highly likely that there will be a need to carry out further surveys to study the specific potential impacts of the plan or project. This is something that can only be done through the AA. The baseline data provided for the site’s designation will not normally be sufficient in itself for such an assessment.
Lack of site level conservation objectives for Natura 2000 sites

Several developers, authorities and NGOs have expressed concern over the lack of clear conservation objectives for Natura 2000 sites. Article 6.3 requires that the AA is done in light of the plan or project’s implications for the site in view of the site’s conservation objectives. Yet, for a number of sites, the conservation objectives have still not been clearly spelled out or are not readily accessible. This makes the job of the AA assessor more difficult.

Not only does it create ongoing uncertainty as regards possible future enforced changes to the legal framework but crucially it also delays the implementation of Article 6.1 of the Habitats Directive. Unfortunately, the financial and administrative resources that are available to the nature authorities for this are usually woefully inadequate in most countries.

The second difficulty encountered during the AA comes from the general lack of scientific knowledge on a particular environment or species. This is especially acute in the marine environment and for some species, such as bats, where there simply isn’t enough scientific data available yet to be able to predict with much degree of certainty the nature and extent of potential impacts from different types of development activities.

Much of the valuable scientific data on these environments is currently being collected via AAs but this means it often remains in the hands of the developer and their consultants and is not generally shared. This can cause a certain amount of repetition and duplication of efforts as regards the surveys.

5.3.4 Problems during screening

Screening is a crucial step of the Article 6.3 permit procedure: it decides if a full appropriate assessment is needed before a decision can be made on whether or not to grant a permit for the plan or project. This stage of the process has the capacity to act as a “loophole” through which plans/projects likely to have an impact may escape the assessment (if the screening process is too simple or incomplete) or as a “trap” in which even projects which are later found to have no impact get caught up and are forced to go through a full AA ‘unnecessarily’ (screening process is too rigorous).

AA Screening problems in Estonia

A five-year review28 of screening decisions in Estonia demonstrated that the Habitats Directive and the respective EU guidelines are poorly applied. According to the national laws in Estonia, the Natura Assessment is not conducted as an independent procedure but is instead conducted within the general framework of the EIA and SEA procedures.

The majority of the EIA and SEA screening decisions in 2004–2009 did not consider the impacts on Natura 2000 sites. Those decisions that did consider them addressed primarily the location-induced aspects of the proposed plan or project, with respect to the location of the relevant Natura 2000 site. Most did not follow the EC methodological guidance. Less than one third of decisions considered location, likely effects and their significance together. In the rest of the cases, the reasoning was missing or unclear.

28 Stockholm Environment Institute Tallinn Centre, Tallinn, Estonia (2010) screening decisions concerning the likely impacts of plans and projects on Natura 2000 sites
Paradoxically, a too demanding screening process may have a perverse effect in that data on the project may intentionally be undervalued or simplified just to escape further assessment. There is also sometimes a misinterpretation of the purpose of screening which is governed by the first part of the first sentence of Art. 6.3: ie screening should decide if there is a likelihood of impact of plan/project on a Natura 2000 site, nothing more. However, sometimes the screening is used also to describe the possible impacts or even propose measures to mitigate that impact.

Some countries or particular competent authorities in these countries have introduced standard procedures and pro-forma screening forms to ensure that the AA screening is done in a consistent way across all projects and plans and is ‘fit for purpose’ and not requiring more administrative work or costs than is actually necessary (see chapter 6 for examples). However, it is also important to watch out that this does not turn the screening into merely a box ticking exercise, there has to be sufficient information available on the specific nature of both the plan or project and the Natura 2000 to be able to make a sufficiently informed screening decision.

5.3.5 Lack of assessment of cumulative and in-combination effects

As was already mentioned, one of the biggest problems identified in the AA lies with the assessment of cumulative impacts which is still too often overlooked. Over 60% of respondents to the online survey indicated that this was ‘always’ or ‘often’ a problem with the AA report. If one takes account of those who stated that it is ‘sometimes’ a problem the figure increases to over 90% of all respondents.

At one level it is a practical issue (e.g. how to mutually compare the impacts of different plans/projects; how far to extend the “zone of impact” of one project in order to compare it with other impacts; etc.) or how to assess the combined impact of multiple types of impacts on a particular qualifying feature. But there is also a question of terminology. In some Member States it is unclear if “projects” have to be compared also with “plans” – sometimes there is a tendency to consider as “cumulative” only impacts of projects of the same type (i.e., impact of road constructions is only compared with impacts of other roads but not of other development activity in the neighbourhood).

Another source of confusion comes from the order in which the cumulative impacts are considered – i.e., what is the “primary” source of likely impact and what are the cumulative impacts. Projects not yet implemented but already approved may be omitted from the assessment because there is an erroneous idea that cumulative effects can only come about from “future” activities.

Several key economic sector interviewees considered that the assessment of cumulative effects should in fact be carried out by the authorities instead. It is very difficult for industry to know what other plans or projects are planned or need to be taken into consideration, especially in a competitive business environment.

5.3.6 Poor understanding of key concepts and legal terms

During the first years of implementation of the Habitats Directive, there were significant problems with the understanding of several terms and concepts in Article 6.3 and 6.4. For instance many were unclear what is a “plan or project” and tended to restrict the definition to either those listed in the EIA or SEA directive or that required some form of consent.
Several countries have now decided to give the term project a very large interpretation, equivalent to ‘any intervention in the natural environment’, (including sports events, rock concerts and other outdoor manifestations) but there is still some confusion as to when a change in land use is a plan or project under the terms of Article 6.3 and when it is part of an existing land use which was present since before the site was designated (eg recurring forestry or fishing activities) and is therefore falls rather under the non-deterioration requirements of Article 6.2.

Other terms that have been reported as a source of uncertainty of lack of clear understanding include:
- What is considered a reasonable level of scientific certainty (see above)?
- What is the threshold of significance (is it more than just direct land take?)
- When is site integrity adversely affected?
- What are mitigation measures and when should they be introduced, how are they different from compensatory measures under article 6.4?
- What are the conservation objectives of a site?
- What kind of alternatives must be considered?
- When is a plan or project considered IROPI?

The term “mitigation” for instance has caused some confusion, especially as the term does not actually appear in the Directive. It is unclear if mitigation measures can be an intrinsic part of the project (ie., if the developers themselves should propose such measures in order for the project to be approved), or if they only should be proposed after the AA has revealed that significant adverse effects of a project exist. The answer depends on the administrative and legislative arrangements of particular countries and there seem to be no simple “recipe” available.

5.3.7 Lack of dialogue and integrated planning

As illustrated in chapter 3, the implementation of Article 6.3 can be heavily influenced by the cultural traditions of the countries and regions concerned. According to feedback from the structured interviews, some have a very sectoral approach to policy making where each sector works independently of one another, and they leave it up to the politicians to sort out any potential conflicts arising between sectors (eg in Sweden). Others have a long tradition of inter-service dialogue and more coordinated spatial planning policies where it is not unusual for the different authorities to meet up early on in the decision-making process to discuss their respective policies and activities (eg Netherlands).

This can have a major influence on the Article 6.3 process. Experience has shown time and again that there is a lot benefit to be had in taking environmental considerations into account early on in the decision making process. Solutions can then be found to address certain concerns when there is still a wide choice of options available. It also fosters a more open and imaginative decision making process where co-benefits and win-win solutions may be easier to identify and are less costly or onerous to implement.

If however this inter-sectoral dialogue is left to the last stages of the Article 6.3 permitting procedure the range of solutions becomes much narrower (and more expensive to implement) and there is a greater tendency for the discussion to become polarized and more confrontational.
This is especially the case if a sectoral policy or development strategy has been given the green light at a high governmental level, without considering other policy implications. Then when it comes to more detailed plans and projects, people have difficulty understanding why the Article 6.3 procedure may block something that has already been politically agreed at the highest levels (even without any spatial information).

An early and iterative dialogue can also significantly reduce the overall time required for the permitting procedure. For instance, it can help to identify the baseline information and field studies that are needed to carry out the assessment so that delays can be avoided later on because the AA making process has to be put on hold whilst additional surveys are being undertaken.

PIANC Position paper: Working with nature

In October 2008 the world association for waterborne transport infrastructure (PIANC) issued a major new position paper entitled ‘working with nature’ which calls for an important shift in approach to navigation development.

"Working with nature" is an integrated process which involves working to identify and exploit win-win solutions which respect nature and are acceptable to both project proponents and environmental stakeholders. It is an approach which needs to be applied early in a project when flexibility is still possible. By adopting a determined and proactive approach from conception through to project completion, opportunities can be maximised and - importantly - frustrations, delays and associated extra costs can be reduced.

"Working with nature" requires that a fully integrated approach be taken as soon as the project objectives are known – i.e. before the initial design is developed. It encourages consideration of how the project objectives can be achieved given the particular, site-specific characteristics of the ecosystem.

"Working with nature’ is about more than just avoiding or mitigating the environmental impacts of a pre-defined design. Rather, it sets out to identify ways of achieving the project objectives by working with natural processes to deliver environmental protection, restoration or enhancement outcomes.

Fundamentally therefore ‘working with nature’ means doing things in a different order:
- establish project need and objectives
- understand the environment
- make meaningful use of stakeholder engagement to identify possible win-win opportunities
- prepare initial project proposals/designs to benefit navigation and nature.

“Working with nature” thus requires a subtle but important evolution in the way we approach project development. We need to move towards an approach which:
- focuses on achieving the project objectives in an ecosystem context rather than assessing the consequences of a pre-defined project design
- focuses on identifying win-win solutions rather than simply minimizing ecological harm

### Benefits of integrated planning

The Commission’s guidance document on inland waterway development and Natura 2000 places a strong emphasis on benefits of integrated planning: according to the guide it can:

- Provide inland waterway planners and authorities with greater certainty over the success of their planning application because environmental concerns are taken into account already during the initial project concept when there is more flexibility in the design.
- Be more cost effective in the long run. Traditional infrastructure projects often face considerable practical problems (and costs) in trying to incorporate environmental improvements or mitigation measures into an already completed design and long delays in getting planning permission due to opposition during the public consultation process.
- Lead to more holistic solutions that can serve various sectoral interests and needs at the same time as well as improve cross-sector communication. If other sectors are involved in the initial scoping stage of the project, their ideas or suggestions can be taken into account already at the initial project design stage. This would enable the project to not only improve transport but also to contribute to other policy objectives such as flood protection or river restoration. Such win-win solutions have proven to be particularly useful on already degraded rivers where new inland waterway developments can be coupled with measures to restore the ecology of the river itself thereby, leading to improvements for both navigation and the river ecosystem.
- Lead to the development of new, creative and innovative solutions which are unlikely to have been explored under the more classic sectoral approach to project planning.
- Contribute to an improved public image of the project and the institutions responsible. By informing the public and involving key stakeholders during the entire planning process and not simply at the impact assessment stage, many of the delays caused during public consultation can be effectively overcome, especially if the stakeholders can see that a transparent planning process has been applied and they have been given an opportunity to comment and influence the project design from an early stage in the planning process.

It is for these reasons that the European Commission strongly recommends the use of the integrated approach for planning inland waterway projects, especially when applying for (co)financing under EU Programmes such as the TEN-T, Structural or Cohesion funds, and, as of 2014, the Connecting Europe Facility.

*Source: Guidance document on inland waterway transport and Natura 2000*


The online survey attempted to identify at what stage the nature authorities are normally consulted about a plan or project or its AA. It is interesting to note that nature authorities are ‘often’ or ‘always’ consulted in the majority of cases (62.3%) before the plan or project is formally submitted. Many are ‘always’ or ‘often’ consulted during the screening stage (63.2%) and once the AA has been completed, even if the AA shows no adverse effects on the integrity of the Natura 2000 site (67.3%)\(^{29}\).

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\(^{29}\) It would have been interesting to examine this also from a geographical perspective (eg which countries start earlier) but the survey does not allow us to analyse this further.
There are, nevertheless, also still a significant proportion of the nature authorities that are only consulted when the AA concludes there is an adverse effect (46.3%) or only in cases of serious disagreements or opposition from NGOs/experts as regards the conclusions of the AA - 33.3% said they were ‘always’ consulted, 17.9% were ‘often’ consulted, and 17.9% were ‘occasionally’ consulted.

Again, these findings should be treated with caution as the questionnaire does not allow for a differentiation between different types of projects, for instance those where consultation is not required or even desirable because the case is so clear cut and uncomplicated. Nor does it take account of the fact that, in several countries, the competent authority making the decision can be the nature authority (and therefore does not need to consult with itself). Some countries also have rigidly prescribed procedures for consultation in their national laws which cannot be deviated from.

### 5.3.8 The ineffectiveness of AAs as regards plans

If carried out properly, an AA of a plan should be able to help to reduce potential conflicts and delays later on in the decision-making process, for instance at the level of individual projects.

However, this does not always work as effectively as it should in practice for a variety of reasons. Around half of the respondents (46.4%) to the on-line survey considered that doing an AA at plan level is ‘sometimes’ effective at reducing the number of AAs required at project level. A minority said that it was ‘definitely’ effective (17.9%). But there are still third of respondents (35.7%) who consider that the AA at plan level does not help reduce the number of projects and project level.
When asked if a plan *facilitates* or *speeds up* the AA procedure for individual projects later on, marginally more respondents said ‘often’ (37%) rather than ‘sometimes’ (31.5%). This could indicate that whilst the AA of a plan may not necessarily reduce the number of AAs a project level it can help to speed up and facilitate the decision making process later on. Moreover, 50% of the respondents considered that the AA at plan level is often effective at directing conflicting development away from Natura 2000 sites. A further 35.7% said it was ‘sometimes’ the case.

However, it is also clear from the structured interviews that a lot depends on the quality and level of detail of the plans themselves and this varies significantly from one country to another depending on their approach to strategic (spatial) planning. Some plans may be too vague in terms of the kind of development they wish to support and where, that it makes the AA very difficult to do in any depth. In some cases it is also due to the disconnect and lack of mutual understanding between site level ecologists and traditional planners. Nevertheless, it is recognized that opportunities are often missed to rule out potential impacts early on in plan making and before a plan is adopted that sets a framework for problems later on.
This may be because there is a great deal of confusion across all Member States in regard to how far AA of plans should provide confidence in the decision that there won’t be an adverse impact on Natura 2000 sites as a result of implementation of the plan and any project mentioned within it or that subsequently result due to the implementation of the plan. The lack of understanding of the methodology in how to assess and apply site specific recommendations through strategic planning is an issue for both spatial planning and strategic planning in other sectors. All too often competent authorities resort to a catch all caveat policy which relies on AA being undertaken at a lower tier of decision making instead.

Another problem that arises with AA of plans are that practitioners and competent authorities get hung up on attempting to understand the impacts of the implementation of projects that may result from a plan and instead fail to take the opportunity to consider regional or catchment based cumulative issues that result from the quantum of change that results a plan. This is where key gains can be made in landscape level ecological assessments involving multiple sites or fragmented sites.

As mentioned above reasons can relate to the difficulties in understand the interface between changes over large spatial scales versus site level ecological impacts, the use of traditional biologists in undertaking the AA and in some cases the unwillingness to reduce the flexibility in the plan policies and therefore the uncertainty associated with plan implementation. All these issues (and others) mean that the effectiveness of plan level AA is often not realized.

### 5.3.9 Public opposition

According to the on-line survey, public opposition to a plan or project was considered by over half of the respondents to be ‘sometimes’ the main reason for delays in the Article 6.3 permitting procedure.

Unlike the EIA and SEA Directives where public consultation is an obligatory part of the assessment process, the Article 6.3 procedure only requires the opinion of the general public to be obtained if appropriate. Because of the very technical nature of the AA it may not always be that useful to ask for the opinions of the general public on a particular project, unless they happen also to be amateur naturalists and/or have valuable scientific information or technical observations on the EU protected species and habitat types present in a particular Natura 2000 site.

There is also increasing concern over the NIMBY effect (not in my back yard), where public objections and resistance to certain plans and projects are grounded in more emotive, personal reasons rather than any real objections on scientific grounds. Feedback from the structured interviews would seem to indicate that this NIMBYism is often used during the AA process to voice general objections to the plans or project under scrutiny, rather than specific concerns about the Natura 2000 site’s target features.

Nevertheless, public consultation is an important and necessary aspect of today’s society (cf Aarhus Convention), and creates a more open, transparent and inclusive development process. Early consultation with stakeholders, can be beneficial also in the case of the Article 6.3 procedure as genuine efforts to provide the public with information and respond to concerns can help prevent miss understandings and can result in more widely accepted projects.
In the case of the Article 6.3 procedure, it is useful also to make a distinction between NGO consultation and consultation of the general public. As stated above the general public often doesn’t have the necessary knowledge and expertise to be able to comment on the plan or project on scientific grounds as regards potential impacts on the Natura 2000 site’s target features.

But NGOs can sometimes make an important contribution to the process, for instance through the sharing of local knowledge and expertise on the species and habitat types involved, or in helping to find appropriate mitigation measures or other solutions to reduce the potential risk of impacts. They can also help ensure that the process is carried out correctly and not abused. However, if they only find out about the project and the AA at a late stage in the planning process, it will inevitably lead to delays if there are problems with the AA report or its conclusions.

5.3.10 Lack of coordination between permits

There have been comments made that the number of permits and authorities a developer has to consult with is significant and the lack of coordination between these different legal requirements can sometimes cause delays and extra costs for the developer. This was not, however, raised as an important issue in the interviews or in the on-line survey. It may be that this problem is associated more with large and complex infrastructure projects than with the majority of the smaller less complicated plans and projects that normally go through an AA procedure.

5.3.11 Inconsistent use of Article 6.4

According to both the online surveys and the structured interviews, it seems that the derogation procedures under Article 6.4 is rarely used. The Commission’s own statistics seem to indicate the same trend. In addition only 20 Commission Opinions have been issues under Article 6.4 in the last 20 years and all but one of these were positive. It also varies from one country to another, with countries like Germany tending to use it more often than others.

There may be several reasons for the limited use of Article 6.4: solutions are found through mitigation at Article 6.3, good alternatives are available, IROPI test not fulfilled, compensation measures too expensive or onerous…. But there does also seem to be an aura of fear about the use of Article 6.4 – that it will lead to considerable delays and extra expenses. Some countries seem to try to push everything through under Article 6.3 to avoid having to use 6.4. and may fudge the differentiations between mitigation measures and compensation measures, either deliberately (to speed up the process) or because of a basic lack of understanding of the differences between the two (which in turn can be due to the fact that the Article 6.4 procedure is so rarely used so there is little practical experiences to guide them) or because there is a lack of political will to take the Article 6.4 route.

Another reason might be (mentioned occasionally in the literature but not raised explicitly during the structured interviews) that a number of Natura 2000 habitat types and species, are extremely difficult to compensate because of their inherent nature.

30 Reply to EP question 2006
6. MEASURES TAKEN TO IMPROVE THE APPLICATION OF ART 6.3 PROCEDURE: GOOD PRACTICE EXAMPLES

6.1 Introduction

This chapter presents a range of examples of measures that have been taken in different EU Member States to improve various aspects of the Article 6.3 permit procedure. They address in particular the problems outlined in the previous chapter. Some of the examples are short summaries of the 12 case studies that were researched in greater detail for the study. A full description of these is available as a separate document accompanying this review.

6.2 Good practice examples

6.2.1 Access to data on Natura 2000 and protected species / habitats

The poor quality of the data used for the impact assessment is one of the most frequent problems encountered with the AA procedure. Yet this data is of fundamental importance for the success of the procedure as every Natura 2000 site has a unique set of intrinsic and extrinsic factors influencing it. This means that the assessment of impacts has usually to be done on a case-by-case basis.

Criticisms have also been made over the lack of access to existing baseline data on the sites or their EU protected species and habitat types. This could be, for instance, in relation to recent species trends or monitoring surveys, or in relation to the Natura 2000 site’s conservation objectives, management plans, or even past AA reports and their associated baseline surveys.

Initiatives have been taken at various scales to try to make this information more accessible to those involved in AA procedures, a few of which are presented here.

The National Authority for Data concerning Nature in the Netherlands

The Netherlands has accumulated enormous amounts of data on its wild species. But, like in other countries, this information is scattered amongst different organisations, and is not always easily accessible. To try to resolve this problem the Dutch Government provided a three year start-up grant to set up an independent not-for-profit foundation, called the ‘National Authority for Data concerning Nature’ (Gegevensautoriteit Natuur), to make the distribution data of plant and animal species, including those protected under EU nature legislation, available through one National Data Warehouse: the National Database Flora and Fauna (NDFF).
For the past three years the National Authority has been collating, validating and standardizing all the existing data on species so that it can be made easily available as completely as possible to all those interested. It is also in the process of updating this information (following validation) using structured contributions from more than 17,000 volunteers across the country. The database currently contains over 40 million records on the distribution of flora and fauna, as well as on habitats, and is growing daily.

The system is intended to be used by the local, regional and national government authorities, nature conservation agencies, building companies and other private investors, consultants, and law enforcement officers amongst others. It should be especially of interest for those preparing new plans or projects and their AA, as it provides quick and easy all the latest scientific data on species occurrence across the Netherlands. This should save time and money, not only on collecting scientifically robust baseline information for the AA but also on preparing additional surveys that may need to be undertaken for the AA. Additionally, it can put the AA consultants into contact with local experts.

The entire database will be fully operational in October 2013 (but already accessible now) and will work on a user pays principle. In other words, organisations can take out various types of prescriptions to access the latest information, including detailed GIS maps, on a particular area (e.g. potential location of a new project). The money made from the subscriptions will be used to keep the database up-to-date.

http://www.gegevensautoriteitnatuur.nl/pages/english.aspx
http://www.natuurloket.nl/natuurloket

A dedicated website on Natura 2000 and the AA procedure in Picardie, France

In 2012, the Nature Unit of the regional authority in Picardie (The Departement regionale de L’Environnement, de L’Aménagement et du Logement de Picarcie - DREAL) established a special website dedicated to Natura 2000 in the Picardie Region. The aim is to give immediate access to all relevant information about the sites and species in the region, as well as on the AA procedure. This is especially designed for anyone who is preparing a plan and project that might affect a Natura 2000 site.

The website contains detailed information about each Natura 2000 site, including their management objectives and conservation measures (so called DOCOBs), any related scientific studies and monitoring reports as well as precise GIS maps. Also included are individual summary sheets on the distribution and conservation status of each of the EU protected species present in the Picardie region.

An entire section of the website is dedicated to a detailed explanation of the AA procedure. It is supported by lists of plans and projects that must undergo an AA, standardized forms and checklists for the initial AA screening phase as well as detailed guidance on how to carry out the AA itself and prepare the accompanying AA report.

In addition to the website the DREAL organizes regular information days, workshops and personalized training sessions on the EI/A/SEA and AA procedures for all those interested, including relevant competent authorities, businesses, elected representatives, collectivities, investors and professional associations. It has also set up a telephone helpline and adopted an ‘open-door’ policy for any developer or authority who wishes to discuss their plan or project and its potential implications for Natura 2000 sites or the AA procedure itself.

Prerequisite for a correct AA: good data on Natura 2000 sites in the Czech Republic

When preparing their Natura 2000 site proposals, many Member States focused on acquiring the data needed to complete the Standard Data Forms (SDFs) that accompany the sites at the time of designation. Although useful documents in their own right, they focus mainly on the relative assessment of the quality of particular target features compared to the national level and are therefore not usually that useful for the AA procedure. The latter requires more comprehensive (and up-to-date) quantitative data on the Natura 2000 site in question.

To fill this gap in information, the Agency for Nature Conservation and Landscape Protection, which was appointed as an official repository of data on Natura 2000 sites in the Czech Republic, created in 2004 a dedicated web page for storing information on Natura 2000 sites across the country, including detailed descriptions of all SPAs and SCIs. These descriptions are both qualitative and quantitative and go far beyond the requirements of the Directives: in addition to the data from official SDFs, there are also descriptions of ecotope, biota of the site, its quality and importance, vulnerability, management, possible conflicts of interest, list of habitats (both Annex I, other habitats of national importance as well as so-called “X-habitats”, i.e., cultural, urbanized, artificial and ruderal habitats), species as well as most important scientific and conservation references.

The website is public which means developers, authorities and AA assessors involved in AAs have immediate access to all the Natura 2000 related data in order to prepare their baseline information and facilitate their assessment of the significance of impacts. The same Agency can also be contacted if access is required to the most recent data entries on specific Natura 2000 sites.


6.2.2 Good guidance on AA issues

As described in the previous chapter, the provision of good guidance documents can greatly facilitate the understanding and smooth application of the AA procedure. Several countries and regions have produced general ‘how to’ guides on AAs, which are in themselves useful, whilst others have gone further and produced more technical guidance on particularly complex aspects of the AA – such as on the assessment of the significance of impacts, cumulative effects and IROPI or in relation to particularly difficult environments like the marine.

Guidance on setting thresholds of significance in Germany

In Germany, as elsewhere, the assessment of significance of impacts on Natura 2000 target features, which is the core of the AA, used to be hampered by a high level of subjectivity. Because of this the competent authorities often did not have the reasonable scientific certainty they needed to underpin their decisions on whether or not to grant authorisation of a plan or project. It also left them open to legal challenges. To address this problem and ensure a more uniform and consistent approach to the assessment of impact significance in practice, the Federal Agency for Nature Protection (BfN) commissioned a research project to provide scientifically tested rules and conventions for all habitat types and species listed in of Birds and Habitats Directives occurring in Germany31. The resulting 240 page guidance document was published in 2007.

The starting premise for the guide is that any permanent loss of habitat types and habitats for species in a Natura 2000 site should be considered a significant impact. However, a certain level of loss could nevertheless be treated as insignificant for some habitat types and species under certain conditions. The guide provides scientifically agreed thresholds and criteria for determining significance, which are based on qualitative as well as functional aspects – not just quantitative criteria.

Thus, for an impact to be considered insignificant all the following conditions must be met:

- specific features of the given habitat/habitat for species or key habitats of the typical species must remain unaltered,
- tentative values of “quantitatively – absolute area loss” is not exceeded,
- supplementary values of “quantitative – relative area loss” of 1 % is not exceeded,
- cumulative effects with other projects does not lead to exceeding the above threshold values, and
- cumulative effects with other factors do not occur.

For the 2nd indent, 7 size classes for habitats and 8 for species were developed, providing ranges in which the threshold values for every habitat type/species lie; 3 threshold degrees for each class were set. The rule is that the higher the absolute area of given habitat type/population of species within the particular Natura 2000 site the lower is the threshold for relative area/population size. According to the third indent the relative loss must not exceed 1% at any time, but this does not mean that a 1% threshold of loss is considered insignificant since all the other above-mentioned criteria must also be met. Thus any impact below this threshold has to be subject to detailed scrutiny.

In practice this means that for 21 of the 91 habitat types occurring in Germany, no loss is acceptable while for the remaining habitats some loss may be considered insignificant if it is scaled according to size classes and degrees. As for the 53 species from Annex II, no tentative threshold values exist for 16 of them, nor for 20 of the 98 Birds Directive species. In other words, no impact is likely to be acceptable. All these conclusions/figures/thresholds are intended to act as guidance only which means that a case-by-case approach within each AA is still required.

Since its publication, the guidance document has been successfully tested in the German courts and is now applied across the country, providing both developers and authorities as well as NGOs, with a robust and consistent approach to the assessment of impacts and their significance levels.


**Guidance on wind farm impacts on birds, Scotland, UK**

Windfarms are a major development activity in Scotland. Scottish Natural Heritage (SNH-the Scottish statutory authority) has prepared a series of guidance documents on how to assess their impacts on Scotland’s natural heritage, and on wild birds in particular. The guides aim to provide a consistent legislative framework, supported by clear, agreed methodologies, for this fast expanding and highly competitive sector. Lack of guidance in the past has led to delays in, and an uneven approach to, windfarm planning applications.

The guidance documents on windfarms and wild birds provide advice and recommendations on a wide range of topics, including: assessing collision risks, methods for conducting surveys to assess impacts of windfarms, significance of impacts on birds within or affecting designated areas, disturbance distances for selected bird species, assessing connectivity with SPAs, geese and windfarms.... Two of the guides are described briefly here as they concern issues that are often not given sufficient attention when carrying out EIA/SEA/AAAs: strategic planning and assessment of cumulative impacts.
The first document is an SNH policy statement offering **strategic locational guidance for onshore wind farms** in respect of Scotland’s natural heritage (including Natura 2000 sites). The aim is to encourage a planned and integrated approach to wind farm development across the region. This should in turn help to reduce any wastage of resources in preparing, assessing and determining controversial, and ultimately rejected, schemes.

The guide is essentially made up of a series of maps and accompanying tables that identify the range of landscape and biodiversity sensitivities at the strategic level, and which should be considered when locating wind farms. Sensitivity has been judged on the basis of the importance of the interest and its susceptibility to impact by wind farms. The last of the maps (Map 5) combines these sensitivities into three broad zones representing relative levels of opportunity and constraint.

Zone 3 contains those areas of greatest sensitivity to wind farms, and which therefore place the greatest constraint on their development (all Natura 2000 sites are included in this category). Zone 1, on the other hand, identifies areas at the broad scale with least sensitivity to wind farms, and with the greatest opportunity for development, within which overall a large number of developments could be acceptable in natural heritage terms, so long as they are undertaken sensitively and with due regard to cumulative impact.

The maps offer a strategic steer of where there is likely to be greatest scope for wind farm development, and where there are the most significant constraints, in natural heritage terms. They do not however obviate the need for an AA if the plans or projects are likely to have a significant effect on a Natura 2000 site at the individual site level.

The second document offers guidance on **assessing the cumulative impact of onshore wind energy**. Because wind farm developments are proceeding at a fast pace across Scotland, concerns have been expressed that the cumulative effects are not being taken sufficiently into account, even though they may well present an eventual limit to the extent of wind development.

The purpose of the guidance is to set out a biologically robust approach to making cumulative assessments which satisfy both planning and legal concerns. It provides clear guidelines for identifying the nature of the cumulative impacts, the scale over which they need to be considered and the other plans and projects that need to be taken into account. A special chapter is dedicated to assessing cumulative impacts on wild birds (e.g. in relation to collision risks, disturbance or displacement, barrier effect, habitat loss).

The guide also recommends that potential cumulative impacts are considered already in the early stages of the impact assessment rather than merely as an ‘afterthought’ at the end of the process. This will help to ensure that their assessment is done using sound baseline data, rather than relying too heavily on qualitative criteria, as is often the case until now.

The guide also encourages Local Authorities and the Scottish Government to log all existing, consented, applied for and formally scoped wind farm proposals on an accessible GIS system so that developers and/or neighbouring Planning Authorities and more easily check other plans or projects that should be taken into account when assessing cumulative impacts.


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RSPB has also developed a more detailed bird sensitivity map to aid the location of onshore wind farms in Scotland. It is based on distributional data for a suite of sensitive bird species and is accompanied by 17 species fact sheets describing the sensitivity to wind farms.
GP WIND Sharing knowledge and good practice experience

The GP WIND project was set up to address barriers to the deployment of onshore and offshore wind energy generation, by recording and sharing good practice in reconciling renewable energy objectives with wider environmental objectives and actively involving communities in planning and implementation.

Supported by the EU’s new ‘intelligent energy Europe’ initiative, the GP Wind project brings together developers, regional and local governments, environmental agencies and NGOs from eight EU countries. The project has lead to the development of a set of Good Practice Guidance and a Toolkit, which can be used to aid more effective and efficient deployment of renewable energy in support of the 2020 targets.

The Good Practice Guide includes around 70 recommendations supported by over 130 examples of good practices, which are collected in three categories:

- Minimising environmental impact
- Optimising social acceptance
- Optimising spatial planning.

GOOD PRACTICE GUIDE

Minimising environmental impact

• HABITATS
• SEABIRDS
• TERRESTRIAL BIRDS
• MARINE SPECIES
• BIODIVERSITY
• UNDERWATER NOISE
• CUMULATIVE IMPACTS
• MITIGATION
• MONITORING
• PLANNING
• CARBON ACCOUNTING

The Toolkit provide the following 3 categories of documents:

- The online library, comprising over 300 documents illustrating the good practices. Tools and guidance enabling you to assess some projects autonomously are also included.
- A Comparison by Country table, which enables comparison between 10 European countries with regard to environmental and regulatory issues, as well as those related to local community involvement.
- The 16 Thematic Case Studies, which served as the basis for the Good Practice Guide, including a number related to species and habitat conservation.

Website: http://www.project-gpwind.eu
6.2.3 Improving the standard of AA experts

Many AAs are contracted out to consultants, especially when it comes to assessing larger or more complex plans and projects that require a good level of scientific expertise. The standard of consultants does however tend to vary and both developers and authorities are sometimes faced with delays and extra costs because the AA report they produce is not of a good enough quality. Some countries have attempted to improve the standard of AA experts in their country.

Licensing for implementation of the AA reports in the Czech Republic

In the Czech Republic, only licensed experts are allowed to carry out Appropriate Assessments. The licensing system is anchored in the Act on Nature Protection (amendment in force since 2004) and details are specified in a ministerial decree. The first basic criterion for obtaining a license is to have a degree in biology or ecology or state exam in ecology. No derogation from this rule is allowed as experience from the field has shown that knowledge of ecology is an essential prerequisite for correct assessments.

The authorisation exam consists of a written test on ecology, zoology, botany and national law (the latter is linked to AA and EIA/SEA issues) and an oral presentation of a case study. The exams take place approximately twice a year and the standard is set rather high, with a special emphasis on knowledge in ecology. Successful candidates are granted a license by the Ministry of Environment (MoE) for 5 years.

There are currently 46 authorised persons in the country (end of 2012), which is considered to be sufficient to undertake all the AAs in the country, even over the longer term. It has also been observed that licensing of individual persons is much more efficient than granting the license to an institution or company as the latter do not always have the necessary practical skills to do the AA, even if they seem to have the right credentials on paper.

The licensing scheme has had a positive spin-off in terms of making improvements to the overall AA process too. The licensed assessors organise regular meetings to share experiences and discuss difficult cases. In view of this the Ministry of Environment commissioned a number of practical guidance documents from them to improve the AAs and ensure a consistent approach. The first set of guidelines was published in 2007, set out the objective way in which to prepare the AA conclusions and enable the overall process of AA be more transparent.

The second guidance document, published in 2011, provides further advice on the assessment of impacts on a number of selected habitat types and species which are considered to be particularly problematic in the Czech Republic. To assist in the Article 6.4 derogation procedure they also present an overview of all Annex I habitat types and Annex II species occurring in Czech SCIs and indicate which ones can be compensated (and under which ecological conditions) or where the compensation, due to their biological nature, is impossible (either at all or in real time). This list informs developers in advance of their chances if deciding to enter the Article 6.4 procedure.

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6.2.4 Ensuring a consistent approach to screening

Many plans and projects are screened out because they are not considered likely to have a significant negative effect on a Natura 2000 site. The screening stage is therefore a crucial first step in the AA procedure and it is important to ensure that the approach taken is both consistent and ‘fit for purpose’. It must not be too lax that it lets through potentially damaging plans or projects but also not too strict that it creates an unnecessary administration burden and extra costs. It must also not be reduced to a mere ‘box-ticking’ exercise.

### Ensuring a consistent framework for screening forestry activities in Ireland

The Forest Service of the Department of Agriculture, Food & the Marine is Ireland’s national forestry authority. It regulates key forest activities undertaken by both the private sector and the state owned forest company, Coillte Teoranta. It is also the competent authority responsible for implementing the Article 6 permit procedure on forest activities as required.

Until recently the screening and AA was done on a somewhat ad hoc basis. However, the Forest Service became aware of the need to improve the system. Not only would this offer a more consistent framework for implementation but it should also help reduce the overall administrative burden associated with handling a large number of applications every year, both from the authority’s perspective and the applicants’.

To this end the Irish Forest Service developed a new Appropriate Assessment Procedure (AAP) which, as a first step, lays down criteria for each main type of forestry activity that the local District Forest Inspectors can use to determine whether a particular application should undergo screening for an AA. This approach allows a high-level screening out of scenarios where it is agreed by all - including nature authorities - that the possibility of an impact just won’t arise.

Where the above triggers indicate that individual screening is indeed needed, a system has been developed to help the forest inspectors carry out this screening test using a standardised form. The form takes the Inspector through a series of questions setting out the thought process to be followed as s/he assesses whether or not there is a likelihood of significant effects on a Natura site.

The form also enables feedback from referral bodies such as National Parks & Wildlife Service (NPWS – the statutory nature authority), local authorities, etc. The advantage of this computerised screening test are multiple: not only does it ensure a consistent approach across Ireland, but it also speeds up the time it takes to do the screening test and so reduces the work load on the individual Forest Inspectors.

Various other in-house back-up activities have also been put in place to continue to support the Forest Service’s AA procedure. They include:

- Training days for Inspectors with further training planned.
- On-going back-up support for Inspectors via designated in-house personnel (including ecologist) within both Inspectorate and Administrative side.
- Regular internal memos to deal with bugs, to clarify interpretation, etc.

See Case study N° 1 (Annex III)
Assessing impacts of small projects in Baden-Württemberg, Germany

In Baden-Württemberg, there are relatively few “large-scale” developments but quite frequently landowners apply for permits to build small constructions needed for their daily work. Such small constructions rarely have any long-distance impact on nature but, if situated in or next to a Natura 2000 site, they could deteriorate the site’s integrity, especially through their cumulative effects. There is a risk that many small projects, if not assessed properly, may be eroding away at the Natura 2000 sites unnoticed.

However, issuing Article 6.3 permits for lots of small projects can also place a non-negligible administrative burden on the authorities. A well-designed screening process will not only ensure a consistent approach but can also help save time and money for all concerned. With this in mind, the provincial expert body – Landesanstalt für Umwelt, Messungen und Naturschutz – published guidelines for each Natura 2000 habitat type and for each species in Baden-Württemberg describing the type of activities that may have adverse effects.

In addition, it developed an official screening form for the AA screening stage. This form (which contains detailed explanations) leads the plan or project proponents through all potential steps which could indicate possible deterioration of the Natura 2000 site(s) in question. Because the form is quite succinct (5 pages) it does not represent a major burden for the proponents, and helps to streamline the work of the authorities. Another advantage is that the authorities gain records of all the small constructions underway, in a standardized and comparable way, which enables them to take into account cumulative effects of such constructions in the future and to gain inspiration from the gradually growing “pool” of proposed mitigation measures for their future decision-making practice.

See case study N° 2 (annex III)

Role of “management bodies” in Upper Austria

In Austria, each of its 9 provinces has its own nature protection legislation, administrative system and practical arrangements. The Provincial Government of Upper Austria puts strong emphasis on ensuring the management of its “European sites” (ca 36 Natura 2000 sites). To this end, it has established local management bodies (“Gebietsbetreuung”) for individual Natura 2000 sites or groups of sites. The staff (currently about 20 people, representing altogether 5 fulltime jobs) is made up mainly of people working and living in the area, with excellent personal knowledge of the landscape, nature and particular sites, and with good communication abilities with local people.

In addition to ensuring the proper management of the site(s) and communicating with landowners, they also assist with, or actually do, the “screening” for AAs. In simple cases, e.g. if a landowner is not sure about the impact of a change in land-use on his property or wants to build a small construction (sheds, stables) (s)he approaches the management body and they clarify that issue by email, telephone call or by an on-the-spot meeting.

For these explanations and clarifications no written procedure is necessary but if the management body considers there is a likelihood of significant effects they direct the proponent to the provincial government to launch the official procedure. This arrangement is very useful as it can significantly lower the administrative burden of both the landowners and the authorities. If the main assessment is subsequently carried out, the screening report is included as the first chapter of the assessment report.
6.2.5 **Encouraging early dialogue and working in partnership**

Early dialogue can significantly reduce the overall time required for the AA procedure. It helps to find solutions early on in the planning process when there is usually more choice available, and it fosters greater mutual understanding and trust, between the different parties involved. There are many examples of the multiple benefits that are derived from early dialogue and working together – the following are just a small selection.

### Finding a way forward for the Egnatia motorway in Greece

The 670-km Egnatia motorway is one of the most strategic and challenging civil engineering projects in present-day Europe. It runs across northern Greece, traversing important mountain ranges, forested areas, ravines, as well as river areas and plains. The cost of the main motorway, whose construction started in the 1990’s, is approximately 6.5 billion euro (with 50% co-financing by EU). The construction of the vertical motorways is still ongoing. In total, the motorway crosses 17 Natura 2000 sites, some of which are prime large carnivore habitat, such as the Pindos range. This mountain range hosts the largest of the two Greek nuclei of brown bear (*Ursus arctos*), with an estimated population of 350-400 animals. The lush forests of Pindos and the surrounding traditional agricultural areas also host a high number of EU protected habitat types and species.

At first the EIA/AA permitting process for the project was fraught with difficulties and delays, culminating, in 1997, in the Greek Supreme Court having to annul the Joint Ministerial Decision approving the initial road project on the grounds that the EIA/AA had not been done properly. Problematic sections of the motorway were subsequently redesigned and a second EIA/AA was carried out on this revised project. It contained more mitigation measures but the conservation NGOs considered these were still not enough to prevent adverse effects on a number of Natura 2000 sites and their target features (especially bears).

A second petition to the Supreme Court of Greece was launched but this was subsequently withdrawn because the NGOs and the investors Egnatia S.A. (supported by the European Commission who had by then started legal infringement proceedings against Greece) decided that the best way forward was to try to find some common agreements on the mitigation measures. This was eventually achieved: an additional 13.2 km of tunnels, 3.7 km of bridges, a green bridge, nine underpasses and numerous overpasses, were added to the Panagia-Grevena segment of the motorway.

In addition, Egnatia S.A. in collaboration with the NGO Arcturos set up a monitoring programme to monitor the project’s impact before, during and after the project construction. The pre-construction monitoring proved to be of crucial importance as it identified critical sections of this motorway segment which were not well catered for by the foreseen technical works. Adjustments were subsequently made (some of which are yet to be fully implemented).

After almost 15 years of endless deliberations, contradictions and final agreements, both the developer and the environmental NGOs now agree that the necessary mitigation measures should have been discussed in the early stages of the project design in order to avoid legal implications, increased costs and time-consuming procedures and that it is much easier to find solutions and collaborate constructively through active dialogue.

Egnatia S.A., believes developers should be more open-minded towards the involvement of NGOs in the project design, since this can prove more time- and money-efficient. It also considers that the involvement of the environmental NGOs provides much needed independent expertise for the final design of the project and for its monitoring programme. They have now established an on-going partnership for new developments as well.

*See case study n°3 (Annex III)*
Working with AA experts on a mining project to avoid significant impacts on Natura 2000 target features in Bulgaria

In 2007, Balkan Minerals and Mining Ltd started an EIA/AA procedure for a gold extraction project in the south-eastern part of Bulgaria. The mining was foreseen to take place on the southern edge of a large Natura 2000 site. The AA was contracted out to consultants in 2008. After careful study, the AA revealed that the project would have a significant negative effect on the integrity of the site and could not therefore be approved in its present form.

After long discussions between the team of AA experts and the investor, Balkan Mineral and Mining decided to withdraw its original project and submit a revised proposal which involved the same open pit and a similar system for crushing and grinding the ore but with a reduced number of ancillary infrastructures and a change in some of the processing techniques (eg for extracting the gold without cyanide). As a result, the total area of the project was reduced 85 ha (compared to 187 ha in the first proposal). Its total cost also diminished (100 million US dollars compared to 160 million US for the first proposal).

A new AA was undertaken on the revised proposal by the same team of experts that carried out the first assessment, which helped ensure continuity and consistency in the impact evaluation. The 2nd AA concluded that the investor had adjusted the locations and types of installations sufficiently to reduce the negative effects on the Natura 2000 site to an insignificant level. The fact that the project area was now more than half the size also played a major role in reducing impacts and cumulative effects.

Because in Bulgaria the AA runs in parallel with EIA procedure, the revised project, together with the impact statements, was also put out to public consultation. Previously both the local community and NGOs had expressed strong concerns about impacts on the environment, especially from the use of cyanide, but the revision of the proposal and the quality of the accompanying measures had largely allayed their concerns. The Ministry of Environment and Water subsequently approved the revised project on condition that the mitigation and safeguard measures proposed in the AA are implemented. The investor has also since decided on his own initiative to set up a pre and post monitoring scheme for the site.

Thanks to the close interactions and good communication between the investor and the AA consultants the original project proposal could be revised in such a way as to remove or mitigate the risk of any adverse affects on the Natura 2000 site. The high quality of the AA also helped to identify appropriate mitigation measures and led to a smoother shorter approval period and greater public confidence in the mining company’s environmental credentials and sense of social responsibility.

See case study N° 4 (Annex III)

Working together to find a win-win solution for extracting aggregates in La Serena Natura 2000 site, Spain

In the south eastern corner of Extremadura there is an extensive steppic plain, known as la Serena, which has been designated a Natura 2000 site. The Zújar River and surrounding plain within the site have been traditionally exploited for sand and gravel extraction in the past. However, following the designation of La Serena as SPA and SCI, such activities now require an AA before being approved. One developer in particular had tried several times to get a permit for extracting aggregates from this river, but this was repeatedly refused. His AA was simply of too poor a quality to enable the nature authorities to conclude that the project would not have an adverse affect on the Natura 2000 site. The precautionary principle was therefore used and the project refused.

Given the insistence of the developer to carry out his project, and his willingness to discuss how best to go about this, the authority responsible for the management of Natura 2000 decided to contact him in order to explore to whether there was a way for him to carry out...
his project in a way that is compatible with the Natura 2000’s site conservation objectives. This was considered a possibility because the extraction would be carried out on agricultural land rather than in steppic or freshwater habitats.

After several meetings with the developer and a more detailed study of the scientific data on that part of La Serena, the authority identified specific species and habitats that might be negatively affected and subsequently analysed whether they could be mitigated. Thanks to the advice of the Natura 2000 authority and the active willingness of the developer to discuss and modify his project, a solution was found that would enable the extraction and the processing of the aggregates to take place in a way that would not adversely affect the Natura 2000 features of the site. The revised project was subsequently approved, subject to the implementation of the mitigation measures identified.

A monitoring scheme was also put in place with the support and supervision of the authorities to ensure that the mitigation measures were working. Adjustments were made to the timing and location of the operations when required. The monitoring also offered some unexpected ‘good news’: Sand martins had started to colonise the sand banks created by the extraction activity (up to 300 individuals were counted in the site in 2012).

The developer agreed to implement a number of additional measures to safeguard these sand banks. He has also begun, at his own initiative, to create a series of small wetlands in the used excavation areas next to the river which could eventually lead to an increase in the availability of suitable habitats for the existing aquatic species present in the area. The result is a classic win-win situation thanks to the active collaboration and dialogue between the nature authorities and the developer.

See case study N° 5 (Annex III)

A coordinated approach to dealing with river maintenance projects in Croatia

In Croatia there are around 21,000 km of streams, rivers, canals and other water bodies, many of which support valuable habitats and species. Some rivers, especially their downstream stretches, are used for navigation and/or irrigation but all are above all an important component of the drainage network for discharging water. Regular maintenance works are required to protect against floods and keep the drainage network fully functional.

The state water agency Hrvatske vode, (HV) is responsible for preparing an annual national “Programme for maintenance works for protection against harmful effects of water”. As an implementation document for the whole country, the programme is characterised by a huge number of individual measures (over 2800) like grass mowing, cutting of shrubs and trees, maintenance of dikes and inundation areas etc., all of which were described in technical terms but with very little information to indicate where they will take place (no maps).

Because some of the maintenance works could negatively impact on Natura 2000 sites, an AA is required but, at first, it was not clear how to go about this as there were so many activities involved and too little information about their exact location. The state nature conservation institute (SINP) and the water agency decided to set up a joint working group to define common steps to be taken in the impact assessment of the Programme.

The first step was to promote greater cooperation between the SINP and HV staff at all administrative levels, from national to local, and to start early communication about the next Programme before the required measures were finalised. To facilitate this, HV provided improved standardized descriptions of particular interventions. SINP, in turn, provided GIS layers related to nature protection assets as well as a list of 40 standardized types of measures which could be used to mitigate general impacts on biodiversity/landscape or on particular species and habitats.

The local nature protection and water management practitioners would then jointly assess the location of each planned intervention in the field and file a report with a proposed set of nature protection measures and/or changes to the proposed water maintenance measures.
in order that these could be incorporated into the draft Programme. Activities that could not be mitigated, and/or where they would be likely to significantly impact on a Natura 2000 site, were flagged up as requiring separate more detailed AA later on.

Thanks to these cooperative efforts and practical collaborative work done in the field, it was possible to set up a more detailed database of standardized protection measures for particular habitat types and species. This makes it possible to create tailor-made sets of conditions for particular watercourses and/or projects which should greatly assist the preparation of future maintenance works for forthcoming annual programmes.

The adoption of this strategic approach resulted in the number of interventions which really required AA dropping dramatically – the precautionary principle was reserved only for cases with reasonable doubts about possible impacts and is no longer applied just because of lack of adequate data.

The process also established a new level of working cooperation between the conservationists and water managers at all levels of management from the field staff to the policy level staff. This not only created a greater potential for further cooperation in the future but also opened up the opportunity for joint planning of conservation measures on particularly valuable watercourses – something which would have been considered pure fiction only a few years earlier.

See Case study N° 7 (Annex III)

Water abstraction at Rutland water, UK – good dialogue helps find a solution

Rutland Water Reservoir was built in the 1970s to supply water to the growing populations and industry in the East Midlands, UK. It has since been classified as an SPA. In 1999 the private water company “Anglian Water Services Ltd” started to examine the option of abstracting more water from Rutland Water and to extend the existing Water Treatment Works to supply an additional 90,000 homes.

The first proposal was put through an AA but it was found that the increased frequency and extent of abstraction and refilling was likely to adversely affect the integrity of the SPA which meant the project had to be refused permission in its present form.

In order to find a way to avoid or mitigate the negative effects, Anglian Water, the local authority, and conservation NGOs met to discuss possible options and alternatives within the framework of the AA. They looked in particular at the option of creating new wetland habitats that would allow Rutland Water to maintain the high numbers of water birds that flock here every winter, thereby offering alternative feeding and refuge locations to the main reservoir at times during periods of drawdown and subsequent refilling.

In the end a strategy was devised to avoid or mitigate and, where necessary, compensate for the adverse effects identified in the AA (via an Article 6.4 derogation procedure). This involved, amongst others, the recreation of nine lagoons, totalling 80ha, on Rutland Water’s western shore to be put in place prior to the start of the water treatment expansion works.

Because of the careful preparation work during the AA and the strong emphasis on dialogue with NGO and local authorities, the revised project passed smoothly through the alternative solutions and IROPI stages, and the proposals were finally approved in 2007. This meant that a solution to water provisioning was found and put in place well before a point was reached where there was a water deficiency in the region.

Nevertheless the whole process from start to finish took 8 years. It took the refusal of the initial application to persuade the applicant that there were negative impacts that needed to be addressed. But once all parties started working together via the AA process, a solution could be found which led to a much smoother permitting procedure.

See Case Study N° 8 (Annex III)
6.2.6 Taking a more strategic approach to AA help streamline the process (and reduce potential conflicts later on)

If done correctly, strategic (spatial) planning can help to avoid or reduce the number of potential site-specific conflicts at a later stage in the development process, when financial and legal resources have been committed and there is less room for manoeuvre. It can also provide developers with a more transparent and stable regulatory environment.

Recognising this, several authorities have adopted a more pro-active and strategic approach to planning developments and their associated AAs in order to facilitate development whilst at the same time reducing the risk of potential conflicts with Natura 2000 sites later on.

streamlining the AA of annual mussels and cockle fisheries permits in the Wash, UK

Located on the east coast of England, the Wash is the largest estuarine system in the UK. The site is designated both as SAC and SPA. The mussel and cockle beds are key attributes of the intertidal flats and a major feeding ground for birds. They are also of vital importance for the local shellfish industry.

The Eastern Inshore Fisheries and Conservation Authority (EIFCA) is the body responsible for authorising the mussel and cockle fisheries in the Wash. Every year EIFCA draws up an annual plan which sets out the terms and conditions for each fishery for that particular year. Since they have the potential to affect the Natura 2000 features of the site, each annual plan is required to go through an AA.

Initially, Natural England, the statutory nature conservation body, disagreed on several occasions with the EIFCA over the impact of the fishery proposals, including EIFCA’s judgements of no adverse effect. This in turn led to delays and difficulties during the permitting procedure. All parties eventually recognised the need to streamline the process and improve joint working. This was facilitated by Natural England updating the site’s Natura 2000 conservation objectives and EIFCA agreeing to some broad fishery management principles in advance. Both of these processes were undertaken in an open, collaborative manner involving conservation advisors, fishermen and fishery managers and were based on several years of data collection.

The general management principles ensured that the fisheries activities were consistent with the conservation objectives of the sites, which meant that the annual fisheries plans could concentrate on setting out the detailed arrangements for each measure - such as the level of effort, total allowable catch and methods of working - for that particular year. As a result the AA would be able to go much faster and focus on minor adjustments rather than run the risk of blanket refusals.

Since the new shellfish policies were published in 2008, the AA procedure has indeed become much faster and smoother. The introduction of broad fishery management principles has ensured that both Natural England and EIFCA have a consistent agreed framework within which to discuss the approval of the annual shellfish plans.

This has not only sped up the permit process but also created a much stronger working relationship between Natural England and EIFCA officers who regularly exchange information on site or fishery conditions so that this can continue to inform the process and lead to adaptive management where necessary. Equally importantly, the entire process has become much more transparent for the fishermen as well as other stakeholders and NGOs operating in the Wash.

Case study N° 9 (Annex III)
Strategic motorway planning with help of AA in Germany

The Federal Ministry for Transport, Building and Urban Development (BMVBS) is responsible for producing a Federal Transport Infrastructure Plan for all future major road infrastructures across Germany. Motorway planning proceeds in two steps. The first step concerns the planning of road corridors and the selection of the most suitable amongst them. Particular routes are prepared as multi-variants within a particular corridor and are subject to EIA, part of which is the AA, in each of the Länder involved.

Despite the fact that the level of detail is often very rough as regards the AA, the road planners try to get as much data as possible on potential impacts on Natura 2000 sites even at this stage – which sometimes requires specific investigations but improves the reliability of the assessment outcomes. On the other hand, if the level of detail is such that a decision cannot be made about the impacts this is pointed out and the detailed AA is left up to the subsequent stage.

Once EIA and AA reports are ready they are submitted to BMVBS who consult with the Federal Ministry of Environment on the findings. Once the road corridor with the least impact has been chosen, the process moves on to the second stage which involves the elaboration of the detailed road project within the selected corridor, and an accompanying AA. The process is in principle the same as at the 1st stage but much more detailed since all of the specific data on the motorway is now available.

The advantage of this “double-AA approach” is that even the “strategic” selection of the route (corridor) of a motorway involves quite detailed research and field examination of all optional routes. Thus, impacts on the environment and on Natura 2000 are identified early on, and avoided or reduced wherever possible. These might otherwise remain hidden until later stages when the margin for manoeuvre is considerably reduced.

In cases where all alternatives will significantly affect Natura 2000 or other environmental assets, the least-damaging alternative can be chosen for further planning, and effective mitigation measures can be already be built into the future project from the beginning. Another advantage is the early involvement of public who can act more responsibly if they are familiar with particular environmental impacts.

The Thames Basin Heaths Delivery Framework, UK: an agreed zoning strategy that protects against cumulative effects.

The Thames Basin Heaths in South East England were classified as a SPA in 2005. The area has been subject to intense housing development pressures for many years. However, the AAs of the plans and projects proved to be problematic because there was so much uncertainty about where the future developments would take place, and the kind of cumulative impacts it might have on this highly fragmented SPA which is spread across no less than 15 boroughs or district councils.

Natural England (England’s statutory nature conservation body) was increasingly concerned the cumulating number of housing developments would significantly increase the recreational pressures on the SPA area and impact negatively on its ground nesting birds. Local authorities were therefore often unable to conclude on a large number of planning applications because of outstanding concerns over the adverse effects on the SPA and lack of clear consensus on the required mitigation. The situation approached a deadlock in 2006, putting at risk 40,000 new homes planned for the area in the next ten years.

In a bid to unblock the situation, Natural England developed a draft “zoning strategy” which proposed to create a development-free buffer of 400 metres around the SPA but also allow for the possibility of new housing developments within 5 km from the SPA provided certain...
mitigation principles were adopted proactively to remove potential adverse impacts on the SPA. These mitigation measures would, inter alia, require housing developers to provide alternative publicly accessible recreational land (known as Suitable Alternative Natural Green Space or SANGs) in order to take the increased pressure away from the SPA.

The Thames Basin Heaths Delivery Framework is designed to provide a strategic and consistent framework for all local authorities and developers so that new housing developments can be done in a manner that does not risk impacting cumulatively on the integrity of the site. It can help prepare both local development plans and individual projects.

The Delivery Framework makes clear that this will not necessarily obviate the need to undertake an AA on individual district plans or associated projects, but it should greatly facilitate the process. The framework has since allowed numerous housing projects to proceed. Reaching this common modus operandi nevertheless took much time and effort. Not only is it a complex issue affecting large areas under intense development pressure but the perceived sudden change in planning law resulting the designation of SPA in 2005 needed first to be fully understood and accepted by all those concerned.

Since the Thames Basin Heaths case, other local authorities affected by housing and associated recreational pressures near Natura 2000 sites have adopted a similar proactive planning approach involving the establishment of agreed mitigation principles at a strategic level to give developers a more transparent and stable legislative framework to work in.

**Case Study N°10 (Annex III)**

**A programmatic approach to dealing with nitrogen emissions affecting Natura 2000 sites in the Netherlands**

In the Netherlands 133 out of its 166 Natura 2000 sites, habitats and species are directly threatened by an excessive input of nitrogen from various sources including agriculture (eg intensive livestock rearing farms), transport and industry. A drastic reduction in nitrogen emissions is needed in order to improve the conservation status of many of its habitats.

This in turn has a direct relevance for the Article 6.3 procedure. Until recently, the State was having to refuse permits for new activities because might lead to an additional input of nitrogen emissions in or near these Natura 2000 sites. In order to find a way forward, the government decided, in 2009, to develop a new programmatic approach to Nitrogen emissions (Programmaticische Aanpak Stikstof - PAS). The idea is to reduce nitrogen deposition and implement recovery strategies for Natura 2000 sites that are sensitive to nitrogen deposition, so that this helps to create ‘room for development’ and enables certain new developments to go ahead whilst still achieving an overall reduction in nitrogen levels.

One of the cornerstones of the PAS is a scientific GIS based model (AERIUS). Its calculations translate nitrogen emissions into deposition levels in Natura 2000 sites. It also helps to predict, on the basis of these levels, where and what kind of activities are likely to increase nitrogen emissions and whether there is ‘room’ for them. This prediction can then be used during the AA to determine the level of potential impact of the particular plan or project in terms of nitrogen deposition.

The AERIUS went on line in June 2013 and will now be used by the 12 provinces and the Ministry of infrastructure and Environment to assess any permit applications for projects that might have effects on nitrogen levels in and around Natura 2000 sites and for more strategic spatial planning initiatives. It offers a science based strategic tool for the assessment process. Plans or projects that are approved are then fed back into the AERIUS database so that their effects on nitrogen levels can taken into account as well.

6.2.7 Coordinating permit procedures for major infrastructure projects

Concerns have been expressed in various quarters that major infrastructure projects are sometimes delayed because there are so many different, yet largely uncoordinated, permit procedures to go through. This does of course depend on the type and complexity of the project involved, and the permitting conditions and laws in the country or region concerned.

Some countries are looking at ways of streamlining, or at least coordinating, the permits for large-scale projects in order to reduce the time it takes to get all the necessary permits.

Major Infrastructure and Environment Unit (MIEU), UK

Following the Habitats Directive implementation review in 2012, the UK government decided there was a need to improve the interaction, at a pre-application stage, between major infrastructure projects identified in the National Infrastructure Plan and the Habitats and Birds Directives. This is to ensure that the commitments under the Directives are met whilst avoiding unnecessary costs and delays.

With this in mind, a special cross-government Major Infrastructure and Environment Unit (MIEU) was set up in April 2012 to offer assistance to the ‘top 40’ major infrastructure projects in identifying and resolving outstanding issues with the EU nature directives ahead of submission to the Planning Inspectorate for Examination. In doing this, the MIEU does not seek to influence decisions on whether projects comply with the Habitats Directive but rather to ensure a smoother run through the AA procedure. In particular, the MIEU aims to improve processes for infrastructure projects by playing a key early risk management role to identify issues associated with the Habitats and Wild Birds Directives for projects, ensuring collaboration between all parties to support resolution of issues as necessary and providing greater clarity to developers on requirements.

A number of pieces of work have already been completed to address strategic issues:

• Guidance has been issued on alternative solutions, Imperative Reasons of Overriding Public Interest (IROPI), and compensatory measures;
• Advice has been published on the circumstances in which a Competent Authority may, or should, adopt the reasoning or conclusions of another Competent Authority. The advice is intended to streamline decision-making by avoiding duplication of work and coordinating the efforts of different Competent Authorities;
• A new process has been set up for agreeing evidence requirements and timescales for major projects that are likely to affect Natura 2000 sites. This will give greater certainty to developers on the evidence they need to provide in accordance with the Article 6.3 (and 6.4) permit procedure and for undertaking the Appropriate Assessment.

The MIEU has also set up a multi-stakeholder ‘Major infrastructure and Habitats Group which provides a forum for industry, environmental NGOs and Government to discuss implementation of Habitats and Wild Birds Directives in relation to major infrastructure. In particular it will work on identifying strategic risks and issues affecting effective and proportionate application of the Directives to major infrastructure (this could include sectoral, territorial or thematic risks and issues) and provide advice to Government on interventions to tackle these strategic risks and issues. At its first meeting it agreed to focus on offshore wind development and on the interaction between linear energy infrastructure (energy transmission), specific energy generation projects and the Habitats Directives.

6.2.8 Looking for potential win-wins and co-benefits

In addition to preserving rare and endangered species and habitats, the Natura 2000 Network also plays a major role in safeguarding Europe’s natural capital. Healthy natural ecosystems can provide a range of important benefits to society and the economy via the flow of valuable ecosystem services such as clean air and freshwater, preventions of floods and soil erosion, carbon fixation etc..)

However, benefits are rarely recognized or taken into account in the decision-making process, which is a major missed opportunity since such an approach could encourage a more coherent, integrated and resource efficient use of Europe’s natural capital which can in turn create potential win-wins and co-benefits.

Fingal Development Plan, Ireland: delivering a high quality environment

Fingal County is located immediately north of Dublin City. As part of the Greater Dublin Area, the county's population has grown more than 20% over the last decade leading to a rapid development of both major towns and smaller settlements across the county, and particularly along the coast. Despite this increased pressure Fingal still has important biodiversity values, which are in part protected by a total of nine SPAs and seven SACs.

Local authorities in Ireland, acting as planning authorities, are responsible for formulating a County or City Development Plan every 6 years. A key challenge for the new Fingal County Development Plan (2011-2017) was to ensure the delivery of a high-quality environment, including the effective conservation of Natura 2000 sites, while at the same time allowing for future growth in the county. Central to achieving this was the decision to focus on green infrastructure as a major element of the Plan.

In addition to delivering a range of environmental benefits such as flood amelioration or pollution control, a high quality green infrastructure is increasingly recognised as playing an important role in attracting the high-quality industries, entrepreneurs and workers needed for the knowledge economy of today.

Fingal County Council’s planning team were committed to the AA procedures when elaborating their draft development plan. It was seen as a positive and useful process for formulating and reconciling development and environmental objectives within the County and was therefore fully integrated into plan-making from an early stage.

This led to the inclusion of a spatial framework for biodiversity conservation – the Fingal Ecological Network – within the development plan. This ecological framework would not only help address the need to protect core areas such as Natura 2000 sites but would also provide greater recognition of the value of having healthy ecosystems and attractive landscapes in the County.

The integration of a green infrastructure approach in the Fingal Development Plan also helped draw attention of other sectors, stakeholders and the wider public to the multiple benefits of a high quality environment as part of land-use planning in Fingal. The overall green infrastructure approach has since been further developed in a series of Local Area Plans for urban and rural areas of the County. Framing the discussions within a wider debate about ensuring a high quality environment attracted much more interest and support than simply trying to explain why Natura 2000 sites must be protected because of the habitats and species they host.

Case Study N° 11 (Annex III)
The Integrated SIGMA plan: protecting against flooding by making room for the river in Belgium

The Schelde river in Belgium, is an important inland waterway but it is also an area that is highly prone to floods which in turn can cause serious economic damage. In 2005 it was decided to develop a flood protection plan, called "SIGMA plan" to protect the Scheldt basin against floods caused by the North Sea and, through dialogue and consultation with other sectors and stakeholders, combine this objective with other objectives such as nature conservation and recreation to the mutual benefit of all.

The SIGMA plan provides a development framework that maintains a balance between environmental, economical, societal and agricultural evaluations. All projects identified within the plan have been developed on the basis not only of detailed technical analyses of the effectiveness and feasibility of measures but also through close collaboration with experts from other relevant policy sectors in order to maximise the potential for win-win solutions.

Because the Scheldt estuary is a also Natura 2000 site, with defined conservation objectives, special attention was paid to this during the planning process. The nature component of the SIGMA plan is now specifically designed to also reach the Natura 2000 conservation objectives as well as ensure compliance with the Flood Risk Directive. This will lead to the restoration of several ecologically valuable habitats (500 ha of mudflats, 1500 ha of tidal marshes, 1500 ha of grassland, 2000 ha of reed and riparian zones and 400 ha of marsh woodland).

The "most desirable scenario" for the Scheldt estuary ended up being an optimised consensus scenario that was constructed interactively during the environmental impact assessment (and AA). The ratification of the integrated SIGMA Plan by the Flemish government has paved the way for a Long Term Vision for the Schelde (LTVS) estuary in the Flemish part of the Scheldt estuary, which aims to integrate even further the transport and flooding objectives with the requirements and objectives of the WFD and Bird and Habitats Directives.

7. CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

The present study set out to review the nature, extent and significance of the problems associated with the Article 6.3 permit procedure and to formulate recommendations for improving its implementation.

The findings of the study are derived from an extensive literature review, an on-line survey of 59 nature authorities in 22 countries, structured interviews in ten Member States and with a number of representatives of key economic sectors and NGOs operating at EU level, as well as a detailed examination of 12 case studies illustrating good practices and lessons learnt.

Due to the limited size of the present study (and also lack of feedback of several countries), it was not possible to carry out a detailed analysis of the way in which the Article 6.3 procedure is implemented in all 28 countries and at all the relevant administrative levels. Also, a number of countries initially contacted for the structured interviews had refused to be interviewed despite our assurance of anonymity.

As a result, it may be that the findings are somewhat biased towards countries that are more actively working on, and succeeding in, ensuring the full and efficient implementation of Article 6.3, as opposed to countries where there are known to be systemic failings with implementation.

7.1.1 Widely differing administrative set-ups within Member States for handling the Art 6.3 permit procedure

Before summarising the key findings, it is important to recall that the way in which the Article 6.3 permitting procedure is implemented varies greatly from one country to another, and even from one region to another within the same country.

This can be heavily influenced by:

• The basic constitutional structure of the countries concerned (whether it is a devolved or centralised government structure);
• The distribution of administrative responsibilities and competences amongst the different authorities (eg whether shared among different sectors or only in the hands of environment authorities; whether the permit procedure is integrated into other consent procedures or treated as a stand alone procedure);
• Traditions as regards administrative practices and cultures (eg in terms of cooperation and dialogue between different administrative bodies, the role of spatial planning for development and land use policies);
• The level of detail of the transposing legislation as well as margin of discretion left to the authorities when implementing the legislative provisions.

These wide ranging factors make it very difficult to obtain a full overview of how the Article 6.3 procedure is being implemented in the Member States. It also cautions against making generalized comments about AA implementation across the EU.

But from the initial analysis undertaken it is clear that the differences in application of Article 6.3 across the countries and regions can have a major influence on how the Article 6.3 permit procedure is implemented in practice and this in turn can impact on the nature and extent of possible problems that arise during this implementation.

7.1.2 The nature and extent of the problems associated with Article 6.3

The first part of the study sets out to examine the potential extent of the problems associated with the implementation of the Article 6.3 permit procedure. It looked in particular at the following questions: to what extent is Article 6.3 problematic, are these problems systemic or case/ country related? How much of an administrative burden is it for those concerned, does it generally lead to a ban on developments in Natura 2000 sites?...

As regards the first two questions, according to the AA online survey, an overwhelming 89.5% of respondents considered that ‘the AA procedure operates well – some difficulties occur, but it is usually possible to deal with them’. Only 7% (ie 4 authorities) considered that it didn’t operate well; all were from local level administrations and two were from the same country.

The structured interviews in the ten Member States and the literature review largely supported this positive view of the Article 6.3 procedure. The majority of the authorities interviewed (both nature and sector orientated) considered that the Article 6.3 procedure is generally functioning correctly in their country/region, and is providing a robust but stable legislative environment for developers.

Several pointed out that there had been some serious teething problems at the start and it took some time for all concerned to get used to the new system, accept it and learn how to apply it correctly. But most of the authorities interviewed indicated that these initial problems have since been largely overcome.

This was especially the case in countries that have made a concerted effort (possibly because many of them have had major ECJ Rulings against them) to ensure that the procedure is both transparent and ‘fit for purpose’, eg through a more consistent framework for screening, improving the quality of the AA reports, as well as improving the understanding and skills of authorities and developers via training courses, guidance documents etc…

It was also the case for countries that placed a strong emphasis on promoting an active dialogue between developers and authorities during the AA procedure and on finding ways to take Natura 2000 requirements into account earlier on in the decision-making process and at a more strategic planning level.
This is not to say that there are not still occasions where problems and delays occur from time to time, especially with the larger infrastructure plans and projects (and also with the sheer volume of very small local scale plans and projects), but these tend to be linked to individual circumstances rather than reflecting a systemic problem across the board, at least in the majority of countries interviewed for this study.

Some countries/regions interviewed however reported that there is still an overall lack of understanding of, or willingness to accept, the Article 6.3 procedure amongst certain authorities and/or sectors. This has in turn caused difficulties in its implementation which has resulted in more frequent delays, inconsistencies in application and frustrations amongst both the developers, authorities and NGOs in those countries/regions.

It seems that this is especially a problem for the lower administrative levels (especially in countries with federal structure) and in countries where the competent authority is not the nature authority, and where that authority is lacking the expertise or capacity to handle the Article 6.3 procedure correctly.

Feedback from the key economic sectors and NGOs operating at EU level, also pointed to the problem that some competent authorities responsible for issuing Art 6.3 permits are clearly less well versed, especially at the local level. In addition, both the key economic sectors and NGOs consider that there are still some serious systemic problems with the implementation in a number of countries, especially in those that were not interviewed as part of this study.

From the industry’s perspective, authorities may for instance take an inordinate amount of time to respond to the request for a permit (or not reply at all) or may rely too readily on the precautionary principle when reaching their decision on whether to issue the permit or ask for a disproportionate amount of information in terms of baseline studies and impact studies.

Moreover, some countries and regions have decided to impose stricter rules than foreseen under the Habitats Directives for certain types of development activities in Natura 2000 sites. Although Member States are allowed to adopt stricter national rules, doing so significantly alters the perception in those countries of Natura 2000.

The EU sector guides sent out a very clear message from the Commission that sectoral activities are not a priori forbidden in principle and that there can be developments in Natura 2000 sites so long as they are done in a way that does not adversely affect the features for which the site was designated.

However, several key economic sectors interview expressed a strong concern over the poor promotion and distribution of the Commission guides amongst the competent authorities across the EU. This has resulted in a very limited uptake. In their view it is essential that the Commission ensures the competent authorities in EU apply the guide fully and correctly.

Feedback from NGOs indicate that they too consider there are still some serious systemic problems with the implementation in a number of countries and that as a result businesses in these countries have an unfair advantage due to the widespread lack of application of the AA impact assessment.
Entire sectors (e.g., forestry/farming/fisheries) may not be going through the AA procedure at all despite the risk of their development activities causing potentially significant impacts on Natura 2000. The screening process for reviewing the likelihood of impacts is also sometimes considered too lax and unclear with the result that all sorts of plans or projects that could potentially have a significant impact on a Natura 2000 sites are not subject to an appropriate assessment.

The NGOs would like to see a more systematic and indepth investigation by the Commission of the way in which AA procedure is being implemented in these countries and recourse to legal action when required.

Both the economic sectors and the NGOs however also recognize the Article 6.3 process does work effectively and smoothly in several countries, especially in those where efforts had been made to install a clear and transparent AA system which is applied in a consistent manner across the country or region and where there is an ‘open door’ policy towards developers which encourages early and active dialogue during the entire AA process.

These were also often countries that have adopted a more integrated land use planning approach that takes into account different potential interests and land uses at a strategic planning level early on.

As to the question of whether the Article 6.3 permit procedure generally lead to a ban on developments in Natura 2000 sites? Part of the answer lies in knowing how many plans and projects are subject to the Article 6.3 and in particular how many are screened out, approved or refused/abandoned or go to Article 6.4.

Unfortunately, it seems that most countries do not keep statistics on how many plans or projects are required to go through the Article 6.3 procedure and what proportion this represents of all the plans and projects involving relevant consent procedures and planning applications. Nevertheless, the literature review and the structured interviews have provided some information for a number of countries.

From these and the feedback from the on-line survey, it seems clear that the majority of plans or projects subject to Article 6.3, are either screened out because they are not considered a risk to a Natura 2000 site, or are approved following an AA. By contrast, only a very small proportion of projects are actually abandoned because the AA has concluded an adverse effect and even fewer use the derogation procedure under Article 6.4.

These findings support the view that Natura 2000 does not, on the whole, act as a general ban on developments within these sites. However, the key economic sectors also pointed out that the presence of a Natura 2000 site can sometimes act as a real deterrent. Because of the time consuming nature of the AA procedure and the uncertainty of the outcome, some companies will actively avoid proposing projects in or near Natura 2000 sites unless they can be sure of a reasonable chance of success.

As to the question of whether the AA permit procedure ‘generates a high administrative and financial workload for administrators and economic operators and causes substantial delays to permitting procedures’, there is no doubt that the Article 6.3 permit procedure, like any other permit procedure, creates an administrative workload for those involved and has a financial cost.
This cost is not just related to carrying out or reviewing the AA but also to the need sometimes to do additional baseline surveys and introduce mitigation or compensation measures as part of the AA process in order to remove the potential impacts of the plan or project on the species and habitat types for which the site is designated.

However, it is extremely difficult to assess this ‘burden’ in any objective way. During the course of the study we were unable to find any accurate information or quantifiable data on the specific cost of the AA procedure itself despite raising this question systematically during the interviews with the competent authorities, NGOs and EU level key economic sector associations.

It seems that Member States simply don’t collect this kind of information, not even when carrying out a review of the Article 6.3 procedure. One of the reasons for this information gap is that both the competent authorities and investors do not record the costs of AA as a separate item; they usually consider them a part of costs of overall EIA and other environmental considerations (including public consultation), which is because, in most cases, the AA is run within the EIA procedure.

Also, it has to be borne in mind that, because the AAs are so project or plan specific, the costs associated with the assessment can be extremely varied. Whereas the costs of EIA generally increase proportionally in function of the size of the project, this is not necessarily the case for the AA procedure since the cost will be intricately linked to the unique range of intrinsic and extrinsic factors operating within the Natura site in question. Thus, one can well imagine a situation where the costs associated with an AA would be relatively low in one Natura 2000 but much higher in another even though the project is exactly the same in both cases.

Further, we found no examples of where the economic value, in terms of socio-environmental benefits derived from maintaining healthy ecosystems, of not carrying out the plan or project is measured or taken into account.

The general lack of data also makes it impossible to confirm the claims made by certain sectors that ‘the AA permit procedure generates a high administrative and financial workload for administrators and economic operators’ is accurate and based on substantiating evidence. Again, this may be true for some plans or projects but there is nothing to suggest, from the information gathered during the course of this study, that this reflects the overall situation with the Article 6.3 across all countries and types of plans and projects.

Individual, high profile examples, whilst of legitimate concern in their own right, do also have a tendency to polarize people’s perceptions of the AA procedure as being always ‘difficult’ and burdensome when in reality this is mostly not the case. They are also used by politicians and others as examples to try to discredit the Habitats Directive and the AA procedure as a whole.

In order to be able to present a more accurate view of its burden and cost to industry/government, it would be necessary to set up a mechanism for gathering further information in a more systematic and objective manner on the actual burden of the AA procedure across a whole range of different types of plans and projects.

But first it would be important to clarify in advance what is considered to be a ‘high’ or ‘inordinate’ cost or burden (all types of licences have both a purpose and a cost) and when is it to be considered disproportionate with the objectives to be achieved.
7.1.3 The underlying causes of the problems encountered

The second part of the study looked at the underlying causes for the problems and delays encountered when implementing the AA procedure and the type of measures that have been used to overcome these, bearing in mind that this can vary significantly from one country to another and even from one region to another in the same country.

Broadly speaking, the problems fall into two main categories depending on the country or region concerned. They may be historical problems, i.e. problems that were particularly acute at the beginning but have now been largely overcome, or they may be on-going problems.

Historical problems

In terms of the ‘legacy of the past’ it is clear that the long designation process for Natura 2000 sites had a significant impact on the application of the Article 6.3 procedure creating considerable regulatory uncertainty for developers, both in terms of knowing where the sites are located and what conditions are attached to their conservation and protection.

Poor transposition was also a major problem in the beginning, resulting in several Member States being taken to the European Court of justice for not transposing the Article 6.3 procedure correctly or fully into their national laws. Unfortunately, it took some countries up to ten years to finally fully transpose Article 6.3. Understandably, the industry and other sector authorities were increasingly frustrated by the perceived constant ‘moving of goalposts’ (caused by incomplete transposition), which created an uncertain and unstable legal environment for their activities and sometimes resulted in considerable delays, unfair refusal (or consenting) of permits and extra administrative work for all concerned in the Article 6.3 permitting process.

Finally, there was also a need for all those involved to become familiar with the Article 6.3 procedure. Many problems arose because those involved (be they developers or authorities) were unfamiliar with the Birds and Habitats Directives and their precise implications. Many countries interviewed considered that there was indeed an initial upheaval caused by the Article 6.3 procedure, due to having to get used to the new system, as well as understanding and applying it properly.

In particular the binding character of the Article 6.3 procedure was not fully understood at the start. Initially many people believed that the AA was essentially the same thing as an ‘EIA’ (especially since the AA was in essence grafted onto the EIA procedure in many countries). As the EIA procedure had been in place in many countries since the 1970s already, developers and authorities were used to this way of working, and could not understand why the AA required something different.

As a result, there were numerous ‘false starts’ and delays with the AAs and the permits. AAs were being rejected for not focusing sufficiently on Natura 2000 site, and permitting decisions challenged because they had not followed the correct procedure for AAs. This caused a lot of frustrations and an extra administrative burden for all those concerned. It also often generated an increasing negative perception of EU nature legislation as a whole.
The legally binding nature of the new AA procedure also met with some strong resistance from developers, politicians and sector authorities. Many found it difficult to understand why nature had been given 'so much legal power' and how this fundamental change in mindset and legal approach had come about. They felt they had been 'caught by surprise' with this new procedure.

In short, the historical problems mentioned above to help explain why there was so much frustration and bad press with Article 6.3 in the first 10-15 years of the Directive. This legacy of the past unfortunately remains set in people's minds today, even though many of the initial problems have since been resolved, at least in a number of countries.

On-going problems

The study also identified a number of on-going problems with the Article 6.3 permit procedure. The exact nature and extent of these problems is of course highly dependent on a whole range of different factors linked not only to the way in which the Article 6.3 procedure is established and implemented, but also to the nature of the plan or project concerned as well as the Natura 2000 site(s) involved.

Chapter 5 provides a complete overview of all the problems identified through the on-line survey, structured interviews, literature and case studies, whereas Chapter 6 provides a range of practical examples of how authorities have overcome these problems and streamlined the AA procedure as a result.

In brief the on-going problems include the following:

- Poor quality of the Appropriate Assessment undertaken
- Lack of skills/knowledge/capacity in the Article 6.3 procedure
- An inadequate knowledge base on which to assess impacts
- Inconsistent screening of plans and projects
- Lack of understanding of key concepts and legal terms
- Persistent lack of assessment of cumulative effects
- Confusion with the EIA/SEA Procedure
- Lack of early dialogue
- Lack of effectiveness of AAs on plans
- Problems during public consultation

The poor quality of the AA reports, and the fact that the AA does not give clear conclusions, is still considered to be a key problem in a number of countries. Experience has shown that delays and problems often occur because the AA report was not complete or was not sufficiently robust to conclude with certainty that there would not be any adverse effects on the integrity of the Natura 2000 site(s). Since the onus is on proving that there are no adverse effects, the competent authorities are liable to be taken to court or to an appeals procedure if the evidence upon which they base their decision is not sufficiently clear or robust.

The majority of those interviewed from both nature and other authorities considered that the AA reports were ‘much better than they used to be’ (but is still a general problem in some countries). This improvement in AA reporting was considered to be largely due to the increasing familiarity with the reporting process amongst developers, consultants and authorities; the issuing of targeted guidance and the frequent objections by NGOs (and some authorities) when the AA was insufficient or considered to be of too poor quality.
The poor quality of the AA is also often linked to the level of knowledge, skills and capacity of those undertaking the AA or involved in the permitting procedure. From the feedback during the structured interviews it is evident that the problem can arise across the board whether with the developer, the AA consultant or the authorities. Some countries like the Czech Republic have introduced an accreditation scheme for AA experts to ensure that they have the necessary skills and expertise to do the AA correctly. Others have relied more on ‘market forces’, developing review mechanisms and on providing training, information seminars and guidance to help improve the understanding of the AA procedure amongst all those concerned. However, there are still countries where this process remains completely “elemental”, and there is no supervision of the quality of AA, nor any attempts made to improve it.

There continues also to be a problem over the lack of knowledge and baseline information on Natura 2000 sites and their target features for the impact analysis. Over 80% of the respondents to the on-line survey considered that there were insufficient field surveys done during the AA process to assess the impacts correctly.

This is especially a problem when there is a general lack of scientific knowledge on a particular environment (eg the sea) or species (eg bats, invertebrates). Much of the valuable scientific data on these environments is currently being collected via AAs but this means it often remains in the hands of individual developers and their consultants and is not generally shared. This can lead to a certain amount of repetition and duplication of efforts as regards the surveys.

Another more systematic problem which appears across all countries and types of plans or projects is the lack of assessment of cumulative impacts. At best it is considered as an after-thought at the end of the AA process, rather than as an integral part of the assessment. There seems to be considerable confusion as to how to carry out the assessment of cumulative / in-combination effects which could indicate that further guidance or even hands-on training is urgently required on this.

Screening is a crucial step of the AA: if the screening process is too simple or incomplete it will act as a “loophole” through which plans/projects likely to have an impact may escape the assessment. If on the other hand it is too rigorous it can act as a “trap” which leads to too many projects being forced to go through a full AA ‘unnecessarily’.

Some countries have solved this issue by introducing standard procedures and pro-forma screening forms to guide the proponents and authorities through the necessary screening steps and to ensure that the AA screening is done in a consistent way across all projects and plans, is ‘fit for purpose’ and does not require more administrative work or costs than is actually necessary.

Confusion with the EIA procedure. Many of those interviewed pointed out that whilst merging the AA and EIA/SEA procedures undoubtedly has a lot of advantages, especially in terms of streamlining the various environmental permits required, it can also cause confusion. For instance, the final EIA assessment may not provide a specific analysis of impacts on Natura 2000 site as required under the AA procedure. Instead, it looks at potential impacts on ‘nature and biodiversity’ in general and in a much more generic manner. This lack of understanding of the AA procedure can lead to delays, because the permitting procedure has to be put on hold until the AA has been carried out correctly and reaches clear conclusions as to the potential impacts on the integrity of the Natura 2000 site.
The fact that the EIA requires the assessment of a whole range of potential environmental impacts as well as an obligatory public consultation exercise also means that the EIA can sometimes be a lengthy process. Consequently, when the EIA is combined with the AA, there is a tendency to ‘blame the AA’ for blocking or delaying developments when in fact it has nothing to do with the AA procedure itself but rather with the requirements of the EIA Directive (for instance the AA does not require systematic public consultation).

**The lack of dialogue early on in the decision making process** is another key problem. Experience has shown that the earlier the AA is started, the easier it is to find solutions to remove or avoid these effects, for instance through dialogue and discussion between the proponent and the consultants undertaking the AA, or the proponent and the relevant competent authorities. This in turn can reduce both the cost and the duration of the permit procedure since the final project can progress more rapidly to the approval stage (and with fewer conditions attached).

For projects that are already finalized and fully formulated in all details, on the other hand, there is often less willingness or flexibility to introduce modifications where significant effects are found. This can, in turn, cause delays because more time needs to be spent on identifying suitable mitigation measures or alternative solutions and on discussions between the proponent and the competent authority.

Several authorities also recognized that early dialogue can foster a more open and integrated decision making process where co-benefits and win-win solutions may be easier to identify and less costly or onerous to implement.

**Strategic (spatial) planning can also significantly help** to avoid or reduce the number of potential site-specific conflicts at a later stage in the development process, when financial and legal resources have been committed and there is less room for manoeuvre, provided the AA is done correctly and not just turned into a box ticking exercise. Equally important is the fact that this approach can provide developers with a more transparent and stable regulatory environment.

Several countries and regions have adopted a more pro-active and strategic approach to planning developments and their associated AAs in order to reduce the risk of potential conflicts with Natura 2000 sites later on. But there are still (too many) situations where this strategic level planning early on in the decision making process is not done or done ineffectively.

This may be because there is still a great deal of confusion as to how to assess higher level plans, which is further exacerbated by a generally poor awareness of the potential benefits such an approach can have for all concerned, not just for nature. As a result, opportunities are often missed for reducing potential conflicts later on at the level of individual projects. This is another area that would benefit considerably from further guidance, especially if it is accompanied by practical real life examples illustrating the potential opportunities and benefits that can be gained from such an approach.

**Public opposition to a plan or project** was considered by many interviewed to be a key reason for delays with the approval of certain plans and projects. But the public opposition was rarely linked specifically to issues regarding the impact on Natura 2000. It was much more often a case of NIMBYism whereby the AA/EIA process was used as a means to voice general objections to the plans or project under scrutiny, rather than specific concerns about the Natura 2000 site’s target features.
It is nevertheless important to make a distinction between NGO consultation and consultation of the general public. Whilst the general public often doesn't have the necessary knowledge and expertise to be able to comment on the plan or project on scientific grounds, NGOs can make an important contribution to the process, for instance through the sharing of local knowledge and expertise on the species and habitat types involved, or in helping to find appropriate mitigation measures or other solutions to reduce the potential risk of impacts. But, if they only find out about the project and the AA at a late stage in the planning process, it can lead to delays if it turns out there are problems with the AA report or its conclusions.

Finally there seems to be a complete lack of recognition of the socio-economic values of Natura 2000 during the Article 6.3 procedure. In addition to preserving rare and endangered habitat types and species, the Natura 2000 network also plays a major role in safeguarding Europe’s remaining healthy ecosystems. These provide a range of important benefits to society and the economy via the flow of valuable ecosystem services (such as water storage, flood prevention, carbon fixation, improvement in air and soil quality).

If decision makers were to take more account of the socio-economic benefits that the healthy natural ecosystems within Natura 2000 provide, it could encourage a more coherent and resource efficient use of Europe’s natural capital. In addition, it can play a major role in meeting other EU environmental objectives and targets set by the Water Framework Directive and the Marine Strategy Framework Directive for example, and in establishing a European Green Infrastructure. However this was almost never taken into account.

7.2 Recommendations for improving the efficiency of the AA procedure

The range of problems list above indicates that there is still significant room for improvement with the Article 6.3 procedure, especially in certain countries where the AA procedure is not working as well as it should. Introducing such improvements would not only help to improve its effectiveness but also reduce its overall cost and burden on all those involved, thereby streamlining the AA process.

Chapter 6 illustrates the range of measures that have been successfully used to overcome the different challenges. These examples should provide valuable food for thought and ideas for others involved in the AA procedures across the EU.

In particular it is recommended to give special attention to the following:
1. Improve access to data on Natura 2000 on protected species/habitats
2. Provide more training on the AA procedure for competent authorities (especially at regional/local levels) and for project proponents (again especially at regional/local levels) to improve the understanding of the AA procedure;
3. Provide more targeted, user-friendly guidance, forms and checklists for the various stages of the AA;
4. Ensure a more robust and consistent framework for screening plans and projects;
5. Encourage early dialogue and working in partnership not only amongst the competent authorities and potential project or plan proponents but also between different sectors within the government;
6. Promote a more strategic approach during the decision making process in order to take account of Natura 2000 at the earliest possible opportunity in the plan or project development so as to avoid or reduce the potential for conflicts later on and to encourage win-wins and co-benefits.
These recommendations are also supported by the feedback from the on-line survey and the structured interview. Both revealed that providing further training on AA was considered a top priority. An overwhelming number (63%) said that they wanted to see more 'information sessions' and 'training' on the AA procedure.

The second most popular measure was to give ‘more focus on strategic planning and the appropriate assessment of plans as a means of avoiding problems at the project level later on’ (57.4% of respondents considered this important).

The other suggestions, which were supported by around half of the respondents, are: 'improvement in screening procedures 48.1%', 'improved availability of information on Natura 2000' (53.7%), 'better guidance on AAs’ (50%) and ‘better coordination between different permit procedure requirements' (42.6%).

On the other hand the suggestion of setting fixed time frames for approving projects/ plans was extremely unpopular– only 14.8% considered this would be useful.

Only a small number of the recommendations from this study are similar to those that were made in the context of the **EIA Directive** and which lead to the proposal for its revision\(^\text{35}\) (improved screening, checklist for contents of EIAs). Generally they focus on more practical aspects of improving the implementation of the current AA procedure rather than suggesting legal or administrative changes.

One of the proposed changes to the EIA Directive, however, raised serious concerns amongst the majority of the interviewees coming from the competent authorities. This concerned the introduction of specific timeframes for the various stages of the EIA. Most considered that this should definitely not be applied to the AA procedure.

As explained earlier the AA is very site and project/plan specific and requires an assessment of impacts that is fully adapted to the individual circumstances surrounding that case. Field surveys may be required, for instance, over a certain vegetation period or annual life cycle of a species which cannot be compressed into administrative timeframes. Such a requirement would be completely incompatible with the requirements of the AA procedure.

Many of those interviewed were also concerned that setting administrative deadlines for the various stages of the AA procedure would in fact lead to more administration and bureaucracy and risk of delays, rather than less, and could even encourage an overreliance on the precautionary principle (leading to an early rejection of a plan or project rather than further dialogue and iteration to try to find a solution) in cases where the AA does not provide clear conclusions as to the potential impacts of the plan or project.

Instead, it was recommended that they best way to reduce the time it takes to process a permit and avoid the risk of delays is to put much more emphasis on early and iterative dialogue between the project or plan proponent and the nature (or other competent) authorities, especially during the pre-application stage. Early dialogue at this stage when there is generally much more margin for manoeuvre with the plan or project’s design can help to avoid or reduce potential conflicts later on. It can also ensure that the necessary baseline information required for the AA is discussed and agreed upon from the outset. This too should help to reduce the risk of delays later on.

The recommendations made in this study are much more in line with the proposals made by the European Commission on streamlining environmental assessment procedures for energy infrastructure Projects of Common Interest (PCIs\(^\text{36}\)).

This also places a strong emphasis on the need for:
- Early planning, ‘road-mapping’ and scoping of assessments
- Carrying out environmental assessment as early as possible in the overall process\(^\text{37}\)
- Introducing an independent quality control to ensure that the environmental reports are complete and robust and the data used is valid and relevant
- Starting data collection as soon as possible in the preparation phase
- Pooling and sharing baseline data and maps so that this can be put to use for other environmental impact assessments, and so avoid unnecessary duplications

\(^{37}\) For instance the document recommends that SEAS/AAs are "mandatory already at the planning stage for national energy policies and plans. This will encourage a more integrated and efficient approach to territorial planning where environmental considerations are taken into account much earlier in the planning process and at a much more strategic level".
## Summary of proposed detailed recommendations

<table>
<thead>
<tr>
<th>Problem identified</th>
<th>Recommendations for improvements</th>
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<tr>
<td>- Poor quality of AA</td>
<td>- User-friendly up-to-date and practical <strong>guidance</strong> documents (eg practical ‘how to’ guide, with worked up examples of how to collect baseline information, assess impacts or cumulative effects, identify mitigation measures, explanations of differences between AA/EIA/SEA, need for clear conclusions…).</td>
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<tr>
<td>- Lack of skills/knowledge of AA procedure</td>
<td>- Consider drawing up standardized, but non obligatory, <strong>checklists</strong> of what to include in an AA report. This could be used by competent authorities or developers to check or completeness of reports prepared by AA experts or to help especially small or medium size proponents to prepare their own AA reports. It could also help ensure consistency of approach within the different competent authorities and provide clear feedback on omissions/problems with the reports when they do occur etc…).</td>
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<td>- Organise more systematic <strong>training courses</strong> (tailored to particular needs) and <strong>exchange platforms</strong> for competent authorities and developers to familiarize themselves with the AA procedure, increase their level of understanding of how this is to be done in practice and discuss any particularly complex or problematic cases;</td>
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<td>- Consideration of <strong>charter or accreditation scheme</strong> for experts who carry out AAs to improve their overall standard.</td>
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<td>- Ensure public procurement tenders require <strong>solid ecological expertise</strong> (as opposed to just environmental expertise) and that this factor is taken into account when selecting the contractor (not just the price).</td>
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<td>- Preparation of <strong>targeted publicity material</strong> on the Article 6.3 procedure to raise general awareness and understanding of its purpose and process (eg dedicated website on AA for proponents, introductory leaflets on AA, helpdesk function, information days …)</td>
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<td>- Lack of capacity of AA procedure</td>
<td>- <strong>Increase staff resource</strong> allocated to handling of AA procedures and/or high persons with sound ecological knowledge.</td>
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<td>- Poor knowledge base</td>
<td>- Ensure <strong>information on Natura 2000 sites</strong> (SDF, detailed maps, monitoring reports, management plans, conservation objectives …) is <strong>readily accessible</strong> to all who may be interested.</td>
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<td>- Where possible provide a <strong>single repository of data</strong> on the species and habitat types and Natura 2000 sites present within a particular country or region, together with any latest surveys, monitoring data.. This repository could also regroup any AA reports and/or baseline studies undertaken for the AAs on EU habitat types and species in order to help build up the...</td>
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| Lack of dialogue | - Promote a culture of dialogue and partnership – not just between developers and competent authorities but also between different government departments and nature authorities to improve the overall understanding of the Article 6.3 procedure and wherever possible look for opportunities to avoid conflicts or find win wins.  
- Adopt an open door policy towards potential project or plan proponents to encourage early pre application dialogue so as to help ensure the AA procedure runs smoothly and correctly  
- Ensure that AA experts are involved throughout the development of the plan or project and can contribute to the eventual revision of the plan or project.  
- Encourage proponents to consider and discuss the requirements of Natura 2000 at the earliest possible stage of their proposal before it is put to paper and all technical details of the plans are drawn up. |
| Lack of proper screening | - Ensure there is a consistent and uniform framework in place for screening of all types of plans and projects so that those that plans and projects that are likely to have a significant effect are not overlooked.  
- Provide a standardized format for preparing the screening application and to guide the developer/competent authority in terms of the minimum level of information that is required for the screening test (together with guidelines and explanations of how to complete them).  
- Identify local nature experts who can be contacted to provide information and preliminary advice on whether and how an AA should be undertaken (e.g. Natura 2000 site managers….) . |
| Lack of assessment of cumulative effects | - Provide additional guidance on how to assess cumulative and in-combination effects within the AA, based on real examples and field experience.  
- Ask local authorities to keep a register all plans or projects that have been approved or granted permits within a Natura 2000 site (include detailed GIS maps) to assist those carrying out the AAs to assess cumulative effects. |
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<th>Lack of understanding of key concepts and legal terms</th>
<th>Advertise the ECJ Rulings on Article 6.3 – The Commission should update its 2006 review of the ECJ rulings on article 6.3 and 6.4 and ensure this is widely distributed to all competent authorities involved in the AA procedure across the EU.</th>
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<td>Lack of early strategic planning</td>
<td>Revise and update the 2000 EC guide on Article 6 in light of existing jurisprudence and provide greater attention in that guide on particularly problematic issues such as what are mitigation measures, how to assess cumulative effects, what is site integrity and when can it be considered to be adversely affected, what is IROPI.</td>
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<td>Consider the need for specific clarification notes, circulars or guides for those areas that have been identified as being a more frequent problem in a particular country or region to help improve the overall level of understanding and consistency of approach.</td>
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<tr>
<td>Ineffectiveness of AA on plans</td>
<td>Focused guidance on how to carry out AA of a plan as opposed to a project.</td>
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<tr>
<td>Lack of early strategic planning</td>
<td>Elaboration of locational guides and risk assessment maps to help identify areas of high or low risk for different types of development activities (eg wind farms, road, housing infrastructure etc…) at a strategic level and to assist in high level planning</td>
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<td>Instill a culture of analysis which creates a link between assessment of strategic, high level policies and subsequent programmes, plans and project that lead on from these.</td>
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<td>Early dialogue and discussion between nature authorities /AA experts and plan developers to improve the mutual understanding of Natura 2000 requirements and the plan objectives so that the appropriate level of detail is provided for a plan level AA.</td>
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<td>Develop a clearer requirement for early engagement for medium to high risk projects between developer, competent authorities and nature authority to set out the terms of reference for the AA at the earliest possible stages and coordinate the requirements of different permits.</td>
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<td>Examine the options for introducing more pro-active and strategic level management principles or mitigation or zoning measures based on the conservation objectives of the Natura 2000 sites in question for certain types of large scale activities (eg housing developments, fisheries, projects with high levels of nitrogen emissions…) . If these are accepted by all parties it can greatly facilitate the subsequent AA at project level.</td>
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<td>promote an ecosystems approach, which considers the full range of benefits that the natural environment provides, and that in turn results in better informed and integrated decisions.</td>
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<tr>
<td>- Public opposition</td>
<td>- Ensure <strong>early public access</strong> to all documents of plans and documentation of projects.</td>
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<td>- where appropriate <strong>engage with local conservation NGOs</strong>, nature experts early on to obtain their views and feedback on potential effects.</td>
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<td>- Make clear during consultation of AAs the <strong>specific focus of the consultation on Natura 2000</strong> ie only comments relating to the EU species and habitat types present on the site and potential impacts on them are sought (not other objections based on NIMBY or environmental, aesthetic, cultural issues).</td>
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<tr>
<td>- Lack of data on N° plans and project going through AA-?</td>
<td>- Ask all competent authorities to <strong>keep a record of the number of plans and projects requesting permits under Article 6</strong> and how many are screened out, approved (with or without mitigation), reworked, refused, abandoned or proceed to 6.4 (and are approved/refused)</td>
</tr>
</tbody>
</table>
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