The European Union legal boundaries for semi-natural habitats management in Natura 2000 sites

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On the Advocate General

• Member of the Court
• Advises the Court by **independently** preparing Opinions
• Does not participate in deliberations
• Opinion is not a Judgment
• Only the Judgment has the authority of the Court
• Opinions can illuminate the background
Outline

• Semi-natural habitats in Natura 2000 & Site Management
• Legal Issues of Site Management
• Obligations under Article 6(2) and (3) of the Habitats Directive
• Distinction between the regulation of other activities and site management
• Legal Boundaries of management measures
Management of semi-natural habitats in Natura 2000 sites

• Natura 2000 includes semi-natural habitats, see Art. 1 (b): the term ‘natural habitats’ means terrestrial or aquatic areas distinguished by geographic, abiotic and biotic features, whether entirely natural or semi-natural

• 3rd recital: ‘… whereas the maintenance of such biodiversity may in certain cases require the maintenance, or indeed the encouragement, of human activities;’

• Obvious example: 6510 & 6520 - Hay Meadows

• Forestry? Apparently preventing the development of some 9160 Oak-hornbeam forests into beech forests may require certain forms of human exploitation
Legal Issues of Management

• Art. 6(1): … Member States shall establish the necessary conservation measures … which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present …

• requirements and necessity are scientific questions and subject to scientific uncertainty; e.g. do oak-hornbeam forests really require human exploitation? And what type of exploitation?

• conflicting conservation objectives are possible; e.g. is continuation of oak-hornbeam communities preferable over the natural development of the site?
Inspiration on Legal Boundaries?

- Site protection is subject to Art. 6(2) to (4) with ample jurisprudence
- COM/UK C-6/04, EU:C:2005:626, para 34: in implementing Art. 6(2), it may be necessary to adopt … measures to prevent natural developments that may cause the conservation status of species and habitats in SACs to deteriorate [AG Kokott: hay meadows need to be mown to prevent overgrowing]
Inspiration on Legal Boundaries?

• COM/Spain C-404/09, EU:C:2011:768
  – para 99: under Art. 6(3), an appropriate assessment of the implications for the site concerned of the plan or project implies that, …, all aspects of the plan or project which can… affect the site’s conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity on the protected site 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
  – para 126: an activity complies with Art. 6(2) only if it is guaranteed that it will not cause any disturbance likely significantly to affect the objectives of that directive, particularly its conservation objectives
  – para 142: it is sufficient … to establish that there is a probability or risk that that operation might cause such disturbances
Inspiration on Legal Boundaries?

- BUT Art. 6(3) only applies to any plan or project not directly connected with or necessary to the management of the site … [management exception]
- COM/Spain C-404/09, EU:C:2011:768, para 142: Art. 6(2) and (3) are designed to ensure the same level of protection
- >> Standards of Art. 6(3) can’t be carried over automatically to Art. 6(2) as far as site management measures are concerned
Inspiration on Legal Boundaries?

• Best scientific knowledge? Yes – see Art. 191 (3) 1st indent TFEU
• Certainty/Absence of reasonable doubt? No – in spite of scientific uncertainty some management is necessary, even inaction is management and will have consequences [contrast to activities that are not related to site management where inaction avoids possible risks]
• >> There is a margin of appreciation as regards ecological requirements, the necessity of measures and preferences between conflicting conservation objectives
Limits to the margin of appreciation?

- Directive does not indicate any limits
- BUT: EU institutions need to respect procedural requirements and provide sufficient reasons where they enjoy discretion
  - Participation of interested parties? Landusers, NGOs, scientists? (Art. 3(4) SEA Directive, Art. 6(1)(b) of the Aarhus Convention, see also the Opinion of AG Kokott in Cascina Tre Pini (C-301/12, EU:C:2013:420, paras 68 ff)
  - Taking all relevant information into account (best scientific knowledge [scientists!], characteristics of the site, relevance within Natura 2000, again landusers + NGOs)
  - Duty to give reasons (explaining choices, addressing reasonable doubt)
Thank you for your attention!

*Euplagia quadripunctaria* – Jersey Tiger (Spanische Flagge), priority species, SCI

*Mattheiser Berg, near Trier*