

# Implementation of *Natura 2000* Network in Romania\*

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**Abstract** – Each Member State must compile a list of the best wildlife areas containing the habitats and species listed in the Habitats Directive and the Birds Directive. The lists are then submitted to the European Commission. In the case of sites according to the Habitats Directive, an evaluation and selection process is taking place at European level, under the Birds Directive no such process is foreseen. For both types of sites it is the task of the Member State to put the necessary protection provisions/designations in place. A Member State is not allowed to refuse to agree on grounds other than environmental protection to the inclusion of one or more sites in the draft list of sites of Community importance drawn up by the European Commission.

**Key-Words** – Natura 2000, sites of Community importance, special protected areas, natural habitats, birds

## I. NATURA 2000 NETWORK

Provided by the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [1], as amended by Council Directive 2006/105/EC of 20 November 2006 [2] (hereinafter “the Habitats Directive”), *Natura 2000* is a coherent European ecological network of special areas of conservation. This network is composed of sites hosting the natural habitat types and habitats of the species listed in Annexes I and II of the Habitats Directive. *Natura 2000* network shall enable the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

According to this Habitats Directive, each Member State shall propose a list of sites indicating which natural habitat types and which species are native to its territory the sites host. The Commission shall establish, in agreement with each Member State, a draft list of sites of Community importance (hereinafter “SCIs”) drawn from the Member States’ lists identifying those which host one or more priority natural habitat types or priority species.

Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. The competent national authorities shall agree 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. 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.

Article 6 is one of the most important articles in the Habitats Directive as it determines the relationship between conservation, development and land-use. Paragraphs 3 and 4 of this article set out a series of procedural and substantive safeguards that must be applied to plans and projects that are likely to adversely affect a *Natura 2000* site.

This is designed to:

- fully assess the impacts of plans or projects that are likely to have a significant negative effect on a *Natura 2000* site by means of an Appropriate Assessment;
- ascertain, through the Appropriate Assessment, whether the impacts will adversely affect the integrity of the site and, if this is the case, whether the plan or project can be approved if certain mitigation measures or planning conditions have been introduced that remove or minimise the adverse effects on the site to a nonsignificant level; and
- provide a mechanism for approving, in exceptional circumstances, plans or projects that nevertheless have an adverse effect on a *Natura 2000* site even after the introduction of mitigation measures when these plans or projects are of overriding public interest and where no suitable alternatives exist.

Unlike Environmental Impact Assessments (EIAs) or Strategic Environmental Impacts (SEAs) which are intended to inform the decision making process, the outcome of the Appropriate Assessment is legally binding for the competent authority and conditions its final decision. In other words, if the Appropriate Assessment cannot conclude that the plan or project will not adversely affect the integrity of a *Natura 2000* site, then it cannot be approved unless the derogation procedure under article 6.4 is invoked.

To assist in the understanding and correct application of this article 6 procedure, the Commission has, over the years, produced several general interpretative and methodological guidance documents [3]. However, various industry sectors have since also expressed a need for more detailed advice on how to apply Article 6 to their own field of activity. In response to this, the Commission has decided to develop a series of sector-specific guidance documents in a range of policy areas currently including wind energy, non-energy extractive industries and ports and estuaries, which may be expanded in the future.

These guidance documents aim to establish a better understanding of how to apply the article 6 procedure to development plans and projects in certain sectors and to provide further advice on how to carry out an Appropriate Assessment in particular. Ultimately, this should give the economic operators and authorities concerned the clarity they require as regards the legislative environment in which they need to operate at EU policy level and ensure that the drive for further development, as promoted under relevant EU policies, is fully reconciled with the obligation to safeguard rare and threatened species and habitat types protected under the two EU nature Directives.

## II. ROMANIAN LEGISLATION REGARDING THE PROTECTED AREAS AND THE CONSERVATION OF NATURAL HABITATS AND OF WILD FAUNA AND FLORA

Habitats Directive complements the Directive 2009/147/EC of European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (hereinafter “the Birds Directive”) [4] which replaces the 1979 version of the Birds Directive (79/409/EEC) [5]. The Birds Directive requires the establishment of Special Protection Areas (SPAs). SPAs are important for rare and vulnerable birds because they rely on them for breeding, feeding, wintering or migration. The Habitats Directive requires Special Areas of Conservation (SACs) to be designated for other species and for habitats. SACs are classified under the Habitats Directive and provide rare and vulnerable animals, plants and habitats with increased protection and management. Together, SPAs and SACs make up the *Natura 2000* network. All EU Member States are required to manage and implement *Natura 2000*.

Romania transposed the Habitats Directive and the Birds Directive of 1979 by the Government Emergency Ordinance No.57/2007 regarding the regime of the natural protected areas, the conservation of natural habitats and of wild fauna and flora (hereinafter “the GEO”) [6], as amended by the Government Emergency Ordinance No.154/2008 [7].

According to the GEO the regime of special protected area is provided by law, resolution of the Government, order of the manager of the central public authority for environmental protection or resolution of the county or local councils [8].

For the proposals of SCIs besides the order of the manager of the central public authority for environmental protection, there are mandatory the endorsements of the Romanian Academy, of the central public authority with competences in public administration, of the central public authority in agriculture and rural development, of the central public authority in

transports, of the public authority in territorial arrangements and the public authority in tourism.

The proposals for SCIs and for special protected aquatic areas a standard application form *Natura 2000* must be filled in.

The protection regime is established irrespective of the plot of land category of destination or its owner.

Any individual or legal entity can submit a proposal for creating such regime to the National Agency for Natural Protected Areas [9].

The *Natura 2000* Barometer of December 2009 which monitors progress in the implementation of both the Habitats and the Birds Directives provides the following information as regards the SCIs and the SPAs in Romania:

- 273 SCIs, having a total surface of 32,833 km<sup>2</sup>, 6 marine SCIs, 1,353 km<sup>2</sup> of marine area;
- 109 SPAs and 1 marine site.

Referring to the role of public local authorities, they have a contribution to create a special protected area by means of a resolution of the local council. As well, public authorities having competence in territorial arrangements endorse a proposal of SCIs.

## III. JUDGMENT RELATED TO THE CONSERVATION OF NATURAL HABITATS AND OF WILD FAUNA AND FLORA. MEMBER STATE CONCERNED TO GIVE ITS AGREEMENT TO THE DRAFT LIST OF SITES OF COMMUNITY IMPORTANCE DRAWN UP BY THE COMMISSION

An important Judgment was given by the Court of Justice of the European Union (hereinafter “the Court”) exercising its jurisdiction on a reference for a preliminary ruling [10] which regards the interpretation of article 2 paragraph 3, article 4 paragraph 2 and article 6 paragraphs 3 and 4 of “the Habitats Directive”. The reference was made in the course of proceedings between Stadt Papenburg (the municipality of Papenburg) and Bundesrepublik Deutschland (the Federal Republic of Germany), regarding the agreement that this State intends to give to the draft list of “SCIs” drawn up by the Commission of the European Communities and including a site on the river Ems downriver from that municipality’s local authority area.

Papenburg is a port town in Lower Saxony on the river Ems, where there is a shipyard. In order to enable ships with a draught of 7.3 metres to navigate between the shipyard and the North Sea, the Ems must be deepened by means of “required dredging operations”. By a decision of 31 May 1994 of the Wasser und Schifffahrtsdirektion Nordwest (Waterways and Navigation Directorate for the North-West Region), Stadt Papenburg, Landkreis Emsland (the district of Emsland) and the Wasser und Schifffahrtsamt Emden (Emden Waterways and Navigation Office) were granted permission to dredge that river, where required. That decision is definitive and means, in accordance with German law, that future “required dredging operations” are considered to have been granted permission. This planning decision replaces all necessary further authorizations required under German public law and cannot be legally contested. The actual dredging operation in each individual case does not therefore require further permission or authorization.

On 17 February 2006, the Federal Republic of Germany indicated to the Commission that parts of the Ems situated downriver from Stadt Papenburg's local authority area, under the description 'Unterems und Außenems' (Lower Ems and Outer Ems), could be accepted as a possible SCI within the meaning of the Habitats Directive.

The Commission included those parts of the Ems in its draft list of SCIs. It requested the Federal Republic of Germany to give its agreement thereto, pursuant to the first subparagraph of article 4 paragraph 2 of the Habitats Directive. Germany wishes to give its agreement. Stadt Papenburg fears that, if the Lower Ems and Outer Ems were included in the list of SCIs, an assessment pursuant to article 6 paragraphs 3 and 4 of the Habitats Directive would in the future be required before every dredging operation. The outcome of such an assessment would be completely uncertain and the expenditure and costs involved would increase considerably.

On 20 February 2008, Stadt Papenburg brought an action before the Verwaltungsgericht Oldenburg (Administrative Court, Oldenburg) seeking to prevent the Federal Republic of Germany from giving its agreement. It claimed that an agreement on the part of that Member State would amount to a breach of the administrative autonomy which it has under German constitutional law.

According to Stadt Papenburg, as a seaport with a shipyard its planning and investments and its economic development depend on the Ems remaining navigable for large seagoing ships. It fears that, if the Lower Ems and Outer Ems were included in the list of SCIs, the dredging operations required for that purpose would in future, and in every case, have to undergo the assessment provided for in article 6 paragraphs 3 and 4 of the Habitats Directive.

The Federal Republic of Germany contends that the action should be dismissed. It is of the opinion that to take into account the interests asserted by Stadt Papenburg when deciding whether to give the agreement at issue in the main proceedings would contravene Community law. Under the first subparagraph of Article 4 paragraph 2 of the Habitats Directive, the Member State is permitted to take the decision whether to give agreement only on the basis of nature conservation criteria.

On the 14<sup>th</sup> of January 2010, the Court (Second Chamber) gave the following Judgement in the case C-226/08 [11]: a Member State is not allowed to refuse to agree on grounds other than environmental protection to the inclusion of one or more sites in the draft list of sites of Community importance drawn up by the European Commission.

Ongoing maintenance works in respect of the navigable channels of estuaries, which are not connected with or necessary to the management of the site and which were already authorised under national law before the expiry of the time-limit for transposing Directive 92/43, as amended by Directive 2006/105, must, to the extent that they constitute a project and are likely to have a significant effect on the site concerned, undergo an assessment of their implications for that site pursuant to those provisions where they are continued after inclusion of the site in the list of sites of Community importance. If, having regard in particular to the regularity or nature of those works or the conditions under which they are carried out, they can be regarded as constituting a single

operation, in particular where they are designed to maintain the navigable channel at a certain depth by means of regular dredging necessary for that purpose, the maintenance works can be considered to be one and the same project.

#### IV. EU BIODIVERSITY POLICY POST 2010

The Commission issued a Communication in January 2010 laying down options for an EU vision and target for biodiversity beyond 2010 [12]. The document takes stock of the current successes and shortcomings of the existing EU policy and offers a new long-term vision to 2050 as well as four possible mid-term (2020) targets to reach this vision, each with increasing levels of ambition. It also outlines the work needed to be able to set and realize these ambitious EU goals. Two issues are highlighted in particular. The first is the acknowledgment that, despite the progress made so far, there is an urgent need to step up efforts at EU level. European biodiversity is still in serious decline and there is now also mounting evidence that entire ecosystems are at the point of collapse. This has implications well beyond the loss of wildlife and nature as it could also seriously affect the welfare of millions of people. Linked to this is the realisation that society can no longer afford to undervalue, or take for granted, the tremendous economic and social benefits that healthy, biodiverse ecosystems offer.

Current EU policies do not sufficiently recognise the value of such ecosystem services. Mainstreaming biodiversity and ecosystem services into other policy areas and sectors should therefore be central to the EU's future biodiversity policy as it is not possible to sustain such activities through biodiversity conservation measures alone.

The Commission's Communication identifies a number of specific areas where further action is needed:

- Delays in the implementation of the Natura 2000 network should be addressed as a matter of priority.
- Action should be taken to fill major policy gaps at EU level, for instance in relation to protecting soil biodiversity or controlling invasive alien species.
- Biodiversity and the valuable ecosystem services it provides should be better integrated into other EU policies.
- Adequate funding for biodiversity conservation should be made available.
- There should be a solid scientific baseline on the state of biodiversity and ecosystem services in Europe against which progress towards reaching the headline target can be monitored.

#### REFERENCES

- \* This paper was written within "Program Resurse Umane, Proiecte de cercetare pentru stimularea constituirii de tinere echipe de cercetare independente, PN II-RU cod 129/2010, TIP TE, Impactul normelor comunitare asupra actelor autoritatilor publice locale, contract28/12.08.2010."
- [1] Published in OJ 1992 L 206, p.7.
- [2] Published in OJ 2006 L 363, p.368.
- [3] [http://ec.europa.eu/environment/nature/natura2000/management/guidance\\_en.htm](http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm)
- [4] Published in OJ 2010 L 20, p.7.

[5] Published in OJ 1979 L 103, p.1.

[6] Published in Official Gazette No. 442/29.06.2007.

[7] Published in Official Gazette No. 787/25.11.2008.

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[10] P. Wennerås, *The enforcement of EC environmental law*, Oxford University Press, Great Britain, 2007, pp.177-214.

[11] Published in OJ 2008 C 209, p.24.

[12] COM (2010) 4 final.