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Weighing environmental risks and socio-economic benefits in view of alternative solutions.

Danish report

Denmark has formally implemented the requirement on taking into account alternatives in the EIA Directive as well as the derogation clause in the Habitat Directive article 6(4).

However, the derogation clause in the habitat directive article 6(4) has never been applied since the Danish Ministry of Environment – as well as the Nature Appeal Board - claims that no project has been approved which could harm a Natura 2000 site or a Bird Protected Area. Of course this is misleading. Major public project which goes through sensitive Natura 2000 sites have been approved – but this has been considered acceptable under article 6(3) because of substitution with new dams or other measures – ignoring that such compensatory measures fall within the scope of article 6(4). Lately a huge windmill test center for windmills 250 metres high close to bird protected area for migrating birds and to other Natura 2000 sites – still without applying article 6(4). For this reason there is no case law on balancing alternatives regarding Natura 2000 sites in Denmark.

Regarding the EIA Directive the geographical scope of alternatives to be considered is because of the Danish implementation restricted to the municipality – leaving small room for assessing alternatives. At court the issue of weighing alternatives has been seen as a political – not a legal matter.

Regarding chemicals, the principle of substitution was adopted in the Chemical Act as early as in 1988 – but has to my knowledge never been used to prohibit any chemical.

So from Danish case law it is not possible to contribute the discussion.

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