

QUESTIONNAIRE FOR THE AVOSETTA MEETING IN KRAKOV, JANUARY 13 AND 14, 2006

Objectives of the meeting:

- to understand the interaction of national and EC nature protection law, its achievements and failures
- to identify points of non-implementation and elaborate proposals for reforming national law and practice
- to identify weaknesses of the EC law and practice and elaborate proposals for reform

I. General background of the MS relevant for nature protection

Please describe shortly:

- *the legislative and executive competencies in your country with regard to nature protection*

The main legislative competence has the Czech Parliament that approves acts. Secondary legislation is enacted by the Ministry of Environment, Government and regions. Nature protection authorities are as follows:

- ✚ municipal authorities
- ✚ municipal offices with delegated competence,
- ✚ municipal offices with enlarged competence,
- ✚ regional offices,
- ✚ administrations of national parks and protected landscape areas,
- ✚ Czech environmental inspectorate,
- ✚ Ministry of Environment,
- ✚ Ministry of defense, regional defense offices.

The key competencies in the field of Natura 2000 laid down by the Directive are entrusted to regional offices, administrations of national parks and protected landscape areas and to the Ministry of Environment (strategic role, international co-operation, reporting and information for the European Commission). The Parliament enacts acts that establish natural parks (within which Natura 2000 sites will be established). Landscape protected areas are established by the regulations of the Czech Government (within them Natura 2000 sites will be established). Other categories of protected areas, within which Natura 2000 sites will be established, are established by generally binding acts of regions and by orders of the Ministry of Environment. Bird sites are established by regulations of the Czech Government.

- *and the characteristics of your natural resources and major threats for nature*

Czech Republic has a rich fauna and flora biodiversity - because of its location on border of several biogeographic areas but also of its historical and cultural development. We have more than 2700 higher flora species, 2400 lower flora species, 50000 species of invertebrates and about 380 species of vertebrates.

Intensive agriculture and industrial development have had a negative impact on the state of environment. It also affected the biodiversity, both from the point of view of particular species and the state of ecosystems. As a result of it, the ecotone areas important as residual biotops with rich biodiversity (for example rushes, bent grass, bottom lands, etc.) are disappearing. Current development projects of new transport infrastructure results in fragmentation of landscape and sites of certain taxon populations, which has a negative impact not only on wild flora and fauna but also on human beings. In spite of generally unsatisfactory state of natural environment many very valuable parts of nature were maintained in a relatively good shape.

Landscape and natural resources devastation has led to a decrease of biodiversity and number of populations of original species. According to Red lists among threatened species there are about 34% of mammals, 52% of nesting birds, 50% of reptiles, 43% of amphibians, 43% of fish, and 60% of higher plant species. Ecosystems on our territory have been damaged to that extent that we fully lost a lot of species.

Within the territorial protection there are 4 national parks in the Czech Republic (Krkonoše, Sumava, Podyjí, České Svycarsko) a 25 protected landscape areas. National parks were established in areas with a lot of natural or almost natural biotops and ecosystems where there were not intensive economic activities carried out during the last 50 years. However, also these areas face huge ecological problem and damages. All national parks have transboundary importance and they are de facto bilateral national parks. Landscape protected areas represent cultural landscape influenced by long-term human activities and with valuable landscape types. The aim of the landscape protected areas is not only to protect fragments of natural environment but particularly development of ecologically appropriate and differentiated economic management of landscape. One third of the landscape protected areas belong to the international network of the UNESCO biosphere reserves or wetlands. National parks and landscape protected areas represent about 15% of the territory of the Czech Republic. There are 38 of newly established SPAs with a special protection regime.

Apart of the above mentioned two categories of large protected areas the Act 114/1992 defines several categories of small protected areas many of which are important for maintaining biodiversity in the cultural landscape.

II. Natura 2000

1. Identification and notification of special areas of conservation (SACs) and special protection area (SPA's) in MS

a) Article 4(1) Dir 92/43 and 4(1) Dir 79/409

- *How were the areas identified which went into the national list of candidate areas for SACS (Article 4(1) of Directive 92/43)? Which criteria were used, if any?*

Based on comprehensive habitat mapping, criteria from annex III were used in a sophisticated way. As for habitats, single patches of habitats occurrence were "clustered"; the clusters were evaluated and the most complex and valuable ones were listed on the national list. Due to short time (no transition period was approved), this methodology was used on uncompleted maps and some gaps can be identified in current (submitted) national list.

- *Has your country identified sufficient candidate SACs and notified them to the Commission? Have core zones and buffer zones been suggested?*

For the Pannonic geographical region the sufficient candidate SACs were identified; it is envisaged that the list will be amended based on the conclusions of the workshop with the Commission; for the Continental are not yet and the workshop will be held in April 2006. The Czech Republic applied very demanding method to comply with the Habitat Directive's requirements and therefore there was not enough time to identify sufficient candidate SACs for another area. Core tones and buffer zones were not suggested. However, nature protection authorities know where the zones should be located. The areas will be managed according to measures laid down in management plans of small protected areas. SACs in large protected areas buffer zones will be established within the framework of zoning.

- *Which criteria were used to designate to designate SPA's (art. 4(1) Dir. 79/409)?*

For a designation of SPAs scientific and commonly respected modified criteria for IBA were applied. For each species approximately % most important sites were selected. It represents 1% of a national population (3, 6, 12 couples respectively). Or 20.000 exemplars of water birds or 1% of a biogeographical population of the species.

- *Was there any public consultation or discussion with regard to the selection of sites of Article 4(1) of Directive 92/43 and to designate SPA's (Dir. 79/409)?*

Competent authorities always consulted selection of sites pursuant to the Directive 92/43 and designation of SPAs pursuant to the Directive 79/409 with regional authorities and big land owners. Some hearings took place for general public and municipalities.

- *What were the main obstacles in process of identification these areas (e.g. local protests, lack of explicit criteria, lack of national data base on such areas)*

The key problem was the time constraint as mentioned above. Apart from this, particularly public authorities were often against the process and against identification of areas in their territories. However, their opinion was mostly influenced by interests of big developers. Big and organized land owners were focused on the legislation; they particularly aimed at significant changes of the amendment of the Act 144/1992 that would make it less demanding.

b) Article 4 para. 2 and Art. 5 Dir 92/43

- *Is the Commissions decision with regard to the lists of areas (Article 4(2) of Directive 92/43) final? How many areas of those that had been proposed have been retained (number and surface)? What then happens to the candidate areas which had been proposed by a Member State, but not retained?*

There is no final decision of the Commission, yet.

c) Art. 4(4) Dir 92/43

- *Has your country already taken decisions with regard to Article 4(4) of Directive 92/43 (final decision to consider an area as special area of conservation of Community interest)? What is the state of decision-taking?*

The country has not got any decision from the Commission so far.

- d) *Are Natura 2000 sites protected through a genuine category of area protection, or are the existing categories of protected areas used for Natura 2000 areas?*

According to the current legislation, the SPA represent a special category of protection. SAC will be established within existing categories of protected areas in the Czech Republic. For purposes of the Article 6 of the Directive more general term has been introduced –“ sites of European importance” including SACs, SCIs, pSCIs.

- e) *Are there decisions by national courts which deal with the identification and notification of areas under Article 4(1) of Directive 92/43?*

No.

- f) *If the notification of the first round is completed, is there an obligation to improve the list of Natura 2000 sites, eg under Art. 10 Dir 92/43?*

Is it possible to reduce or abolish already designated sites (for others reasons then indicated in point II. 3.c).

I do not understand the question. The Directive does not envisage improvement of the list. And it is not clear what “improvement” means.

Notification to the EC was completed (i.e. 1st round).

2. Management of Natura 2000 sites

- a) Article 6 paras. 1 and 2 Dir 92/43

- *does national law require management plans for the sites - are they specifically designate for the site or integrated to others plans (which?)*

The national legislation requires specifically designated management plans for the sites.

- *which conservations measures - statutory, administrative or contractual measures – where chosen in your country? Which is the main form?*

The key conservation measures are statutory ones. However, the protection of SACs that will be newly established may be ensured also on a contractual basis (contract between a competent public authority and land owner). It concerns particularly small sites, e.g. building design for the protection of bats or abandoned mines.

- *what appropriate steps are taken to avoid deterioration/disturbances (art.6(2) Dir 92/43*

SACs will be protected the same way as existing and corresponding categories of protected areas in the Czech Republic. The protection regime is laid down both by the Act 114/1992 and by acts establishing the areas. Exemptions may be approved only by competent public authorities if significant or irreversible deterioration of habitats and ecosystems of species is excluded and if the exemptions do not mean any permanent or long-term disturbance of species for the protection of which the site was designated. Any concept or project that is likely to have a significant impact on the SAC has to be assessed from the point of view of its impact on the

SAC. The assessment must be carried out by authorized persons. It is a guarantee of its professional quality.

- Who does administer/supervise Natura 2000 sites – is it organized within existing nature public bodies? Do environmental associations supervise?

Administration and supervision of the Natura 2000 sites is organized within existing nature protection public authorities. Environmental associations have full access to information and to certain decision making procedures.

- b) *Special question on GMOs and nature protection (posed in the context of research for the German Nature Protection Agency): Is there specific regulation or a discussion in your country on whether in nature protection areas the sowing of genetically modified seeds can and even must be prohibited? Can the authorisation for releasing genetically modified seed be denied for the mere fact that the site of release is situated in a nature protection area? Would an authorisation of the bringing on the market of genetically modified seed exclude any measure restricting the sowing of the seed in nature protection areas (see Art. 22 Dir 2001/18)?*

This issue has not been a subject of any regulation or discussion so far. In the Czech Republic there is just a few fields with genetically modified seeds. If this becomes a more massive trend the country will have to take appropriate measures.

3. Appropriate assessment' and authorisation of plans and projects

- a) Article 6 para 3 and 4 Dir 92/43

- *How was Article 6(3) and (4) Dir 92/43 transposed in your country*

Any permit, approval positive opinion or exemption concerning a site of European importance or a bird site may be guaranteed only by competent public authorities if significant or irreversible deterioration of habitats and ecosystems of species is excluded and if the exemptions does not mean any permanent or long-term disturbance of species for the protection of which the site was designated. Any concept or project that is likely to have a significant impact on the SAC has to be assessed from the point of view of its impact on the SAC. Any concept or project that is likely to have a significant impact on a site of the European importance or on a bird site must be submitted to the nature protection authority for an opinion. If the opinion of the nature protection authority does not exclude a significant impact of the concept or project on the sites of European importance or bird sites it must be assessed according to the EIA legislation.. If the negative impact of the concept of project cannot be excluded the person drafting the concept or a developer are obliged to suggest alternative solutions aiming at excluding or at least mitigating the negative impact. An authority competent to approve the concept of project can do it only if the assessment demonstrates that it will not have a negative impact on the site of European importance or bird site. If the assessment results prove a negative impact on the site of Natura 2000 the concept of project may be permitted only for imperative reasons of overriding public interest. At the same time compensatory measure ensuring protection and integrity of the Natura 2000 are imposed.

Where the site hosts priority natural habitat type and/or a priority species the concept or project may be approved only for reasons related to human health or public safety, to beneficial consequences of primary importance for the environment. Other reasons of overriding public interests may be considered as a reason to grant a permit only further and opinion of the Commission.

- does national law/case law make Article 6 para 3 and 4 applicable also to a) Proposed Sites of Community Importance (pSCIs) b) non proposed but eligible sites (npSCIs)? If yes is this regarded as required by EC law or as a stricter national measure?

According to national legislation Article 6 paragraphs 3 and 4 is applicable also to pSCI; not to npSCI. It is considered as a stricter than national measure.

- what is the factual information on plans and projects affecting Natura 2000 candidates or determined sites

There is not database established. The key source of information is the announcement of a developer.

- b) Relation of the appropriate assessment under Article 6 to the EIA under EIA Directive and SEA under SEA Directive

PROJECTS

- Does the assessment for the purposes of Article 6(3) take the form of an assessment under EIA Directive /or SEA Directive (if not – please shortly indicate the form, content and procedure of ‘appropriate assessment’, including questions of public participation

Where the EIA or SEA are required the procedure is carried out according to the EIA/SEA legislation (and relevant directives). However, within the framework of Natura 2000 also “smaller” projects are to be assessed. For this purpose the Act 114/1992 lays down simplified assessment procedure based on the expert opinion of authorized person. General public has an access to it according to the legislation on free access to environmental information.

- is the appropriate assessment confined only to EIA Directive Annex I and II projects or also to other projects (if yes - how they are being defined and what triggers the procedure)

Also to other projects. The assessment is confined also to other projects: any concept or project that is likely itself or in connection with other concepts or projects to have a significant impact on sites of European importance or SPAs. Those who draft the concept or developers shall announce the intention to the competent nature protection authority that decides whether a significant impact could be excluded or not. If not, either EIA/SEA is to be carried out or only an assessment of impact on Natura 2000 sites (so called “small green EIA”) should be carried out.

- is the appropriate assessment confined only to ‘development consent’ under EIA Directive or also to other permits (for example: IPPC permit)

Pursuant the Czech legislation the term «development consent» is broadly defined. Therefore it concerns also other permits, including the IPPC.

- is the scope of EIA procedure and EIA documentation (EIS) limited in case of ‘appropriate assessment’ as compared with those under EIA Directive?

Yes. The scope of the “small green EIA” as mentioned above is narrower than traditional EIA. It is applied in significantly larger group of projects.

- has there been any discussions concerning the possible effects on the national legal scheme of the Waddensee case; Draggagi case

No, as far as I know.

PLANS

- is the ‘plan’ under the Habitat Directive (and legal implications under Article 6.4) interpreted to cover all plans and programs covered by SEA Directive? How in practice it is determined that they are “likely to have significant effects on the site”? what triggers the procedure?

“Plans” are defined by the EIA Act. In case of Natura 2000 the opinion of the competent nature protection authority is of a decisive importance. However, so far there are not many cases like that and therefore it is hard to say exactly how the “plans” will be interpreted.

- *is there any special decision making procedure to decide in case a plan will “adversely affect the integrity of the site”. Who decides whether to agree to the plan and what compensatory measure be taken (the authority competent to prepare/adopt the plan or any other authority)?, in what legal form?*

There are no special decision making procedures. Rather general procedures are being applied that include steps and measure required by the Directive.

c) Interpretation of certain terms according to administrative adjudication, court decisions, and academic debate (you can illustrating the following problems on significant case/cases or just answer the questions)

- *design of impact studies – based on the meeting with authorised persons the unofficial requirements concerning the design and content of impact studies have been identified.*
- *meaning of „significant effect“ and „adversely affect“, e.g.: is the cutting of a special area of conservation (SAC) per se an adverse effect? Any mandatory or indicative thresholds (for example - projects within certain radius from a site deemed to be likely to have significant effect on it). No, there is no interpretation of these terms. It will depend on natural conditions in particular areas and on occurrence of Annex I and II habitats and species.*
- *what is and what is not regarded as „imperative reason of overriding public interest“? We do not know, yet. On what level of concretion are the objectives of the plan or project formulated (mark that the more concrete the less alternatives come into play)? Are they sometimes expressed in monetary terms? There is no legal provision on the level of concretion of the objectives. Objectives expressed in monetary terms are usually considered as insufficient.*
- *what is the scope of alternatives to be considered? must any alternative considered be realisable by the original applicant? Are alternatives involving more costs than the prime variant excluded from further consideration?*

Pursuant to the nature protection legislation presenting alternatives is obligatory where the competent nature protection authority does not exclude any significant impact of the project/concept.

- *Are compensatory measures (Art. 6 para 4 subpara 1) be counted as reducing the adverse effect?*

YES.

- *Do „priority“ species under under Art. 4 para 4 subpara 2 Dir 92/43 also include endangered birds, such as those listed in Annex 2 of Dir 79/409 recognised?*

It is not an issue for national legislation; rather to be interpreted by the Commission.

- *what counts and what not as an „opinion from the Commission“? Is an informal statement sufficient?*

If the EC want to have a coherent system of Natura 2000 it should use unified instruments/documents (formal statements) to enforce the Community legislation. It should not be up to Member States to decided what kind of statement is considered as an “opinion from the Commission”.

- *Are there instances of lobbying the Commission to render obtain a favourable opinion?*

The question is not clear.

- *What is the legal role of a positive or negative opinion?*

The opinion does not have any legal role. Theoretically the permit can be granted even if the opinion is negative.

- *who has standing to challenge decisions under Art. 6 para 4 Dir 92/43? is it a difference between plans and programs in this respect? Does Article 10a of the EIA Directive apply?*

Right to standing depends on nature of the permit. Generally requirements of the Aarhus Convention are complied with. Directive 92/43 does not mention programmes.

- *Is Art. 4 para 4 Dir 79/409 either as such or in combination with Art. 7 /Art. 4 para 4 Dir 92/43 directly applied if the site was not notified?*

It is if the site has not been notified to the Commission but the negotiation with the Commission about its including is being carried out.

- *Is Art. 4 para 4 Dir 92/43 directly applied aa) if the site was notified and listed by the Commission (Draggagi case) bb) if the site was notified but not yet listed cc) if the site was not notified but qualifies as potential Natura 2000 site*

aa) **yes**

bb) **no (not adopted by the Commission)**

cc) **no (not adopted by the Commission)**

III. Species Protecion (only for discussion)

- *For reasons of time we will discuss this topic as in terms of EC requirements rather than as in terms of national law. It is recommended that you make yourself familiar with Artiles 12 to 16 Dir. 92/43 as they are viewed from the EC and national perspectives. No written report is requested.*

IV. Financing nature protection (please write a short opinion, if possible)

- Should there be a financial instrument (fund) at EC level for financing conservation measures? Yes. Don't we run the risk that then Member States will do something on the condition that there is money coming from Bruxelles? **No.**
- What about Article 175(5) EC Treaty and Article 8 of Directive 92/43: should these provisions be made operational? **Yes. Why not?**
- Is it appropriate to delete LIFE (Regulation 1655/2000) and let the Structural Funds intervene instead? **No.**

V. The actual state and the future development of EU nature protection law (topic for final discussion; the written answer is optional)

It is suggested that we come up with an avosetta resolution on certain basic points including e.g.

- *The results of 26 years of Directive 79/409 and 13 years of Directive 92/43. What has been the evolution of animals and plants in this time? Is it true that despite these measures, nature slowly withdraws from the environment in Member States?*
- *Ano, je to bída. Obě směrnice chtějí účinnější enforcement – sankce za (zaviněné) zhoršování stavu z hlediska ochrany.*
- *Major deficiencies in the 2 directives: e.g.: does EC law allow for too many possibilities for the balancing of interests and thus the preponderance of exploitation interests?*
- *Odborně mizerné přílohy, najmě anex I HabDir. Annexes are not result just of an expert knowledge but they are rather the result of political negotiations of 12 “old” MS.*
- *The main ‘troubles’ with regard to transposition and applying of the directives?*
- *Is the system of Directives 79/409 and 92/43 enough to protect nature in Europe? Should there be further European legislation (e.g. on landscapes)?*

No, it is not. Nature and landscape should be treated separately. Landscape legislation would be even weaker; therefore it seems to be more efficient to be focused on improvement of the Habitat and Bird Directives.

- *What can be done to improve the situation of nature within the EU and globally?*

Stop the world!

Eva Kruzikova and Jiri Guth