

# **Ports and Nature**

## **Conflict analysis and Conflict resolution**

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# European port and maritime policy

The main challenge  
of a sustainable  
transport policy consists of  
**decoupling** economic and  
transport growth

“Motorways of the sea” and ports  
can play a crucial role in promoting  
environmental-friendly modes  
of transport such as  
**Short Sea Shipping**

***To maintain current levels of biodiversity  
and to stimulate sustainable transport  
could easily end up in conflict***

*“To stimulate sustainable transport implies  
the creation of new infrastructure along waterways  
and in ports. This policy orientation should not be  
‘punished’ with extra costs for habitat  
compensation.”*

## *And also...*

*“Transnational maritime links and land links with a Trans-european Network status should be automatically considered as having an “overriding public interest” and should have priority over Birds & Habitats Directive. I.o.w. Member States should designate related areas as*

***’Areas of Special Economic Interest’***

# *On the other hand, environmental organisations reply*

*“Sustaining acceptable levels of biodiversity in Europe implies that rivers and estuaries remain (or should become again) strongholds for European wildlife. Such policy orientation should not longer be frustrated by unhampered development of port and waterway infrastructure.”*

# *As a consequence...*

*Estuarine and coastal areas that are recognised as an “Important Bird Area” should be designated by Member States as Special Protection Areas for Birds.*

# Stalemate....

**A “lock out nature” policy**

**VS.**

**A “lock up the site” policy**



# Still, amendments may seem to be necessary because....

## The Birds and Habitats directive

- produces unacceptable economic losses
- can lead to misuse in competitive contexts (esp. Cross-border projects)
- results in unequal treatment of economic activities (port expansion projects....)
- has counterproductive effects on the environment

# Birds and Habitats Directive

## the complaints

1. No provisions on how to deal with previously allocated user rights (incl. concession rights); pre-existing arrangements are ignored,
2. Decision process for allowing economic projects to proceed is cumbersome and complex
3. Interpretation problems with key concepts (IROPI, Significant effects, Mitigation vs compensation;
4. Interpretation problems with key procedures (esp. art. 6(3)& 6(4)
5. Inconsistent implementation by MS (on the level of designation and its criteria; on the level of transposition into national law; law enforcement)
6. Scientific information is lacking (maintenance objectives, impact assessment)
7. No suitable framework for cross-border projects .
8. Lack of integrated approach (on the level of designation; comparisons of alternatives)
9. Species (and specimen) protection regimes are almost impossible to cope with...

# Assessment of the complaints

- Prior responsibility of MS and subregional authorities must not be ignored.(1,5,6)
- EC-guidelines and case law provide guidance on how to interpret Directives. EC should do more (3,4)....
- Some complaints are shared with environmental NGO's (3-8))
- EC should start thinking about:
  - A framework for cross-border projects (7)
  - How to ensure equal treatment (5)
  - How to integrate policies on the EU-level (8)

# The trouble with art.6

- Article 6(3) & 6(4) is meant to be cumbersome and complex.  
Reason: use of art.6(4) should stay an exception to the rule
- The Article 6 decision procedure is triggered when significant effects occur
  - Without significant effects:
    - EIA can follow integrated approach (no priority to ecologically best solution – environmentally friendly solution instead)
    - No IROPI discussions (especially troublesome for private projects)

# Conflict resolution

“prevent significant effects from occurring”:

## *How?*

- Set maintenance objectives for the SPA as a whole. Consider all aspects of the Directives’ obligations (not only annex I species...)
- Create and realise a nature development and management scheme for the SPA so that the integrity of the site and its role and place in the Natura 2000 network is safeguarded on a long term basis.
- Evaluate effects of envisaged plan or project only within the framework of the ongoing nature development inside the SPA.
- When nature development has effectively advanced beyond a certain level, economic projects will be evaluated on their own merits and not under the restrictive criteria of art. 6(4)
- Large designations are better.... More space for cohabitation

# Suggestion for a possible amendment of the designation procedure

## Why?

- Designated areas may be too strictly defined to create scope for conflict resolution inside the designated area
- Expansion of designated areas does not solve all problems (uncertainties prevail)
- **Proposal: Compare actual values with future possibilities**
  - **Fact of life:**
    - some areas with lower actual ornithological or ecological value have lower societal costs to develop or maintain at their current level than other areas with higher actual ecological or ornithological values
    - Some areas with lower actual value are less conflict ridden than other areas with higher value -> long term prospects may be endangered.
  - Use of other criteria should always confirm main objective: what is the best solution from a long term perspective on the maintenance of biodiversity
  - Replacement of designated areas by new ones only possible after effective and succesful realisation of the advanced objectives in the newly designated area

Questions ?