

CASE STUDY ON IMPLEMENTATION OF THE **SEA** DIRECTIVE

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Case study – Regulation on the landscape protection area ‘Silent River’

EU MS “A” issued a regulation on landscape protection in the Silent River area. It encompasses around 1.800 km² and comprises the mentioned river, which is also protected under Natura 2000, an agricultural area, a residential area, and one industry – a cement plant. The latter has been located there for decades. The whole area is protected according to the Nature conservation law. It gives the option of protection areas (SpA) to the State and the local communities. The river itself is protected also by Natura 2000 rules.

At the same time, a concession act has also been adopted to award concessions for the construction and operation of 3 hydroelectric power plants (HPPs) on that river inside the area covered by the mentioned Regulation. The Regulation foresees three HPP up to 50 MW power. The exact locations are defined. Reservoirs are also foreseen in those locations and shall not be bigger than 5 hectares. HPP are of overriding public interests.

The residential area is foreseen in the small part (15 hectares) south of the river and east of the cement plant. This area shall be at least 10 km away from the plant. It is also defined that the residential area shall not be too close to the riverbank but can depart from the existing planning requirements.

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The agricultural land shall be conserved north-west of the river. It encompasses 150 km². The Regulation foresees that, due to the proximity of the Silent River, the level of nitrates released shall be at least 10% lower than generally allowed.

It is prohibited to build North of the river (alongside), up to the west where the agricultural land is situated. The area consists of forests; the only possible interference can be roads if necessary.

An NGO named *Fish Protection Society* was involved in the preparation of the Regulation. The State invited the NGO into the process. The NGO asked for SEA to be performed, at least regarding the concessions for HPP. Its demand was not upheld. The reason was that the Regulation, although not totally optional, is a *protection plan* from which the area, including the river, will only benefit. HPP projects will also be a subject of the EIA assessment once the concessions are awarded.

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After the adoption of the contested Regulation, the NGO filed a lawsuit at the competent court, claiming that:

- it is having *standing*,
- the Regulation shall be annulled as a plan or at least its parts with the *ex tunc effect*;
- SEA shall be performed for the whole Regulation, not only some parts;
- not only the Regulation, but also the Concession Act is “a plan” or “a programme” according to the SEA directive and shall also be based on the SEA. Later EIA does not suffice;
- an interim measure is necessary, at least to preclude the effects of the Concession Act. Otherwise, damage will occur to those winning the tender if the act is later annulled.

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- The defendant replied that:

- a special management plan will be adopted in the near future that will further define all measures, activities, limitations, derogations etc. That plan will be subject to SEA and HPP will be subject of EIA procedure;
- hence, there is no need for an annulment. Annulment would run contrary to the spirit of the SEA directive. If any measure, then the court shall be limited to modifications;
- No need for the interim measure the tenders have not yet been prepared.

The court shall decide... about the claim (annulment of the Regulation as a plan).

On a path to the judgement, what questions are the court faced with?