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Too bad for the bats?

Source: Dietmar Nill - PLoS Computational Biology, July 2009



Source: Von Jestr - Eigenes Werk, CC BY-SA 3.0, <https://commons.wikimedia.org/w/index.php?curid=50274769>



1. Basic knowledge



Bechstein's Bat : „near threatened“ (NT)

Kingdom: Animalia
Phylum: Chordata
Class: Mammalia (Vulgo: It is not a bird !).

Included
 in Annex II as “*Myotis bechsteini*” and
 in Annex IV as “Microchiroptera (all bats)”

of the Habitats Directive



2. Will the action be successful?



2.1 Is the action admissible?



2.1.1 Standing (locus standi)? 2.1.2 Time limit?

ENGO
must be recognized
and dedicated to environmental protection.
(details differ from MS to MS)

Time limits observed under national law?



2.3 On the merits of the case ...

Is the building permit illegal?



Violation of Art 6.3 Habitats Directive?

Problem:

The mechanism of Art. 6.3 Habitats Directive
is not directly applicable.

At the the time of the approval there was
neither a designated SAC nor a listed SCI.

A „proposed SCI“ has weaker legal status because the
selection process by the EU Commission has not yet been
completed.



FYI: Sites in the context of the Habitats Directive:

1. Interesting sites = "Candidate pSCI"
2. Submission to the EC:
Proposed Sites of Community Interest (pSCI)
3. Adoption by the EC in a list of sites:
Sites of Community Interest (SCI)
4. Designation by the Member States after the designation as SCI:
Special Area of Conservation (SAC)



Requirements of Art. 6.2 Habitats Directive?

The essence of Art 6.2:

Member States must take appropriate steps
to avoid **habitat deterioration**
and the **disturbance of species**
for which the site has been designated.

You may add: “**at all time**”.



Quid iuris?

The Court of Justice

by a judgement of 14 January 2016 (Case C-399/14)
(„Grüne Liga Sachsen“ = „Waldschlösschenbrücke“)

was asked to and gave guidance.



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (I)

“Article 6(2) Habitats Directive

must be interpreted as meaning that a plan or project

not directly connected with or necessary to the
management of a site, ...



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (II)

... and authorised, following a study that did not meet the
requirements of Article 6(3) of that directive,

before the site in question was included in the list of SCIs

must be the subject
of a subsequent review, ...



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (III)

... by the competent authorities,

of its implications for that site
if that review constitutes the only appropriate step
for avoiding that the implementation of the plan or
project referred to results **in deterioration or
disturbance** that could be significant in view of the
objectives of that directive ...



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (IV)

It is for the referring court

to verify whether

those conditions are met.”



More Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (V)

- “Article 6(2) of the Habitats Directive must be interpreted as meaning that if, in circumstances such as those in the main proceedings, a subsequent review of the implications for the site concerned of a plan or project which began to be put in hand after that site was included in the list of SCIs proves necessary, that review must be carried out in accordance with the requirements of Article 6(3) of that directive.”
- Such a review must take into account all factors existing at the date of that inclusion and all implications arising or likely to arise following the partial or total implementation of the plan or project on the site in question after that date as well.



Guidance:

CJEU C-399/14 „Grüne Liga Sachsen“ (VI)

- Article 6(4) of the Habitats Directive must be interpreted as meaning that the requirements of the check made in the context of the review of alternative solutions may not be amended on account of the fact that the plan or project has already been implemented.”

(in short: “fait accompli does not count”)



Result?

The national judge has to make it work:

Art. 6.2 Habitats Directive prohibits deterioration ...

Here, this result may lead to an obligation to conduct a **subsequent Appropriate Assessment (AA)**.

The subsequent AA will provide information and will show whether the traffic on the bridge (by night) has an impact on the bats.

If so, measures have to be taken:

Art. 12 Habitats Directive!



Thank you
for your kind attention!

