



WESTFÄLISCHE
WILHELMS-UNIVERSITÄT
MÜNSTER

Art.6 (3) of the Habitats Directive – An Allocation Problem

European Environmental Law Forum 2017

Jens Weuthen

Background and Introduction to the Habitats Directive (& Natura 2000)

- Habitats Directive → In combination with Birds Directive cornerstone of European Union's biodiversity policy.
- Requires Member States to ensure that the listed species and habitat types are maintained/or restored to a favourable conservation status
- Objective shall be achieved by:
 - Site designation and management measures
 - Species protection measures

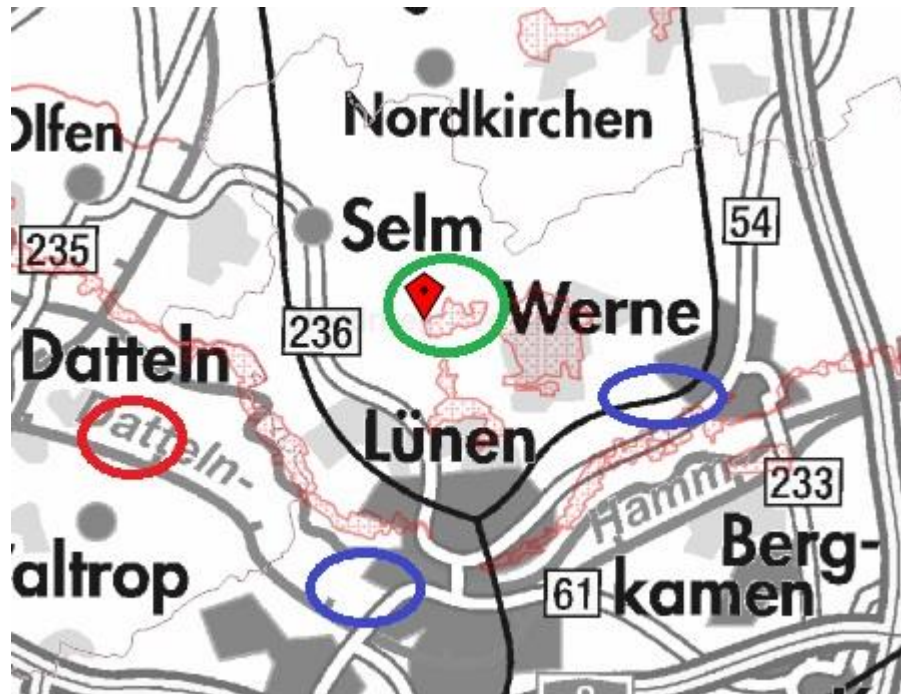
Article 6 (3) of the Habitats Directive

„Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives.“

Article 6 (3) of the Habitats Directive

*„Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or **in combination with other plans or projects**, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives.“*

Allocation Problems caused by Article 6 (3)



Which Criteria should determine the order of cumulative projects?

- Germany: Verbatim transposition of Art. 6 (3) into national law
- Lack of legislative effort → shifts the burden on competent authorities and the courts
- German Courts: Order of cumulative impacts is determined by temporal priority
- **But:** Reference point for priority is inconsistent among German Courts (State and Federal Level) → legal uncertainty

Temporal Priority should not be the only Criterion for a Potential Law



Proposal: A Two-Step-Approach

Two-Step-Approach



1st step: Judgmental Criteria → Benefits for the General Public, Public's Acceptance, etc...



2nd step: Formal Criteria as Ultima Ratio (such as temporal priority)

Summary of Results

- 1) Art. 6 (3) of the Habitats Directive causes allocation problems
- 2) Temporal Priority should not be the only criterion for a law determining the cumulative impacts order
- 3) A potential law should take a two-step-approach combining judgmental criteria and formal criteria (such as priority)



Thank you for your attention!