

European Union Network for the Implementation and Enforcement of Environmental Law

NATURE PROTECTION IN PERMITTING AND INSPECTION OF INDUSTRIAL INSTALLATIONS – IMPLEMENTATION OF ART. 6(3) OF THE HABITATS DIRECTIVE (PHASE 3)

Development of an IMPEL Guidance Document

PIG AND POULTRY FARMS AND NATURA 2000

And

Updated wind energy development case studies

Date of draft report: March 2017

Report number: 2015/14

Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) is an international non-profit association of the environmental authorities of the EU Member States, acceding and candidate countries of the European Union and EEA countries. The association is registered in Belgium and its legal seat is in Brussels, Belgium.

IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. The core of the IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

During the previous years IMPEL has developed into a considerable, widely known organisation, being mentioned in a number of EU legislative and policy documents, e.g. the 7th Environment Action Programme and the Recommendation on Minimum Criteria for Environmental Inspections.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on both technical and regulatory aspects of EU environmental legislation.

Information on the IMPEL Network is also available through its website at: www.impel.eu

Title of the report:	Number report:
Nature protection in permitting and inspection of industrial installations – Implementation of Art. 6(3) of the Habitats Directive (phase 3)	2015/14
Development of an IMPEL Guidance Document	
PIG AND POULTRY FARMS AND NATURA 2000 and	
Updated wind energy development case studies	
Project Manager/Authors:	Report adopted at IMPEL
Gisela Holzgraefe (DE), Project manager	General Assembly Meeting:
Iñaki Bergaretxe Urdampilleta (ES)	<mark>Written Procedur</mark> e, 2017
Kate Bayley (UK)	Total number of pages: xx
Andreja Slapnik (SI)	Report: 18
Ana Garcia (PT)	Annex 1: Guidance 127
	Annex 2: Case studies: 34

Executive Summary

In 2015 IMPEL carried out a follow-up project in the series of projects on "Nature protection in permitting and inspection of industrial installations Implementation of Art. 6(3) of the Habitats Directive". The main tasks consisted of:

- a. the Development of an IMPEL Guidance Document Pig and Poultry Farms and Natura 2000,
- b. the collection of updated wind energy development case studies and Natura 2000 and
- c. the collection of recommendations for important updates regarding wind energy and Natura 2000 (to be directly submitted to the Commission).

The **IMPEL Guidance Document "Pig and Poultry Farms and Natura 2000"** provides advice to permit authorities, nature conservation authorities and all those who are involved in the Article 6 (3) procedure of the Habitats Directive.

For those who are not familiar with the Article 6 (3) procedure it gives an overview on the legal background with brief information on relevant EU legislation. Then it concentrates on sector specific aspects:

- definition of the boundaries and thresholds for livestock projects and cumulative effects,

- identified impacts of intensive farming projects on Natura 2000 sites, identified threats and pressures on Natura 2000 sites from intensive rearing of poultry and pigs

- Methodologies for the assessment of nitrogen deposition
- Information on documents and data to be submitted to the permit authority
- Some examples on criteria for determining significant effects
- information about screening and assessment tools in practice
- some considerations concerning permit conditions.

In order to ensure that the operators comply with their permits and that emissions, namely ammonia and other pollutants are reduced competent authorities must undertake regular inspections of intensive farms. The control can be done by (1) carrying out inspections (including site visits) at the farms and (2) undertaking visits to relevant Natura 2000 sites.

The scope of the chapter on inspections constitutes an approach to environmental inspections to pig and poultry farms, exploring only some specific impacts on nature and biodiversity considered in permit conditions, concerning item (1), ensuring compliance with permit conditions. For item (2) "undertaking site visits to relevant Natura 2000 locations" the project team proposes future IMPEL Projects on this subject, namely considering the need for Inspectors to ask for advice of the nature conservation body, to understand the conditions of the Natura 2000 and the impacts causing pressure on the site and how those impacts can be managed through inspection to a specific location/activity (of pigs and poultry) but also through a broader inspection of the Natura 2000 site where these activities take place

Fostering close cooperation between IED permitting and inspection authorities and nature conservation authorities allow for producing good and harmonised results.

The collection of **updated wind energy development case studies** and Natura 2000 provides some best practice examples of dealing with wind energy projects and Natura 2000. On top it informs about screening tools that are used in participating countries.

Disclaimer

This report is the result of a project within the IMPEL network. The content does not necessarily represent the view of the national administrations or the Commission.

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1. Introduction

1.1. Project background

The alarming decline in Europe's biodiversity as drived the adoption, by EU Member States of two key pieces of EU legislation – the Habitats and Birds Directives – to conserve Europe's most valuable species and habitats across their entire natural range within the EU.

The Birds and Habitats Directives are central to achieving the EU 2020 target of halting and reversing the loss of biodiversity endorsed by Heads of State and Government. The Commission has adopted an ambitious strategy to achieve this objective, comprised of six targets. Target 1 of this Strategy is focused on "Full implementation of EU nature legislation to protect" biodiversity and requires a significant improvement in conservation status. The implementation of EU nature legislation of EU nature legislation also contributes significantly to other targets of the biodiversity strategy, including in relation to green infrastructure and restoration under Target 2.

The "Study on Evaluating and Improving the Article 6.3 Permit Procedure for Natura 2000 Sites" of the Commission found out that in total the Article 6.3 permit procedures is functioning well. However, a number of current problems are mentioned in the study. Only nature authorities were involved in the study.

As a contribution for overcoming the problems, IMPEL carried out 2014 project with the title "Nature protection in permitting and inspection of industrial installations Implementation of Art. 6(3) of the Habitats Directive" in which nature authorities and permit and inspection authorities for industrial installations participated. It was found out very quickly that the project could only give a general overview of the situation and collect information about some best practice examples. It is impossible to give one receipt for all different species and particular targeted features. The project team recommended a step by step approach and to work on sector specific items. The team made a proposal for a new project consisting of the parts:

- The development of an IMPEL Guidance Document PIG AND POULTRY FARMS AND NATURA 2000 (Annex II to this report),
- Updated wind energy development case studies and Natura 2000 (Annex III to this report) and
- Important updates regarding wind energy developments and Natura 2000 (directly submitted to the Commission)

1.2. Project objectives

This project aimed at the exchange of experience concerning the wind energy sector and Natura 2000 in permitting and inspection of wind energy projects. As there is a rather fast development in the sector (micro turbines and growing height of the wind mills) as well as in the assessment of the impacts on different species, it was decided to collect best practice examples and make them available. From this work the project team collected some recommendations for updates regarding wind energy and Natura 2000. They were directly submitted to the Commission.

1.3. Methodology

After an in depth discussion of the items in the first project team meeting (28 – 29 May 2015 in Berlin) it was decided to collect best practice examples on dealing with the Habitats Directive in permitting and monitoring of wind energy projects. Another aim was to find out more about instruments, methods and supporting tools that are used in practice in the IMPEL member states. In this field the Guidance Document of the European Commission provides valuable information.

For the sector of husbandry it was decided to concentrate first on intensive rearing of poultry and pigs. For other kinds of animals and small animal numbers a follow-up project might be an option.

For collecting more information a workshop was carried out (24 – 26 August 2015 in Berlin).

The draft documents for both sectors – wind energy projects as well as pig and poultry farms and Natura 2000 were discussed and improved during the second project team meeting (22 – 23 October 2015 in Santiago de Compostela).

1.4. Participants

Members of the project team: Gisela Holzgraefe (DE), Project manager, Iñaki Bergareche Urdampilleta (ES), Andreja Slapnik (SI), Ana Garcia (PT), Kate Bayley (UK).

Participants of the workshop: Gisela Holzgraefe (DE), Deirdre French (IE), Katica Bezuh (HR), Iñaki Bergareche Urdampilleta (ES), Kate Bayley (UK), Constantin Hutupas (RO), Kirsten Schoonaert (BE), Lora Dimitrova (BG), Aleksandrina Yaprakova (BG), Mirjam E.A. Broekmeyer (NL), Maria Ines Trigo (PT), José Paulo Santos (PT), Iñaki Bergareche Urdampilleta (ES), Andreja Slapnik (SI), Ana Garcia (PT),

2. The products

2.1. IMPEL Guidance Document PIG AND POULTRY FARMS AND NATURA 2000

The IMPEL guidance document "Pig and poultry farms and Natura 2000" provides

- a) an overview on the legal background relevant for farm projects. This includes the Habitats Directive, the Environmental Impact Assessment and the Strategic Environmental Impact Directive, the Directive on Industrial Emissions, the Nitrates Directive and the National Emissions Ceilings Directive.
- b) The importance of strategic planning
- c) Information about the definition of the boundaries and thresholds for livestock projects and cumulative effects

- d) Identified impacts of intensive farming projects on Natura 2000 sites, identified threats and pressures on Natura 2000 sites from intensive rearing of poultry and pigs
- e) Methodologies for the assessment of nitrogen deposition
- f) Information on documents and data to be submitted to the permit authority
- g) Some examples on criteria for determining significant effects
- h) information about screening and assessment tools in practice
- i) some considerations concerning permit conditions
- j) information concerning inspection of farm projects.

Concerning Inspections the guidance concentrates on the farms, to ensure compliance with their permits. The ability to manage and reduce harmful emissions and subsequently protect biodiversity can be done by (1) ensuring that permit conditions are complied with and (2) undertaking visits to relevant Natura 2000 sites. For item (2) "undertaking site visits to relevant Natura 2000 sites" the project team proposes future IMPEL projects on this subject.

2.2. Updated wind energy development case studies and Natura 2000

The project team created two documents concerning wind energy development and its impact. The document with the case studies was the result of the workshop, in which the participants provided some good examples of dealing with wind energy projects and Natura 2000. On top they informed about screening tools that are used in their countries.

2.3. Important updates regarding wind energy developments and Natura 2000 (directly submitted to the Commission)

In phase 2 of the project series on "Nature protection in permitting and inspection of industrial installations – Implementation of Art. 6(3) of the Habitats Directive" the Commission had asked IMPEL to give feedback on the use of the existing Guidance Documents. The project team collected some recommendations for a future update of the Guidance Document "Wind energy developments and Natura 2000" and submitted it directly to the Commission.

3. Main conclusions and proposals for future work

3.1 Main findings

There is a need for:

Improving knowledge about and use of EU guidance / awareness raising measures, Initiating revision of existing or development of new EU guidance, Sharing existing national guidance and scientific studies on different projects, Exchange of knowledge about screening criteria and assessment methodologies, e.g accepted practices: use of Critical Loads (CL), criteria for habitat loss, new approaches. Follow-up projects should concentrate on small steps.

3.2 Proposal for future work

For 2016 the proposal of a follow-up project was to explore other projects, namely quarries, by making an evaluation of the applicability of the EU Guidance Document "Non-Energy Mineral extraction and Natura 2000", on the subject of quarries and to explore the practices of Member States on the application of Art 6(3) of the Habitats Directive concerning this sector.

After that at least one project on the item of "Nature protection in permitting and inspection of industrial installations – Implementation of Art. 6(3) of the Habitats Directive" should concentrate on inspections.

Annexes

Annex I: Terms of References

Annex II: IMPEL Guidance Document PIG AND POULTRY FARMS AND NATURA 2000 (separate document)

Annex III: Updated wind energy development case studies and Natura 2000 (separate document)

Annex I. Terms of Reference Project 2015/14

TOR Reference No.: Author(s): Gisela Holzgraefe, Ana Garcia and			
	Inaki Bergareche		
/ersion: 1.0 Date: 11/09/2015			
TERMS OF REFERENCE FOR WORK UNDER THE AUSPICES OF IMPEL			

1. Work type and title

1.1 Identify which Expert Team this needs to go to for initial consideration				
Industry Waste and TFS Water and land Nature protection Cross-cutting – tools and approaches -				
1.2 Type of work you need funding for				
Exchange visitsImage: Constant of tools/guidanceDevelopment of tools/guidanceImage: Comparison studiesAssessing legislation (checklist)Image: Constant of tools/guidanceOther (please describe):Image: Constant of tools/guidance				
1.3 Full name of work (enough to fully describe what the work area is)				

Nature protection in permitting and inspection of extractive industry (quarries) – Implementation of Art. 6(3) of the Habitats Directive

1.4 Abbreviated name of work or project

Permitting under Art. 6(3) HD - quarries

2. Outline business case (why this piece of work?)

2.1 Name the legislative driver(s) where they exist (name the Directive, Regulation, etc.)

Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive or HD)

☑

2.2 Link to IMPEL MASP priority work areas

- 1. Assist members to implement new legislation
- 2. Build capacity in member organisations through the IMPEL Review Initiatives
- 3. Work on 'problem areas' of implementation identified by IMPEL and the European Commission

2.3 Why is this work needed? (background, motivations, aims, etc.)

The alarming decline in Europe's biodiversity as drived the adoption, by EU Member States of two key pieces of EU legislation – the Habitats and Birds Directives – to conserve Europe's most valuable species and habitats across their entire natural range within the EU.

The Birds and Habitats Directives are central to achieving the EU 2020 target of halting and reversing the loss of biodiversity endorsed by Heads of State and Government. The Commission has adopted an ambitious strategy to achieve this objective, comprised of six targets. Target 1 of this Strategy is focused on "Full implementation of EU nature legislation to protect" biodiversity and requires a significant improvement in conservation status.

The implementation of EU nature legislation also contributes significantly to other targets of the biodiversity strategy, including in relation to green infrastructure and restoration under Target 2.

Europe's manufacturing and construction industries are heavily dependent on the non-energy extractive industry for essential raw materials, including non-energy minerals, resources that are many times present on Natura 2000 sites, which highlights the a need to assure the compatibility of extractive industry with effects on wildlife and nature.

In 2012 - 2014 the "Study on Evaluating and Improving the Article 6.3 Permit Procedure for Natura 2000 Sites" was carried out for the Commission. Only nature authorities were involved in it. A big variety of different approaches have been applied in practice.

In total it was found that the Article 6.3 permit procedures is functioning well.

However, some countries/regions some countries reported that there is still an overall lack of understanding of, or willingness to accept, the Article 6.3 procedure amongst certain authorities and/or sectors. Several countries reported that there was still a real need to set up a more systematic and consistent framework for assessment, provide skills training and locally adapted guidance (including for instance checklists and pro forma forms) for both the project or plan proponents and the competent authorities

A number of current problems are mentioned in the study:

- Poor quality of the AA;
- Lack of skills/ knowledge /capacity in the Article 6.3 procedure;
- Poor inadequate knowledge base on which to assess impacts ;
- Problems during screening;
- Lack of assessment of cumulative effects ;
- Poor understanding of key concepts and legal terms;
- Lack of early dialogue;
- Ineffectiveness of AAs as regards plans.

This report makes several recommendations, to facilitate the implementation of the HD Directive, increase the level of understanding of how this is to be done in practice and discuss any particularly

complex or problematic cases, including:

User-friendly up-to-date and practical guidance documents (eg practical 'how to' guide, with worked up examples of how to collect baseline information, assess impacts or cumulative effects, identify mitigation measures, ...).

- Consider drawing up standardized, but non obligatory, checklists of what to include in an AA report.

- Organise more systematic training courses (tailored to particular needs) and exchange platforms for competent authorities;

Ensure there is a consistent and uniform framework in place for screening of all types of plans and projects;

- Provide a standardized format for preparing the screening application and to guide the developer/competent authority in terms of the minimum level of information that is required for the screening test (together with guidelines and explanations of how to complete them).

In 2013 IMPEL carried out a small project "Nature protection in permitting and inspection" where the project team explored the needs and requirements concerning nature protection in permitting and inspection of industrial installations. The need for more information was confirmed. Therefore IMPEL carried out a follow-up in 2014 project with the title "Nature protection in permitting and inspection of industrial installations Implementation of Art. 6(3) of the Habitats Directive" in which nature authorities and permit and inspection authorities for industrial installations participated. The project took conclusions and recommendations into consideration. In the 2014 project the core team collected information by using a questionnaire and carried out a workshop. It was found out very quickly that the project could only give a general overview of the situation and collect information about some best practice examples. It is impossible to give one receipt for all different species and particular targeted features. *The main findings of the project 2014 were: There is a need for:*

Improving knowledge about and use of EU guidance / awareness raising measures, Initiating revision of existing or development of new EU guidance,

Sharing existing national guidance and scientific studies on different projects,

Exchange of knowledge about screening criteria and assessment methodologies, e.g accepted practices: use of Critical Loads (CL), criteria for habitat loss, new approaches. Follow-up projects should concentrate on small steps.

In 2015 the project is ongoing, and the products will be:

- An evaluation of the applicability of the Guidance Document "Wind energy developments and Natura 2000" and a
- Sector specific guidance document on Article 6(3) HD in permitting of farm projects (pigs and poultry) (or one other sector the project team agrees on) – (with at least definition of the project and project boundaries, development of a screening list, problem of salami slicing)

In 2016 the proposal of a follow-up project is to explore other projects, namely quarries, by making an evaluation of the applicability of the EU Guidance Document "Non-Energy Mineral extraction and Natura 2000", on the subject of quarries and to explore the practices of MS on application of Art 6(3) of the HD concerning this sector.

2.4 Desired outcome of the work (what do you want to achieve? What will be better /

done differently as a result of this project?)

Exchange of experience concerning the applicability of the EU Guidance Document "Non-Energy Mineral extraction and Natura 2000" – on the subject o quarries and to explore and present the practices of MS on application of Art 6(3) of the HD concerning this sector.

At the same time improving better knowledge about the document and discussion of national approaches. If necessary, the evaluation may provide input for the Member States and the Commission.

For the development of a common understanding and sharing as well as spreading knowledge a report should be developed. The results will be available for all interested parties.

2.5 Does this project link to any previous or current IMPEL projects? (state which projects and how they are related)

2013: "Nature protection in permitting and inspection"

- 2014: "Nature protection in permitting and inspection of industrial installations Implementation of Art. 6(3) of the Habitats Directive"
- 2015: "Nature protection in permitting and inspection of industrial installations Implementation of Art. 6(3) of the Habitats Directive"

3. Structure of the proposed activity

3.1 Describe the activities of the proposal (what are you going, to do and how?)

Working with a core team for the preparation of the project activities, including a short questionnaire to send to MS.

Sending of the questionnaire to MS.

Invitation of experts concerning quarry projects for the evaluation of the Guidance Document "Non-Energy Mineral extraction and Natura 2000".

Discussion with experts concerning Article 6(3) HD in permitting of projects.

Preparation of the documents.

3.2 Describe the products of the proposal (what are you going to produce in terms of output / outcome?)

Report that includes an evaluation of the applicability of the Guidance Document "Non-Energy Mineral extraction and Natura 2000" and that complements it, with atual practices and examples from MS, intended to cover:

- The non-energy extractive industry (neei) in the eu;
- The eu's policy framework and legislation for nature and biodiversity;
- Potential impacts of non-energy extraction activities on nature and wildlife;
- The importance of strategic planning;
- Article 6.3: carrying out an appropriate assessment of neei plans and projects in accordance with the habitats directive;
- Article 6.4: alternative solutions;
- Some neei activities and their relations with the provisions of article 6.3 and 6.4 (Rehabilitation);

- Monitoring in the framework of Article 6.3 and 6.4 provisions;
- Inspection.

3.3 Describe the milestones of this proposal (how will you know if you are on track to complete the work on time?)

January 2015: identification of core team members

February to May 2015: identification of contributors to the project

March 2015: first core team meeting

March/April 2015: send questionnaire to MS

June 2015: workshop with experts

August 2015: second core team meeting

September 2015: draft final report for Cluster i

November 2015: submission of the draft final report to GA

3.4 Risks (what are the potential risks for this project and what actions will be put in place to mitigate these?)

4. Organisation of the work

4.1 Lead (who will lead the work: name, organisation and country) – this must be confirmed prior to submission of the TOR to the General Assembly)

Gisela Holzgraefe (DE)

4.2 Project team (who will take part: name, organisation and country)

Gisela Holzgraefe (DE), Project manager, Iñaki Bergareche Urdampilleta (ES), Andreja Slapnik (SI), Ana Garcia (PT), Kate Bayley (UK)

4.3 Other IMPEL participants (name, organisation and country)

t.b.d

4.4. Other non-IMPEL participants (name, organisation and country)

e.g. ENCA, Habitats Committee, ORNIS Committee, JASPERS, Working group for Appropriate Assessment procedure.

5. High level budget projection of the proposal. In case this is a multi-year project, identify future requirements as much as possible

	Year 1 (exact)	Year 2	Year 3	Year 4
How much money do you				
require from IMPEL?	17 270 €			
How much money is to be co-				
financed	-			
Total budget	17 270€			

6. Detailed event costs of the work for year 1

	Travel € (max €360 per return journey)	Hotel € (max €90 per night)	Catering € (max €25 per day)	Total costs €
Event 1				
First core team meeting,	6 x 360 € =	540€	150€	2 850 €
March 2015,	2 160 €			
Location t.b.d.				
6 participants				
2 days, 1 night				
Event 2				
workshop	18 x 360 € =	3 240 €	1 350€	11 070 €
June 2015	6 480 €			
Location t.b.d.				
18 (6 core team plus 12				
experts on quarries)				
3 days / 2 nights				
Event 3				
second core team meeting	2 160 €	540€	150€	2 850 €
August 2015				
Location t.b.d.				
6 participants				
2 days, 1 night or 2 nights				
Event 4				
<type event="" of=""></type>				
<data event="" of=""></data>				
<location></location>				
<no. of="" participants=""></no.>				
<no. days="" nights="" of=""></no.>				
Total costs for all events	10 800 €	4 320 €	1 650 €	16 770 €

7. Detailed other costs of the work for year 1

7.1 Are you using a consultant?	🗆 Yes 💌 No
7.2 What are the total costs for the consultant?	[-]
7.3 Who is paying for the consultant?	-
7.4. What will the consultant do?	Development of a draft for the final report, the evaluation document and the sector specific guidance document
7.5 Are there any additional costs?	Yes □ No Namely: 500 €
7.6 What are the additional costs for?	participation in cluster i meeting
7.7 Who is paying for the additional costs?	IMPEL
7.8. Are you seeking other funding sources?	□ Yes
7.9 Do you need budget for communications around the project? If so, describe what type of activities and the related costs	☐ Yes

8. Communication and follow-up (checklist)

|--|

8.1 Indicate which communication materials will be developed throughout the project and when (all to be sent to the communications officer at the IMPEL secretariat)	TOR**Image: black			
8.2 Milestones / Scheduled meetings (for the website diary)	First core team meeting Workshop Second core team meeting			
8.3 Images for the IMPEL image bank	Ves 🗆 No			
8.4 Indicate which materials will be translated and into which languages	t.b.d.			
8.5 Indicate if web-based tools will be developed and if hosting by IMPEL is required	t.b.d.			
8.6 Identify which groups/institutions will be targeted and how	COM, non-IMPEL participants, e.g. ENCA, Habitats Committee, ORNIS Committee, JASPERS, Working group for Appropriate Assessment procedure.			
8.7 Identify parallel developments / events by other organisations, where the project can be promoted				

*) Templates are available and should be used. *) Obligatory

9. Remarks

Is there anything else you would like to add to the Terms of Reference that has not been covered above?

In case of doubts or questions please contact the IMPEL Secretariat.

Draft and final versions need to be sent to the <u>IMPEL Secretariat</u> in word format, not in PDF.

Thank you.