



NIM/AEAJ workshop in Bucharest
on
16 – 17 May 2013

Case study “Mountain bike downhill
course”

Comments to the questions

4/5/2009 10:08

1. Lack of a dispensation

- Must an omission be contestable?
 - ❖ In case of missing EIA (This is not the case here) Yes
see Article 11 para 1 Directive 2011/92/EU
 - ❖ See Aarhus Convention Article 9 para 3: Yes
 - ❖ General considerations: Danger of circumvention

2. Judicial review restrained ?

- Opinion of Advocate General Kokott
 - C-127/02 “Waddenzee”
Para 109
 - C- 241/08 „Commission v France“
Para 30

*Certain margin of discretion of the public authority
(not adressed by the CJEU)*

3. Site adversely affected ?

- Site's conservation objectives affected
- Loss of 1000 m² insignificant?

Statutory provisions do not exist
According to German Guidelines
(Experts Commission):

Threshold if less than 0,1 % of the site
is lost:

- ❖ Habitat type 6520: 500m²
- ❖ Habitat type 6230: 250 m²

4. Annulment due to a procedural fault ?

Yes

- The interest is to **weigh up** against the damage
See CJEU:
C-304/05, Commission v Italy, para 83
C-182/10, Marie-Noëlle Solvay and Others,
para 74
- The court can not grant dispensation itself

5. Preconditions for dispensation met?

Restrictive interpretation of article 6 (4)

Judgement C-182/10, para 73 – 78

- Article 6 (4) subparagraph 1
 - ❖ Absence of alternative solutions (may be supposed)
 - ❖ ***Imperative*** reasons of
 - ❖ ***Overriding***
 - ❖ ***Public*** interest ?

Promotion of tourism not sufficient

- Article 6 (4) subparagraph 2

Considerations related to

- ❖ Human health: no
- ❖ Public safety: no
- ❖ Beneficial consequences of primary importance for the environment : no
- ❖ Other reasons (to an opinion from the Commission): no



The session is closed !

4/5/2009 10:42