

Minutes of the meeting between the Commission and the Romanian authorities on draft Order on the methodology on environmental assessment for forest management plans

Wednesday 16 September 2020 (9h-11h)

1) Scope of application of the order

RO explained the steps for developing and approving a forest management plan (FMP), which are developed through a three-stage process that concludes with the so-called “technical solution notice” (I, II Conference and technical solution notice). The strategical environmental assessment procedure (SEA), including the appropriate assessment (AA), starts after the Ist Conference which aims to pre-approve the main theme. After the IInd Conference, which includes the pre-approval of the technical solutions, the SEA report (AA study results included) is finalized. Ultimately, the Technical Committee for Forestry analyses and approves the FMP, followed by a ministerial order to formally approve the FMP.

RO indicated that SEA is obligatory for FMPs which set the framework for future development consent of projects listed in Annexes I and II of the EIA Directive (Article 6, §1 (a) of the draft order) and for the FMPs that overlap totally or partially with Natura 2000 sites (Article 6, §1 (b) of the draft order).

As for the FMPs in the vicinity of Natura 2000 sites (Article 6, § 2 of the draft order), RO pointed out that the Screening Committee will carry out a *case by case* analysis, taking into consideration the comments and proposals sent by the public concerned.

COM drew the attention that the criteria to be considered in the screening should be also those referred in the SEA Directive. In this respect, a cross reference should be made to GD 1076/2004 (the act transposing the SEA Directive into the RO legislation).

Moreover, COM insisted on an effective screening in order to prevent reoccurrence of the situation when it was systematically decided that an AA is not necessary.

COM also mentioned that all FMPs that are likely to have a significant effect on N2K areas shall be subject to the AA procedure, and not only those which are in the vicinity of the these areas. In this respect, COM drew attention to the fact that the term “vicinity” can generate a certain confusion.

COM insisted that the screening decision takes into account the screening criteria for AA and the sites’ specific conservation objectives.

Conclusion:

RO agreed to provide with a definition of the term ‘*vicinity*’ for this particular type of plans (Article 6 § 2). RO also agreed that this term should not exclusively reflect the distance of the area covered by the FMP to the Natura 2000 sites but also other factors relevant for the potential impact of the FMP on the sites’ integrity.

RO agreed to modify Article 10(4) in order to introduce a reference to the screening criteria for the appropriate assessment (reference to Methodological guide on the appropriate assessment of the potential effects of plans or projects on protected natural areas of Community interest from 18.02.2020).

Question to be addressed in written

Could RO clarify whether for FMPs overlapping, fully or partially, with a Natura 2000 site the environment assessment includes a full AA study? That is, in case of an overlap an AA study is automatically carried out.

2) Revision of FMPs

RO claimed that there is no need to revise the FMPs that will expire in the next 2 years, considering this is the period necessary to complete the revision. Moreover, RO mentioned that there are plans that expire by the end of 2020.

RO pointed out that the order cannot set a deadline regarding the revision of the FMPs as long as the length of the revision process might differ from plan to plan.

Conclusion:

RO to clarify Article 27 of the draft order: not only the FMPs that overlap partially or fully with N2K areas should be revised, but all FMPs, which may have a significant effect thereon. Furthermore, the revision should not be limited to FMPs for which the SEA procedure was finalised with the screening stage decision, without drawing up the AA study and environmental report. FMPs not subject to screening as part of the AA should also be reviewed, as long as they are likely to have a significant effect on Natura 2000 sites.

RO should come up with a programme of progressive revision of the FMPs, including those plans expiring before 2023.

3) Suspension of FMPs during their revision

RO initially indicated that a suspension of FMPs cannot be brought off considering that are activities that are already approved and permits which are already issued. In addition, RO stressed out that the FMPs are correlated with the N2K management plans and a suspension of the FMPs will rather have a negative impact on sites (insect outbreaks, 3 million cubic meters of wood resulted from windfall, etc.).

COM insisted that any activity likely to have a significant impact on the Natura 2000 sites (including but not limited to logging) shall be suspended. COM suggested that RO provides with a list of the targeted activities (e.g. those related to public safety) that will be allowed to continue pending the revision of the FMPs, in line with the principles set by the Białowieża ruling (C-441/17, Commission v Poland).

Conclusion:

RO agreed to modify Article 27 of the draft order and to define the list of allowed activities in an Annex to the order according to the principles and the ruling above, after analysing this possibility according to the national legislation in force.

4) Application of the FMPs

RO clarified that the logging according to the FMP will be implemented only once the environmental permit is issued by the competent authority. However, RO mentioned that, according to the Forest Code, the FMP enters into force the 1st January of the next year and that there are certain activities foreseen therein, other than logging, which can apply independently of an environmental permit (i.e. afforestation, compensation).

Conclusion:

COM pointed out that this issue is problematic and invited the RO authorities to come up with a solution. COM insisted that any activity likely to have a significant impact on the Natura 2000 sites (including but not limited to logging) shall not be implemented before the final authorisation of the FMP (and definitely not before the environmental permit is issued).

RO will clarify which activities are currently possible without an environmental permit issued in accordance with the EIA Directive/Article 6(3) of the Habitats Directive.

5) Reference to conservation objectives for the FMPs that overlap totally or partially with N2K for which a management plan has not yet been drafted and reference to compensation and mitigation measures

5.1. COM asked for clarification in relation to the AA carried out for FMPs likely to have an impact on Natura 2000 sites for which a management plan has not yet been drafted.

RO explained that the drafting of site-specific conservation objectives was ongoing for all sites without a management plan. This process ought to be completed by the end of the year when all Natura 2000 sites in the country would have conservation objectives (details in the ppt presentation).

Conclusion:

RO agreed to amend all relevant articles of the draft order to make reference to site specific conservation objectives instead of the set of minimum conservation measures for Natura 2000 species and habitats.

5.2. COM also mentioned that the use of the term “compensation” is not appropriate. RO clarified that it was not intended to refer to Article 6(4) of the Habitats Directive, but rather to the SEA criteria.

Conclusion:

RO agreed to amend the draft order and replace the term “compensation” in the text (Articles 16, 17 and 22).

5.3. COM mentioned that mitigation measures cannot be applied at screening stage.

Conclusion:

RO agreed to amend Article 10(6) of the draft order.

6) Access to environmental information contained in the FMPs

RO mentioned that, as from 30 September 2020, the Forestry Guards will publish on their respective website environmental information related to the FMPs, including those which will not be revised.

As for the FMPs that will be revised, the public will be consulted and will have access to all relevant information along the SEA process.

Once the FMP is adopted, a request for environmental information can be addressed to the beneficiaries of these plans, including the forestry districts.

Conclusion:

COM insisted on the need for transparent and effective access to environmental information to ensure effective decision-making and invited RO authorities to provide further explanation in their written correspondence.

Overall conclusion:

RO will launch the public consultation on the order in the upcoming days (17.09.2020 was indicated). Subsequently, RO will amend the draft order following to COM’s comments and of the meeting’s operational conclusions and will send it back to COM for analysis.

By the end of September 2020, RO will send a letter reporting all the progress made since the reply to the reasoned opinion of 3 August 2020.