

Guidance document for Strategic Environmental Assessment and Appropriate Assessment procedural integration



CReIAMO PA

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- Lazio Region: Environmental Impact Assessment Area - Superior Structure of the Regional Environment Directorate
- Liguria Region: Department of Territory, Environment, Infrastructure and Transport Deputy Directorate of Territory;
- Lombardia Region: Legal Structure for the Territory and EIA and Directorate General for Territory and Civil Protection - Nature and Biodiversity Structure UO: Sustainable Development and Protection of Environmental Resources;
- Marche Region: "Environmental Assessments and Authorizations Sector" and "Internal Territories, Parks and Regional Ecological Network Sector";
- Molise Region: Environmental Protection and Evaluation Service;
- Piemonte Region: Environmental Assessments and Integrated Procedures, North West Area Urban Planning Co-planning, Environment, Energy and Territory Department;
- Toscana Region: Strategic Environmental Assessment - Environmental Impact Assessment, Strategic Environmental Assessment - Public Works of Regional Strategic Interest Sector;
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SUMMARY

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Preface

This document was prepared as part of the activities of the LQS1 intervention line of the CREIAMO PA Project dedicated to Environmental Assessments, SEA and EIA, under the coordination of the Directorate General for Environmental Assessments of the Ministry of the Environment and Energy Security (MEES), and is aimed at a reasoned analysis on the SEA-AA procedural integration.

The document was prepared by the Specialised Technical Unit of the Line of Intervention LQS1 on the basis of the survey of legal and technical documentation at European, national and regional level and by virtue of the contribution provided by the regions and autonomous provinces.

The possibility of having support tools for the activities of the competent authorities in the field of SEA and of the proponents represents an important opportunity to guarantee a homogeneous application of the SEA discipline on the national territory: this objective is pursued by the CREIAMO PA Project through the publication of this guidance document which, although not binding, can represent a valid orientation tool.

arch. Gianluigi Nocco
Director General for environmental assessments
Ministry of Environment and Energy Security

ACRONYMS AND DEFINITIONS

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|--|--|
| Habitat Directive | Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural and semi-natural habitats and of wild flora and fauna |
| <i>Bird Directive</i> | Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds |
| SEA Directive | Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programs on the environment |
| DGEA | Directorate General for Environmental Assessments of the Ministry of the Environment and Energy Security |
| National Guidelines for Appropriate Assessment | National Guidelines for the Appropriate Assessment (AA) "HABITAT" Directive 92/43/EEC Article 6, paragraphs 3 and 4, adopted by Agreement of 28.11.2019 pursuant to Article 8, paragraph 6, of Law no. 131 of 5 June 2003, between the Government, the Regions and the Autonomous Provinces of Trento and Bolzano (Official Gazette of the Italian Republic General Series no. 303 of 28.12.2019)) |
| MEES | <i>Ministry of the Environment and Energy Security</i> |
| CREIAMO PA Project | <i>Competences and Networks for the Environmental Integration and Improvement of Public Administration Organisations - PON Governance and Institutional Capacity 2014-2020</i> |
| P/P/P/I/A | Plans, Programs, Projects, Interventions, Activities |
| EU | European Union |
| STU | Specialized Technical Unit of the CREIAMO PA Project - Line of intervention LQS1 "Environmental assessments Actions for improving the effectiveness of SEA and EIA processes relating to programmes, plans and projects" |
| EIA | Environmental Impact Assessment |
| SEA | Strategic Environmental Assessment |
| AA | Appropriate Assessment (AA) – HABITAT" Directive 92/43/EEC Article 6 |

1. INTRODUCTION

1.1 Aims and structure of the document

This document represents one of the products of the CREIAMO PA Project – and it is part of the AQS1.2 "Procedural integration" project activity of the LQS1 intervention line "Environmental assessments Actions for improving the effectiveness of the related SEA and EIA processes to programmes, plans and projects".

During the various technical meetings and exchanges of experiences held with various Regions and Autonomous Provinces, the UTS proposed to draw up two shared technical documents on the procedural integration EIA-AA and SEA-AA. Concerning SEA, the idea is to update the SEA-AA 2011 Guidelines of the MATTM, also taking into consideration the National Guidelines for AA published in the Gazette of 28 December 2019.

The need arises from numerous questions and requests for clarification on the field of application of procedural integration with the AA in the SEA area.

An uneven application of the SEA discipline in the national territory leads to possible significant problems and criticalities at a legal (European and national disputes) and procedural level (different fulfilments and related administrative burdens for businesses and public administrations).

In addition to the above, the identification of homogeneous criteria to standardize the integrated SEA-AA procedures at national level appears appropriate due to the following common elements, both from a legal and a technical point of view:

- Avoiding any European disputes (EU Pilot,...);
- Ensure a continuity (longitudinal and areal), which goes beyond the regional administrative boundaries and autonomous provinces and which requires a logic of management and protection on a national scale.

The document represents a guidance tool intended to support both the competent authorities and the proposers, in the correct application of the SEA and AA regulations, with particular, but not exclusive, reference to those Regions/Autonomous Provinces that do not have specific regulations in matter. It therefore does not assume a binding nature (the current European and national regulations represent the only legally binding instruments) but represents the result of the technical collaboration between the STU of the CREIAMO PA Project and the stakeholders (Regions and Autonomous Provinces)

Chapter 1 describes the methodology and tools adopted for the preparation of this document and sets out the issues and topics discussed during the online meetings held with the Regions, Autonomous Provinces and competent bodies.

The first three paragraphs of Chapter 2 are dedicated to the relationship between plans and the Natura 2000 network regarding the integration of SEA and AA; they include the analysis of the sector legislation and the guidelines both at European and national level and also the regional references and the autonomous provinces, with the laws and official acts adopted by the regions/autonomous provinces regarding the SEA-AA integrations.

Furthermore, paragraph 2.4 shows the questionnaires drawn up by the Regions regarding procedural integration from which the critical issues were extrapolated and analysed.

Finally, in 2. 5 the proposals to overcome the aforementioned critical issues relating to the SEA-AA procedural integration are set out.

1.2 Methodology, document tools

The *roadmap* leading to the realization of the document has gone through the following steps:

- On 2 February 2021, a technical meeting (by videoconference) was held with the Marche region, the Sardinia region and ARPAM (Regional Agency for Environmental Protection of the Marche), during which the analysis of the specific regional legislation was shared, both of the Marche and of Sardinia, regarding the integration of the proceedings, with the evidence of the main discrepancies with the national legislation and the sharing of the main critical issues that emerged above all in the case of EIA eligibility and relations with the AA screening and regarding the SEA-AA eligibility;
- An exchange of experiences between the Emilia-Romagna region and the Puglia region took place on 15 April 2021, during which the main critical issues that emerged especially in the case of subjection to EIA and AA (Screening and Appropriate Assessment) reports were discussed;
- On 13 July 2021, an exchange of experiences was held with the Lombardy region and the Piemonte region, the issues concerning the main critical issues encountered at the regional level regarding the integration of procedures and in particular the SEA procedures integrated with the verifications of EIA eligibility and the adopted practices were shared, again with regard to the integration of the EIA-AA and SEA-AA procedures, by both regions.
- On 10 September 2021, a survey was launched involving the EIA and SEA sectors of the Regions and the Autonomous Provinces through the transmission of two questionnaires: SEA-AA, EIA-AA;

Questionnaire submitted to the Regions regarding the integrated SEA-AA procedures

- 1. What are the main procedural issues encountered in the integrated SEA-AA procedures?**
- 2. What are the main technical issues encountered in the integrated SEA-AA procedures?**
- 3. If and with what criteria/methodologies it was possible to overcome them, also in relation to the innovations introduced by the National Guidelines for AA?**
- 4. Have specific regulations and/or resolutions and/or specific guidelines been adopted on the subject of SEA-AA integration?**
- 5. Have The National Guidelines for AA been officially implemented?**
- 6. Are there case studies and good practices of SEA-AA integration to be shared in the steering document?**
- 7. DO the proceeding Authorities and the competent Authorities, both in the field SEA and in the field of AA use the document "SEA – Strategic Environmental Assessment. Proposal for the integration of contents" (MATTM, MIBAC, ISPRA, Regions, Autonomous Provinces, 2011) [Guidelines MATTM SEA-AA]?**
- 8. If so, indicate how the National Guidelines from MATTM for SEA-AA resulted as useful**

Questionnaire submitted to the Regions regarding the integrated EIA-AA procedures

- 1. What are the main procedural issues encountered in the context of the integrated EIA-AA procedures?**
- 2. What are the main technical criticalities encountered in the context of the integrated EIA-AA procedures?**
- 3. If and with which criteria/methodologies was it possible to overcome them, also in relation to the innovations introduced by the National Guidelines for AA?**
- 4. Have specific regulations and/or resolutions and/or guidelines been adopted on the subject of EIA-AA integration?**
- 5. Have the National Guidelines for AA been officially implemented?**
- 6. Are there any case studies on good practices for EIA-AA integration to be shared in the guidance document?**

The questionnaires were designed to obtain information on procedural criticalities, technical criticalities and any criteria/methodologies adopted to overcome them, and whether, if any, specific regulations and/or decisions and/or guidelines on SEA-AA integration have been adopted; information on the official transposition of the national AA Guidelines and cases of good integration practices in SEA-AA. and EIA-AA and only for the EIA was a survey carried out regarding the use of the Guidelines MATTM EIA AA of 2011.

- On 27 October 2021 technical meeting of the Abruzzo region, Friuli-Venezia Giulia region, ALMNP (Abruzzo Lazio and Molise National Park), MNP (Maiella National Park) regarding the critical issues encountered at the regional level, both in Abruzzo and in Friuli-Venezia Giulia, regarding the integration of the procedures and in particular on the SEA eligibility verification procedures integrated with the AA screening and in particular on the timing of the various procedural phases and sharing of the practices adopted
- On 13 December 2021 during the workshop with the Regions and Autonomous Provinces of Italy, held by videoconference, the structure of the document was shared and specific topics related to critical issues and related solutions were explored
- 23 February 2022 technical meeting with the Campania and Veneto Regions, based on the comparison of experiences on procedural integration, skills and knowledge in order to promote the integration and coordination of the various subjects involved in the environmental assessment procedures AA, SEA and EIA. The comparison and debate focused above all on the state of the art, on the critical issues and strengths of procedural integration. The structure of the document was shared and specific issues related to critical issues and related solutions were explored.
- 23 March 2022 during the workshop held in videoconference with the Sicilia Region and the STC (Scientific Technical Committee) of the Sicilia Region, the objectives and aims of the activity on the integration of the EIA-SEA-AA environmental assessment procedures were discussed. Experiences regarding the EIA-AA Integration in the Sicilia Region were shared and the regional transposition of the National Guidelines for AA was illustrated; the structure of the shared document was therefore distributed and specific topics related to critical issues and related solutions were explored.
- 18 May 2022 During the exchange of experiences with the Abruzzo, Marche and Piemonte Regions, the structure of the document was shared, the specific issues related to the critical issues and the related

solutions were explored and the objectives and goals of the integration activity were discussed of the environmental assessment procedures EIA-AA and SEA-AA.

- 20 October 2022 During the workshop held by videoconference with the Regions, the Autonomous Provinces and the National Parks, the progress of the documents was discussed and shared. The Puglia, Liguria and Lazio regions illustrated their experiences regarding the EIA-AA and SEA-AA Integration; the theme on the critical issues of the different methodological approaches between the SEA and the AA was then examined in depth and finally on the possibility of using territorial analysis methods such as Sensitivity Maps.

2. RELATION BETWEEN PLANS/PROGRAMMES AND THE NATURA 2000 NETWORK: SEA AND AA INTEGRATION

2.1 Recognition of European legislation and guidelines

The Appropriate Assessment (hereinafter "AA") finds its main regulatory foundation in the Euro-unit context.

In particular, the institute is governed by Directive 92/43/EEC (hereafter Habitat Directive), which through article 6 defines the general framework for the conservation and management of the sites that make up the network Nature 2000.

Within this framework, the AA has a decisive role, which represents the necessary tool to reconcile the needs of local development and the need to guarantee the achievement of the conservation objectives of the Natura 2000 network. In fact, pursuant to par. 3, of the aforementioned art. 6: *"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. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4 , the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and , if appropriate, after having obtained the opinion of the general public"*.

It is therefore an environmental assessment, the objective of which is clearly defined in the context of guaranteeing the conservation of the sites that make up the Natura 2000 network.

For the purposes of this document, it is necessary to ask oneself about the hypotheses in which this assessment concerns plans or programs which are contextually subject to a further type of environmental assessment: the SEA (Strategic Environmental Assessment).

The SEA is governed at Euro-unit level by Directive 2001/42/EC (hereafter the " SEA Directive"), and is an institution aimed at subjecting plans and programs that may have significant impacts on the environment to environmental assessment.

Among these, pursuant to art. 3.2, lett. b): *"an environmental assessment shall be carried out for all plans and programmes, [...] which, in view of the likely effect on sites, have been determined to require an assessment pursuant to Article 6 or 7 of Directive 92/43/EEC."*

Therefore, it is the Directive itself that imposes an environmental assessment in all cases where plans and programs may have effects on Natura 2000 sites.

In terms similar to the provisions on the subject of the EIA, then, in art. 11.2 it is specified that: *"For plans and programmes for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and other Community legislation, Member States may provide for coordinated or joint procedures fulfilling the requirements of the relevant Community legislation in order, inter alia, to avoid duplication of assessment"*.

As specified in the SEA Directive, and as can be desumed from other Commission documents on environmental assessments, the two assessments can be the subject of a "common" procedure or a "coordinated" procedure. The difference between the two hypotheses lies in the fact that in the "common" procedure there is a single environmental assessment, which therefore includes both the SEA and the AA, and consequently there is a single "Environmental assessment report" presented by the proposer including all necessary information and conclusions and addresses the specific characteristics of each environmental assessment to be carried out in relation to the project.

In the "coordinated" procedure, on the other hand, there are two different assessments, however coordinated by a competent authority, in this case also the "environmental assessment report" differs for the two assessments, even if it can then represent a single document, or in any case there may be coordination between its contents.

In this sense, we note the successful adoption of the Communication of the European Commission on the "Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC" C (2021), 6913.

In this context, the Commission reiterates that: "*The appropriate assessment [Editor's note: AA] applies both to projects and plans. It can be coordinated with, or integrated into, other environmental assessments, such as the Environmental Impact Assessment (EIA) for projects, the Strategic Environmental Assessment (SEA) for plans and programmes.*"

In the same Communication, then, the European Commission seems to assume that the preferable type of procedure is, also with reference to the SEA, the "common" or "integrated" one, stating in fact that "*the plan or project developer usually submits an appropriate assessment report to the competent authority for scrutiny*" (point 3.2).

Therefore, the Commission considers a hypothesis in which the competent authority is the one responsible for SEA, and the environmental report also contains the elements necessary for the AA.

The Commission, however, does not exclude a different hypothesis, rather clarifying that: "*An appropriate assessment [Editor's note AA] can be reported within the EIA or SEA report or in a separate report. In both cases, the relevant information and conclusions of the appropriate assessment must be distinguishable and differentiated from those of the EIA or SEA. This is necessary given that there are several important distinctions between EIA/SEA and appropriate assessment procedures. [Editor's note AA]*"

2.2 Recognition of national legislation and guidelines

Legislative Decree No 152 of 3 April 2006 Environmental Regulations (Italian Official Journal No 88 of 14 April 2006)

Coordination of SEA procedures and impact assessment in the internal legal system

As part of the internal regulation, as known, the AA regulation was implemented through the D.P.R. 357/1997.

Unlike what is foreseen with reference to the EIA, no coordination provisions are found here with the SEA discipline, which in fact was introduced into the law much later than the AA discipline.

Also with reference to the SEA, on the other hand, the coordination provision is art. 10, Legislative Decree 152/2006, entitled "*Coordination of SEA procedures, EIA, Verification of eligibility to EIA, Appropriate assessment and Integrated environmental authorization*", which provides for:

«*The SEA and the EIA include the impact assessment procedures referred to in article 5 of decree no. 357 of 1997; to this end, **the environmental report, the preliminary environmental study or the environmental***

impact study contain the elements referred to in annex G of the same decree n. 357 of 1997 and the assessment by the competent authority extends to the conservation purposes of the impact assessment or will have to acknowledge the outcomes of the impact assessment. The methods of informing the public give specific evidence of the procedural integration".

At the level of domestic law, therefore, the integration of the AA into the SEA loses its optional nature and becomes mandatory.

The choice of the legislator, also in this case, concerns the most SEA hypothesis, namely that of the "common" procedure, which therefore implies a single assessment and a single "environmental assessment report".

In fact, although the art. 10 is classified with the term "coordination", paragraph 3 regulates the ways in which the AA must be "integrated" into the SEA procedures, as clearly explained in the formulation of the provision which provides that the latter "include", therefore including in the respective procedures that of AA.

The "prevailing" procedure, in this case, is represented by the SEA, and is therefore conducted by the authority responsible for issuing this title, and structured on the basis of the corresponding procedural discipline. However, the AA is "included", or integrated, in the context of this procedure.

On the other hand, the hypothesis of verifying the eligibility to the SEA does not appear, both nominally: reference is made only to the SEA, and in terms of documents: reference is made only to the environmental report, as the preliminary environmental report is not mentioned.

However, an extensive interpretation of the provision of Article 10 paragraph 3 is highly desirable in order to guarantee the useful effect of the Directive and maximize environmental protection by implicitly considering the verification of eligibility also included in the SEA.

Therefore, it is considered necessary to integrate the AA also in the verification of eligibility to SEA.

Presidential Decree 357/97, as modified and integrated by the Presidential Decree. 120/2003 - Article 5 "Appropriate Assessment"

Paragraph 7.

The appropriate assessment of plans or interventions involving proposed sites of Community importance, sites of Community importance and special conservation areas falling, wholly or partially, in a national protected natural area, as defined by law 6 December 1991, n. 394, is carried out after consultation with the management body of the area itself.

Paragraph 8.

The Habitats Directive does not contain an explicit obligation to seek the view of PUBLIC OPINION when authorizing plans or projects subject to an appropriate assessment. According to the provisions of article 6, paragraph 3 (DIR 92/43/EEC), it is only necessary to do so "if necessary" even if, as indicated in par. "4.2. Public consultation and participation" Communication of the European Commission 2016/C 273/01 it is advisable to involve the public from the beginning of the procedure, so as to guarantee a better quality of participation.

Consultation of the public is an essential element of the SEA Directive (DIR 2001/42/EC) (art. 6), consequently, in cases where the evaluation envisaged by article 6, paragraph 3, is coordinated with the evaluation pursuant to of this directive, public consultation is necessary in line with the provisions of the same.

par. 1.10 The Appropriate Assessment integrated in the EIA and SEA procedures

The assessment of the effects on habitats and species of Community interest protected by the Habitats and Birds Directives is one of the key elements of the Environmental Assessment procedures (SEA and EIA) governed by Part Two of Legislative Decree 152/2006. For this reason, the definition of *appropriate assessment* was inserted by Legislative Decree 104/2017 in art. 5, paragraph 1, lett. b-ter), of Legislative Decree 152/2006, as: "procedure of a preventive nature to which it is necessary to submit any plan or project that may have significant effects on a site or a geographical area proposed as a site of the Natura 2000 Network, individually or in conjunction with other plans and projects and taking into account the conservation objectives of the site itself". Legislative Decree 104/2017, also amending and integrating art. 5 paragraph 1, letter c), of Legislative Decree 152/2006, also specified that *by environmental impacts we mean the significant* direct and indirect effects of a plan, program or project on various factors. These include "**biodiversity**, with particular attention to species and habitats protected under the 92/43/EEC «Habitat» Directive and the 2009/147/EC «Uccelli» Directive.

par. 2.8 Screening in EIA and SEA procedures

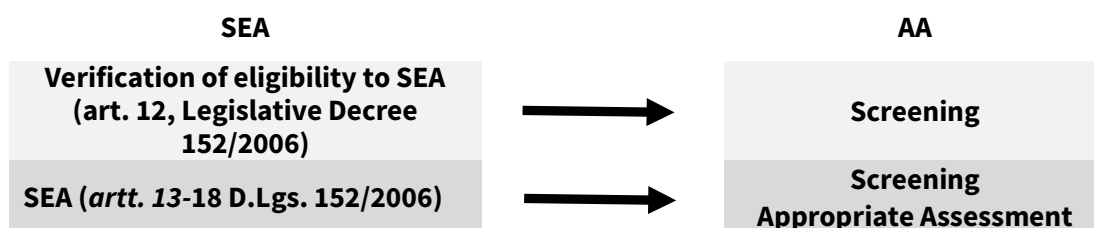
This paragraph highlights, among other things, that the outcome of the AA procedure is binding; in fact, "screening (Level I) in the SEA procedures includes the obligation to submit a specific plan to SEA if, for this plan/programme, the conditions exist for it to have to be subjected to an appropriate assessment (Level II) - pursuant to the Habitats Directive".

Therefore, the verification of the existence of possible impacts on the sites of the Natura 2000 network (negative outcome of the screening) carried out during the verification of the eligibility to SEA, determines the subsequent subjection of the same to an Appropriate Assessment and SEA".

**ELEMENTS TO PAY
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Relationships between the two procedures for Verification of eligibility for SEA and AA screening

The results of the AA screening influence and condition the SEA screening; in fact, if the AA screening is negative, it is not possible to exclude the P/P from the SEA and it is necessary to proceed with an appropriate assessment. If the proposer is unable to exclude negative effects, even if only potential, he can autonomously decide to directly carry out an appropriate assessment in the SEA procedures.



Screening results AA: BINDING

Chap. 2.8 National Guidelines (screening): if based on the elements provided it is not possible to exclude negative effects on the Natura 2000 Site, Level II (Appropriate Assessment) is started with the preparation of the Study for AA, integrated with the Strategic Assessment (SEA)

The concrete applicability of the AA discipline to plans subject to SEA

The practical application of the AA discipline in coordination with the SEA discipline leads in some cases to perplexities related to the rigorous formalism that characterizes it.

In particular, by virtue of the prevailing application practice today, all plans, of any type, are subject to AA.

This application hypothesis derives from the formulation of the Italian provision in this regard, namely the art. 5, paragraphs 1 and 2, Presidential Decree 357/1997 which state:

"In territorial planning and programming, the naturalistic environmental value of the proposed sites of Community importance, of the sites of Community importance and of the special conservation areas must be taken into account."

2. The proposers of territorial, urban and sectoral plans, including agricultural and wildlife-hunting plans and their variants, prepare, according to the contents set out in Annex G, a study to identify and evaluate the effects that the plan can have on the site [...]."

The wording seems aimed at including all types of plans, considering both plans with a territorial and urban value (now obsolete terminology), and sector plans.

It follows, therefore, that all these plans are also subject to SEA, in consideration of the circumstance that SEA must be carried out for all plans and programmes: *"for which, in consideration of the possible impacts on the conservation purposes of the sites designated as of special protection for the conservation of wild birds and those classified as sites of Community importance for the protection of natural habitats and of wild flora and fauna, an impact assessment is deemed necessary pursuant to article 5 of the decree of the President of the Republic 8 September 1997, n. 357" (art. 6, paragraph 2, letter b, Legislative Decree 152/2006).*

In some cases, this leads to a concrete difficulty in carrying out the AA, with particular reference to plans (such as, for example, recently, the National Waste Management Plan) which do not present any location reference or specific territorial considerations, leaving each choice to the next level of planning, where appropriate evaluation would appear to be most effective.

This has led numerous administrations to question the possibility of identifying different application methods of the AA discipline with reference to plans that do not seem to have any impact on the sites.

On this point, without prejudice to the legitimacy of the formalistic interpretation prevailing today, which is supported by the literal tenor of art. 5, paragraphs 1 and 2 of the Presidential Decree 357/1997, it is possible to hypothesize an alternative hermeneutical hypothesis, which leverages more on the text of the AA Directive.

In fact, pursuant to Directive 92/43/EC, the AA is required for: *«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"».*

Therefore, the formulation of the Directive seems to presuppose a prior assessment of the possibility that that plan could have significant effects on the site.

On these bases it would seem conceivable an application method of the AA which takes the form of a preventive verification "case by case" on the effective possibility that the plan has negative effects on the site, thus following a more streamlined procedural process, which should end with a strictly motivated about the subsequent, and possible, evaluation steps.

It is a mere interpretative hypothesis - as far as is known - never submitted to the scrutiny of the administrative judge, who could well however dispute its validity, confirming on the contrary the formalistic practice predominant up to now.

In order for this simplification solution to be implemented, an intervention by the legislator certainly seems preferable, which can *de iure condendo* introduce a regulatory formulation more in line with that of the AA Directive.

2.3 Recognition of the legislation, of the guidelines of the Regions and Autonomous Provinces

The table below shows a summary of the Regional Council resolution and Regional law concerning the regional implementations of the "National Guidelines for AA (Directive 92/43/EEC "Habitat" art. 6, Paragraphs 3 and 4) published on December 28, 2019.

From the reconnaissance of the regional regulations, it emerged that almost all the regions/autonomous provinces have implemented the National Guidelines for AA.

| Region - Autonomous Provinces | Provisions of the Regions and Autonomous Provinces on the procedural integration SEA-EinA, regional implementations LLGG Naz. EinA of 28 December 2019 |
|---|--|
| Abruzzo | Regional Council resolution no. 860 of 22 December 2021 of the Abruzzo Region - Understanding State-Regions-Autonomous Provinces 28 November 2019. Presidential Decree n. 357/97. L.R. no. 7/2020. Adoption of the "Regional Guidelines for the Appropriate Assessment", as implementation of the national Guidelines and simultaneous revocation of the Guidelines for the Appropriate Assessment Report referred to in ANNEX C of the document "Criteria and guidelines on environmental procedures" approved with Regional Council resolution no. 119/2002 – BURA n° 73 Special of 06.14.2002 and subsequent amendments and integrations in the Coordinated Text. |
| Basilicata | Regional Council resolution no. 473 of 11/06/2021 |
| Bolzano (Autonomous Province of) | Provincial Council of the Autonomous Province of Bolzano - Alto Adige resolution no. 1153 of 28 December 2021 - Adaptation to the National Guidelines in the documentation for the Appropriate Assessment in Natura 2000 sites |
| Calabria | Regional Council resolution no. 65 of the session of 28 February 2022, acknowledgment of the understanding of 28.11.2019 (GURI n.303/2019), article 8, paragraph 6, of the law of 5 June 2003, n. 131, between the Government, the Regions and the Autonomous Provinces of Trento and Bolzano on the National Guidelines for AA - Directive 92/43/EEC "HABITAT". |
| Campania | Regional Council resolution no. 280 of 06/30/2021: Implementation of the "National guidelines for the AA - Directive 92/43/EEC "HABITAT" Art. 6, paragraphs 3 and 4. Update of the "Guidelines for carrying out the Appropriate assessment in the Campania Region". Regional Council resolution no. 207 of 28/04/2020 repeal of Reg.to Reg. 1/2010 |
| Friuli Venezia Giulia | Regional Council resolution 1183 of 5 August 2022 "Application guidelines on the Appropriate assessment following the transposition of the "National guidelines for AA - Directive 92/43/EEC Habitats article 6, paragraphs 3 and 4" |
| Lazio | Regional Council resolution no. 938 of 27 October 2022. Implementation of the National Guidelines AA and provisions of an interpretative, dispositive and technical-operational procedural nature aimed at making the implementation of art. 6, par. 3 and 4 of the "Habitats" Directive 92/43/EEC and of the art. 5 of Presidential Decree no. 357/97 and subsequent amendments. |
| Liguria | Regional Council resolution no. 211 of 03/19/2021 Regional law n. 28/2009. Transposition of the National Guidelines for AA and modification of the Regional Council resolution no. 30/2013. Approval of the new model of the proposing form for screening. |

| | |
|----------------------|--|
| Lombardia | <p>Regional Council resolution No. XI/4488 03/29/2021</p> <p>Harmonization and simplification of the procedures relating to the application of AA for the transposition of national guidelines covered by the agreement sanctioned on 28 November 2019 between the government, the regions and the autonomous provinces of Trento and Bolzano.</p> <p>Annex B to the Regional Council resolution 4488/2021: precedent- Appropriate Assessment of impact for certain types of interventions, plans or activities</p> <p>Annex C to the Regional Council resolution 448/2021: Methods for verifying correspondence to the regional precedent-assessment</p> <p>Annex D to the Regional Council resolution . 4488/2021: Mandatory conditions; and update of Regional Council resolution XI/5523 OF 11/16/2021 "Harmonization and simplification of the procedures relating to the application of the Appropriate Assessment for the transposition of the National Guidelines object of the agreement sanctioned on 28 November 2019 between the government, the regions and the autonomous provinces of Trento and Bolzano", published in BURL n. 14 of 7/4/2021.</p> |
| Marche | <p>Resolution of the regional council N 1661 of 12/30/2020: State-Regions-Autonomous Provinces Agreement 28 November 2019. Presidential Decree n. 357/97. L.R. n.6/2207. Adoption of the regional guidelines for the Appropriate Assessment as transposition of the national guidelines</p> |
| Molise | <p>Resolution of the Regional Council Session of 09/13/2021 n. 304: Transposition of the National Guidelines for AA – Directive No. 92/43/EEC “Habitats” Art. 6, par. 3 and 4, Directive Approval.</p> |
| Puglia | <p>Regional Council resolution no. 1515 of 27 September 2021, "Guidance and coordination act for carrying out the impact assessment procedure - Implementation of National Guidelines on AA - Amendments and additions to Regional Decree 304/2006</p> |
| Sardegna | <p>Resolution no. 30/54 of 09.30.2022, the Regional Council of the Sardegna Region approved the new Regional Directives for the Appropriate Assessment (AA) and the related annexes, in transposition of the National Guidelines for AA - Directive 92/43/EEC "Habitats" article 6, paragraphs 3 and 4, adopted on 28.11.2019 with Agreement, pursuant to article 8, paragraph 6, of Law 5 June 2003, n. 131, between the Government, the Regions and the autonomous Provinces of Trento and Bolzano (GU General Series no. 303 of 28.12.2019).</p> |
| Sicilia | <p>Council decree no 036/GAB of 14/02/2022</p> |
| Toscana | <p>Regional Council resolution no. 13 of 10 January 2022 of the Tuscany Region "Guidance and coordination act for the harmonization and simplification of procedures relating to the Appropriate assessment in transposition of the National Guidelines".</p> |
| Umbria | <p>Regional Council resolution 360/21 Implementation of National Guidelines for AA</p> |
| Valle d’Aosta | <p>Regional Council resolution 30 December 2021, n. 1718. : "Approval, pursuant to article 7 of the regional law 8/2007, of the transposition of the National Guidelines for the Appropriate Assessment. Revocation of the Resolution of the Regional Council n. 970 on May 11, 2012.</p> |

3 CRITICAL ISSUES RELATING TO THE SEA-AA INTEGRATION AND POSSIBLE SOLUTIONS

3.1 Procedural problems and possible solutions

Coordination problems for the acquisition of the AA heard/opinion when the P/P involve a high number of Natura 2000 network sites:

The "recovery" of the hearing/opinion of all the managing bodies involved could require longer times than those normally required of the subjects involved.

A good procedural practice is to foresee the convergence of the opinions given by the management bodies, as well as the possibility of a regional coordination as, for example, reported by the Regional Council resolution 1661/2020 of the new AA Marche Region Guidelines which in paragraph 5.4 Coordination for impact assessments involving multiple Natura 2000 sites, sites managed by multiple entities and adjacent sites mentions: *"In the case of plans or interventions of regional, interprovincial or provincial importance, which affect multiple sites and which, therefore, require the expression of the Appropriate Screening or Assessment opinion by multiple management bodies, this is rendered by each for the part of its competence and then merged into a single text, transmitted by one of the management bodies delegated to it by the remaining managing bodies. In the implementation phase of the consolidated text, the competent regional office can contribute with a coordination action."*

Critical issues related to the procedural cases that provide for the coexistence of the proposed entity with the entity responsible for AA.

In the subparagraph *"Conflict of interest"* by the EC in par. 5.2.1. *"Opportunities and benefits of the rationalization of the SEA and of the Appropriate assessment"* of the Communication of the European Commission *"Assessment of plans and projects in relation to Natura 2000 sites - Methodological guide to article 6, paragraphs 3 and 4, of the Habitats Directive 92/43 /EEC"* [C(2021) 6913 final], it is reported that ... *If the competent authority coincides with the client, the Member States shall at least take steps to separate in an appropriate manner the conflicting functions in relation to the performance of the tasks deriving from this Directive, within their own organization of administrative powers.*

Therefore, it is proposed to overcome this criticality by setting up a specialist office for the AA independent of the one assigned to the ordinary technical functions, as well as, for example, reported in paragraph 1.1 "Regional Authority" of the new Campania Regional Guidelines for AA (Regional Council resolution no. 280 of 30/06/2021);

or it can be foreseen that if the Projects, Interventions, Activities are proposed by the managing body of the Natura 2000 Site itself, the Appropriate Assessment or the Screening are expressed by the Province or Metropolitan City and in the event that the managing body coincides with the Province or Metropolitan City from the Region ex *D.G.R. no. XI/5523 of 2021 Lombardy Region* "Harmonization and simplification of procedures relating to the application of the AA for the transposition of National Guidelines".

1. Presidential Decree 357/1997, art.5, paragraph 7 After consultation with the managing body of the national protected natural area

*"The AA procedure for plans or interventions involving proposed sites of community importance, sites of community importance and special conservation areas falling, **wholly or partially, in a national protected natural area**, as defined by the law of 6 December 1991, n. 394, **is carried out after consultation with the management body of the area itself**".*

Scope of application: national protected natural areas pursuant to art. 8 Law 394/1991 (national parks, state nature reserves, marine protected areas)

Depending on the regional laws, it may also be foreseen for regional parks (see national LLGG AA, page 75 *"It remains within the discretion of the Region and the Autonomous Provinces, the right to insert the "heard" also for the protected areas of regional competence, identified in pursuant to Title III of Law 394/91, if the same is not identified as the managing body of Natura 2000 sites"*

Obtaining the "Heard" is a binding Provision for SEA and Verification of eligibility to SEA.

On the basis of the Sardegna Regional Administrative Court sentence II no. 278 of 27 March 2019 is equivalent to an "opinion" or "technical evaluation" and configures the application of art. 17, Law 241/1990:

- *As provided for by art. 17 of the law of 7 August 1990 n. 241, moreover, where in the procedure technical assessments must be acquired from entities or bodies other than the proceeding one, these must give their opinion within at least 90 days of the request (paragraph 1) and cannot disregard the acquisition of these assessments where they must come from by administrations "responsible for environmental, landscape-territorial protection and citizen health" (2nd paragraph)"*
- *"The opinion of the Park Authority provided for by art. 5, paragraph 7, of Presidential Decree no. 357/1997 is unequivocally a mandatory opinion because it is imposed by law and attributable to the institutional functions of the Body. It therefore had to be certainly acquired during the proceedings, in order to complete the fulfillment of the advisory function underlying this provision".*

2. "Heard" from the managing body of the Natura 2000 site

In the National Guidelines for AA, p. 50 "Expression of the reasoned opinion by the Authorities delegated to the AA" is reported:

*The Screening and Appropriate Assessment procedures must be concluded with the expression of a reasoned opinion by the Competent Authority for AA. Before the expression of this opinion, the AA Authority acquires the **"heard" of the managing body of the Natura 2000 site**, if not coinciding with the same or of the managing bodies of the Natura 2000 sites in the case of several sites involved. What is expressed by the managing bodies must be taken into consideration in the drafting of the final opinion.*

Except as otherwise regulated at the regional level or in any case established as a practice, the opinion of the management body of the Natura 2000 site is not a mandatory fulfillment by law, unlike the opinion of the Park Authority.

3.2 **Technical criticalities and possible solutions**

Qualitative lack of the documents supplied for the AA

As regards the technical criticality concerning the **qualitative lack of the documents**, in paragraph 3.3 "Determinations on the level of appropriate assessment" of the National Guidelines for AA it is highlighted that: ... the **professionals** in charge of drawing up the Study for AA must have effective skills for analyzing the degree of conservation of habitats and species, the conservation objectives of the Natura 2000 network sites, as well as for the evaluation of the Interferences generated by the P/P/P/I/A on the Natura 2000 site or sites concerned. Evidence must therefore be given in the regional guidelines and the PA that *"the Study for AA must be drawn up according to the methodological criteria and contents described in these guidelines and must preferably be prepared by an interdisciplinary group and necessarily signed by a professional with specific experience, documented in the naturalistic and environmental fields, as well as, if different, by the planner of the plan/programme/intervention/activity"*.

Skills of the professional figures responsible for drafting the Study for AA.

The Studies for AA must be drawn up by professionals with proven expertise in the naturalistic/environmental and nature conservation fields, in the floristic-vegetational and faunal sectors, taking into account the habitats and species for which the Natura 2000 site/sites are /I have been identified.

Requirements and fulfilments required by the Regions and autonomous Provinces of the drafters of the Studies for AA. *The Competent Authority for Appropriate Assessment may in any case reserve the right to request the presentation of a specific curriculum vitae proving the possession of the necessary specific professional skills.*

Inhomogeneity of the data both with respect to the regional cartography of reference

In the documentation submission phase, there is often incomplete information relating to the technical aspects of AA such as the cartographic and digital definition of the reference ecological network.

It is possible to overcome this criticality by making explicit the obligation to submit, attached to the technical documentation, all the georeferenced documentation (shapefile) of the interferences of the P/P/P/I/A with the sites of the Natura 2000 network, with particular reference to the Habitats present, and with the regional ecological network; therefore, it is suggested to implement specific training programs on the use of georeferenced cartography.

This lack of technical quality of the study for AA is often found in a little effective phase of investigation of the territory (large area) to be examined; The technical criticalities often derive from the different approach in the two SEA and AA assessments and from the fact that the SEA is applied to Plans and Programs with strategic choices that often do not have a defined location.

In paragraph 1.9 "General provisions for the Appropriate Assessment procedure" of the National Guidelines for AA with a SEA area of potential impact, the maximum spatial and temporal limits of influence of the plan, programme, project, intervention or activity (P/P) are meant, that is, the entire area in which the proposal can generate all its possible effects.

In the screening phase, the SEA area is identified by the competent Authority for the AA, on the basis of the information elements provided by the proponent and its own technical discretion, while in the appropriate assessment phase, the identification of the SEA area of analysis is carried out by the proponent and must be verified and approved by the AA Authority during the evaluation.

However, as reported in paragraph 1.10 National Guidelines for AA *The Appropriate Assessment integrated in the EIA and SEA procedures, the screenings or AA studies integrated in the EIA and SEA procedures must contain information relating to the location and characteristics of the plan /project and the estimate of the potential interferences of the plan/project in relation to the characteristics of the habitats and species*

protected in the Natura 2000 sites, and it is a fundamental condition that the analyzes carried out take into consideration:

- -The conservation objectives of the Natura 2000 sites affected by the plan/project;
- -The state of conservation of the species and habitats of Community interest present in the Natura 2000 sites concerned
- -The Conservation Measures of the Natura 2000 sites involved and the consistency of the plan/project actions with them;
- -All potential direct and indirect interference generated by the plan/project on Natura 2000 sites, both during construction and implementation.

A better oriented approach of territorial survey and SEA area can be carried out through an **appropriate assessment** as suggested by the European Commission in the Communication "Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on Article 6(3) and (4) of the Habitats Directive 92/43/EEC" [C(2021) 6913 final]).

This approach can be used to prevent conflicts with Natura 2000 sites and with EU protected species and habitats. In fact, it consists in considering the environmental consequences of new developments early, at the level of strategic planning, through a regional or national development plan for sectoral activities (for example in the energy, transport, mining, aquaculture sectors) or through land use plans or other land use plans.

As reported in the Communication, *Sensitivity maps can be used at an early stage in the planning process to identify zones containing ecological communities sensitive to a specific influence or activity. They can inform strategic planning decisions during the initial site selection phase of the development process and can operate on a regional, national or transnational scale*

"In the context of applying Article 6(3) and 6(4) of the Habitats Directive, strategic planning makes it much easier to consider, on a larger scale and in a comprehensive way, the possible implications of planned activities on Natura 2000 sites. In this way, site sensitivities are taken into account at an early stage, when more options are available to meet development objectives and at the same time reduce their potential environmental impacts. This will help to identify sites that are suitable or not for specific activities and minimize the risk of potential conflicts with Natura 2000 sites at the individual project level."

Depending on the level of detail of the plan the scope and extent of the *Appropriate Assessment* may be established ... but in any case, the assessment must aim at identifying sensitive or vulnerable areas or other potential risks – or conflicts with Natura 2000 sites so that these can be taken into account in the subsequent stages of the planning process.

For plans/programmes on a regional or national scale, in the context of which the location and design of all their main components are not yet decided, it may only be possible to identify the potential effects of certain actions or components of the plan at a general level, without specifying them at the site level.

*However, broader plans can steer further developments towards areas where there is a lower risk of potential conflicts with Natura 2000 sites through the use of Wild Fauna and Flora **Sensitivity Maps**.*

Recalling that the underlying objective is always to avoid or eliminate any risk of an adverse effect on the integrity of Natura 2000 sites or to eliminate any reasonable cause for concern that such an adverse effect may occur when the plan is implemented.

Therefore, an Appropriate Assessment of the effects of the plans in accordance with Article 6(3) and the assessment carried out in accordance with the applicable EIA procedures, which may identify activities or elements of the plan which it is certain will damage the integrity of the Natura 2000 sites even if mitigation measures are taken. The valuation of such assets or items may therefore be excluded from the plan at this point. The assessment could also provide an overview of what other activities may be harmful to protected habitats and species and consequently better focus the assessment at project level.

It is therefore recommended to coordinate the SEA with an appropriate assessment.

The **Sensitivity Maps** method can be developed within the SEA, as a particular analysis with respect to the Natura 2000 Network, and consists in the identification of suitable locations or the exclusion of unsuitable locations, thus falling within the context of the appropriate assessment of the plans. The identification must be based on an adequate analysis of how vulnerable EU protected species and habitat types in the whole area of the proposed development are to the planned activities.

Sensitivity mapping is a method that is often used to identify areas that may be particularly sensitive to the development of sectoral activities. This is often used, for example, to identify sensitive areas for birds and bats that may be unsuitable for wind energy developments or to identify potential conflict zones for industrial activities or housing developments.

Sensitivity mapping approaches would not replace the need for an appropriate site-specific assessment under Article 6 of the Habitats Directive, but can be used during appropriate assessments and following the release of development consent to inform the choice of site as well as possible prescriptions/indications regarding management.

In all cases, as provided for in point 2.8 *"The screening procedure in EIA and SEA procedures, of the AA 2019 Guidelines, is envisaged: ... In the event that the planning level subject to the SEA does not identify the location of the planned projects, it is necessary to prescribe the evaluation of the impact of the individual interventions which will however have to be verified also in consideration of the cumulative effect generated by the same.*

Below is a multi-step approach of **sensitivity mapping** extracted from the European Commission document Brussels, 28.9.2021 C(2021) 6913 final.

Multi-step approach to sensitivity mapping

1) Identify the types of developments (projects, activities, infrastructures, etc.) to be included and the species and habitats likely to be affected. To do so consider:

- species/habitats likely to coincide with development (at any stage of their life cycle) and consider all life history phases (breeding, migration, etc.);
- different phases of development (e.g. construction, operational phases), as well as associated infrastructure;
- which species/habitats are sensitive to development;
- which species/habitats are of conservation concern (eg those listed within the Birds and Habitats Directives);
- how species can be affected: e.g. habitat loss and degradation, collision with infrastructure, avoidance, displacement and barrier effects.

2) Compile distributional datasets on sensitive species, habitats and other relevant factors.

- review what data is already available and decide whether additional data should be collected;
- if datasets are spatially incomplete, consider using modeling based on habitat and landscape predictors to forecast distribution in under-sampled localities;
- it is also important to highlight data deficiencies and other methodological shortcomings.

3) Develop a sensitivity scoring system.

- Assign sensitivity scores to species and habitats based on relevant characteristics (habitat fragility, conservation status, species behavior, etc.).

4) Generate the map.

- Identify what is the most appropriate mapping format, GIS software, mapping unit, etc.;
- generate a grid based on appropriate mapping unit and overlay the species distributions (or models) and potentially other useful datasets, including relevant buffer zones;

- identify the species present within each grid cell;
- for each grid square, calculate a score using the species sensitivity scoring systems.

5) Interpret the map

- Group sensitivity scores into categories indicative of their level of sensitivity (e.g. very high, high, medium, low) or that indicate a particular prescription (e.g. no-go vs low risk areas);
- develop guidance material that explains what data are used, how the map is generated, how it should be interpreted and what caveats exist regarding interpretation.

Tab.1: Multi-step approach to sensitivity mapping (see box 22 in the Assessment of plans and projects in relation to Natura 2000 sites - Methodological guide to Article 6(3) and 6(4) of the Directive Habitat 92/43/EEC Brussels, 28.9.2021 C(2021).)

National examples of sensitivity mapping are presented below.

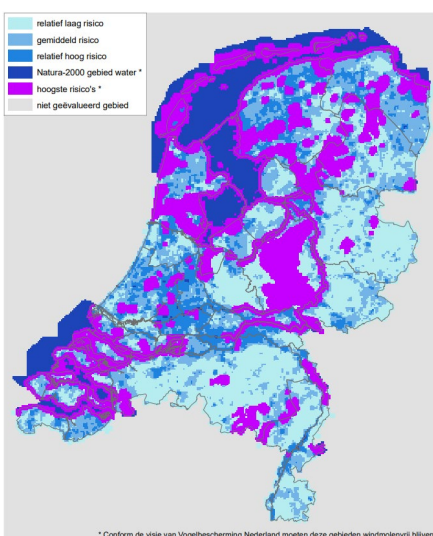
The Netherlands national map of wind farm sensitivity

The National Wind Turbine Risk Map for the Netherlands is a spatial mapping tool for **early screening of onshore wind farm developments**. The tool focuses on terrestrial bird populations and includes sites of bird importance such as critical migration areas, high nature value farmland and important roost sites. The tool measures the risk to bird species in terms of their conservation importance. It does not integrate any assessment of the susceptibility of species to collision.

The data was collected from a variety of sources, including the National Breeding Bird Census, waterfowl count, colony bird count, bird flight model data (BAMBAS, biomass of flying birds), Natura 2000 sites and specific inventories of rare birds. Migration-critical areas have also been integrated. Risk maps have been generated for single sensitive bird species or groups of species as individual strata, eg waterfowl, grassland nesting birds, swans and geese, foraging grounds of Natura 2000 species and Red List species. The individual layers were used to compile the final risk map.

For each “layer” of the map, grid cells in the Netherlands were classified as low, moderate or high risk based on the importance of the site and/or the number of species present. Buffer zones were identified for each species and applied to the maps. The scores from the various grid cells were aggregated into the final map.

This tool has proven to be very useful as a screening tool. Even though the map was not previously adopted in the planning system of the Netherlands, it is still widely used.



Overall risk map showing risks from highest (purple) to relatively low risk (blue) (Source: Aarts, B. and Bruinzeel, L. (2009), *De nationale windmolenrisicokaart voor vogels*. SOVON Vogelonderzoek Nederland/Altenburg & Wymenga

https://assets.vogelbescherming.nl/docs/e3b4524d-5cc2-4565-a65e-3226a124837e.pdf?_ga=2.19770104.1164016512.1551712082-129991070.1550147440

A sensitivity mapping tool for hydropower development in Austria

Hydropower developments should follow a strategic approach so as to safeguard the remaining significant, sensitive and intact stretches of a river. To support this goal, the World Wildlife Fund (WWF) has prepared a master plan to provide a technically sound decision-making basis for assessing the need for protection of Austrian waters (WWF Ökomasterplan, 2009). The study was published in 2009 and evaluated, for the first time, the ecological significance of 53 of the largest rivers in Austria with a catchment area exceeding 500 square kilometers. It also presented official data from the Current Status Analysis, produced by the ministry responsible for implementing the EU's Water Framework Directive and which provides information related to conservation, such as information on Natura 2000 sites and other protected areas.

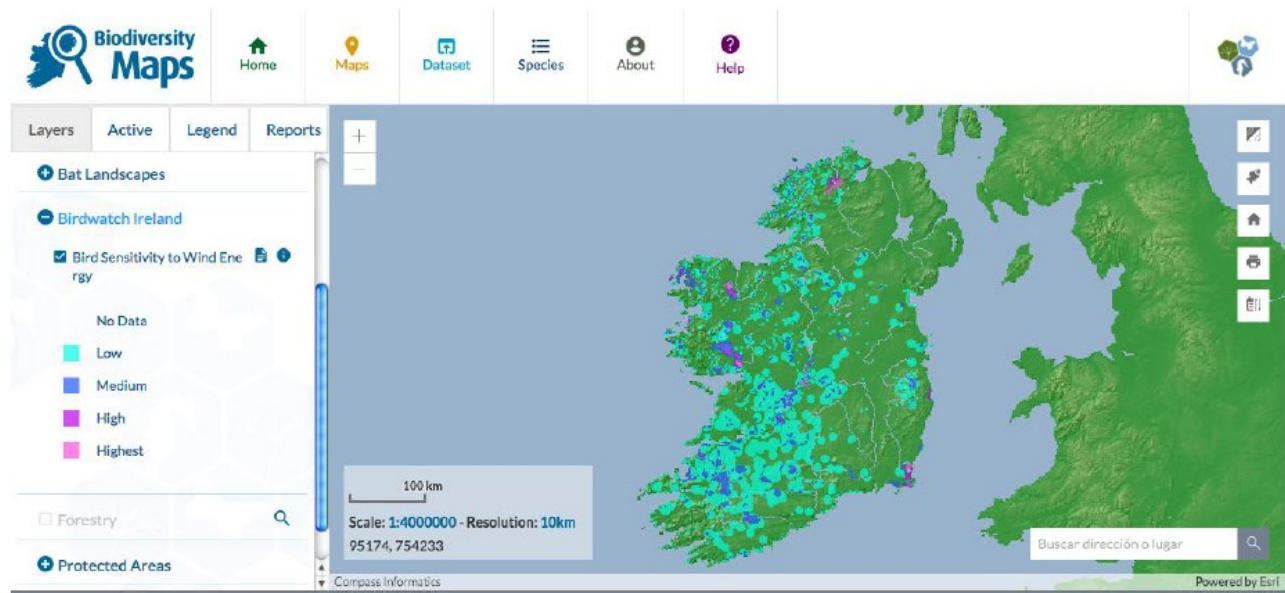
Each stretch of river has been categorized and ranked in order of importance on the basis of various selection criteria (eg ecological status, situation in protected areas, hydromorphology, length of contiguous free-flowing course); moreover, each river stretch was classified according to the following sensitivity classes:

- sensitivity class 1: protection extremely justified by the ecological state;
- sensitivity class 2: extremely justified protection from the situation of one or more reserves;
- sensitivity class 3: protection highly justified by the morphology;
- sensitivity class 4: protection very justified by the length of the contiguous free-flow path;
- sensitivity class 5: protection potentially justified by the lack of a database for a reliable assessment of the ecological state;
- sensitivity class 6: potentially justified protection;
- sensitivity class 7: poorly justified protection;
- sensitivity class 8: used for energy production;
- lack of data (ecological status, hydromorphology).



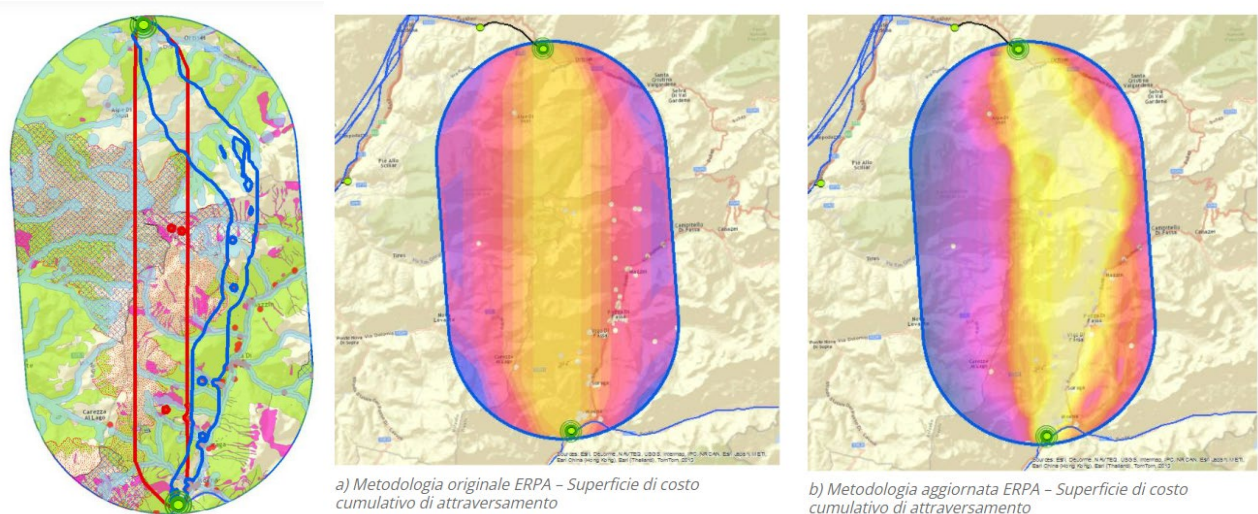
Online platforms to access sensitivity maps in Ireland

A web platform enables a rapid and interactive spatial examination of environmental sensitivities and potential land-use conflicts. Such a solution can support Strategic Environmental Assessment and Appropriate Assessment, and ultimately informed planning and decision-making. For example, the National Biodiversity Data Center portal in Ireland provides access to the wind energy sensitivity map of birds through an online web tool.



Font : <https://maps.biodiversityireland.ie/Map> .

A similar solution is that of **Terna s.p.a.'s ERPA methodology**, which consists in identifying "**corridors**" by selecting a route that tends to avoid crossing territories of environmental, landscape and/or cultural value, favoring as far as possible highly attractive areas for the implementation of the intervention, which however do not deviate excessively from the shortest route linking the two stations of origin and destination.



Examples of Terna S.P.A.'s ERPA methodology

The selection of the corridors (location hypotheses) would take place semi-automatically, through a GIS procedure. The choice of the semi-automatic approach would make it possible to apply shared procedures

and criteria at the national EIA Table level, leaving, at the same time, a margin of discretion and adaptability to the context, which would make the corridor generation mechanism more flexible.

However, completely automatic procedures would not be used, because various phases require careful control of the hypotheses and parameters used, above all to verify in the field, through joint inspections with the competent territorial administrations, that significant aspects of the territory in question have not been overlooked.

The method would be applicable in all situations where vector cartographic layers are available at a suitable scale for the level of analysis of the corridors (preferably at least 1:50,000), which allow mapping all the ERPA criteria on the entire territory to be examined.

| ERPA Criterias | | | |
|---|---|---|---|
| <p>Exclusion: <u>areas in which any realization is precluded</u>; includes both the areas recognized by the legislation as areas with absolute exclusion (E1), such as <u>airports and military zones</u>, and the areas not directly excluded by the legislation (E2), which are bound by merit agreements established between Terna and the Bodies involved, such as continuously urbanized areas.</p> | <p>Repulsion: <u>areas which it is preferable not to be affected by interventions, unless in the absence of alternatives</u>, or in the presence of only alternatives with less environmental compatibility, in any case in compliance with the agreed prescriptive framework; comprehends:</p> <ul style="list-style-type: none"> - Areas that can be taken into consideration only in the absence of alternatives (R1); - Areas affected by merit agreements with reference to protected areas (R2); - Areas to be considered only if there are no more environmentally compatible alternatives (R3). | <p>Problematic: <u>areas for which in-depth analysis is necessary</u>, as the attribution to the various classes established at national level is problematic, because it does not contemplate regional or local specificities; <u>a further territorial analysis is therefore necessary, supported by an objective motivation documented by the Bodies involved</u>; the result of this analysis will allow the areas to be assigned to one of the functional criteria R or A; unlike the other criteria, this one is characterized by the need for in-depth analysis and by the absence of an automatic a priori evaluation mechanism; in fact, the nature of this category (P) is specified, completely different from the others (E, R, A), as it was specifically established to ideally and temporarily accommodate any regional territorial peculiarities, in order to be able to carry out the appropriate investigations, functional to allow its subsequent placement in the categories of Repulsion or Attraction; category P, therefore, is a "conceptual" category of work and not of definitive placement of environmental, territorial, naturalistic, landscape and cultural typologies: for this reason it is not indicated in the table above, because it would be completely empty</p> | <p>Attraction: <u>areas to be preferred</u> when possible, subject to verification of the carrying capacity of the territory; includes areas with good landscape compatibility (A1) and already infrastructural areas (A2), more suitable for the construction of the work, in compliance with the carrying capacity of the territory.</p> |

ELEMENTS TO PAY ATTENTION TO

Buffer Zone, precisely identify the areas within which to start the AA

The 92/43/EEC "Habitat" Directive, the various guidelines of the European Commission, as well as the D.P.R. 357/97 and subsequent amendments, do not provide for the identification of buffer zones with respect to Natura 2000 sites within which the P/P/P/I/A must be or not subject to the provision of art. 6.3 of the Directive. This concept is also reaffirmed in Chap. 2.2 Determinations on the Screening phase of the National Guidelines for AA it is clear that the AA itself is a preventive, binding, case-by-case verification procedure, which cannot provide for eligibility thresholds, lists of simple exclusions, nor is it possible to introduce buffer zones, in the absence of appropriate preliminary site-specific assessments:

Therefore, within the technical discretion of the Regional Authorities and the Autonomous Provinces, the criterion relating to the identification of areas defined as buffers must correspond to pre-evaluations conducted on the direct and indirect effect of certain types of P/P/P/I/A against individual sites, since the levels of interference may vary according to the type of initiatives and site-specific characteristics. For this reason, an a priori identification of buffer zones cannot be accepted, but must be identified in a differential way for the different sites and the different project categories, in consideration of the SEA area of influence of the P/P/P/I/A.

ELEMENTS TO PAY ATTENTION TO

Impossibility of identifying cases of exclusion from the AA procedure, as only through a careful analysis and proposal of pre-evaluations is it possible to speed up the screening procedures without, precisely, the use of lists of project/intervention types to be excluded a priori.

As reported in paragraph 2.2 "Decisions on the Screening phase" of the National Guidelines for AA "lists of interventions a priori excluded from the AA" must not be accepted.

The European Court of Justice ruled that the possibility to exempt certain activities from the Appropriate Assessment procedure does not comply with the provisions of article 6, paragraph 3 of the Habitats Directive (C-256/98, C-6/04, C- 241/08, C-418/04, C-538/09). Therefore, lists of a priori exclusions from the AA are not permitted, if not sufficiently motivated by site-specific preliminary technical assessments conducted by the regional authorities or by the site management bodies which take into account the conservation objectives of the Natura 2000 sites, and can therefore be configured as screening procedure. As regards the need for procedural simplifications, the correct identification of the conservation objectives and the detailed drafting of the Conservation Measures represent the necessary requirement for introducing simplifications in the screening procedure, as well as for overcoming the impossibility of using prescriptions in screening opinions.

Competenze e Reti
per l'integrazione
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