

THE VERWALL NATURA 2000 MEDIATION PROCEDURE

The Verwall mediation procedure formed part of a highly controversial planning process aimed at the creation of a Natura 2000 conservation area in the alpine region. The procedure took place between January 2001 and December 2002. Implementation of the outcomes is currently under way.

The Verwall is a mountain massif in Hinteres Montafon, Vorarlberg. It extends across parts of the parishes of Klösterle, Silbertal, St. Gallenkirch and Gaschurn. The main source of income for the population is tourism. Other important economic sectors are agriculture and forestry, and small-scale industry. The four communities have about 5,500 inhabitants, many of whom commute to the district capital, Bludenz. The Natura 2000 site has an area of about 12,000 hectares, at altitudes of between 1,500 and 2,700 metres above sea level.

Initial situation and previous history

Following Austria's accession to the EU in 1995 part of the Verwall was nominated for Natura 2000 (the EU network of conservation areas). This was mostly on the basis of the Birds Directive, but a small part of the area was nominated under the Natural Habitats Directive. With the exception of Silbertal the Verwall Natura 2000 area was also designated a Special Area of Conservation, but for a limited period ending in 2003.

There are three predominant land uses in the designated Natura 2000 area: alpine farming, forestry and hunting. Tourism plays a smaller part in the Natura 2000 area than elsewhere. Alpine farming has been present for almost 1,000 years, but the number of animals driven up to high pastures has been in steady decline since the 1950s. At the same time, however, farming methods have been intensified on the more suitable land, .

The forests in the Natura 2000 area are mostly jointly owned. Some areas have been used intensively in the past few years while others have been designated as natural forest reserves. Hunting rights in the Natura 2000 area have been in the hands of Alpine co-operatives since the Middle Ages. Since the second half of the 20th century, the leasing of hunting rights has occasionally provided a vital source of income. Wild game is intensively managed.

The area is primarily frequented by hikers, and to a lesser extent by mountain bikers, extreme skiers and rambblers as well as paragliders. Tourism is much less prevalent than in the popular neighbouring areas of Montafon and Arlberg because of the long access routes.

These land uses were in constant conflict with one another, quite apart from any nature conservancy concerns, and this emerged and had to be dealt with during the mediation procedure.

The prior, comparatively extensive land use in Verwall means that it is of high ecological value as one of the last great Alpine retreats in western Austria. This was the scientific reason for designating it a Natura 2000 area.

Background to the mediation procedure

The nomination of the Verwall Natura 2000 area, and in particular its designation as a Special Area of Conservation, led to widespread worries and strong opposition on the part of landowners in the affected communities. They felt that they had been passed over and were suddenly confronted with the fact that their land was part of a protected area. It was incomprehensible for them that they could suddenly be hit by restrictions on their freedom to use the land they had tended for the last few decades, particularly as it was precisely this type of land management which had helped create and maintain the area's ecological value. Many land users saw the decision to designate the area, which had been taken over their heads, as a hostile act by the local and regional authorities. Communication between the authorities and those affected increasingly broke down until the provincial government decided to conduct a mediation procedure at the instigation of the provincial environmental legal officer. The Vorarlberg provincial environment directorate engaged the Viennese planning consultancy Rosinak&Partner to conduct the procedure.

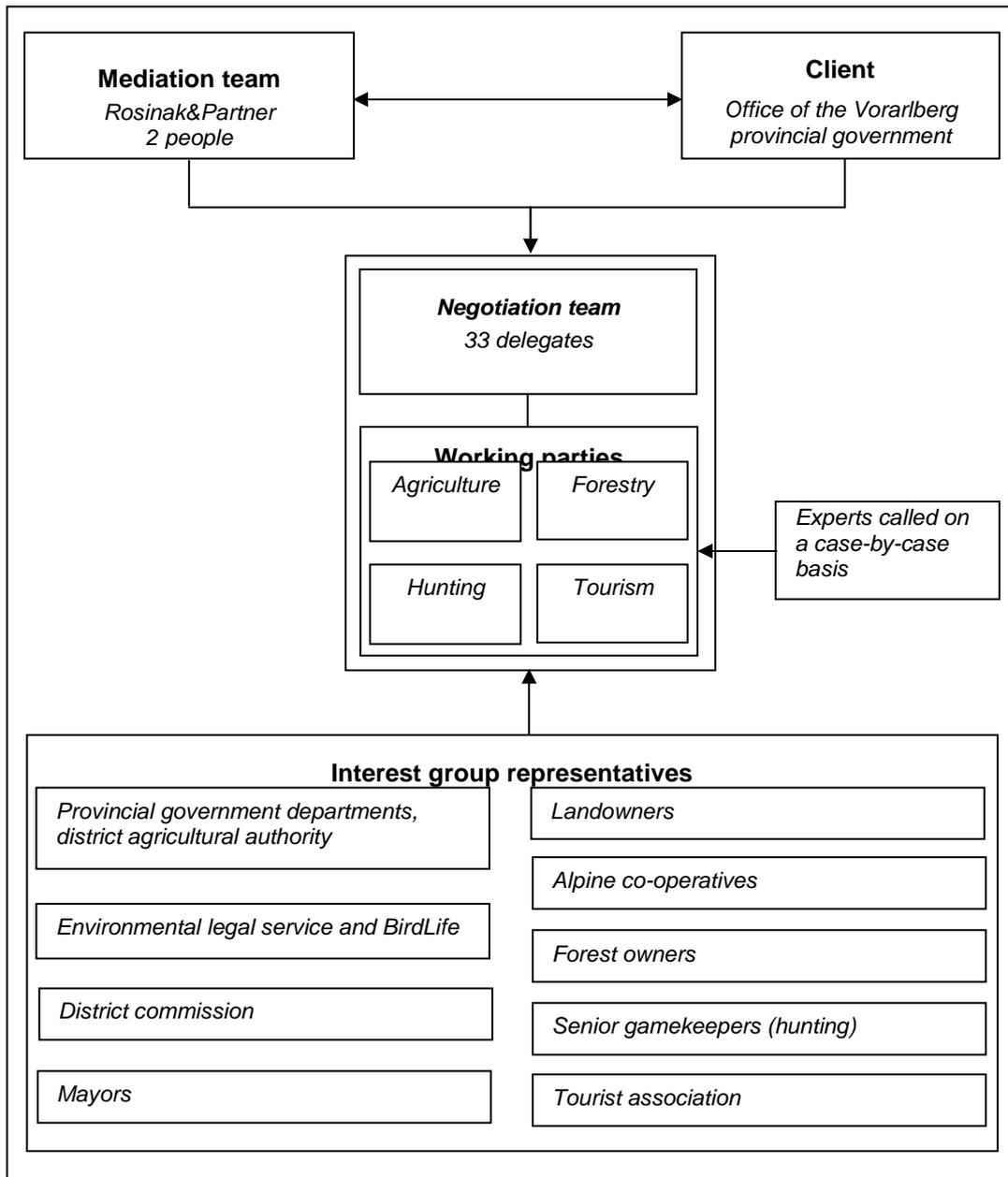
Aim of the procedure

The aim was to reach agreements between landowners, land users, various other interest groups and the authorities on the future use of the area.

Participants and their interests

The following interest groups were represented in the negotiating team: agriculture, forestry, hunting, tourism, nature conservation, the mayors of the four villages, officers of the Bludenz district commission and the Vorarlberg provincial government, the provincial environmental legal officer, as well as a representative of BirdLife to provide an expert opinion. Other outside experts were called in as required. The procedure was supported by two mediators from Rosinak&Partner.

Fig. 1: The procedure



Source: Hiess and Pfefferkorn

Some 31 men and only two women attended the procedure; their ages ranged from 25 to 75 years. Of the 33 participants, the 15 representatives of the alpine co-operatives formed the largest group. Negotiations were for the most part carried out in the local Montafon dialect.

Main conflicts

There were a number of tensions and conflicts of differing magnitudes between the various interests arising from different land uses, some of which had their roots far back in history. Among these were:

- Agriculture and forestry versus nature conservation: land use restrictions, compensation payments, maintenance of land management practices, intensive versus extensive methods;
- Tourism versus conservation: restrictions on tourist uses (extreme skiing, paragliding and mountain biking);
- Hunting versus nature conservation: wildlife populations hunting restrictions;
- Forestry versus hunting: wildlife populations and animal browsing damage;
- Hunting versus tourism: disturbance to wildlife through tourist uses (extreme skiing, paragliding and mountain biking);
- Tourism versus forestry: illegal use of forest paths by mountain bikers; and
- Agriculture versus forestry and hunting: woodland pasture.

Tools and methods used

A number methodological components were combined in the procedure. To begin with, information events were held in the parishes, and there were one to one meetings with individual parties. The most important instrument was the mediation procedure, for which the participants were separated into working parties.

Process stages

The mediation procedure was divided into the following seven phases.

Table 1: Summary of process phases

Phase	Activities	Duration
Preparatory activities	Conflict analysis, public information events and determination of participants	Jan.–March 01
Launch phase	Agreeing ground rules, procedure structure, information exchanges and methodology	March– May 01
First round of negotiations	Working through current and past conflicts, positions and interests; field trip	May–Oct. 01
Second round of negotiations	Drawing up draft agreements on agriculture, forestry, hunting and tourism	Oct.–May 02
Third round of negotiations	Discussion of draft agreements, monitoring issues and field trips; reporting back to groups represented	May–Oct. 02
Agreements	Finalisation of agreements	Oct. 02–Dec. 02
Implementation	New District Order based based on the agreements; commencement of the advisory council's activities (from 2004)	Oct. 03

Source: Hiess and Pfefferkorn

Preparatory activities

In preparation for the mediation procedure, the mediation team held preliminary discussions with the Mayors in the affected parishes and staged information events in order to gain a better insight into the situation and finalise the provisional list of participants. It was not possible to complete the selection of participants at this stage as some of the alpine co-operatives refused to be represented by others. In consequence the negotiating team ultimately had to be made up of 33 people, which was a considerable obstacle to the procedure.

Launch phase

At the outset of the procedure it was important to clarify the ground rules for the mediation process, and lay the groundwork for constructive collaboration. The negotiating team adopted rules of procedure establishing the stages of the procedure, the participants' roles, and related rights and duties, the way decisions would be made, and the rules of behaviour for participants towards one another.

Excerpts from the rules of procedure:

- Participation in the mediation process is voluntary for all parties.
- Negotiating team members shall be nominated in person. Regular attendance is vitally important to the success of the mediation process. Represented by other persons shall thus only be possible in exceptional circumstances.
- All information relevant to the procedure shall be disclosed, and must be accessible to all parties.
- The parties accept and respect the positions and interests of the other parties. All parties undertake to collaborate constructively in pursuit of the objectives of the procedure. Participants shall work together continuously, openly and fairly.
- The representatives of each party shall ensure that communications with their interest groups are maintained.
- The procedure shall be consensual, and no provision is made for voting on substantive issues.

After the rules of procedure had been agreed information exchanges were the main priority. All of the participants received an information kit containing background on Natura 2000 and the relevant EU legislation (directives and regulations), as well as expert opinions and studies of relevance to the procedure. The documents were discussed in depth and any queries answered. Collective discussion helped the participants to gain a broad understanding of the legal and administrative complexities surrounding Natura 2000.

Setting the ground rules and ensuring that everyone had at least a similar level of background information were crucial to the participants' confidence in the process and readiness to negotiate.

First round of negotiations

During the first round of negotiations, current conflicts were very much in the foreground. The members of the negotiating team expressed fears about protected area status, criticised other interest groups and put forward their own positions and demands. There was also discussion of previous decisions such as selection of the area and the way in which the boundaries were drawn, as well as the expert opinion from BirdLife. Many of the participants only then became aware of the full implications of the decisions. This resulted in severe criticism of the authorities and the BirdLife report. Many past and present land use disagreements which had nothing to do with Natura 2000 but significantly affected the relationships between the interest groups in the negotiating team were also raised. Step by step, after many difficult discussions, a degree of trust was built up between the participants. Almost one third of the time was devoted to getting to grips with the complexities of the subject and previous developments, so as to reach a point at which the participants could continue working together.

In substantive terms, four main issues (agriculture, forestry, hunting and tourism) emerged during the first round of negotiations. A field trip to Silbertal took place in the summer of 2001 to clarify matters on site.

Second round of negotiations

These four core issues were subsequently discussed in detail in smaller working parties. There was opposition to the use of working parties at first, but it soon became apparent that it would be impossible to discuss detailed questions sensibly and work through texts in a group of more than 30 people. By spring 2002 the four working parties had produced draft agreements designed to reconcile the various uses with the requirements of the Flora Fauna Habitats Directive. The draft texts were drawn up by members of the working parties and discussed by the latter.

Third round of negotiations

During the third round of negotiations, the draft texts on the four issues were discussed in plenary sessions in order to iron out any conflicts between them. These discussions led to a final overall draft agreement which served as a basis for discussion by various interest groups, i.e. local councillors, alpine co-operatives, hunting clubs and the tourist board. This consolidated draft also contained a proposal for future monitoring and implementation of the results of the negotiations. Thereafter inspections of the Natura 2000 area were carried out in order to clear up some detailed issues.

Outcomes and follow-up actions

Seven negotiating team meetings and many working party sessions, over a period of about one-and-a-half years, resulted in the following outcomes of the procedure:

- The final agreement document: this contains decisions on future uses and area monitoring.
- A draft of the Natura 2000 District Order, referring directly to the agreement. The order came into force on 1 October 2003 and replaced the previous temporary conservation order.
- A separate record of all opinions and proposals on which no agreement was reached during the procedure. These matters are to be dealt with by an advisory council.
- An advisory council comprising 18 persons and including representatives of all the interest groups concerned was set up to permit continued collaboration between the authorities and those concerned. The council has met at least once a year since 2004 to discuss matters relating to the Natura 2000 area and the agreements.

Key success factors and lessons for similar projects

The initial position was very fraught due to affected parties' deep mistrust of the authorities. Throughout process the fear constantly resurfaced that the provincial government would not honour the agreements. The negotiating climate in the larger group was often very tense. Without the use of working parties it would not have been possible to make any substantive progress or reach any agreements. A number of factors contributed to the success of the mediation procedure. These were:

- The inclusion of all interested parties;
- Clear rules of procedure as a basis for building confidence between participants;
- Same information for all;
- Clear roles in the procedure;
- Intensive preparation for and follow-up to individual negotiation rounds (agendas, preparation of materials, comprehensive minute taking, draft texts, and text editing, and ongoing communication between the members of the negotiating team);
- Sufficient time for the negotiation procedure (one-and-a-half years);
- Field trips and on-the-spot inspections: these helped resolve conflicts;
- Sufficient expertise and local knowledge (dialect) on the part of the mediators;
- An open and respectful attitude to other participants — which the mediators often had to work to restore;
- Sufficient flexibility in the procedure: only separate minuting of all the issues on which no consensus was possible enabled the procedure to be concluded by reaching the agreements;
- Binding nature of the outcomes: the parties initially wished to conclude agreements in the form of contracts with the authorities, but it soon became clear that an administrative order applicable to all concerned would bring more certain results;
- Continued involvement of all participants in implementation: this is to be assured by establishing an advisory council on which all interest groups involved in the mediation process are represented;
- In questions of distributive justice it is not always possible to find a win-win solution; instead, the aim should be to reach fair agreements on the distribution of public and private costs and benefits.

Difficulties encountered and solutions found

Table 2: Problems and solutions

Problems	Solutions
Severe conflicts at the beginning	One to one discussions, information events, and sufficient time to work through the past.
Large negotiating team (33 people)	Only partly overcome, e.g. through working in smaller working parties.
Lack of trust of the afflicted parties in the authorities and each other	Only partly overcome, by ensuring that all information and documentation was made from the beginning, and by a commitment from the provincial government to implement any outcomes of the negotiations.
Lack of trust between the parties to conflicts	Open and fair dealings during the procedure, clear ground rules, and an active role on the part of the mediators.
Limited scope of the negotiations	Certain issues were no longer subject to negotiation, e.g. boundary lines. Therefore it was essential to use the available scope as much as possible.
Open questions	Some issues could not be resolved at once, e.g. the question as to how high the deer population in the Natura 2000 area should be: a "deer plan" is to be drawn up to solve this issue.
Dissenters	The mediation procedure participants were not able to agree on all points. Separate minutes were kept of discussions in which there were dissenting opinions..
Doubts about the reliability of the expert opinions	Additional expertise, inspections and discussion of individual criticisms.
Distribution of costs and benefits between conservation areas and non-conservation areas	Agreement on equalisation payments and compensation in the case of restrictions on use; more responsiveness to the concerns of landowners.
General problem: social and spatial distribution of costs and benefits	The general problem can only be partly resolved. Those areas which are prospering economically no longer have much biodiversity worth conserving. The areas that do have only very limited opportunities for economic development. There are general disagreements on the extent of the transfer payments. There are also conflicts of interest between landowners and users. In the past these were often the same, but this is less so today, and this leads to additional tensions.

Excerpts from the agreements made

From the agriculture chapter: alpine cultivation

Spreading of liquid manure not originating from the alps and of liquid manure from local farms is forbidden. Spreading of liquid manure arising from indoor stock keeping must not endanger any water bodies and must be restricted to suitable land (not too steep or too flat, not too wet, and not too stony). Pastures can only be fertilized with dung and liquid manure suited to the alps.

From the forestry chapter: wood uses

Wood felling in the habitats of Annex I species (Fig. 3, page 11) may not be carried out during breeding periods between 1 April and 10 July. An exception is particularly urgent work (e.g. when there is a threat from bark beetles) subject to permission from the area supervisor.

From the hunting chapter: regulation of wildlife populations

Deer culling has been resumed in the Silbertal area. The Vorarlberg provincial government, in conjunction with landowners, hunting clubs and the Montafon municipal association, will

produce a predator and deer management plan for Hinteres Silbertal, based on preferential use of alpine land, in order determine the sizes of wildlife populations, to control their distribution in their winter habitats and to maintain their summer choice of habitats.

From the tourism chapter. paragliding

Expansion of aerial sport in the Natura 2000 Verwall area is prohibited. This will be ensured by the following measures:

No applications for paragliding in the Natura 2000 area from tourist associations, other institutions or individuals to be accepted;

No public aerial sports events and competitions to be held in the Natura 2000 area,

No official designation of take-off points in the Natura 2000 area.

Excerpts from the separate minutes

Boundary delineation in the parish of Gaschurn

The affected parishes, landowners and land users were not consulted on the drawing up of boundary lines for the Natura 2000 area. Negotiating team members from Gaschurn demanded changes to the Natura 2000 delineation in the vicinity of the parish of Gaschurn in order to prevent the construction of a ski lift in the Versalspitze area, Alpe Gibau being obstructed or prevented by additional impact assessments required by the Natural Habitats Directive. In the view of those affected, this is one of the last chances to open up a ski resort in this area. They believe this option should be kept open for future generations for whom tourism will be a main source of income. Related plans and projects were drawn up in the 1970s.

This is in direct conflict with the Vorarlberg tourism plan, which does not foresee any new lifts in this area. At the same time the provincial government is facing a breach of contract suit from the European Commission. It is accused of designating too small an area for the Verwall Natura 2000 project. Any alterations to boundary lines would have to be based on scientific arguments and would require a political decision. The negotiating team members are unable to put forward a unanimous recommendation on this score. A possible compromise would be a boundary review at the first monitoring session or a temporary limitation on the effect of the Natura 2000 District Order until the first monitoring session.

Paths ban

The hunting representatives proposed incorporating the imposition of a paths ban for particularly sensitive bird habitats in the agreements. They argued that this option should be kept open to preserve the peacefulness of the area, and would only be brought into effect if the need arose. This idea was welcomed by the district commission as means of reducing pressures on the natural habitat of hoofed game and thus minimising the damage caused by game elsewhere. This would also be advantageous from a forestry point of view.

However this proposal was received with much scepticism from some parties, as they fear the creation of exclusion zones similar to the hunting ban zones, and believe that it would not be understood by the local population. Paths bans are undeniably useful from a forestry perspective but not in connection with bird protection agreements.

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