



INSTITUTE OF THE REPUBLIC OF SLOVENIA  
FOR NATURE CONSERVATION

Strategija za usposabljanje SEA/EIA  
MODUL 13: Presoja sprejemljivosti na varovana območja

# **MITIGATION AND COMPENSATORY MEASURES**

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# Mitigation and Compensatory Measures in Appropriate Assessment

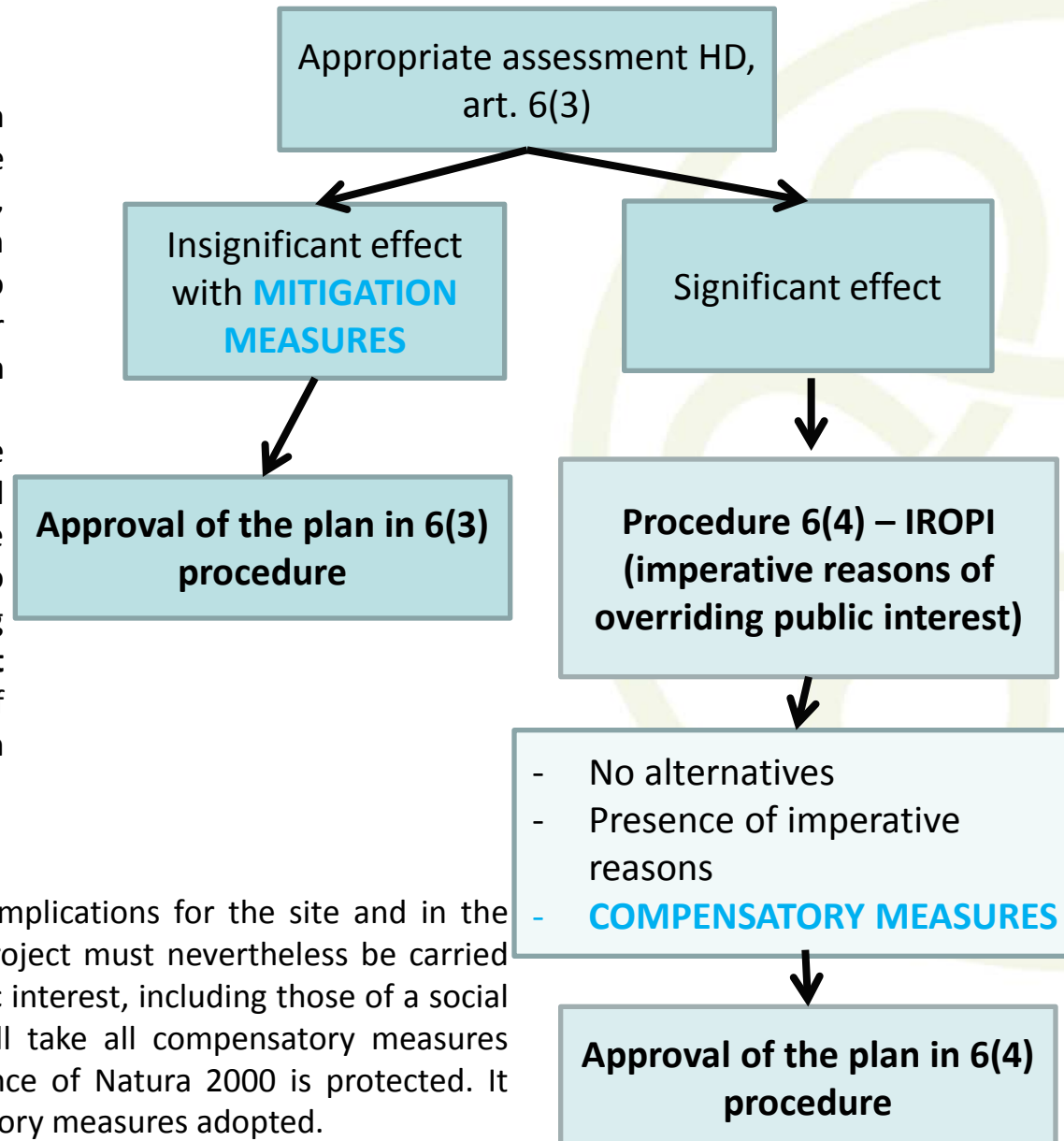
## Art 6(3) of Habitats directive

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.

## Art 6(4)

If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.





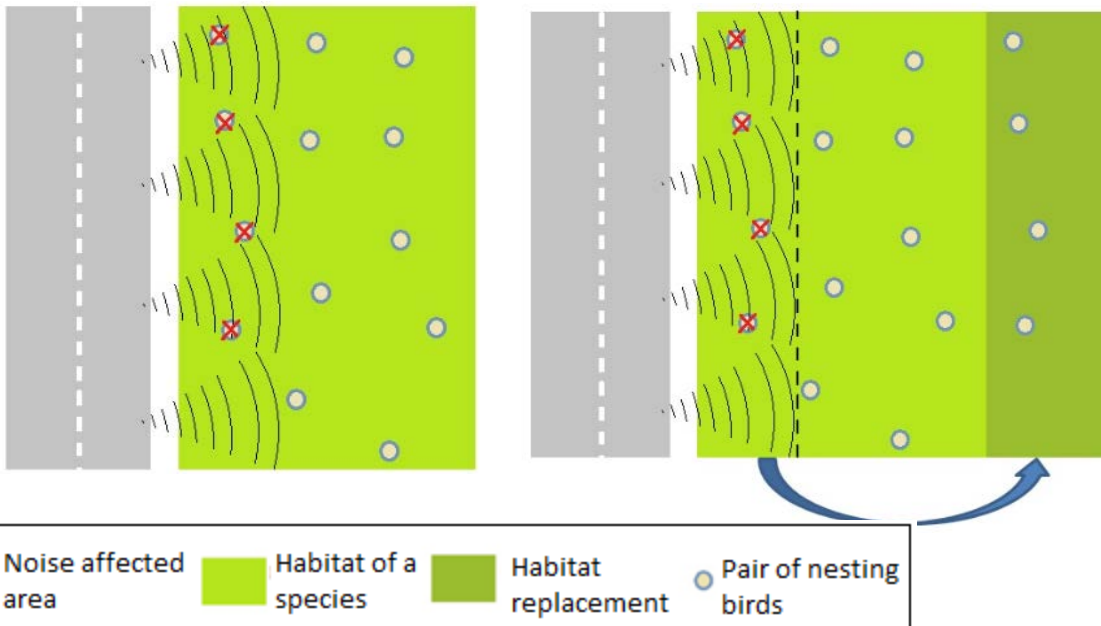
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# Habitat replacement and other forms of off-setting adverse impact – mitigation or compensatory measures?

## 2004 – 2013

- EC 2000 [Managing Natura 2000 sites: The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC](#)
- EC 2001 [Assessment of plans and projects significantly affecting Natura 2000 sites](#)
- EC 2007 (updated 2012) [Guidance document on Article 6\(4\) of the Habitats Directive 92/43/EEC](#)

**EC guidances:** the distinction between mitigation and compensatory measures in the case of habitat replacement was not completely clear; it was mentioned as a form of compensatory measure, but it was not stated that it could not serve as a mitigation measure.



**Understanding of some MS:**  
„If, by establishing part of the habitat, we can ensure that the conservation objectives and integrity of the site are preserved (art. 6(3)!), then it can be regarded as a mitigation measure.“

**NOT CORRECT!**



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# Habitat replacement and other forms of off-setting adverse impact – mitigation or compensatory measures?

## 2013: EU PILOT: ŠKOFLJICA BYPASS ROAD

- Large-scale replacement habitats as a measure to mitigate the impact on birds.
- EU Commission: such measures cannot serve as a mitigation measure. The impacts of the plan should be recognized as **significant** and the replacement habitats can only be identified as **compensatory measures after the IROPI procedure has been completed.**

## 2014 : JUDGEMENT OF THE COURT C-521/12 vs. Netherlands

„It is clear that these **measures are not aimed either at avoiding or reducing the significant adverse effects** for that habitat type caused by the A2 motorway project; rather, **they tend to compensate** after the fact for those effects. “

„Article 6(3) of Habitats directive must be interpreted as meaning **that a plan or project, which has negative implications for a type of natural habitat** present thereon and **which provides for the creation of an area of equal or greater size of the same natural habitat type within the same site, has an effect on the integrity of that site.** Such measures can be categorised as ‘**compensatory measures**’ within the meaning of **Article 6(4)** only if the conditions laid down therein are satisfied.“



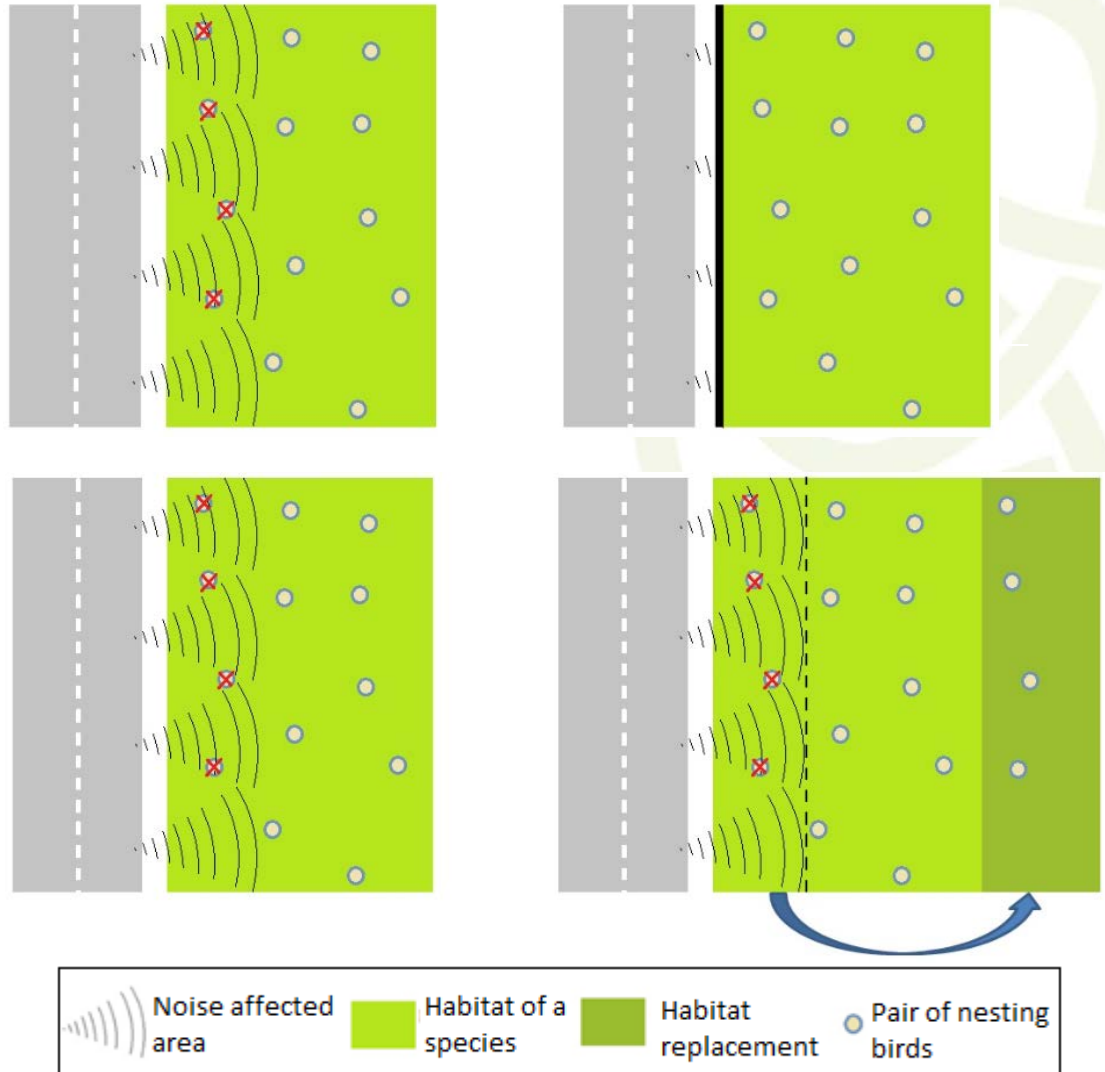
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# Habitat replacement and other forms of off-setting adverse impact – mitigation or compensatory measures?

## After 2014:

**MITIGATION MEASURE:**  
avoiding or reducing the significant adverse effects

**COMPENSATORY MEASURE:**  
compensating for the damage (off-set)





# Examples of mitigation and compensatory measures

**Table 7. Possible mitigation measures for impacts on habitats and species of Community**

Types of mitigation measures
<b>Avoidance</b>
<ul style="list-style-type: none"> <li>▪ Sensitive design of the plan or project, use of best techniques/solutions to prevent effects</li> <li>▪ Siting of projects based on least damage criteria</li> <li>▪ Avoidance of key areas (entire Natura 2000 sites or core areas within or connecting Natura 2000 sites)</li> <li>▪ Protective fences to prevent damage to vegetation</li> <li>▪ Wildlife fences</li> <li>▪ Avoidance of key periods for implementation works (e.g. breeding season)</li> <li>▪ Desisting from impact-generating actions</li> </ul>
<b>Reduction, moderation, minimization</b>
<ul style="list-style-type: none"> <li>▪ Emission controls</li> <li>▪ Noise barriers</li> <li>▪ Screens</li> <li>▪ Pollutant interceptors</li> <li>▪ Controlled access to sensitive areas during construction/operation</li> <li>▪ Wildlife crossings (e.g. bridges, tunnels and “ecoducts”)</li> <li>▪ Adapting impact-generating actions to reduce effects to the extent possible</li> </ul>

**Table 12. Types of compensatory measures suitable for Article 6(4)**

Table 12. Types of compensatory measures suitable for Article 6(4)	
Measure	Description
Habitat restoration or enhancement in existing sites	Increasing the habitat area in the site concerned or restoring the habitat in another Natura 2000 site, in proportion to the loss due to the plan or project
Habitat recreation	Creating a habitat on a new or enlarged site, to be incorporated in the Natura 2000 network
Designation of a new site to the Natura 2000 network with implementation of accompanying management measures	Designating a new site of sufficient quality under the Habitats or Birds Directive and implementing the appropriate accompanying measures (management plan and action)
Species reintroduction, recovery and reinforcement, including reinforcement of prey species	Reintroduction of species into sites where the species have disappeared (provided the scientific soundness of such a re-introduction). Re-stocking species populations in areas where they are declining.
Accompanying measures	Description
Land purchase	Acquiring an area of land for nature conservation and establishing the appropriate protection and conservation measures.
Rights acquisition for nature conservation	Acquiring management rights over an area of land or sea and establishing the appropriate protection and conservation measures.
Reserve creation	Setting restrictions in the use of an area of land or sea. This may be paired with incentives to good practice (see next line).
Incentives for good practice	Incentives for certain economic activities that sustain key ecological functions. These incentives may also be directed to the adaptation of the activities to support the conservation of relevant habitats and species.
Reduction of threats	Reduction in (other) threats, usually to species, either through action on a single source or through co-ordinated action on all threat factors (e.g. factors stemming from space-crowded effects).



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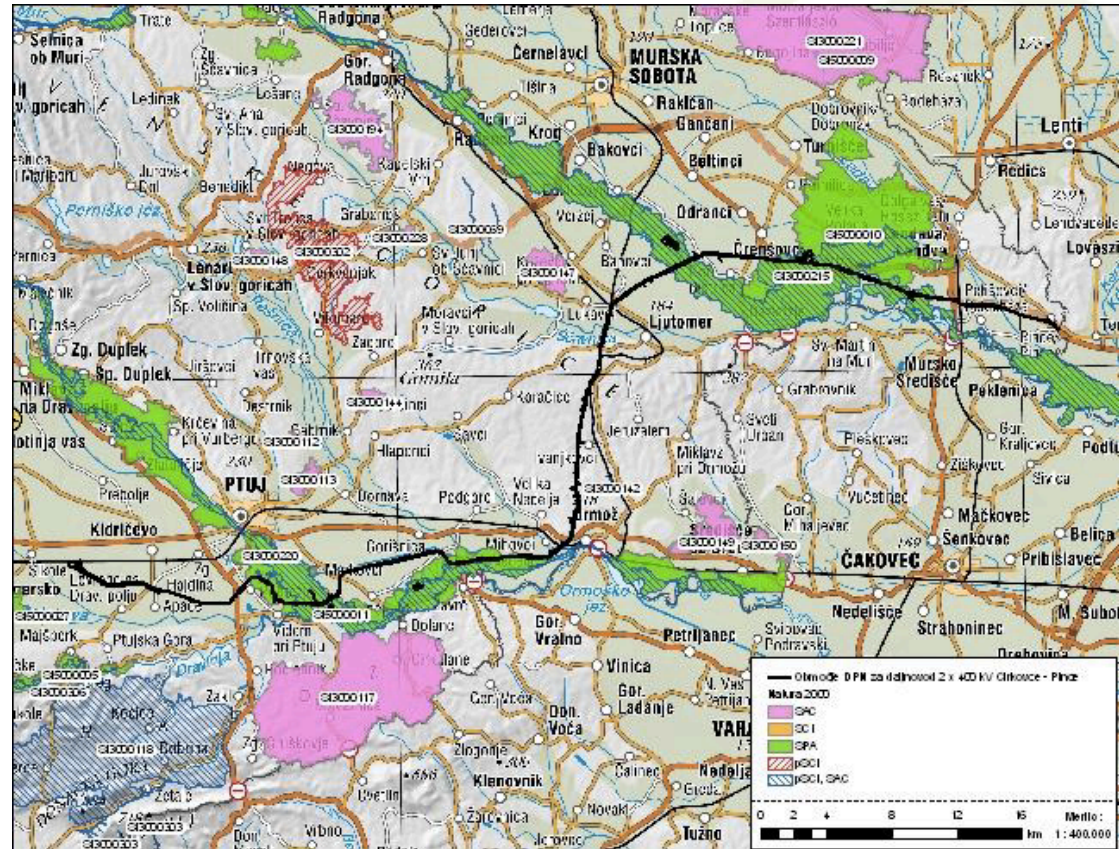
# Latest experiences – 2 x 400 kV Cirkovce-Pince power line project

## Appropriate assessment:

- Impact is not significant;
- To mitigate the impact on the conservation objectives (in particular for birds and HT) and to preserve the integrity of the site, some measures are proposed that are intended to reduce the impact of the project (deterioration of parts of the habitat due to the placement of power lines and collisions of birds with wires).

## Opinion of the EU commission:

- some of the proposed measures should be regarded as compensatory measures and
- the impact of the project should be regarded as significant.

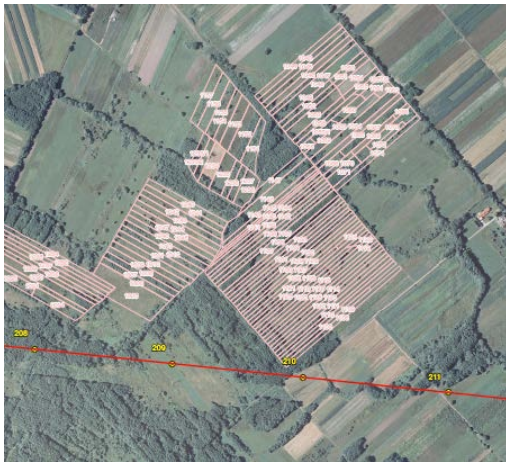




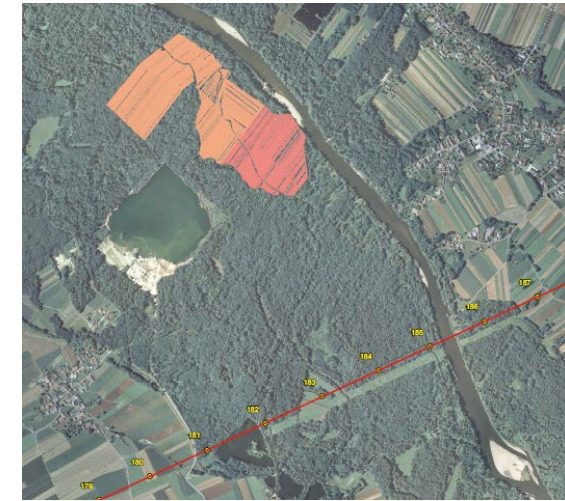
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## Proposed measures in question

Enhancement of extensive meadows and pastures to ensure sufficient feeding and resting habitat for the species



Improved habitat (from overgrown old oxbow to a functional one) to provide better support for the bird populations in the area. This approach supports the cluster of oxbows in the area and reduces the cumulative impacts in the area.



Setting aside a portion of the existing forest to provide stability to the populations of species bound to forest habitats, reduction of fragmentation effect





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# Arguments for measures to be regarded as mitigation:

1. The implementation of these measures ensures the achievement of the conservation objectives of the site
2. The integrity of the site will not be effected after the implementation of the measures.

## Art 6(3) of Habitats directive

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In the light of the conclusions of the assessment of the implications for the site at 3, 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.

### Box 13. Assessment of effects on the Integrity of the site: a checklist

Does the project have the potential to:

- Hamper or cause delays in progress towards achieving the conservation objectives of the site?
- Disrupt those factors that help to maintain the favourable conditions of the site?
- Interfere with the balance, distribution and density of species that are the indicators of the favourable conditions of the site?
- Reduce the area of habitat types, or habitats of species, for which the site has been designated?
- Reduce the population of species for which the site has been designated?
- Result in disturbance that could affect the population size or density or the balance between species?
- Result in fragmentation?
- Result in loss or reduction of key features (e.g. tree cover, tidal exposure, annual flooding, etc.)?
- Reduce the conservation degree of habitats and species that motivate the site designation

*Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC, 2nd draft, EC 2019*



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## Arguments for measures to be regarded as mitigation:

3. All measures are **part of the project**, as they are already defined by the national spatial plan, and thus fall within the definition of mitigation measures.

4. The measures are intended to preserve the **integrity of the affected area**, not to the **overall coherence** of the Natura 2000 network, and are therefore mitigated according to the definition of the measures.

*Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC, 2nd draft, EC 2019*

5. The project is a continuation of a plan approved in the same form and with the same measures in 2012 - that is, before the judgment.

**Mitigation measures** are those measures that aim to minimise, or even eliminate, the negative impacts likely to arise from the implementation of a plan or project **so that the site's integrity is not adversely affected**. These measures are considered in the context of **Article 6(3)** and are **an integral part of the specifications of a plan or project or conditional to its authorisation**.

**Compensatory measures** are independent of the project (including any associated mitigation measures). They are intended to offset the residual negative effects of the plan or project **so that the overall ecological coherence of the Natura 2000 network is maintained**. They can only be considered in the context of **Article 6(4)**.



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## Opinion of the EU Commission

- the measures in question are not intended to prevent the damage but to off-set it, to compensate for the loss.
- since the damage would occur and without those measures the effect would be significant, the impacts of the project have to be assessed as significantly adverse. The measures may, after completing the process of IROPI, serve as compensatory measures.
- The fact that the plan was adopted (2012) before the Dutch judgment (2014) does not justify the conclusion that these are mitigation measures. The directive had the same form in force before.



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## Conclusions:

If the only way to ensure integrity and achievement of the conservation objectives of the site is by offsetting the damage, caused by the impacts of the plan or project, the impact of such plan or project should be regarded as significant. Such measures should be considered as **compensatory measures** in scope of 6(4) IROPI procedure.

A measure can be considered as a **mitigation measure** only if it can prevent or reduce the impact of the plan, so that the significant damage to the site does not occur in the first place.

