



Assessments of plans and projects according to Art. 6(3) and 6(4) of the Habitats Directive

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Seminar on AA
Training strategy for SEA/EIA
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7th Environment Action Program

“Living well, within the limits of our planet”

- **2020** timeframe, **2050** vision, **9** priority objectives
- Commitment by EU and its **Member States**

THEMATIC OBJECTIVES:

- **Protect, conserve and enhance the EU's natural capital**
Fully implement the EU Biodiversity Strategy
- **Green & competitive growth – low-carbon, resource-efficient economy**
- **Health & environment, human well-being**

LOCAL, REGIONAL, GLOBAL DIMENSION:

- **Urban environment**
- **International**

ENABLING FRAMEWORK:

- **Implementation**
- **Information, knowledge base**
- **Investment**
- **Integration, coherence**





EU biodiversity strategy to 2020

"Our life insurance, our natural capital"

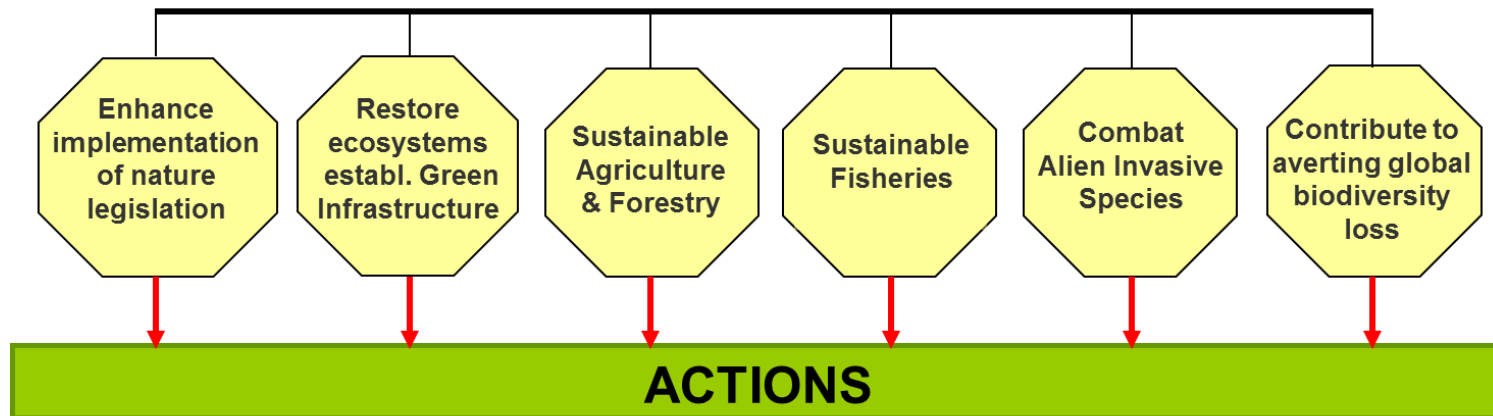
A 2050 VISION

European Union biodiversity and the ecosystem services it provides – its natural capital – are protected, valued and appropriately restored.

A 2020 HEADLINE TARGET

Halt the loss of biodiversity and ecosystem services in the EU and restore them insofar as feasible, and step up the EU's contribution to averting global biodiversity loss.

6 TARGETS



EU Biodiversity Strategy

Target 1 - Nature conservation

➤ *To halt the deterioration in the status of all species and habitats covered by EU nature legislation and achieve a significant and measurable improvement in their status by 2020*

- Complete the establishment of the Natura 2000 network, incl. in the marine part, and ensure good management
- Ensure adequate financing of Natura 2000 sites
- Increase stakeholder awareness and involvement and improve enforcement
- Improve and streamline monitoring and reporting

Natura 2000: European network of protected areas based on two EU Directives

HABITATS DIRECTIVE

National List of
proposed sites
(pSCI)

Sites of
Community
Importance (SCI)

Special Areas of
Conservation
(SAC)

BIRDS DIRECTIVE

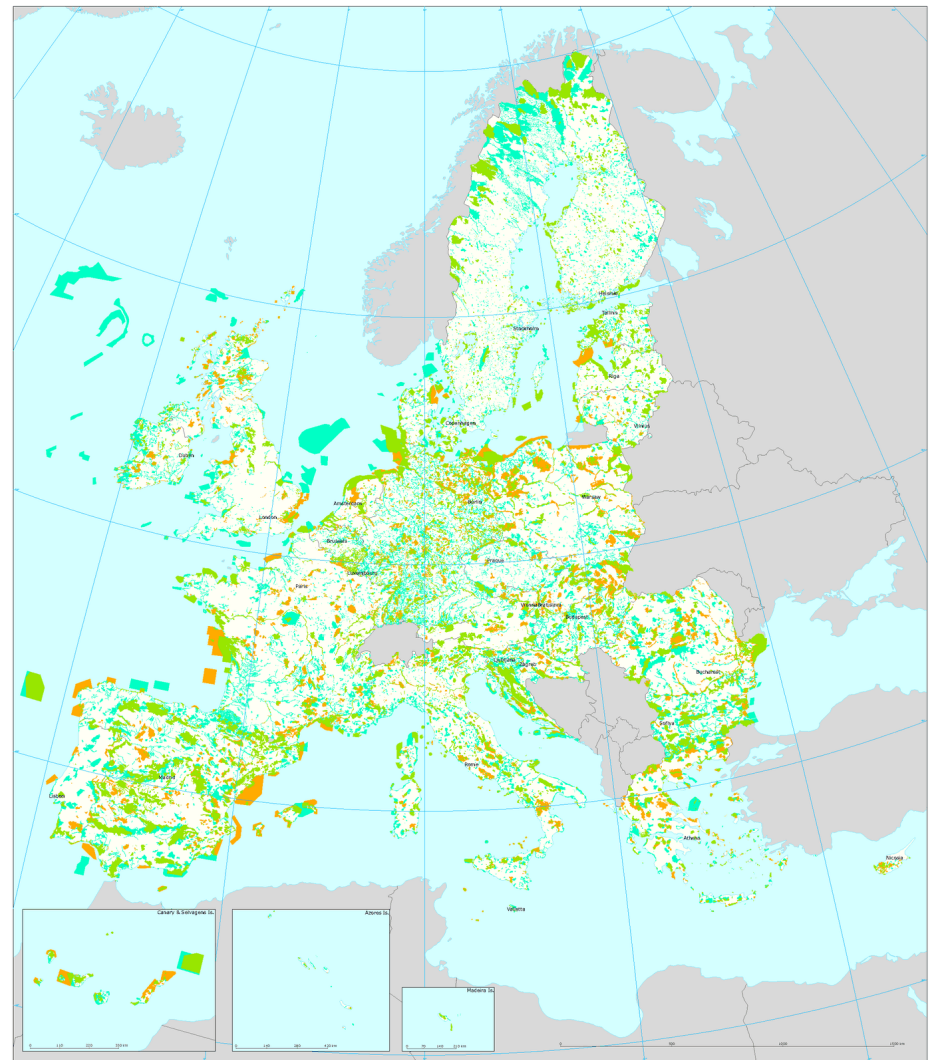
Special
Protection
Areas (SPA)



Natura 2000 network

- The **largest coordinated network** of conservation areas
- More than **27.000 sites**
- **Over 18% of EU land territory + 6% of marine areas**
- Aims to ensure long-term survival of Europe's most valuable/threatened **species and habitats**
- Works in collaboration with land owners and users; sites are not strict nature reserves
- Human activities are undertaken in a way that allows **nature conservation objectives** to be reached
- **Strong legal basis**, but has high flexibility and subsidiarity provisions

The cornerstone of EU biodiversity policy



NATURA 2000
Orange: Birds Directive sites (SPA)
Green: Habitats Directive sites pSCI, SCI, SAC
Yellow: Sites - or parts of sites - belonging to both Directives

European Environment Agency



Source:
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Map of NATURA 2000 sites for Europe, London, 2000.
Production: Lambert Adriaenssens, Ecoland.

Objective of both Directives

Within all Natura 2000 sites:

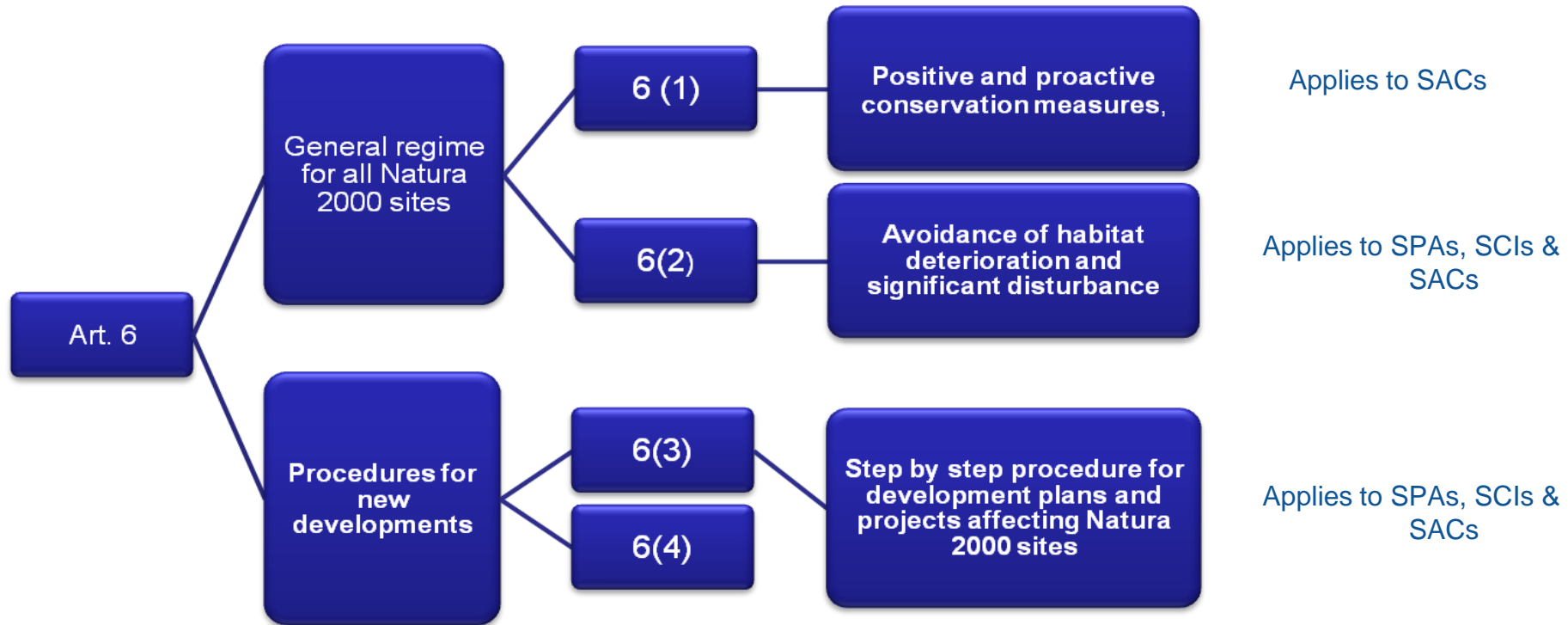
- ❖ *Avoid damaging activities that could significantly disturb the species and/or habitats for which the site has been designated;*
- ❖ *Positive measures are taken, where necessary to maintain and restore those habitats and species to a favourable conservation status in their natural range*



The ultimate objective is to ensure that the species and habitats reach "favourable conservation status"

Translated in legal terms in **Article 6 of the Habitats Directive (HD)**
(applies also to sites designated under the Birds Directive)

Management regime for Natura 2000 sites



- Strong legal basis, built in flexibility
- Many years of implementation, ECJ rulings

Assessment process under Art. 6(3)&(4)

- No ‘a priori’ prohibition of new activities or developments - judged on ‘case by case’ basis

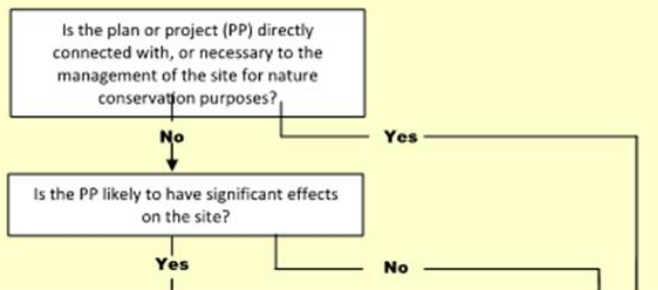
- Art. 6(3)

*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.*

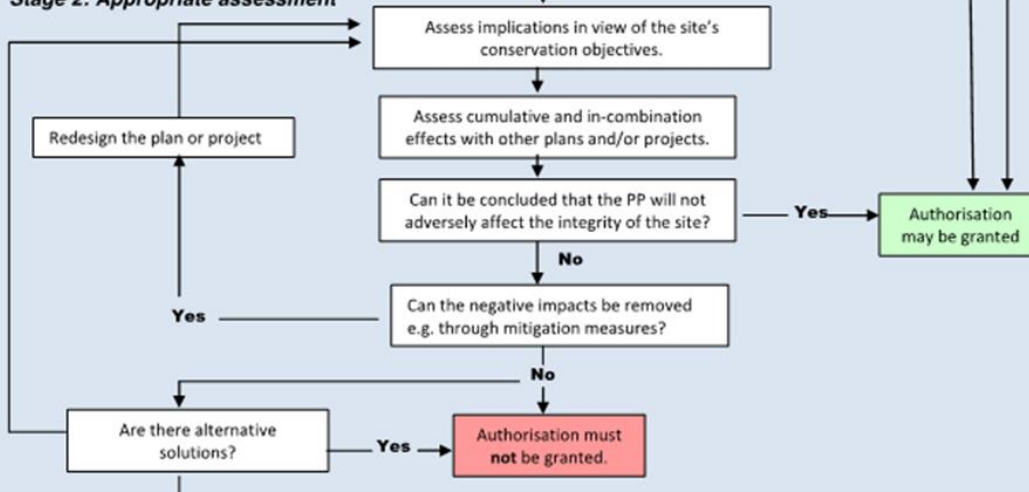
- Art. 6(4)

- In case of negative conclusion and absence of alternatives, plan or **project can still be authorised if there are** imperative reasons of overriding public interest, **compensation measures** established + **opinion of the Commission** (if needed).

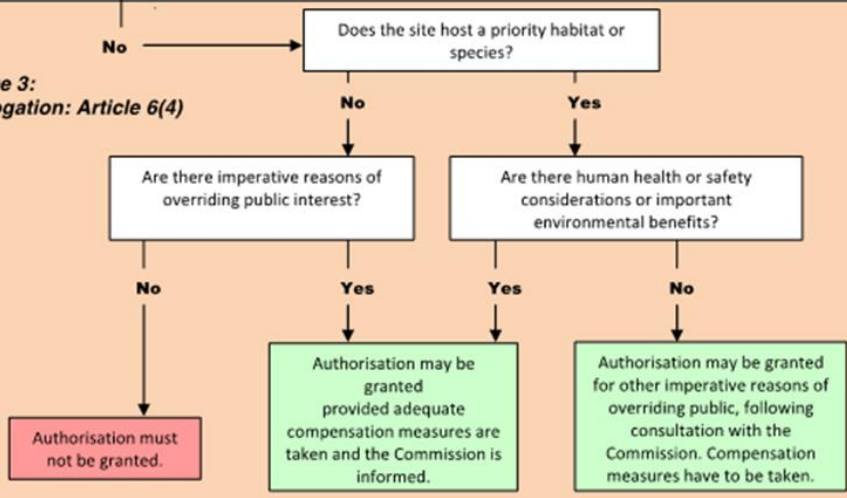
Stage 1: Screening



Stage 2: Appropriate assessment



Stage 3: Derogation: Article 6(4)



Step-by-step assessment of plans and projects affecting Natura 2000 sites

- Possible negative impact on Natura 2000 site? (screening)
- No ⇒ OK
- Yes ⇒ Appropriate Assessment (AA)

- No impact ⇒ OK
- Negative impact ⇒ Alternatives?
- There are alternatives ⇒ no authorisation ⇒ new AA
- No alternative ⇒ Imp. Reasons of Overriding Public Interest?
- No IROPI ⇒ no authorisation
- IROPI ⇒ Priority habitats/species affected?
- No ⇒ OK with compensation measures, notification to EC
- Yes ⇒ Commission opinion required

Appropriate Assessment (AA) – key elements

- ❖ Appropriate Assessment is a key tool of Habitats Directive in ensuring sustainable development and nature protection
- ❖ Triggered by the likelihood of significant effects ("screening")
- ❖ Assessment focusing on **conservation objectives** of the site on the basis of habitats/species for which it has been designated.
 - Consider **cumulative effects**
 - **Mitigation measures** form integral part of the process
- ❖ **Objective and verifiable information** required to enable the competent authorities to decide on the basis of the impact on the integrity of the site.
 - Authorisation only if certainty exists, **without any reasonable scientific doubt**, that the plan or project will not affect the integrity of the site.

Appropriate Assessment (AA) – key elements

- ❖ **Coordination with the EIA/SEA** process is possible/advisable.
- ❖ **Guidelines and standards** very important in helping ensure quality and consistency of assessments
- ❖ A sound and objective AA can prevent/reduce conflicts and delays at the permitting and implementation stage and increase public acceptance

Plans and projects

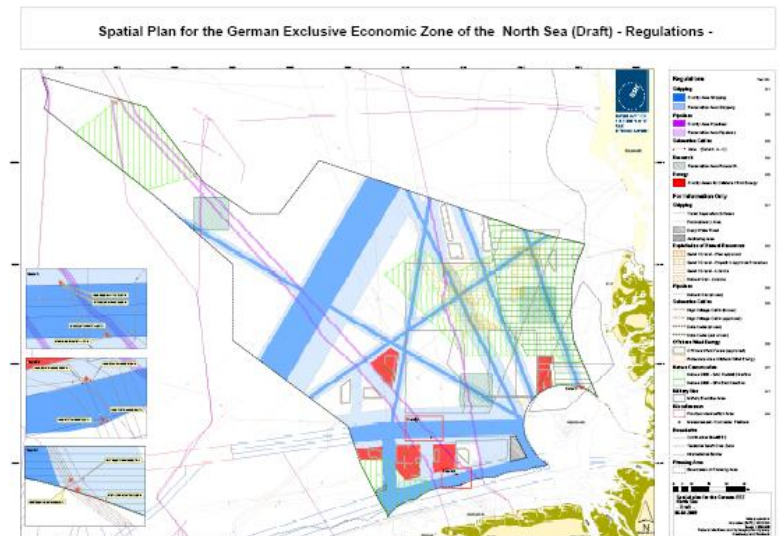
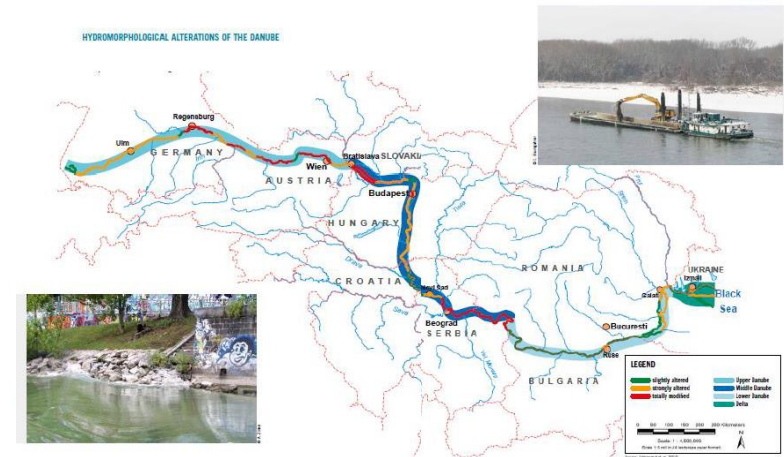
- No definition of "plan" or "project" in HD
- Court supports a **broad meaning**

Activities carried out periodically Waddensea (C-127/02),
Papenburg (C-226/08)

Generally certain activities (C-256/98; C-6/04; C-241/08; C-
418/04; -538/09)

The size of the project not relevant (C-98/03; C418/04)

- Plans – **wide interpretation** (including land use or spatial plans, sectoral plans)
- Plans such as policy statements or other policy documents normally outside the scope, as well as plans and projects related to the conservation management
- AA at plan level does not exempt projects from AA



Determining likelihood of significant effect

- Likelihood vs. certainty

Precautionary principle – in case of doubt as to the absence of significant effects, go for the AA

(Waddensea C-127/02, par. 39-44)

- Spatial scope (plans/projects **either inside or outside** Natura 2000 sites – also transboundary effects!)
- Significant effect:
 - No arbitrary (quantitative) definition → case by case approach;
 - Related to
 - specific features / ecological conditions of the site,
 - nature of impacts (magnitude, type, extent, duration, intensity, timing, probability, **cumulative effects**).



Cumulative impacts

- Modest impacts multiplied = significant impact
- Threshold of significance
- Plans and projects to be considered:
 - completed
 - approved but uncompleted
 - or actually proposed

“the failure to take account of the cumulative effect of projects in practice leads to a situation where all projects of a certain type may escape the obligation to carry out an assessment, whereas, taken together, they are likely to have significant effects on the environment” (C-418/04, C 392/96 paragraphs 76, 82).



Assessing the implications for the site

- **Evaluation on a case-by-case basis** (C-127/02, par. 48)
- Look at **all aspects of the plan or project** that could cause a significant effect on the Natura 2000 site
- Consider **all elements essential to the functions and the structure of the site** and to the habitat types and species present.
- Use **best scientific knowledge** (C-404/09)
- The appraisal of effects must be based on objective and, if possible, quantifiable criteria. Impacts should be predicted as precisely as possible, and the basis of these predictions should be made clear and recorded in the Appropriate Assessment report.

Site's conservation objectives

- Where conservation objectives have been set for a site, the effects must be assessed against these objectives (C-127/02, par. 46-48)
- As a minimum: **no deterioration**
- Information on each site in a **Standard Data Form (SDF)**
- Management plans
- Guidance note of Commission services on setting cons. obj.
- In SLOVENIA: Program upravljanja območij Natura 2000 (Cilji in ukrepi)

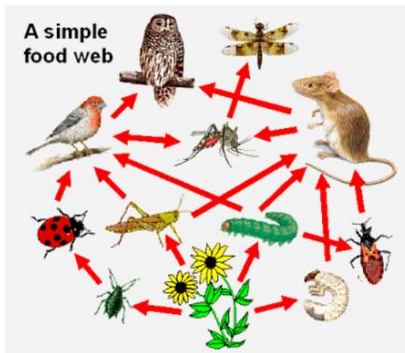
Zaporedna številka vrstice	ID območja	Ime območja	Skupina območij	Koda vrste/HT	EU koda	Ime vrste/HT	Znanstveno ime vrste	Taksonomska skupina	Tip podrobnejšega varstvenega cilja	Podrobnejši varstveni cilj	Vrednost podrobnejšega varstvenega cilja (številčna)	Enota	Vrednost podrobnejšega varstvenega cilja (besedna)
15,00	S13000173	Bloščica	Bloščica	HT_7230	7230	Bazična nizka barja		barja in močvirja	Velikost habitatnega tipa	ohrani se	80	ha	
16,00	S13000173	Bloščica	Bloščica	HT_7230	7230	Bazična nizka barja		barja in močvirja	Specifične lastnosti, strukture, procesi habitatnega tipa	ohrani se			visok nivo talne vode

Integrity of the site

Sum of structure,
function,
ecological
processes

Linked to
conservation
objectives,
resilience

Site specific



A plan or project will affect the integrity of a site ***'if it is liable to prevent the lasting preservation of the constitutive characteristics of the site'*** (C-258/11, par. 48)

Mitigation measures

- Aim to prevent negative effects or reduce them to a non-significant level
- Directly linked to the negative effects
- **Must be described in sufficient detail**
- Based on best available knowledge
- Integral part of the specifications of a plan or project
- **Not to be confused with compensation measures under Art. 6(4)**

(C-521/12): a project...which has negative implications for a type of natural habitat ...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'



Decision making

- The appropriate assessment should contain **complete, precise and definitive conclusions capable of removing all reasonable scientific doubt** as to the effects of the works on the site. (C-304/05, par. 69)
- Developer normally pays for AA...but authorities have the responsibility to ensure quality and consistency of assessments.
- Competent authorities....are to authorise that plan or project only if they have **made certain that it will not adversely affect the integrity of that site**. That is the case where **no reasonable scientific doubt remains as to the absence of such effects**. (Case C-127/02 Waddenzee)
- **The onus is on demonstrating the absence of adverse effects, rather than their presence.**
- Article 6(2) always applies

Art. 6(4)

- Allows for exceptions to the general rule of Article 6(3)
- Its application is not automatic, it is up to the project or plan proponent to decide whether they wish to apply for a derogation to Article 6(3). (C-241/08)
- **Article 6(4) must be applied** in the sequential order established by the Directive – that is **after all the provisions of Article 6(3) have been undertaken in a satisfactory manner.** (C-304/05)
- **The decision must meet the requirements, in particular:**
 - *No alternative exists that would not affect the integrity of the site (C-239/04)*
 - *There are imperative reasons of overriding public interest (C-182/10, C-43/10)*
 - *All compensatory measures necessary to ensure the overall coherence of N2000 are taken*
- Information to the Commission or **the opinion of the Commission** in case the site hosts priority habitats/species

Compensation measures

- Independent of the project (including any associated mitigation measures)
- Intended to offset the negative effects of the plan or project so that the overall ecological coherence of the Natura 2000 network is maintained.
- Last resort. They can only be considered in the context of Art. 6(4).
- Can involve habitat restoration or enhancement, habitat recreation, or new site designation.
- Important to consider: feasibility and effectiveness of compensation, extent, location and timing
- Additional to normal obligations under the Habitats and Birds Directives

Relationship between EIA, SEA and AA

- Many **similarities** but also important **differences** (scope, content, implications)
- **Streamlining**: Procedures, where appropriate, can be coordinated and/or run jointly (Art. 2(3), Amended EIA Directive) – AA can be part of EIA/SEA
- But:
 - SEA and EIA **cannot substitute** for the AA (C-418/04)

Information gathered in the course of the EIA procedure cannot substitute the AA information, as neither procedure overrides the other.

- In all cases **the AA must be clearly identifiable**, either within the EIA/SEA report or in a separate report, so that its conclusions can be distinguished from those of the overall impact assessment.

Comparison of Appropriate Assessment, EIA and SEA (1)

	Appropriate Assessment	EIA (amended Dir.)	SEA
Which type of development covered?	Any plan or project likely to have an adverse effect on a Natura 2000 site	Projects listed in Annex I. Annex II projects determined on a case by case basis through thresholds or criteria (biodiversity taken into account for screening)	Any Plan or Programme (a) for certain sectors which set the framework for future development consent, or (b) that requires AA under Art. 6 HD
What impacts need to be assessed relevant to nature?	Assessment in view of the site's conservation objectives (for species/habitats for which site designated)	significant effects on ... biodiversity , with particular attention to species and habitats protected under the Habitats and Birds Directives.	Likely significant effects on the environment , including on issues such as biodiversity, fauna, flora & interrelationship

Comparison of Appropriate Assessment, EIA and SEA (2)

	Appropriate Assessment	EIA	SEA
Who carries out the Assessment?	Responsibility of the competent authority but developer may need to provide necessary studies & information	The developer provides necessary information to be taken into account by the competent authority	Competent planning authority
Are the public/ Other authorities consulted?	Not obligatory but encouraged (the public 'if appropriate')	Compulsory consultation to be done before adoption of the proposal	Compulsory consultation to be done before adopting the PP
How binding are the outcomes?	Binding . Agreement to the plan/project only if it will not affect the integrity of the site	Result of consultations and information must be taken into consideration in the development consent procedure	Environmental report & opinions expressed shall be taken into account during the preparation of the plan/program

Complementarity of SEA and EIA with Art. 6 HD

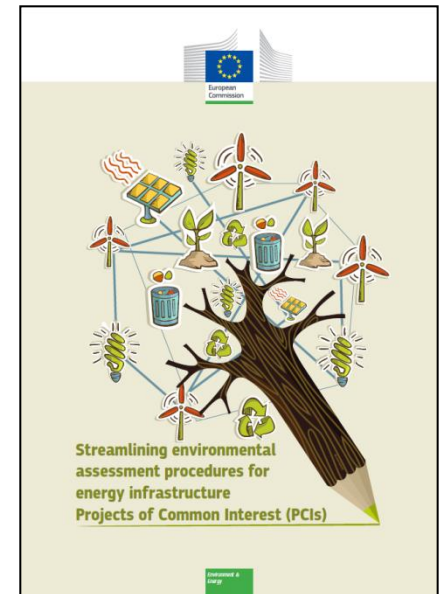
- Broader scope and application than Natura 2000
- Extended assessment obligations:
 - **Scoping** (SEA Dir., optional under amended EIA Dir.)
 - **Assessment of reasonable alternatives** (SEA Dir., am. EIA Dir.)
 - **Participation of the public and the environmental authorities (information and consultation)**
 - **Transboundary impact assessment and consultations**
 - **Information after the decision**
 - **Monitoring** (SEA Dir., amended EIA Dir.)

Commission guidance on streamlining

❖ *Issued for energy infrastructure Projects of Common Interest (PCIs) - Recommendations:*

- early planning, roadmapping and scoping of the assessments; early and effective integration of the assessments and other environment requirements;
- procedural co-ordination and time limits [competent authority integrating/coordinating all permit granting processes (for TEN-E projects)] to reduce complexity, and increase efficiency and transparency;
- data collection, sharing and quality control;
- cross-border cooperation;
- early and effective public participation;

❖ *Commission guidance document on streamlining environmental assessments conducted under Article 2(3) of the Environmental Impact Assessment Directive (new)*

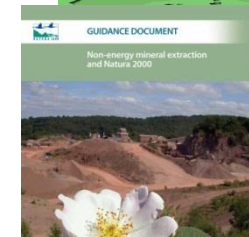
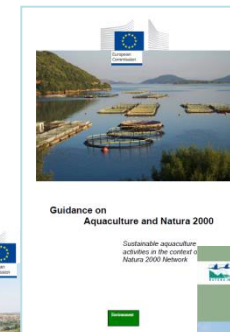
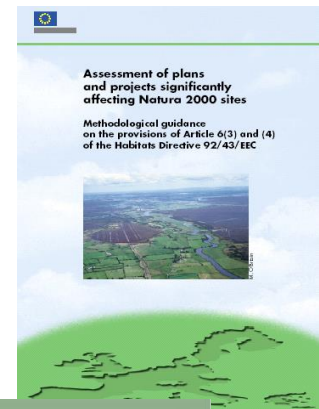
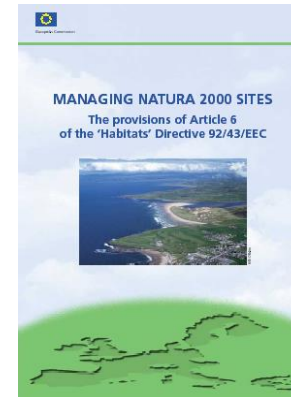


Concluding comments

- ❖ The "Appropriate Assessment" is a key tool of Habitats Directive in ensuring **sustainable development, nature protection** and prevention of conflicts.
- ❖ AA process can be combined with **EIA/SEA process**, but with different focus/implications.
- ❖ Value of **strategic approach** and integrated planning (e.g. spatial planning).
- ❖ Fudging makes things worse. Respecting the legislation is often at the end cheaper than trying to avoid it.
- ❖ **Competent authorities** have key responsibility to ensure the standards for effective delivery of AA (conservation objectives, status of habitats/species, etc.).
- ❖ Practitioners need to have necessary **expertise** for delivery of assessments.
- ❖ **Guidelines** and standards very important in helping ensure quality and consistency of assessments.

Commission guidance documents

- ❖ 'Managing Natura 2000 sites – the provisions of Art. 6' – currently updated...
- ❖ ***NEW – Article 6 – Rulings of the ECJ (July 2015)***
- ❖ Assessment of plans and projects: methodological guide Art 6 (3) & (4)
- ❖ Sector specific guidance:
 - ❖ **Wind energy**
 - ❖ **Non-energy extractive industries**
 - ❖ **Ports and estuaries**
 - ❖ **Aquaculture**
 - ❖ **Inland Waterways**
 - ❖ **Agriculture**
 - ❖ **Forests**
 - ❖ **Forthcoming: Energy infrastructure and hydro-power**



Thank you for your attention

More information on our internet site:

http://ec.europa.eu/environment/nature/index_en.htm



Points for discussion (afternoon)

- *The aim is to review the most common issues and problems with the implementation of AA in Slovenia, in light of the COM guidance, ECJ case law and experience from Slovenia and other MS*
- *Informal discussion which could lead to ideas for improvements or listing problems which need further consideration from the authorities and COM*

Typical problems with applying Article 6.3/6.4

- **Trying to avoid Art 6.3. AA** - inappropriate screening, non-respect of the precautionary principle
- **Wrong interpretation of 'P&P necessary for the management of the site'**, e.g. no AA of forest management plans
- **No or inappropriate assessments:**
 - e.g. no AA of projects outside Natura 2000, but which affect Natura 2000 nearby or downstream
 - effects on species or habitats not well assessed, poor expert input
 - effects assessed on species and habitats status quo, not on the conservation objectives
 - **Lack of consideration of cumulative impacts (salami slicing)**
- **Mixing-up mitigation and compensation measures**



Typical problems with applying Article 6.3/6.4

- **Trying to avoid Art 6.4.**
- **Negative results of assessments not respected**
- **No/insufficient alternatives considered**
 - Economic arguments only are not enough
 - Best alternatives are not assessed on purpose so as to stick to old plans
 - Zero alternative not considered
- **No real IROPI**
- **No or inadequate compensation measures**
 - Trying to avoid designating more sites
 - Usually best sites have been designated, or restoration takes time, so more than 1:1 in size expected
 - Using normal management measures such as restoration of existing sites as compensation

No designation/proposal of a qualifying site: requirements apply nevertheless
(C-340/10 linked to C-244/05)

Nature and Biodiversity Cases - Rulings of the European Court of Justice

- *Nature and Biodiversity cases ruling of the European Court of Justice 2006* (2006)
- *Court rulings related to Article 6 of the Habitats Directive* (2015)

Plans and projects

*"Therefore, an activity such as mechanical cockle fishing is covered by the concept of plan or project set out in Article 6(3) of the Habitats Directive. The fact that **the activity has been carried on periodically for several years** on the site concerned and that **a licence has to be obtained for it every year**, each new issuance of which requires an assessment both of the possibility of carrying on that activity and of the site where it may be carried on, does not in itself constitute an obstacle to considering it, at the time of each application, as a **distinct plan or project** within the meaning of the Habitats Directive".*

(Case C-127/02, Waddenvereniging and Vogelbeschermingsvereniging)

*"In its definition of measures to be subject to an assessment of the implications, **the Directive does not distinguish between measures taken outside or inside a protected area.**"*

*"The condition, to which the assessment of the implications of a plan or a project on a particular site is subject, which requires such an assessment to be carried out where there are doubts as to the existence of significant effects, **does not permit that assessment to be avoided in respect of certain categories of projects**, on the basis of criteria which do not adequately ensure that those projects will not have a significant effect on the protected sites".*

(Case C-98/03 Commission v Germany)



Plans and projects

"As a result of the failure to make land use plans subject to appropriate assessment of their implications for SACs, Article 6(3) and (4) of the Habitats Directive has not been transposed sufficiently clearly and precisely into United Kingdom law and, therefore, the action brought by the Commission must be held well founded in this regard."
(Case C-6/04, Commission v UK)

*"As to Ireland's argument that no environmental impact assessment had been required for shellfish farms **because they are small in size** and are of only limited impact on the environment, the Commission is correct in arguing that **that is not an adequate reason not to assess the effects of such a plan or project**. As just pointed out in paragraph 238 of this judgment, the first sentence of Article 6(3) of the Habitats Directive requires an appropriate assessment of any plan or project in combination with other plans and projects".*
(Case C-418/04 Commission v Ireland)

*"In the light of the foregoing considerations, it must be held that, **by not requiring an appropriate environmental impact assessment to be undertaken for certain activities, subject to a declaratory scheme**, when those activities are likely to have an effect on a Natura 2000 site, the Kingdom of Belgium has **failed to fulfil its obligations under Article 6(3) of the Habitats Directive**".*
(Case C-538/09 Commission v Belgium, paragraphs 50-64)

Plans and projects

*"In the light of the above, the answer to the question is that Article 6(3) and (4) of the Habitats Directive must be interpreted as meaning that **ongoing maintenance works in respect of the navigable channels of estuaries**, which are not connected with or necessary to the management of the site and which were already authorised under national law before the expiry of the time-limit for transposing the Habitats Directive, **must, to the extent that they constitute a project and are likely to have a significant effect on the site concerned, undergo an assessment** of their implications for that site pursuant to those provisions where they are continued after inclusion of the site in the list of SCIs pursuant to the third subparagraph of Article 4(2) of that directive"*

(Case C-226/08 Stadt Papenburg v Bundesrepublik Deutschland)

*"It follows that the mere **fact that the Natura 2000 contracts comply with the conservation objectives of sites cannot** be regarded as sufficient, in the light of Article 6(3) of the Habitats Directive, to **allow the works and developments provided for in those contracts to be systematically exempt from the assessment** of their implications for the sites. Accordingly, by systematically exempting works and developments provided for in Natura 2000 contracts from the procedure of assessment of their implications for the site, the Member State has failed to fulfil its obligations under Article 6(3)."*

*"Further, by **systematically exempting works and development programmes and projects which are subject to a declaratory system** from the procedures of assessment of their implication for the site, the French Republic has failed to fulfil the obligations under Article 6(3) of the Habitats Directive."*

(Case C-241/08 Commission v France)

Plans and projects

- Examples of plans for which AA is necessary if they are likely to have a significant effect on N2000: *land use or spatial plans, forestry plans, water management, hunting, fishing, etc.* and any updates of such plans, regardless of who is adopting the plan
- General policy documents excluded (strategies etc) unless there is a clear and direct link between their content and effects on N2000 site
- **Is there still unclarity about certain category of plans?**
- Doing the AA at the plan level does not exempt individual projects from AA (spatial plan – projects), and afterwards 6(2) still applies
- Plans adopted before the accession – need to comply with 6(2) and if necessary 6(3)

Plans and projects

- Plans which are directly related to the conservation management of the site should generally be excluded, but their **non-conservation components may still require AA** – example of forestry plans - parts which are not connected to the conservation (commercial logging) or plans which contain infrastructure developments (roads etc) – these are "mixed" plans
- Project authorised before but implemented after SCI designation → Article 6(2) applies to the implementation (C-141/14) and an ex post assessment may be needed if that is the only appropriate step for avoiding that the implementation of the plan or project results in deterioration or disturbance that could be significant in view of the objectives of the HD (C-399/14)
- Article 6(2) and (3) form a coherent whole and they are designed to ensure the same level of protection of habitats and species

Screening: Plans or projects 'likely to have a significant effect'

*"It follows that the first sentence of Article 6(3) of the Habitats Directive subordinates the requirement for an appropriate assessment of the implications of a plan or project to the condition that **there be a probability or a risk** that the latter will have significant effects on the site concerned".*

*"Such an interpretation of the condition to which the assessment of the implications of a plan or project for a specific site is subject, which implies that **in case of doubt as to the absence of significant effects such an assessment must be carried out**, makes it possible to ensure effectively that plans or projects which adversely affect the integrity of the site concerned are not authorised, and thereby contributes to achieving, in accordance with the third recital in the preamble to the Habitats Directive and Article 2(1) thereof, its main aim, namely, ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora".*

(Case C-127/02, Waddenvereniging and Vogelbeschermingsvereniging)

Screening

- The notion of what is "significant" needs to be interpreted objectively. At the same time, the significance of effects should be determined in relation to the **specific features and environmental conditions** of the protected site concerned by the plan or project, taking particular account of the site's **conservation objectives** and the **ecological characteristics** of the site.
- Significance will vary depending on factors such as magnitude of impact, type, extent, duration, intensity, timing, probability, cumulative effects and the vulnerability of the habitats and species concerned. **What may be significant in relation to one site may not be in relation to another.**
- The procedure under Article 6(3) is triggered not by a certainty but by a **likelihood of significant effects**, arising from plans or projects regardless of their location inside or outside a protected site.

Screening

- When determining likely significant effects, the combination with other plans and/or projects should also be considered to take account of **cumulative impacts** during the assessment of the current plan or project in question. It would seem appropriate to restrict the in-combination provision to other plans or projects which have been **already completed, approved but uncompleted or actually proposed**.

Integrity of the site

In Ireland a competent national authority decided to grant development consent for the Galway City Outer Bypass road scheme. Part of the proposed road was planned to cross the Lough Corrib SCI which hosts a total of 14 habitats referred to in Annex I to the Habitats Directive, of which six are priority habitat types. The road scheme involves the permanent loss within the SCI of approximately 1.47 hectares of limestone pavement, a priority habitat type. A total of 270 hectares of limestone pavement lies within the entire SCI.

- *"The competent national authorities **cannot therefore authorise interventions where there is a risk of lasting harm to the ecological characteristics of sites which host priority natural habitat types.***
- *"In the main proceedings, the Lough Corrib SCI was designated as **a site hosting a priority habitat type** because, in particular, of the presence in that site of **limestone pavement, a natural resource which, once destroyed, cannot be replaced.**"*
- *"Consequently, if, after an appropriate assessment of a plan or project's implications for a site, carried out on the basis of the first sentence of Article 6(3) of the Habitats Directive, the competent national authority **concludes that that plan or project will lead to the lasting and irreparable loss of the whole or part of a priority natural habitat type** whose conservation was the objective that justified the designation of the site concerned as an SCI, **the view should be taken that such a plan or project will adversely affect the integrity of that site.**"*

(C-258/11)

Mitigation measures

- Mitigation measures must be directly linked to the likely impacts that have been identified in the Appropriate Assessment and can only be defined once these impacts have been fully assessed and described in the Appropriate Assessment. The identification of mitigation measures, like the impact assessment itself, must be based on a sound understanding of the species and habitats concerned.
- The identification of mitigation measures, like the impact assessment itself, must be based on a sound understanding of the species and habitats concerned and must be described in detail. Well-implemented mitigation measures will limit the extent of the necessary compensatory measures by reducing the damaging effects which require compensation.

Mitigation measures

- Mitigation measures may be proposed by the plan or project proponent and/or required by the competent national authorities in order to remove, preempt or reduce the potential impacts identified in the Appropriate Assessment to a level where they will no longer adversely affect the integrity of the site.
- ***Mitigation measures, which aim to remove or prevent any impacts from happening in the first place, must not be confused with compensatory measures, which are intended to compensate for any damage that may be caused by the project. Compensatory measures can only be considered under Article 6(4) if the plan or project has been accepted as being necessary for Imperative Reasons of Overriding Public Interest and where no alternatives exist.***

Distinguishing between mitigation and compensation measures

The Netherlands decided to approve a project to widen the A2 motorway despite the fact that was found to have potential negative implications for the Natura 2000 and in particular for the habitat type Molinia meadows within that site. They considered this was acceptable since the project provided also for improvements to the hydrological situation in other parts of the site, which will allow for the development of a larger area of Molinia meadows of higher quality, thereby ensuring that the conservation objectives of the site for this habitat type are maintained through the creation of new Molinia meadows.

- *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.*
- *"...**protective measures** provided for in a project which are aimed at **compensating** for the negative effects of the project on a Natura 2000 site **cannot be taken into account** in the assessment of the implications of the project provided for in **Article 6(3)**."*

(C-521/12)

Other issues?

- *EIA decisions – separate information on AA and impact/mitigation in relation to N2000 features could save time and effort and improve streamlining*