



**Bundesministerium  
für Verkehr, Bau-  
und Wohnungswesen**

Federal Ministry of Transport, Building and Housing  
of the Federal Republic of Germany

**Methodological Guideline  
for Impact Assessment  
of Transportation Infrastructure  
Significantly Affecting Natura 2000 Sites**

**(Guideline for IA)**

**Guidance on the provisions of Article 6(3, 4)  
of the Habitats Directive**

**Version 2004**

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## Foreword

The following document is based on the “Guidelines for Impact Assessment of Federal Motorway Construction” that were introduced for motorway construction projects in the Federal Republic of Germany. These mandatory guidelines were developed by an expert committee under the direction of the Federal Ministry of Transport, Building and Housing (BMVBW).

Their objective was to provide guidance on the form and content of the information required for the assessment and derogation procedures under Article 6 of the Habitats Directive (HD) in the context of federal transportation planning.

The guidance is designed principally for use by the members of the Motorway Administration and the consultants who are responsible for the preparation of the assessment documents. The guidelines take into account the present state of technological and legal development, as well as research. It is hoped that institutions and professionals of other Member States, who are involved in assessment procedures according to Article 6 of the Habitats Directive, will be interested in these comprehensive step-by-step recommendations for the decision process and implementation of the Habitats Directive.

This version has been cleared of all content that is specific to the German nature protection law or administrative procedures. The original German version includes a toolbox on a CD-ROM with 60 explanatory sheets dealing in detail with technical topics and frequently asked questions.

# 1 Introduction

The European Union adopted two directives for the conservation of nature and biological diversity:

- Directive 79/409/EEC of the Council from 2 April 1979 on the preservation of wild bird species, amended through the Directive 97/49/EC (Birds Directive, BD)
- Directive 92/43/EEC of the Council from 21 May 1992 on the preservation of natural habitats as well as wild fauna and flora, last amended by the Directive 97/43/EC (Habitats Directive, HD).

The objective of the Habitats Directive, in addition to the direct protection of species,<sup>1</sup> is to create, to protect and to develop a coherent European ecological network "Natura 2000" of Special Areas of Conservation (SAC). The network integrates the Sites of Community Importance (SCI) according to the Habitats Directive, as well as the Special Protection Areas (SPA) specified by the Birds Directive.

The purpose of the network is to maintain or restore a favourable conservation status of the natural habitats and species of wild fauna and flora of Community interest (Article 2(2) Habitats Directive). In addition, the Birds Directive calls for the protection of the habitats and nesting areas of the bird species in Annex I of this directive as well as the breeding, moulting and wintering areas of the regularly occurring migratory birds (Article 4(1, 2) Birds Directive).

According to Article 6(3) of the Habitats Directive all plans and projects, which also include proposals for the construction or expansion of roads, that individually or in combination with other plans or projects are likely to have significant impact on the Natura 2000 areas, shall be assessed according to their compatibility with the conservation objectives of the respective sites.

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<sup>1</sup> Comprehensive goals of the Habitats Directive are the preservation and the enhancement of biodiversity. To this end two main instruments are available: provisions for a comprehensive protection of species (species in Annex IV) and a coherent network of selected conservation areas, in which the protection of habitats types in Annex I and species in Annex II take priority over other interests.

## 2 Legal provisions

### 2.1 Scope

The application of Article 6(3, 4) of the Habitats Directive basically presupposes that the Habitats Directive has been fully implemented at the national level. This will not be the case until the formal designation of all sites is completed. Nevertheless, the requirements of Article 6 HD are binding on the authorisation procedure, regardless of whether the Member State has already transposed the specific European obligations in all national legislative and administrative regulations or not.

#### 2.1.1 Sites under the Habitats Directive

Sites of Community Importance (PSI) are not under the full protection regime of the Habitats Directive until the proposals of a Member State has been approved by the European Commission. For the transition period, sites should be treated in the following manner:

#### **Proposed Sites of Community Importance (pSCI) (candidate sites submitted to the EC)**

For all proposed sites hosting priority habitats or priority species, Article 6(3, 4) of the Habitats Directive applies without any delay. For the remaining proposed sites, any deterioration that could affect the eligibility of the site for the European network should be avoided. Also in such cases the requirements of Article 6(3) apply.

#### **Additional sites**

Sites not yet proposed may remain relevant, until the designation procedure is considered closed by the EU Commission. Until that time, which can be expected shortly, further potentially eligible SCI may be taken into account in order to improve the legal consistency and safety of the authorisation procedure.

**Potentially eligible Sites of Community Importance** are sites that are not proposed although they qualify for a designation according to the criteria set out in Annex III (Stage 2, Nr. 1) HD. Sites hosting priority habitats or species can be especially considered as potentially eligible. If such sites or habitats are affected by projects, an impact assessment based on the requirements of Article 6(3, 4) HD has to be carried out, unless the competent authorities provide the evidence that the presently designated sites ensure a sufficient protection of the habitat or the species in question.<sup>2</sup>

After the list of sites has been agreed with the European commission, potentially eligible SCIs will no longer be of relevance.

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<sup>2</sup>

In the context of this statement, the competent authorities establish that a sufficient number of sites have already been proposed for the protection of the respective habitat types/species. Therefore, no further designation is required.

For sites under Article 5 HD the integration into the network is still in question. The commission opens a consultation procedure if it considers that a site which is not included in the national proposals is essential for the conservation of a priority habitat or of a priority species. During the consultation period and pending a Council decision, the site is subject to Article 6(2) HD. The Member State has to abstain from all activities that may cause significant disturbances of priority natural habitats or species. For reasons of legal safety, it is necessary in these cases to follow the regulations of Article 6(3, 4) HD and carry out an Impact Assessment.

## 2.1.2 Sites under the Birds Directive

a.) Sites that Member States classify as Special Protection Areas according to Article 4(1, 2) of the Birds Directive, or recognise as such, require an Impact Assessment according to Article 7 of the Habitats Directive. For them, Article 6(3,4) HD also applies.

Sites are classified:

- for the bird species in Annex I of the Birds Directive according to the criteria of Article 4(1) Sentences 2 to 4 of the Birds Directive
- for the regularly occurring migratory species according to the criteria of Article 4(2) of the Birds Directive.

b.) Some sites that are not actually proposed by the Member State ought to be classified as Special Protection Areas, according to the criteria of Article 4(1) Sentences 2 to 4 as well as the specific criteria of Article 4(2) of the Birds Directive. These sites are in fact to be notified as **Special Protection Areas** and have to be treated as SPA. This also applies to sites where migratory birds regularly appear in significant populations,<sup>3</sup> especially for Ramsar sites.

The “in fact to be notified” Special Protection Areas must be reviewed with respect to the objectives of Article 4(4) BD to determine whether the project will lead to pollution of or impact on natural habitats or to a disturbance of the birds. The objectives set out in Article 4(1, 2) of the Birds Directives are the standards for the examination:

- ensure survival and reproduction of bird species found in Annex I within their areas of distribution,
- similar measures for regularly occurring migratory species not listed in Annex I, as regards their breeding, moulting and wintering areas, as well as staging posts along their migration routes.

If the project proves to have significant adverse effects on the site, then it may be authorised only under the strict requirements of Article 4(4) of the Birds Directive. In this case only major imperative reasons of overriding public interest, such as public safety,<sup>4</sup> may be acceptable. Social or economic reasons, i.e. transportation economics, do not justify an exemption.

The regulations for exemption in Article 7 and referring to Article 6(4) HD are applicable in accordance with the case law of the CoJEC,<sup>5</sup> if a designation procedure has been opened for the site.

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<sup>3</sup> For an explanation of the concept of “significant population” of migratory birds see Section 5.2.3.2, Definitions: conservation objectives and conservation status.

<sup>4</sup> Judgement of CoJEC from 28.02.1991 - C 57/89 – Leybucht.

<sup>5</sup> Judgement of CoJEC from 07.12.2000 - C 374/98 - Basses Corbières.

### 3 Procedure according to Article 6(3, 4) Habitats Directive

The Procedure according to Article 6(3, 4) HD encompasses up to three phases. Each step focuses on different issues (Fig. 1) and is to be recorded individually.

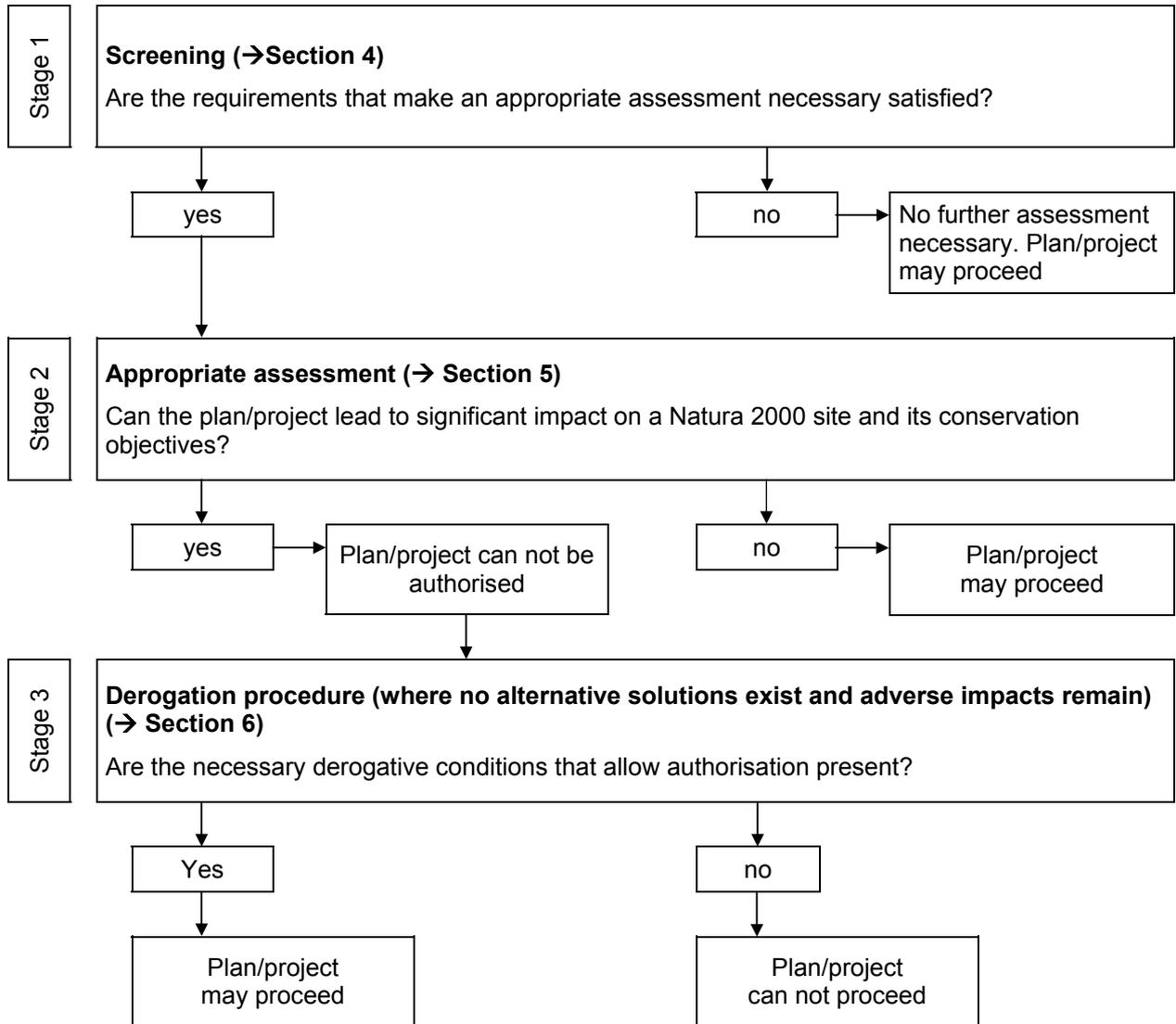


Fig. 1 Procedure flowchart according to Article 6(3, 4) HD

## Explanation of the procedure

Screening (**Stage 1**) is the process of decision-making whether or not an appropriate assessment is required (for more information see Section 4, Screening). If no further assessment steps are necessary, the project may proceed.

However, if the possibility of a significant impact cannot be ruled out at the screening stage, a thorough examination of the effects of the project for the integrity of the site has to be carried out in a second assessment phase (**Stage 2**) (for more information see Section 5, Appropriate assessment). If the project can lead to a significant impact on the conservation objectives of a Natura 2000 site, either alone or in combination with other plans/projects, as a rule no authorisation can be granted. Generally, a project may only proceed once it has been ascertained that it will not adversely affect the integrity of the site's features.

.Should the project go ahead despite significant impacts, a third assessment step (**Stage 3**) has to determine if there are exceptional circumstances which justify a derogation, as set out in Article 6(4) HD (for more information see Section 6, Derogation procedure).

If adverse effects for a priority habitat type or a priority species cannot be ruled out, the European Commission must be consulted unless the project has to be carried out for imperative reasons of overriding public interest relating to human health or public safety, or benefits of primary importance for the environment. The plan or project is allowed to proceed if it has satisfied the legal requirements of the derogation procedure and the necessary compensatory measures have been set up.

## 4 Screening

### 4.1 Task and objective of screening

Screening (preliminary examination) has to determine if an appropriate assessment must be carried out or not. If it is obvious that significant impacts are likely to occur and an appropriate assessment needs to be undertaken, then no further documentation of the outcome of the screening stage is necessary.

The assessment obligation set out in Article 6(3) HD applies to all plans and projects, which either alone or in combination with other projects or plans could have significant effect on a Natura 2000 site. The assessment approach is a stepwise process.

As a first step, the risk of significant adverse effects on the conservation objectives of a Natura 2000 site is estimated. At this level, the **potential hazards** related with the plan or project and their likely consequences for the integrity of the site are to be assessed. If the risk of a significant adverse effect cannot be ruled out, an appropriate assessment must be carried out. In this second step, the assessment determines whether or not the plan or project in combination with other plans and projects will **actually** have significant adverse effects.

The objective of screening is to reduce administrative effort by sorting out obviously unproblematic projects and identifying clear-cut cases. For that reason, it is not advisable to shift all the tasks of an appropriate assessment to the screening stage. Screening, therefore, should be based solely on readily available information about the occurrence of species and habitats. The estimation of the likely magnitude of effects is based on accepted expert opinion about the extent and intensity of impacts. Further survey fieldwork should remain an exception and strictly restricted to a few selected localities or features.

The following issues need to be cleared on a case-by-case approach:

- identification of Natura 2000 sites within the area potentially affected by the project, and
- judgement about the risk of significant impacts on the site's conservation objectives.

The location of the proposed plan or project in the frame of the Natura 2000 network determines its potential of hazards. This means that not only the range of the immissions but also fragmentation effects have to be considered for the delimitation of the investigation area.

If screening shows that the risk of significant impacts cannot be ruled out, then an appropriate assessment must be carried out.

### 4.2 Scope and content of the documents for screening

The scope and the accuracy of the required information depend greatly on the individual situation (scope and type of project, location of plan/project in relation to the network Natura 2000, specific features and conservation objectives of the site itself). If no Natura 2000 site exists within the maximum possible range of effects caused by the project and if far-reaching pathways (e.g. dispersal of pollutants via hydrological pathways) can be ruled out, then a brief documentation of the circumstances is sufficient.

Depending on the specific features of the assessed case, information about the following points can be necessary. However, the information provided should be restricted to the issues required for a sufficiently transparent documentation of the outcome of screening.

### **Identification of potentially affected Natura 2000 sites**

The respective sensitivity of the site's conservation objectives and the range of project-related effects are decisive to determine the potentially affected sites.

The sites are to be identified according to their official code and site name and by using the specified nomenclature for the site's status.

### **Description of the project or plan**

A sufficiently specific description of the technical features of the project is necessary. The technical characteristics of the project which are already known at this stage of the planning procedure (e.g. trenches, embankments, culverts) are to be addressed. Depending on the characteristics and sensitivity of the conservation objectives, information about activities that take place as late as the construction phase can be necessary. Precautions for avoidance and reduction of adverse effects can only be considered at the stage of screening if they are specific and **non-optional** characteristics of the project submitted for assessment.<sup>6</sup>

### **Description of potentially affected Natura 2000 sites and their conservation objectives**

For each potentially affected Natura 2000 site, a separate description is to be made of the habitats and species (with mention of their priority or non-priority status), the conservation and restoration objectives (if not yet fully set up, at least interim statements) and the relevant ecological baseline features of the site.

The examination must ensure that the available data and information is sufficiently exhaustive and up to date. The plausibility of the entries in the standard data forms must be checked and an agreement should be met with the competent authorities. The relevance of obvious gaps in the data for the results of the assessment must be estimated.

The conservation status of qualifying species and habitats of the site, its general conservation and restoration objectives, the site-based management targets as defined by the competent authorities, as well as the functional relationships to other Natura 2000 sites are to be addressed. Previous environmental impacts must be taken into account.

### **Description of the project-specific effects**

The relevance of the project-specific effects and impacts, both inside and outside the site, depends on the sensitivity of the site's conservation objectives as well as the specific layout of the dispersal

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Mitigation measures taken for Natura 2000 specific issues are not considered at the screening stage. The type and level of mitigation required, as well as its efficiency and viability, can only be determined by examining impacts in a case-by-case approach, and is therefore the task of an appropriate assessment. As a rule, mitigation measures are only necessary if a risk of significant impact exists, which is a sufficient justification to move to an appropriate assessment (European Commission / GD Environment (2001).

pathways in the receiving environment. Therefore, the description of the foreseeable effects is closely related to the specific conditions of the site. Information is required about effects related to the physical features of the project and its construction, as well as its operation. The examination of the extent and the magnitude of the effects is based on the possible response of the most sensitive stage of the life cycle of species or the most vulnerable ecological functions of the site.

## **Prediction of possible impacts on the conservation objectives of the Natura 2000 site**

The possible impacts are to be identified for the habitats (including the characteristic species that are likely to occur in the site) and species, key features for the conservation objectives, as well as the requirements for the implementation of the measures set up according to the management plan of the site. Each conservation objective should be considered individually.

Furthermore, the assessment considers potential impacts on the network relations between Natura 2000 sites.

If certain negative effects of the project cannot be ruled out without any doubt at the screening stage, their occurrence must be assumed. This means that the potential for subsequent impacts must also be assumed, and an appropriate assessment may be necessary to determine their significance.

Information about the relevance of other plans and projects can be found in Section 4.3.

### **4.3 Implications of the results of the screening for further steps of the procedure**

An appropriate assessment can be waived only when screening ascertains that the project obviously cannot have<sup>7</sup> any significant impact and that there is no possible cumulative impact from other plans and projects.

The treatment of possible cumulative effects of other plans and projects should comply with the following principles:

If the project does not lead to **any** apparent, even inconsequential, impact on a given site, then no consideration of other plans and projects is necessary. Impacts caused by other plans or projects are treated in their respective assessment procedures. In this case, the authorisation of the submitted project is not linked with the presence or absence of other plans or projects affecting the site.

If the submitted project might have impacts, and there is a risk of cumulation with the impacts of other plans and projects on the same conservation objectives, an appropriate assessment will be necessary. This also applies when the impacts of the project itself are not likely to be significant.

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<sup>7</sup> Example:

A bypass road is planned in the vicinity of an SAC for wintering geese. The potential increase of noise will affect an up to 100 m broad fringe of the site. A railway dam that is lined with a high row of trees runs between the planned road and the site. Because of their specific behaviour, resting geese keep a distance of more than 100 m from high structures. For this reason, they keep away from the part of the site that will be affected by the proposed bypass road because it is situated close to the tree-lined railway. Therefore, though noise will increase in the site, this effect will cause no significant impact on the conservation objectives of the site (in this case, the function as staging area for wintering geese). An appropriate assessment is not necessary.

It is not satisfactory to waive the appropriate assessment due to the uncertainty of the occurrence of certain effects. The screening process should not determine the certainty, but rather the reasonable possibility of a risk of significant effects.

Therefore, gaps in data about the ecological baseline situation can be enough reason to move to the appropriate assessment. This basic rule applies also if the gaps are restricted to few habitats or species. Whenever the readily available data does not provide a reliable base for a sound assessment, further survey fieldwork has to be carried out in the frame of an appropriate assessment.

The outcome of the screening must ascertain that the risk of significant harmful impacts on the site's conservation objectives can, without a doubt, be ruled out,<sup>8</sup> otherwise an appropriate assessment must be undertaken.

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When the results of the screening indicate that an appropriate assessment is not required, the competent authorities in charge of the site's management should be timely consulted in order to avoid a different opinion at a later stage of the procedure.

## **5 Appropriate assessment**

### **5.1 Task and objectives of the appropriate assessment**

The objective of an appropriate assessment (AA) is to evaluate the compatibility of a project with the conservation objectives of a Natura 2000 site.

The appropriate assessment of a project is required if a risk of significant impacts on the conservation objectives of a Natura 2000 site cannot be completely excluded. A differentiated identification of the impacts and an evaluation of the significance of these impacts on the conservation objectives are to be carried out in the appropriate assessment.

### **5.2 Methodological requirements for the appropriate assessment**

#### **5.2.1 General requirements**

#### **Separate assessment for each Natura 2000 site**

The evaluation of the impacts is to be carried out for each Natura 2000 site. Because of the different conservation objectives and interrelationships with the surroundings of each Natura 2000 site, it is necessary to assess each site separately and, as a rule, to prepare a separate report. Combined documentation is only possible if similar conservation objects have been established for the different Nature 2000 sites and the sensitivity of the conservation objectives to the project-related affecting processes is identical for all the sites.

Sites that are protected under both the Habitats and the Birds Directives, and for which different standard data forms are available, require individual treatment and documentation.

#### **Nomenclature of the Natura 2000 site**

The site's official code and description are to be used. The specific nomenclature for the identification of the site status is to be used. The sites are to be identified according to their official code and site name and by using the specified nomenclature for the site's status.

## 5.2.2 Setting up the programme and the data requirements

In order to identify the data required for the appropriate assessment, the following steps are to be carried out:<sup>9</sup>

<p><b>1. Identification of affected sites</b></p> <ul style="list-style-type: none"> <li>- Identification of the relevant sites.<sup>10</sup></li> <li>- Description of the project and the range of the potentially damaging processes.</li> </ul>
<p><b>2. Identification of the site's conservation objectives</b></p> <ul style="list-style-type: none"> <li>- Identification of the site's conservation objectives and of the qualifying ecological features of the site. If the management targets are not sufficiently concrete, then they should be clarified in cooperation with the competent authorities.</li> <li>- Determination of the site-based assemblage of Annex I-habitats' characteristic species. The competent authorities should be consulted.</li> </ul>
<p><b>3. Determination of the potentially affected conservation objectives</b></p> <ul style="list-style-type: none"> <li>- Identification of the affecting processes that are relevant for the conservation objectives and the qualifying ecological features of the site.</li> <li>- Identification of the specific sensitivity of the conservation objectives.</li> </ul>
<p><b>4. Identification of other relevant plans and projects</b></p> <ul style="list-style-type: none"> <li>- Identification of other plans and projects that could be relevant for the site's conservation objectives and qualifying features in combination with the assessment project.</li> </ul>
<p><b>5. Delineation of the area of detailed investigation</b></p> <ul style="list-style-type: none"> <li>- Delineation of the area of detailed investigation based on the specific sensitivities of the potentially affected conservation objectives and the assumed range of the affecting processes.</li> </ul>
<p><b>6. Identification of need for investigation</b></p> <ul style="list-style-type: none"> <li>- Examination of the existing data about the site's conservation objectives and qualifying features, including the key habitats for species, as well as the site-based assemblage of Annex I-habitats' characteristic species.</li> <li>- Identification of gaps in the data.</li> <li>- Selection of adequate type, scope and methods for the additional surveys and investigations.</li> </ul>

The determination of data that must be supplemented with further surveys can normally be achieved on the basis of existing information and consultation with the competent authorities (see above).

The scoping procedure is a case-by-case approach. It aims to determine which information is actually needed in the specific assessment situation according to the guidance given in Sections 5.2.3 to 5.2.5.

<sup>9</sup> As far as screening has been carried out, the information that has been collected at this stage is to be included and, if needed, specified.

<sup>10</sup> For information about the identification of the relevant sites see Section 2.1.

## Data and information requirements

For the evaluation of the effects on a site, the up-to-dateness, completeness and reliability of the available documents and data are to be verified. If the existing documents and data are not sufficient, i.e. not sufficiently informative to evaluate the effects associated with the proposed project, then further investigations are necessary, e.g. mapping of the habitat types, fauna survey, etc. Gaps in the data that cannot be avoided or remedied in the available time are to be identified and their relevance for the appropriate assessment is to be estimated.

The extent and the degree of detail of the necessary investigations are determined by the requirements presented in Sections 5.2.3 to 5.2.5.

### 5.2.3 Description of the site

#### 5.2.3.1 Area of investigation for the appropriate assessment

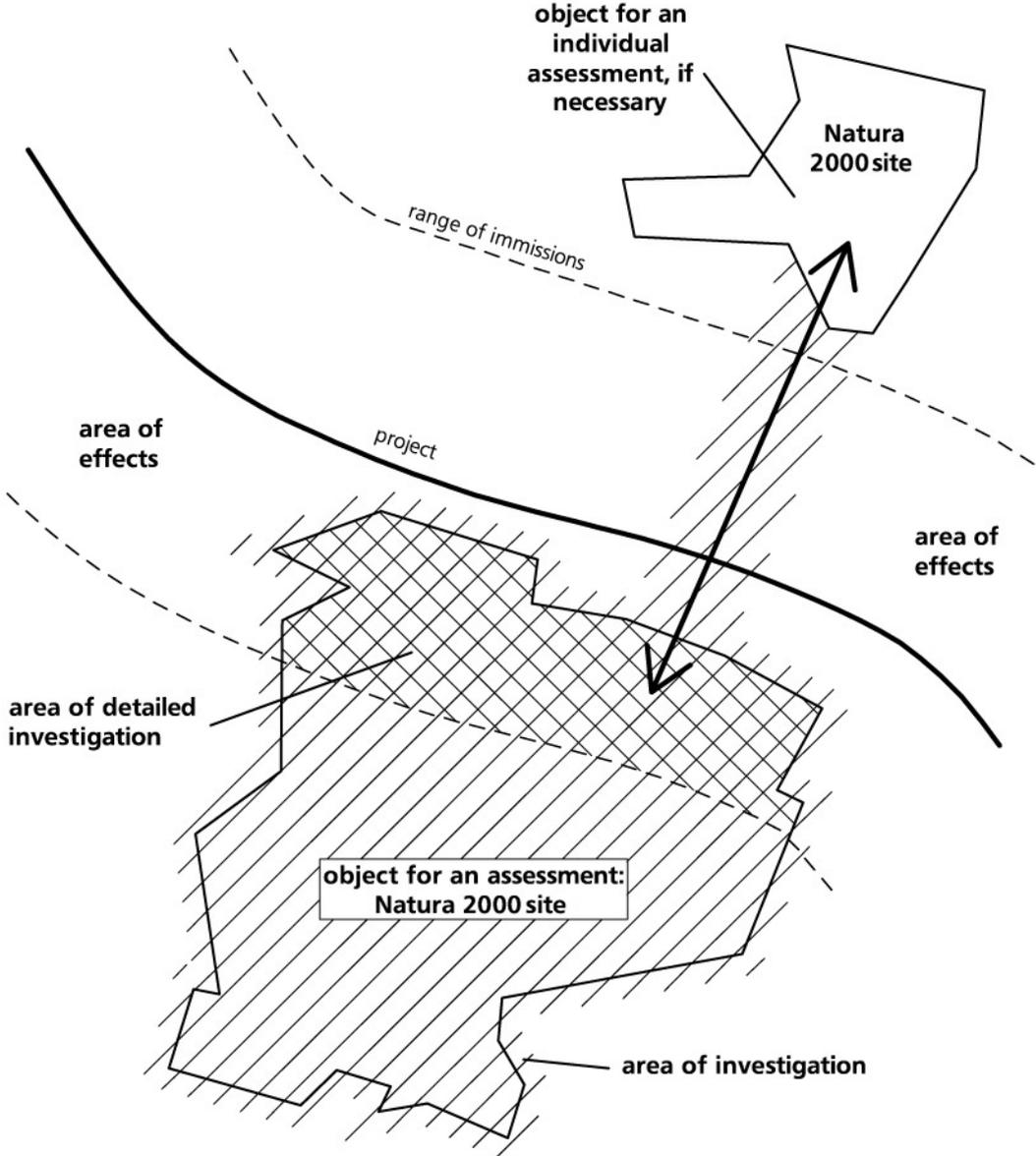
### Definitions

The overall **area of investigation** is the area that must be considered for the evaluation of the effects of the project on the site's conservation objectives. It includes at least the entire affected site as well as the structures, functions and functional relationships outside of the site that are essential for a favourable conservation status of the site's conservation objectives.

The appropriate assessment applies strictly to the affected site. For large sites, it can be sensible to delineate a smaller **area for more detailed investigation** where it is required.

As a rule, a detailed investigation is restricted to the **area of effects** around the site. In individual cases, it may be necessary to undertake additional investigations that extend past the area of effects, if the conservation status of species or habitats in the entire site cannot be judged with sufficient certainty on the basis of available data.

**Fig. 2: Description of the area of investigation for the appropriate assessment**



**Description requirements for the overall area of investigation**

Even when a project affects only a small part of a large site, a complete description of the overall area of investigations, focusing on the site, is necessary, in order to make a qualified estimation of the relative importance of the affected portion of the site and an evaluation of the significance of the impacts.

The general description of the overall area of investigation must fulfil the following functions:

1. To give an overview of the site's conservation objectives and the entire inventory of important natural habitats or species in Annex I and II of the Habitats Directive, or bird species in Annex I of the Birds Directive, and the occurrence of species according to Article 4(2) of the Birds Directive, including (site) requirements that must be fulfilled for their preservation and restoration. Detailed information about the entire occurrence of natural habitats and species in the site is required only for the habitats and species that are potentially affected by the project.
2. To describe the network of functional relationships of the site<sup>11</sup> within the Natura 2000 network that are essential for a favourable conservation status of the site's conservation objectives and for a coherent Natura 2000 network. Therefore in specific cases it may be necessary to consider a larger area than the site itself, e.g. in order to grasp the interchange of mobile animals between key habitats located both inside and outside of the site. As a rule, special investigations are not necessary for this.
3. To include the information that is necessary to make the delineation of the detailed area clear and understandable. For example, a watershed divide can be the reason for the limit of unaffected sections of the site's watercourses or water bodies.
4. To provide the basis for an assessment of the local impacts on the habitats or species, e.g. an alluvial forest in the area of effects, in the context of the overall character of the habitat or species, for example, to the entire alluvial forest.

A detailed description is only necessary for circumstances which are essential for determining significant impacts.

As a rule, the necessary information for the description of the overall area of investigation can be compiled through data research. If no data is available, then special surveys must be carried out for portions of the site that are important for the affected conservation objectives. Otherwise in order to be legally certain of the evaluation of significance of the impacts, it must be assumed, as worst case assumption, that the affected populations have outstanding value for the whole site.

### **Delineation of the area of detailed investigation**

In large sites, or sites of great longitudinal extension (e.g. watercourses) the detailed area of investigation is to be limited to the sections in which the features relevant to the conservation objectives could be significantly impacted. In small sites, the overall area of investigation and the area of detailed investigation may be the same.

The spatial layout of the features which are relevant for the conservation objectives, and the range of the project's relevant affecting processes, determine the delineation of the area of detailed investigation. The reasons for the selection of the boundaries will be explained.

### **Description requirements of the area of detailed investigation**

A full description of the qualifying habitats and species in Annex I and II of the Habitats Directives, or in Annex I of the Birds Directives, as well as other qualifying features, is necessary for the area of

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<sup>11</sup> See Section 5.2.3.2.

detailed investigation (see Section 5.2.3.2). Furthermore, the description of the landscape (information about geology, geomorphology, climate, hydrology, soil, landscape history, land use, etc.) is to be made for factors which make the evaluation of the significance of impacts understandable (e.g. previous impacts, pathways of affecting factors, outstanding value or sensitivity due to the special layout of the landscape, habitat mosaics and relationships to surrounding biotopes).

### 5.2.3.2 Conservation objectives of the site

#### **Definition: conservation objectives and conservation status**

The term **conservation** is defined in Article 1(a) of the Habitats Directive. These species and habitats are examined in the appropriate assessment as long as they are classified as significant.<sup>12</sup> The migratory birds that are not listed in Annex I of the Birds Directive are still examined in the appropriate assessment if they occur regularly as internationally significant populations in Special Protection Areas. Furthermore, migratory birds that occur regularly in only regional or national significant aggregations may also be considered in the assessment after consultation with competent authorities. The parameter of regular occurrence applies to the moulting and wintering areas as well as the staging areas along their migration routes. In particular, but not only, Wetlands of International Importance (Ramsar sites) according to Article 4(2) of the Birds Directive are to be considered.

Species which are listed in other annexes of both Directives, or are stated in the standard data form as so-called “other species of fauna or flora”, are not examined in the assessment, unless they belong to the typical assemblage of the Annex I habitats specified as conservation objectives.<sup>13</sup>

The “favourable conservation status” of natural habitats and species as defined in Article 1(e) and (i) of the Habitats Directive is the decisive criterion for the assessment of impacts and the evaluation of their significance.<sup>14</sup>

According to Article 1(e), the conservation status of a natural habitat is considered favourable if:

- “its natural range and areas which it covers in this site are stable or expanding, and
- the necessary structure and specific functions which are necessary for its long-term continuity exist and are likely to continue to exist for the foreseeable future, and
- the conservation status of its typical species<sup>15</sup> is favourable as defined in (i).”

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<sup>12</sup>

In the standard data form, non-significant occurrences of habitats and species are also listed. These are not part of the appropriate assessment. Habitats and species are rated as non-significant, for which representativity is rated in the standard data form in category “D: non-significant presence”, or the population is categorised as “D: non-significant population”.

A conservation authority can – when justified – select as conservation objectives habitats or species, which at that time of designation have no significant occurrence in the site (e.g. for re-establishment). In the evaluation of significance for bird populations, the generally accepted quantitative threshold values for national and international importance are to be considered, which are published in the scientific literature and are reviewed on an irregular basis (BirdLife International / European Bird Census Council (2000), Wetland International (2002)).

<sup>13</sup>

For characteristic species of the natural habitats, see page 19.

<sup>14</sup>

Cp. Section 5.2.5.2 regarding evaluation criteria for the assessment of the conservation status.

<sup>15</sup>

For characteristic species of the natural habitats, see page 19.

According to Article 1(i), the conservation status of a species is considered favourable when

- "population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitat, and
- the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and
- there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis."

The "favourable conservation status" of the bird species in Annex I and of migratory birds according to Article 4(2) of the Birds Directives is not explicitly defined therein. The definition of terms in Article 1(i) can, nevertheless, be applied to the protected bird species of the Birds Directive. As is the case for species in Annex II of the Habitats Directives, the favourable conservation status of bird species can be estimated based on the degree of conservation of its functions and the potential of regeneration of the key habitats for the species.

### **Definition: features of relevance of the site for the conservation objectives<sup>16</sup>**

This refers to the network of features of the landscape, communities of species, biotic and abiotic factors of the site and their relationships that are important for the protection or restoration of a favourable conservation status of the Annex habitats and species. These valuable features should, as a rule, be specifically mentioned in the description of the conservation objectives.

- Among relevant structures of a site are, for example, landscape structures, which are not specified as habitats in Annex I but are necessary for the conservation of these natural habitats. In this way, for example, the fringe and buffer zones around intensively used agricultural areas within the site can be relevant.
- Plants or animal species can be relevant elements of a habitat of Annex I if they belong to their typical species assemblage. Animal or plant species which are indispensable feeding resources of Annex II species are essential for their occurrence in a site.
- Also general characteristics of a site may be relevant factors for the assessment. For example, the extent of unfragmented areas of a site can be decisive for the exchange between patches of a habitat in Annex I. This also applies when the fragmentation takes place in an area where no habitat of Annex I occurs or can be developed.
- Areas which are intended for the expansion or creation of Annex I habitats or key habitats for Annex species play a decisive role in the development of the conservation status of these natural habitats or species, and therefore should be classified as relevant valuable features of the site.

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<sup>16</sup>

The German Federal Act for Nature Conservation (Bundesnaturschutzgesetz) mentions explicitly specific features of a Natura 2000 site which are important for the protection of Annex habitats or species. Since numerous questions arose from the wording of the Act for Nature Conservation (see § 34 (2)), the German text discusses its specific implications.

## **Landscape structures outside of the site that are necessary for the site's conservation objectives**

The analysis of the valuable features for an Annex habitat or species can show that ecological structures and/or functions outside of the site are relevant for the conservation status of habitats or species within the site. Negative trends which have their origins outside of the site are also to be considered in the assessment if they affect the conservation objectives of the site, e.g. fragmentation of these necessary parts of habitats or structures. These structures and/or functions are to be included in the assessment, even if they do not belong to the designated site.

## **Conservation objectives that are laid down in the assessment**

The selection of the conservation objectives is strictly the task of the competent authorities. After the Natura 2000 site has been designated, a management plan is drawn up by the competent authorities, in which the conservation objectives are detailed and the management measures which are essential for these objectives are presented. Presently such underpinning is not yet available, because the Commission has not yet established a list of Sites of Community Interest according to Article 4(2) of the Habitats Directive.<sup>17</sup>

The important information to date for each site consists of a standard data form about conservation objectives for each site as well as the site descriptions. The existing data and information are to be examined for up-to-dateness, completeness and plausibility in consultation with the competent authorities.

During the transition period until a management plan is fully completed it may be necessary to set up an interim statement in order to specify, amend and detail the conservation objectives. In this case, the proponent of the project or his consultants will consult the competent authorities or submit own proposals. The following requirements should be taken into account:

- The conservation objectives should be concretely formulated and site-specific. They should take the special characteristics of the respective sites into account.
- The conservation objectives should be spatially located. Especially in the case of competing conservation objectives, they are to be established without question and, if necessary, also prioritised.
- The structures and/or functions of the site which are relevant for the conservation objectives should be specified.
- In addition to the conservation aspects, the restoration and re-creation objectives, which are determined by the competent authorities, are to be considered. This is especially important, if a presently unfavourable conservation status endangers the long-term survival of the respective natural habitats or species.

The site-related enhancement and restoration objectives should be explicitly stated. It is not the task of the proponent of the project to investigate all of the thinkable potentials for habitats or species in an affected site. Potentials need to be considered only if an expansion or re-creation of

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<sup>17</sup> Specific trait of the German procedure according to which the competent authorities will wait for the official decision about the designation of a site before starting with a Habitats or Birds specific management.

relevant natural habitats or comparable habitats has been explicitly specified by the competent authorities, either in the site designation or description of the conservation objectives.

- When the preservation and restoration of a favourable conservation status of species and habitats requires the implementation of management measures, then such information (e.g. timetable for the implementation of management and restoration measures) is necessary.<sup>18</sup>

If the existing data and information is not sufficient to draft an adequately specific conservation objective, then a special survey and analysis of the habitats and species in question are necessary. This applies especially to the specifications in the standard data form for the estimation of conservation status of the habitat and species that are to be protected. Included in this are, for example, mapping of habitat types, fauna reports, of habitat structures, of characteristic species and habitats, etc.

Gaps in the data that cannot be avoided or remedied in the available time should be identified and their relevance for the assessment should be estimated.

## **Description of the conservation objectives and their relevant structures and/or functions**

- **Description of the natural habitats in Annex I of the Habitats Directives**

The description of a natural habitat, depending on its status (priority or non-priority), includes information about the size and location, as well as a description of its characteristic species, its current conservation status and its local distinctiveness in the site. Regional variations, such as related with the occurrence of particular sub-types or occurrence of uncommon species, can be important. Moreover, the prerequisites of the site and the stipulated maintenance measures that are especially necessary for the continuity or restoration of a favourable conservation status for the natural habitat are to be presented.

The landscape structures should also be addressed that are not included in Annex I as natural habitats, but are necessary for the conservation of these natural habitats (e.g. buffer zones shielding Annex I habitats which are sensitive to pollutants from the surroundings). This also applies to the landscape structures outside the site, though they are not included in the site.

The description of natural habitats must be sufficiently differentiated in order to undertake a sound assessment of the existing predicted impacts. The following questions should be answered:

- How large is the overall extent of the habitat in the site?
- What proportion of the overall extent of the habitat in the site is located within the area of effects?
- Do the Annex I habitats in the area of effects host especially valuable sub-types or varieties of the broadly-defined habitat type?

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<sup>18</sup>

Maintenance, enhancement and restoration measures are described in the site's management plans or are established by the competent authorities in advance of the completion of the management plan in an interim statement. Projects which cause constraints or prevent the implementation of necessary measures for the conservation or restoration of a favourable conservation objective of the site's species and habitats conflict with the objectives of the Habitats and Birds Directives. Accordingly the circumstances of conservation objectives are to be addressed.

- Does the area of effects fulfil a special function for the life cycle of the relevant characteristic species?<sup>19</sup>
- Does the area of effects have an outstanding value or function in the spatial patterns of habitats in the site (e.g. part of a specific habitat mosaic such as riparian series)?

- **Selection and description of the characteristic species of Annex I Habitats which are relevant for the appropriate assessment**

Characteristic species (as indicator attributes for the favourable conservation status of the Annex I habitats according to Article 1(e) of the HD) are flora and fauna species which are reliable indicators for the favourable conservation status of an Annex I habitat in a specific site. Their indicator value is more specific than species listed in descriptions of broadly-defined habitat types. The occurrence of a reliable characteristic species must be more or less restricted to the habitat type considered, and their conservation must be directly related to the preservation of this habitat.<sup>20</sup>

Not all the characteristic species of a habitat can be taken into account in the context of the appropriate assessment. Therefore, it is advisable to focus on species that will show a measurable response to the predicted effects of the project and therefore can be reliable indicators for the significance of impacts of the projects on the habitat.<sup>21</sup>

The following criteria are to be fulfilled cumulatively in the selection of species:

- Flora and fauna species whose occurrence is closely associated with the habitat type considered. Species which are typical attributes of the favourable conservation status of the habitat in the region should be selected whenever possible.<sup>22</sup>  
Species which are especially valuable in terms of species protection (e.g. species in Annex IV, rare and endangered species or species for which the Member State has a special responsibility<sup>23</sup> for their protection) require special consideration, as far as they fulfil the above mentioned conditions, **and**
- The selected species must also provide additional information which could not be gleaned from already surveyed vegetation schemes and physical parameters, **and**
- The species must show an interpretable response to the effects caused by the project, **and**
- They must contribute to provide an understandable justification for the judgement of significance of project-related impacts. This presupposes a sufficient knowledge about the ecological requirements of the species.

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<sup>19</sup> For characteristic of the natural habitat see below.

<sup>20</sup> Example: kingfisher as relevant characteristic species of the habitat 3260 Rivers of the planar and montane level with the vegetation *Ranunculus fluitantis* and *Callitriche-Batrachion*.

<sup>21</sup> For relevance of the selected species in the evaluation of significance of impacts see Section 5.2.5.3.

<sup>22</sup> Example: In a dry European heath (Natura 2000 Code 4030) only ground-nesting birds should be taken into account as characteristic bird species since shrub-nesting birds need vegetation structures typical for a degradation stage of the habitat.

<sup>23</sup> A special responsibility of a Member State for the conservation of a species is given if the occurrence of the species is more or less restricted to the territory of this state (example: *Oenanthe conioides* – Water Dropwort, priority species of Annex II, occurs in Europe exclusively in the tidal sections of the lower Elbe river).

Taking these criteria into account greatly reduces the numbers of characteristic species which must be considered in the appropriate assessment. The reasons for the selection should be made transparent. The competent authorities are to be consulted.

The selected characteristic species are to be described with respect to their ecological requirements, with special consideration given to their sensitivity to potential effects of the project, as well as to their distribution in the habitat. Their description will be integrated into the presentation of the habitats to which they are associated.

- **Description of species in Annex II of the Habitats Directive**

The description of the occurring species of Annex II, differentiated according to priority or non-priority status, includes information about the present conservation status, information about the population structure and dynamic, as well as judgements about whether the available key habitats allow for the long-term continuity of a stable population on the site.

In addition, the site requirements and the management measures required for a favourable conservation status of species in the site are to be presented. This includes, for example, suitable habitats corridors and functional criteria such as the securing of foraging grounds.

For fauna species with wide-ranging habits and which use several locations in their life cycle, the network of relationships to other key habitats, also those outside of the site, is to be described. The specific functions that a site fulfils for the species (e.g. for bats: feeding grounds, breeding roost, summer roost and hibernation site) is also to be documented.

The description of the species and its key habitats must be sufficiently differentiated in order to carry out a sound evaluation of the occurring impacts. The following aspects, among others, shall be addressed:

- Size of the overall population of the species on the site.
- What percentage of the overall estimated population of a species occurs in the area of effects?
- What percentage of the species' key habitats in the entire site is located within the area of effects?
- Does the area of effects have a special function in the life cycle of the species?
- Is there a local population, for which the effects of fragmentation could cause long-term isolation?

- **Description of the bird species in Annex I of the Birds Directive and the migratory bird species according to Article 4(2) of the Birds Directive**

The description of occurring species in Annex I of the BD and the regularly occurring migratory birds according to Article 4(2) BD includes information about the size of the population, the population structure and dynamic, as well as judgements about whether the key habitats for the species are sufficient and allow the long-term continuity of a stable population on the site.

While sufficient data about migratory birds on the Natura 2000 sites is usually already available, further investigations may be necessary to gather information about relevant parameters of the nesting bird species of Annex I.

- **Description of the potentials to be taken into account**

In order to evaluate possible impacts, sufficiently concrete information about the location of areas in which measures for the enhancement of key habitats for species, the resettlement of species or the re-creation of habitats are intended. Baseline information is recorded in the standard data forms or specific statements of the competent authorities. Also required is detailed information about suitable site conditions and the conservation measures that are necessary to reach the management targets.

The specifications that arise from the implementation of management measures and from the consideration of the potentials are incorporated into the description of the respective habitats and species. The same applies for the general features of the site which are relevant for the respective habitats or species.

Different degrees of detail are possible in the presentation and description of the conservation objects. In the overall introduction to the site, the description of the conservation objectives that are not affected can be briefly summarised because they are not necessary for the assessment of impacts. The conservation objectives that can be significantly impacted by the project require a more detailed presentation.

### **Description of the functional relationships to other Natura 2000 sites**

In some cases, the favourable status of the conservation objectives in one site is closely related to the existence or the development of specific structures in other Natura 2000 sites. The functional relationships of the particular site to other sites which are relevant for a favourable status of the conservation objectives are to be presented, as far as they could be affected by the impacts of the project. The habitats of some animal species with a large range can cover several Natura 2000 sites (e.g. migratory fish species which move from marine to fluvial habitats). Other species, e.g. geese, are not dependent on classic corridor networks linking individual sites. Instead, they depend on a certain density of suitable staging areas as stepping stones in the network.

The single areas of a life-cycle-network can also have fundamentally different structures. In that way, migratory birds place different requirements on the habitats of their nesting, staging and wintering areas. Functional relationships can, therefore, also exist between dissimilar areas.

In these special cases, a project can not only adversely affect the site itself, but also affect other sites if their functional relationships are impacted. In these cases, it can be assumed that a significant deterioration of the functions at the level of a single site causes significant damage to the overall coherence of the Natura 2000 network.

## **5.2.4 Description of the project**

### **5.2.4.1 Technical description of the project**

A detailed description of the project characteristics and its likely effects is the prerequisite for a sound identification of impacts and the evaluation of their significance.

The technical aspects are emphasised in the project description. The technical information must be adequate and sufficiently detailed to identify the significant factors and effects.

The description should include information about cross-section, gradients, engineering constructions and drainage, as well as information about the type and amount of the anticipated immissions (e.g. noise, pollutants, vibration and light). If relevant, the construction-related factors are to be addressed in detail, e.g. the location and the size of the construction site, the amount of construction-bound traffic and the temporary roads during the construction phase, as well as the treatment of run-off water. Furthermore, information about the duration and the time schedule of the construction may be necessary.

If some technical details needed are not available, then it must be compiled as long as it is relevant for the identification of the significant factors and effects.

Preventive measures to avoid or minimise impacts can be integrated into the project description, if it is ascertained that they are non-optional characteristics of the project.<sup>24</sup>

### **5.2.4.2 Relevant factors**

In contrast to other assessment approaches (e.g. Environmental Impact Assessment), the Natura 2000 site-bound approach of the appropriate assessment focuses on the factors that may affect the conservation objectives and the qualifying features of the site.

The relevance of the affecting factors depends on the specific sensitivity and vulnerability of the conservation objectives. For example, if a Natura 2000 site has been designated for the protection of a single plant species, the only factors that are to be considered are those that could affect the site conditions necessary for the long-term preservation of that species.

All relevant directly or indirectly affecting factors must be described. This also applies to those factors outside of the site if they may cause impacts on habitats and species within the site. As a rule, the description should include not only the type and intensity of affecting factors, but also information about their range and the duration or frequency.

The description differentiates the factors related to the physical parameters of the project as well as to construction and operation.

In most cases, the factors of the project and the resulting processes have been described in the environmental impact assessment. Their relevance for appropriate assessment will be examined. If necessary, the description given in the EIA will be adjusted or supplemented to meet specific requirements of Natura 2000.

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<sup>24</sup>

Mitigation measures taken for Natura 2000 issues are addressed after the identification and assessment of impacts caused by the project, because the need for mitigation is established as a result of the assessment of impacts.

The description of the affecting factors provides the technical baseline information necessary for a full understanding of the processes and the impacts triggered by the project.

## **5.2.5 Determination and evaluation of impacts**

### **5.2.5.1 General requirements**

#### **Independent treatment of the conservation objectives**

One significant impact on a single conservation objective is justification for the project not to be authorised. Each conservation objective should, therefore, be treated independently.

Species and habitats have, as a rule, different sensitivities. A combined examination of several species or habitats is only admissible if they would show a similar response to all the relevant effects of the proposed project. This should be justified in an understandable manner.

#### **Consideration of the prior damage**

The obligations imposed by the Habitats Directive to prevent a deterioration of habitats and species in the Habitats and Birds Directives also apply if the present conservation status is still unfavourable and the site's management targets a restoration to a favourable conservation status. An unfavourable conservation status which was caused by prior damage does not justify additional impacts that would lead to further deterioration of the conservation status.

Consequently, the evaluation of impacts should take into account the prior damages (e.g. from readily authorised and implemented projects) as part of the baseline conditions of the site. If the possibility to restore a favourable conservation status should remain an option, then a site with greater previous damage can obviously tolerate less additional impact than a site with little prior damage.

## 5.2.5.2 General requirements for the prediction and assessment of impacts

### Requirements for the reliability of the impact prediction

The type, extent and magnitude of the predicted impacts and the likelihood of their significance must be estimated with adequate reliability and accuracy. The prognosis must be as correct and reliable as it can be, based on the current state of knowledge and the use of suitable methods.

It is not always possible to prove that there is no impact. Basically, difficulties in furnishing evidence can arise from some affecting processes. Uncertainties of the prognosis and still lacking scientific background knowledge are to be reported. Their relevance for the evaluation of the significance of the impacts is to be estimated.

The following should be considered:

The more severe or intensive the potential impacts are, the more likely it is that the sole presumption of a significant impact could justify the unsuitability of a project. The more a population is endangered, for example, due to its small size or its high sensitivity, the sooner a significant impact can be assumed. This applies especially when the damage, despite a low probability, could lead to the extinction of a population on the site.<sup>25</sup> The underpinning facts must, however, always be explained objectively. The judgement of significance should not be based on unfounded conjectures.

Basically, the judgement of significance should follow the rule that a project that is likely to have significant impacts may not be authorised, even if it is not possible to establish that the predicted damage will definitely be significant. If it is not possible, despite a thorough investigation, to rule out any doubt, a likely significant impact will be considered, in terms of the precautionary principle, as being significant, as far as this assumption is founded on objective information.

The concept of “sufficient likelihood” of significance sets the legal frame for the certainty of the prognosis that may be reasonably required. Therefore “sufficiently likely” is synonymous with “sufficiently certain”. Considering the legal implications of the judgement of significance for a project, the degree of prognosis certainty for the determination of non-significance should comply with particularly high standards.

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Example:

A road is to be built in the vicinity of the nest of a breeding pair of white-tailed eagles. The probability that a vehicle will hit or kill one of the only two birds in the SAC is relatively low. However, the consequences would be significant if it actually happened because 50% of the population would be extinguished and reproduction would not be possible anymore in the site. In this case, the low probability of occurrence does not justify evaluating this impact as minor. Instead, it is a significant impact on the conservation status of the white-tailed eagle on the site.

## Requirements for the method of evaluation

The method employed to assess the significance of impacts must be clearly explained. It must meet the following requirements:

- The method should be suitable for assessing impacts which occur in the area of effects in relation to their implications for the integrity of the site.
- In order to ensure the comparability of results of the iterative steps of evaluation, the method should be suitable for the assessment of single impacts, residual impacts after mitigation (Section 5.2.5.4) as well as for cumulative impacts (Section 5.2.5.5).
- The method must lead to sufficiently accurate results in order to express clearly that the specific share of the different affecting processes and the share of the different projects on the overall significance of impacts can be established. This is imperative for a transparent justification of the necessary mitigation measures.<sup>26</sup>

## Required assessment steps

The significance of impacts can result from the interaction of impacts caused by the interaction of the assessed project with other plans and projects. For this reason, iterative assessment steps are required:

<b>Step 1</b>	<p>Assessment of the individual impacts caused by the proposed project</p> <p>a) Assessment of the impacts caused by the proposed project without consideration of the mitigation measures.</p> <p>After establishing necessary mitigation measures in the case of significant impacts</p> <p>b) Assessment of the residual impacts caused by the proposed project after consideration of mitigation measures.</p>
<b>Step 2</b>	<p>Assessment of the cumulative impacts of the proposed project and other plans and projects</p> <p>a) Assessment of the cumulative impacts with other plans and projects without consideration of mitigation measures.</p> <p>After establishing additional mitigation measures required for the proposed project as well as for other plans and projects</p> <p>b) Assessment of the cumulative residual impacts after consideration of the mitigation measures.</p>

The cumulative effects with other plans and projects may be decisive for the result of the appropriate assessment. A final decision about significance of impacts can be made only when the other plans and projects have been considered and all the necessary mitigation measures have been determined.

It must be made clear with unambiguous terminology whether the assessment relates to an interim step or a final result of the assessment process.

<sup>26</sup>

Regarding mitigation measures see Section 5.2.5.4.

## General requirements for the assessment of the significance of impacts

The significance of impacts is decisive for the approval of a project (Article 6(3) HD). It is to be determined in a case-by-case approach. Only scientific criteria are to be taken into account.

The term “significance” cannot be pressed into the frame of any legally binding definition. Therefore, it must be specified in each single case. The conservation objectives for which the site was designated are decisive for the evaluation of significance.

The aim of the Habitats Directive according to Article 2(2) is to maintain the species and natural habitats of Annex I and II at a favourable conservation status. The assessment of the significance of impacts is to reflect the stability<sup>27</sup> of the conservation status. The effects of a project are considered significant when they lead to a deterioration of the conservation status of the conservation objectives. If the conservation status remains stable, it is likely that the potential for improvement of a currently unfavourable status will not be affected. Therefore, the potential for a restoration of a better status of the conservation objectives remains entire.

Because the appropriate assessment evaluates impacts, there is no direct connection between the scope of an impact and the estimation of the conservation status of species and habitats in the standard data form. The three level scale of the standard data form was designed as a coarse frame for the designation procedure of sites and international reporting. Therefore, it is not adequate for the assessment of impacts. Also impacts that do not cause a shift of the conservation status, for example, from “A: excellent conservation” to “B: good conservation” may, nevertheless, be significant.<sup>28</sup>

## Requirements for the assessment criteria

The assessment criteria must be suitable for an adequate assessment of the impacts on the favourable conservation status of the effected species and habitats.

In the definition of a “favourable conservation status”<sup>29</sup> given in Article 1 HD, specific criteria are listed that establish whether the conservation status of a species or natural habitat is favourable or not (structures, functions, characteristic species, population size, population trends, etc.). These criteria represent, in turn, indicator values through which the impacts can be recognised.

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<sup>27</sup> Stability is defined here in relation to the effects of an assessed impact. It is given when the decisive conditions (e.g. site parameters) for the site’s conservation objectives remain completely intact.

<sup>28</sup> For example, in the case of an extremely rare bird species, even after a loss of 50% of breeding population of 20 pairs, the conservation status of the population in the site would still be estimated as “A: excellent conservation” due to the rarity of the species. Nevertheless, the impact would undoubtedly be significant.

<sup>29</sup> For the term “favourable conservation status” and its application to species in the Birds Directive see Section 5.2.3.2.

The following attributes should be considered for the **habitats listed in Annex I of the Habitats**

**Directive:**

- “Habitat structures” (descriptive attributes of the situation of a given habitat on the site including e.g. its extent, its diversity of sub-types and environmental conditions, and characteristic species assemblage),
- “functions” (requirements that must be met in order to ensure the long-term continuity of the described structures), and
- “restoration possibilities“ of the habitat.

The following table illustrates which attributes of the habitat or site may be relevant for the favourable conservation status and taken into account.

<b>Examples of assessment parameters for a habitat structure</b>
Size and relative cover within the site
Species diversity / types of vegetation present (e.g. plant communities)
Characteristic species (population size and dynamic)
Structural elements e.g. different age classes of a forest, occurrence of old trees or dead wood, layers in a stratified forest, riparian series along watercourses and around lakes
Physical conditions Geomorphologic, climatic, edaphic, hydrologic parameters of the site
<b>Examples of assessment parameters for habitat functions</b>
Maintenance of the conditions required for suitable physical conditions e.g. buffer zones
Maintenance of the conditions required for suitable biotic balance e.g. no introduction of invasive neophytic species
Ensured continuation of suitable site management or suitable land use
Ensured conservation of a viable extent
Ensured conservation of the linking ecological features (e.g. corridors)
Absence of further threats
<b>Examples of restoration possibilities</b>
Occurrence of residual populations
Potential for improvement of the habitat’s structures and characteristic species
Potential for enlargement of the habitat’s extent
Potential for restoration of degraded physical conditions
Potential for the enhancement of the functional relationships

The following attributes should be considered for the **species listed in Annex II of the Habitats**

**Directive:**

- “Structure of the population” (descriptive criteria of the population, including size and dynamic trends),
- “functions of key habitats” (requirements that must be met in order to ensure the long-term continuity of the key habitat’s features on the site) and
- “restoration possibilities“ of key habitats.

The following table illustrates which attributes may be relevant for the favourable conservation status of a species and taken into account.

<b>Examples of assessment parameters for the structure of a species population</b>
Size and density of the population
Demographic attributes
Specific population dynamics
Population trends
<b>Examples of assessment parameters for the functions of key habitats for species</b>
Size of the habitat
Ensured conservation of a sufficient size
Maintenance of the conditions required for suitable physical conditions e.g. buffer zones, habitat dynamics
Maintenance of the conditions required for suitable biotic balance e.g. maintenance of suitable prey/predator relationships, presence of pollinating insects for a plant species
Ensured continuation of suitable site management or suitable land use
Ensured conservation of suitable linking ecological features (e.g. corridors)
<b>Restoration possibilities</b>
Occurrence of a residual population
Potential for improvement of key habitat structures and functions
Potential for the enlargement of key habitats
Potential for restoration of degraded physical conditions
Potential for the enhancement of the functional relationships

Similar attributes can be used in the assessment of impacts on **bird species in Annex I of the Birds Directive** as well as on **migratory birds according to Article 4(2) Birds Directive**. The following criteria of a favourable conservation status should be considered:

- “Structure of the population” (descriptive criteria of the population, including size and dynamic trends),
- “functions of key habitats” (requirements that must be met in order to ensure the long-term continuity of the key birds habitats features on the site). The functions are defined according to specific ornithological criteria; and
- “restoration possibilities“ of key birds habitats.

The impacts on the favourable conservation status of a bird species in a site can be assessed according to the following attributes.

<b>Examples of assessment parameters for the structure of a bird species population</b>
Size and density of the population
Demographic attributes
Specific population dynamics
Population trends
<b>Examples of assessment parameters for key habitat functions<sup>30</sup> for a bird species</b>
Size of the habitat
Ensured conservation of a sufficient size
Maintenance of the conditions required for suitable physical conditions e.g. buffer zones, water level
Maintenance of the conditions required for suitable biotic balance e.g. availability of a sufficient food supply
Ensured continuation of suitable site management or suitable land use
Ensured conservation of suitable network features
<b>Restoration possibilities for bird habitat</b>
Occurrence of a residual population
Potential for improvement of key habitat structures and functions
Potential for the enlargement of key habitats
Potential for restoration of degraded physical conditions
Potential for the enhancement of the functional relationships

These coarsely described attributes must be specified with regard to the specific requirements of species and habitats as well as adjusted in the context of the site’s circumstances.

Considering the full amount of these attributes allows an accurate identification and a thorough assessment of possible impacts on the favourable conservation status of the habitats and species of a given site.

<sup>30</sup> Key habitats for nesting, feeding, resting, moulting, staging, wintering, etc.

## **Determination of the significance of impacts**

When significant impacts are present, a threshold is trespassed beyond which the authorisation of the project may not be granted according to Article 6(3) HD.

This threshold cannot be standardised. Whether the threshold is reached always depends on the kind, duration, range and intensity of an impact in combination with the specific sensitivities of the site's conservation objectives and qualifying features.

Because at present there are very few useable threshold values for the tolerance of species and habitats, even for relatively quantifiable and well-researched sources of impact the assessment of significant impacts is to be based on expert judgement.

General threshold values for the significance of impacts, for example, can be defined for parameters that are sufficiently consistent to show independence from specific site factors.

This includes, for example:

- The minimum viable area necessary to sustain a population of animal species. Reduction of the area would mean extinction of the species.
- Minimum viable size of a habitat that if reduced, the negative fringe effects become so dominant that a characteristic development of the habitat type is not longer possible in the core.
- Maximum level of tolerable nitrogen input for nutrient poor sites.
- Maximum level of phosphorus input into water bodies.
- Maximum level of noise.

Based on the threshold values the initial estimation of the significance of impacts can be carried out, but it must be followed by a site-specific review of the situation. Thus, in a site-specific situation the behaviour of a species or habitat can differ from the norm due to various stress factors and display higher sensitivity. The opposite is also possible, i.e. that the sensitivity of an expending population falls under the normal threshold value.

The following factors can be relevant for the site-specific assessment of the significance of an impact:

<b>Restoration objectives</b>	The conservation of trophic conditions of a nutrient-rich water body can be compatible with the input of a small amount of nutrients. If the conservation objectives require a clear reduction in the amount of nutrients, then a reduction of the actual nutrient level is required. Every additional input to the existing situation is strictly incompatible with the conservation objectives.
<b>Prior damage</b>	A relatively high prior damage reduces the tolerability of impact, because the affected organisms already suffer from high stress levels.
<b>Population trends</b>	For populations which show declining trends, every additional impact can be significant. Expanding populations can, in contrast, tolerate a short-term disturbance.
<b>Local distinctiveness</b>	Sub-types of habitats can have different species assemblages and structural patterns. The loss of the same surface of different sub-types may have a different significance for the site.
<b>Functional characteristics</b>	The function of a landscape structure in a habitat network is site-related. The significance of an impact is dependent on the effects that arise from the changes in this structure for the conservation objectives.
<b>Overall area</b>	The orchid example quoted in footnote 31 shows that minimal loss or deterioration of large species populations or of expansive habitats may be non-significant.
<b>Special topographic situation</b>	The loss of a small area in linear alluvial forest in a narrow valley may be significant, if the biological continuity of the habitat is interrupted. A loss of a similar extent in an alluvial forest of a different ground shape (e.g. rectangular) may be, in contrast, non-significant.

Generic threshold values for the determination of the significance of impacts can be helpful for the evaluation of impacts in the appropriate assessment. However, due to the site-related approach of the assessment, no universal thresholds can be defined. The site-specific assessment remains indispensable.<sup>31</sup> Therefore in individual cases the general threshold values may be exceeded – as well as fall below target – if a detailed examination of the site’s situation gives sufficient reasons and the circumstances are well founded.

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<sup>31</sup> The necessity to consider the situation of the specific site is emphasised in the interpretation guide for Article 6 of the Habitats Directive from the EU Commission (2000).

“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.”

“For example, a loss of a hundred square metres of habitat may be significant in relation to a small rare orchid site, while a similar loss in a large steppic site may be insignificant.”

### 5.2.5.3 Assessment of the project-related impacts on the site's conservation objectives

#### **Assessment of the impacts on the site's conservation objectives and qualifying features**

During the assessment of the impacts on conservation objectives, which is based on the criteria mentioned in Section 5.2.5.2, each affecting process<sup>32</sup> and each conservation objective are to be addressed independently, according to habitat and species and separated by priority and non-priority status.

Furthermore, characteristic species are to be considered in the assessment of the impacts on habitats. If a characteristic species is identified as relevant in the context of the appropriate assessment,<sup>33</sup> then a significant impact on this species is also a significant impact on the habitat. The impacts are assessed using the same method that is applied to species in Annex II HD or for bird species in BD.

Because the quantification of the impacts is not always possible, the assessment must be justified with arguments that are based on the respective circumstances. At the same time, an objective justification with transparent and well-documented criteria is also necessary. All criteria that are relevant to the conservation status of a habitat or species of a specific site are to be considered in the assessment (e.g. abiotic site factors, biotic dynamics, buffer zones, habitat structures, occurrence of relevant organisms, network elements also outside of the site, etc.).

Incompatibility as defined in Article 6(3) Habitats Directive and the consequent inadmissibility of a project are justified through:

- significant impact on one single conservation objective by one single affecting process,
- cumulative significant impact on one single conservation objective by several affecting processes.

#### **Assessment of the impacts on functional relationships between Natura 2000 sites**

Impacts on one site or on its functional relationships with another site may have negative effects for the conservation status of habitats and species in other Natura 2000 sites.

In the appropriate assessment, the extent to which a project causes a significant impact on the conservation objectives of the particular site is to be determined. For example, gaps in connecting corridors may disturb or even interrupt necessary exchanges between local populations.

Not only the large-scale functional relationships of animal species with large ranges (e.g. fish, birds, mammals and butterflies) are relevant, but also the interchange of populations of less mobile species may be important. It is possible that a species with a small range is more severely impacted by a gap in the habitat network than a species with greater mobility, which is more likely to encounter partners of the same species or suitable habitats.

Also for plants, the impact on the relationships between sites can also be important, for example, for the dispersal of seeds or other propagules by water, wind or animals. The opportunity for the

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<sup>32</sup>

It may be necessary to bundle single processes into process complexes if, from the point of view of the conservation objective, their effects merge and therefore can not be assessed individually.

<sup>33</sup>

For selection of relevant characteristic species in the appropriate assessment, see Section 5.2.3.2.

exchange of genetic material between populations is especially relevant for the stability of a favourable conservation status of rare species with small population.

#### **5.2.5.4 Mitigation measures**

The term “mitigation measures” does not appear in the Habitats Directive. It is, however, explicitly mentioned in the guidelines published by the European Commission.<sup>34</sup>

### **Necessity for implementation of mitigation measures**

The necessity to carry out mitigation measures stems from the results of the appropriate assessment.

In the case of significant impacts, mitigation measures are mandatory due to the strict legal consequences of the protection regime under Article 6 HD. In this case, the compatibility of the project with the conservation objectives can be ensured only through suitable mitigation measures. Only measures that can be reasonably expected to be taken are mandatory.

Moreover, it may be necessary to reduce an impact that may be non-significant if considered individually, if the threshold of significance is exceeded through the cumulative effect of other affecting factors or plans and projects (→ Section 5.2.5.5).

### **Tasks and opportunities of mitigation**

The function of mitigation measures is to prevent or limit the negative effects of project-related impacts that affect the conservation objectives of a site, and in this way contribute to the ecological compatibility of the project.

In principle, it is possible to include necessary measures which avoid/reduce straightforwardly foreseeable impacts, in the initial layout of the project. Often the measures are not integrated into the project from the outset, because their necessity first becomes apparent as a result of the assessment of the project-related impacts on the conservation objectives. Therefore, mitigation measures that are taken to prevent or reduce impacts on habitats or species of the Habitats or Birds Directives are to be described and justified following the evaluation of the project-related impacts.

Mitigation can be achieved before and during the implementation of a project as well as after its completion. Among the measures that frequently come into question are:

- optimisation of the scheduling of construction measures (e.g. not during nesting or resting periods of bird species),
- use of less intrusive construction practices (e.g. foregoing soil disturbance on river flood plains),
- devices to protect from and reduce impacts (e.g. immission protection through plantings),
- devices for the reduction of fragmentation effects (e.g. overpass for fauna, additional culverts for streams), and

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<sup>34</sup> European Commission / GD Environment (2000) Natura 2000 – Managing Natura 2000 Sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC.

European Commission / GD Environment (2001) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.

- alteration in the dimensions of planned structure (e.g. widening of bridges over valleys to span alluvial forests, widening of culverts for streams).

The avoidance or reduction of adverse effects at the source, e.g. widening of passage structures, receives highest priority in mitigation. The reduction of on-site impacts, e.g. the reduction of the consequences of the nutrient input by increasing mowing and harvesting of a grassland area,<sup>35</sup> is principally the second choice.<sup>36</sup>

## **Degree of concretisation**

Just as is the case for general project specifications, the mitigation measures must be sufficiently specific, so that a sound statement about their efficiency can be made. The planned mitigation measures must be adequately concrete and site-specific. Their implementation must be technically, legally and financially possible. The implementation schedule and deadlines are to be specified.

## **Evaluation of efficiency and mode of affectivity**

The examination of the efficiency of a mitigation measure presumes a clear understanding of the problem to be solved. This analysis has been carried out in the context of the prognosis of the project-related impacts. Based on this information, it is to be explained how the proposed measures will reduce adverse effects. The efficiency of proposed mitigation is to be evaluated based on the predicted residual impacts on each concerned conservation objective that remain after the implementation of the measure.

If mitigation measures taken to avoid or reduce straightforwardly foreseeable impacts are integrated into the project specification, then the remaining residual impacts will be assessed in the appropriate assessment. In that way, the efficiency of the mitigation will be examined simultaneously.

### **5.2.5.5 Integration of other plans and projects**

#### **Relevance of other plans and projects**

In some cases, the impacts of a project on a Natura 2000 site become significant only in combination with other plans and projects.

Possible effects of other plans and projects on the conservation objectives impacted by the assessment project are a prerequisite for the occurrence of cumulative effects.

The conservation objectives must not necessarily be affected by the same type of cumulative effects that primarily arise from common impacts of the proposed project and other plans and projects.

Other plans and projects should be considered under the following conditions:

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An increased intensity of mowing can only be considered a mitigation method if it reduces the consequences of the additional input of nutrients caused by the project (increased biomass and thus pressure on less competitive species). It should be noted that intensive mowing can have adverse effects on species in the habitat that are sensitive to cutting.

<sup>36</sup>

European Commission (2001) Assessment of plans and projects significantly affecting Natura 2000 sites. Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC., p. 14.

- In principle, plans are not relevant until they are legally binding, i.e. have taken effect. As an exception, they are relevant if they have been finalised and there are no required authorisations or notifications outstanding.
- Projects are not to be considered until they are authorised, implemented or recognised unless an initial notification has been registered by the authorities. Projects for which no concrete intention of implementation is recognisable or which concrete design is yet unknown should not be taken into account. A sufficient level of concretisation may be reached when the authorisation procedures have progressed sufficiently, e.g. public hearings have been initiated.

For cases in which other plans and projects are considered, the following should be examined:

- whether other plans and projects affect the same Natura 2000 site, and if so, how much,
- how much previous impact exists, and
- to which respective amounts the project on one hand, and the other plans and/or projects on the other hand contribute to the effects on the site.

This means that another plan or project can be dismissed from further consideration if possible cumulative impacts can be excluded with sufficient likelihood. This decision must be clearly justified and well documented.

In the same way, the effects that are caused exclusively by other projects should be identified since the proponents of these other projects will carry the entire responsibility for the resolution of these specific problems.

Other plans and projects are examined in the project's appropriate assessment only from the perspective of their possible cumulative effect. In the case that the necessary information is not available in the planning and proposal documents of the other projects or plans, then only the possibility of cumulative impacts on the relevant conservation objectives of the site is to be identified. The proponent of the project is not obligated to collect data during the appropriate assessment that should have been collected in the context of a different project.

If a cumulative effect that could lead to significant impacts cannot be completely ruled out due to unavoidable gaps in information about other plans or projects, then the respective contribution of the individual projects to the overall impact should be estimated. If there is no significant impact caused by the proposed project, but it is not clear whether or not the threshold of significance will be exceeded through the interaction with other plans and projects, then the circumstances must be clearly described and documented and the share of impacts that is attributed to respective projects is to be stated. In the case that the proposed project may be authorised without any additional mitigation measures for cumulative impacts, then the other projects must subsequently take into account its remaining non-significant impacts in the form of an additional prior impact.

## Identification of other plans and projects

A subset of that which can be considered as another **project** can be found in Annex I in the EIA Directive or in the respective state laws about EIA.

Moreover, other projects and measures as well as **plans** which are stipulated by the respective state laws for the implementation of EU Directive 2001/42/EC (Plan-EIA), e.g. the development of housing areas, can be relevant inside and outside of sites, as far as they can interact with the proposed project and cause damage to the site.

Completed projects are treated as prior impacts<sup>37</sup> as far as their effects belong to the baseline situation of the site.

The area to be checked for relevant plans and projects is to be determined on the basis of the range of the identified pathways of affecting factors with respect to the specific features of a site. In addition to the pathways of affecting factors, the range of the affected species is to be considered in the delineation of the area of investigation exploration.

According to the site-related assessment approach, there is no obligation to assess the impacts on an animal population for the entire Natura 2000 network. Only the project-bound impacts that are relevant for the site treated in one given assessment must be considered in this assessment. Therefore, other plans and projects are only relevant if they are able to have cumulative effects with the proposed project on the same Natura 2000 site.

The competent authorities are to be consulted about the relevance of each individual project.

### **Methodological requirements for the assessment of cumulative effects**

The significance of impacts on conservation objectives caused by cumulative effects is to be evaluated using the same method that is used to evaluate impacts caused by the proposed project.<sup>38</sup> The assessment must address the condition that will presumably occur as a result of the entire pathway of additive and synergetic effects.

In most cases, the assessment of impacts caused by cumulative effects can be characterised as estimation. The justification for assessment results may be based on qualitative arguments that stem from the respective factual background. Nevertheless, an objective justification based on transparent criteria is necessary. The same requirements apply that are used to assess the individual project-related impacts.

### **Description of the project characteristics and relevant effects of other plans and projects**

The necessary facts and background of the other relevant plans and projects are to be presented which are required to carry out the overall estimation of the significance of the cumulative impacts.

The description of technical features of the other plans or projects is limited to those aspects which are relevant for the assessment of impacts through cumulative effects, i.e. the “intersection” of the proposed project and the other plans and projects. In the case that mitigation measures for individual plans and projects are already established, they shall be integrated into the project specifications.

The necessary information about other plans and projects can be gathered, as a rule, from the respective planning and proposal documents. Cooperation with the proponents of the other plans and projects may be necessary in order to close gaps in information about specific aspects of the project or the occurrence of certain effects and make a legally sound prediction of the significance of the expected cumulative effects.

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<sup>37</sup> See Section 5.2.5.1.

<sup>38</sup> For assessment methods see 5.2.5.2.

If it is not possible to clear up information gaps, then realistic assumptions must be made with respect to the potential effects of other plans and projects. These assumptions are oriented towards the maximum reasonably possible impact. If non-significance is predicted for the interaction with the other plans and projects using this approach, then a maximum legal certainty is assured. If, however, a significant impact cannot be ruled out, then maximum efforts are to be made to close the information gaps.

## **Identification and assessment of the impacts through cumulative effects of plans and projects**

After the conservation objectives that are impacted by the proposed project have been identified in a first step, the affecting processes that originate in other plans and projects and potentially impact these conservation objectives are to be determined in a second step.

All conservation objectives which are impacted either directly or indirectly by the proposed project **and** by at least one other plan or project are relevant for this step of assessment. Only conservation objectives which are clearly not affected or no longer impacted due to project-specific mitigation measures can be excluded from further examination.

Aside from the direct impacts on the site's conservation objectives, the indirect impacts also are to be considered if they may alter the conservation or restoration of the favourable status of these species and habitats. This includes, among others, the characteristic species of the habitat, the specific requirements of management as well as the functional relationships to other Natura 2000 sites.

In the prediction of effects, both cumulative effects and interaction effects are to be addressed. The evaluation of each pathway of cumulation is to include: amount, type and intensity, location and chronology of individual impacts in combination with the specific characteristic responses of the affected habitats and species.

Simple cumulative impacts resulting only from the addition of impacts of similar type occur rarely. It must also be examined, with respect to the conservation objectives, whether and how the single processes could amplify each other or cause cascade effects. For this, the single processes of the complex must be stated, and the mechanism of complex pathways explained.

Because of potential complex interactions, it is important to observe the rule that a presumably significant impact may be considered significant when assessing cumulative effects.<sup>39</sup>

If the analysis of impact pathways proves that no cumulative effects through the interaction with other plans and projects are to be expected, then these results should be clearly documented.

If it appears that the proposed project without the cumulative effects does not exceed the significance threshold, then it must be shown what portion the individual projects contribute to the overall impact on the conservation objectives. If the proposed project does not exceed the significance threshold without the cumulative effects, then an authorisation may not be excluded, but possible. In some cases, another project may carry the entire burden of reacting to the expected common transgression of the significance threshold.

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<sup>39</sup> For certainty of prognosis see 5.2.5.2.

## **Establishment of mitigation measures for cumulative impacts**

When necessary, the mitigation measures taken specifically for the reduction of cumulative effects are to be planned and their efficiency documented, as described in Section 5.2.5.4. If an effective mitigation, and consequently the authorisation of the proposed project, can only be achieved through mitigation that involves other projects, then amicable solutions are to be pursued with the proponents of the plans and projects. Should a mitigation involving other projects not be possible, then the share of the overall impact on the affected conservation objectives that is caused by each individual project is to be presented. If the proposed project is able to furnish the proof that its own impacts will remain below the significance threshold through the implementation of all reasonable project-specific mitigation measures, then the other projects must carry the responsibility for dropping with mitigation measures the remaining common impacts below the significance threshold. The proof that the project-related share of the cumulative impacts remains under the significance threshold through mitigation measures carried out in the proposed project is to be comprehensibly documented in the appropriate assessment.

The assessment of the residual impacts after mitigation is to be evaluated using the same assessment methods as for the individual and cumulative impacts.

### **5.2.5.6 Final assessment of the significance of impacts from interaction with other plans and projects**

A final assessment of the significance can be carried out only after examination of the other plans and projects and determination of all the necessary mitigation measures.<sup>40</sup>

The result of the assessment depends on the impact that remains after consideration of the cumulative effects and all the mitigation measures. A single significant impact on one conservation objective is sufficient to justify the inadmissibility of a project interacting with other projects according to Article 6(3) HD.

If no impacts caused by other plans or projects are to be expected, then the final result of the assessment is derived directly from the evaluation of the significance of impacts of the project itself, as described in Section 5.2.5.3.

## **5.3 Consequences of the appropriate assessment for further steps of the procedure**

The appropriate assessment is a process of decision-making about whether or not the project complies with the regulations of Article 6 Section 3 of the Habitats Directive. If the appropriate assessment establishes that the project, in combination with other plans and projects, does not lead to significant impacts on the conservation objectives of the Natura 2000 site in question, then there is no objection to an authorisation of the project according to the Habitats or Birds Directives.

If it is established that the project alone or in combination with other plans and projects causes significant impacts no authorisation may be granted, unless the project can submit derogation prerequisites (for derogation procedure see Section 6).

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For the procedure for establishing mitigation measures for cumulative effects see 5.2.5.5.

## **6 Derogation procedure – justifications needed to proceed where significant adverse effects remain**

### **6.1 Scope**

A project will not be permitted if the appropriate assessment establishes that it can significantly impact the integrity of a Natura 2000 site. A project can be authorised according to Article 6(4) of the Habitats Directive only if:

- the project is necessary for imperative reasons of overriding public interest, including those of social or economic nature,
- no alternative solution is available, and
- the compensatory measures<sup>41</sup> necessary to ensure a coherent European ecological network Natura 2000 are carried out.

All the above-mentioned prerequisites must be fulfilled and clearly documented for each individual case.

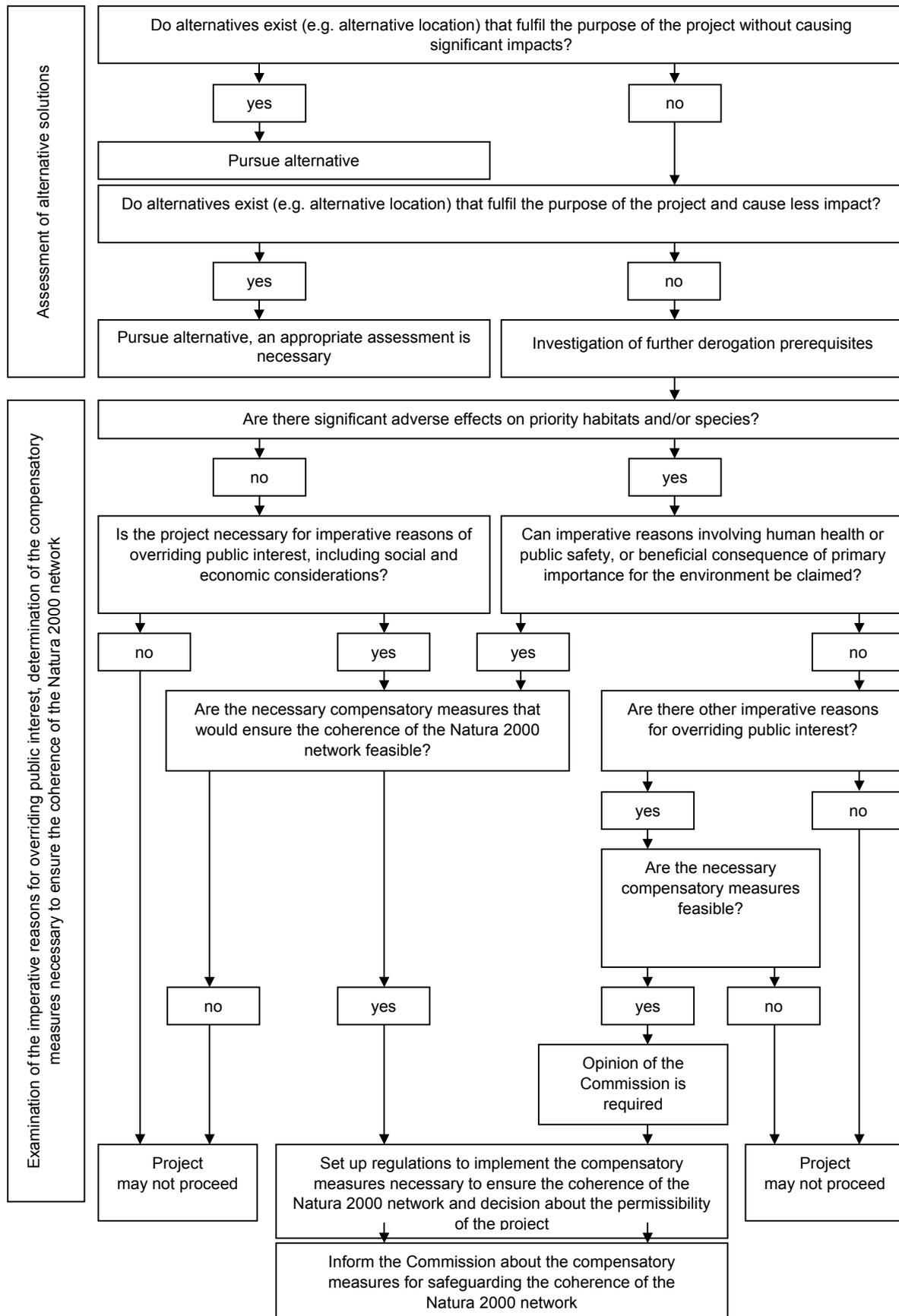
When priority habitats and/or species are significantly impacted, authorisation may be granted according to Article 6(4) of the Habitats Directives only for imperative reasons of overriding public interest relating to human health or public safety or to beneficial consequences of primary importance of the project for the environment. Other reasons may only be taken into account after the Commission has been consulted.

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In Germany, these are named “measures to ensure coherency” in order to avoid confusion with compensatory measures set up to comply with the national nature protection law.

**Fig. 3: Derogation procedure according to Article 6(4) of the Habitats Directive**



## 6.2 Alternatives

Where, as an exception, a project should be authorised that has significant impacts on a site's conservation objectives, an examination of alternatives is legally required by Article 6(4) of the Habitats Directive. According to this provision, it is mandatory to assess whether the project can be carried out using alternatives that have either fewer or no significant impacts. Only alternatives that fulfil the specified key objectives of the project need to be examined.

No assessment of alternative solutions is required for projects that do not cause significant impacts on Natura 2000 sites.

### 6.2.1 Concept of “alternative” identification of the alternatives to be examined

Possible alternatives may include:

- **conceptual alternatives**  
Conceptual alternatives represent completely new alternatives to the project and are generally found at the regional and infrastructure planning level.  
Because the authorisation process is bound to a specific project, only alternatives that fulfil the purpose of this project are to be examined. Therefore, fundamentally different solutions (e.g. “do nothing” option, solutions for long-distance travel involving all transportation sectors) are no genuine alternatives relevant for the assessment of a specific project.
- **location and route alternatives**  
Location and route alternatives include spatial alternatives of the project. The objective is to identify the optimal location or route for a project.
- **technical alternatives**  
Technical alternatives address the various technical possibilities for a solution. In addition to construction alternatives, grading variations are also to be considered.

The prerequisite for an alternative is its suitability to promote the purpose of the project. According to the current case law of some Member States (e.g. Germany), alternatives that are not fully satisfactory regarding the objectives of the project may also be considered to be alternatives. Restrictions in the degree of fulfilment of the objective may have to be accepted. Nevertheless, this does not imply that the objective itself has to be questioned. In order to evaluate the degree to which the objectives are satisfied, the purpose of the project must be clearly determined and presented. Only alternatives that may be reasonably considered need to be assessed.

Solutions that have been proposed by a third party may also be possible alternatives. In addition to reviewing alternatives which were examined in prior planning phases, it may be necessary to consider further technically feasible solutions that support the project objectives whenever the perspective of the Natura 2000 network requires it. Economic interest may not play a role in the selection of the alternatives that are to be investigated.

### 6.2.2 Assessment of alternatives based on the requirements of Natura 2000

The first step is to examine whether there is a reasonable alternative which accomplishes the proposal of the project without significant impact of the conservation objectives of the Natura 2000 site. This alternative is to be pursued if the potential additional (e.g. financial) expense or the limitations on the fulfilment of the project's aims is considered to be within proportion to the decrease in significant

impacts on the conservation objectives of the Natura 2000 site (see Section 6.2.3). In this case, it is not necessary to look for and examine further alternatives.

Where there is no alternative without any significant impacts, a comparative assessment of further alternatives must be carried out with respect to their impacts on all of the potentially affected Natura 2000 sites. If several alternatives exist, each alternative has to be assessed according to its compatibility with the conservation objectives of the respective Natura 2000 sites. The assessment emphasises alternatives that may cause less severe damage than the project's layout presently submitted for authorisation.

The programme of assessment is limited to Natura 2000-related requirements. Whether and to what extent Annex I habitats and/or Annex II species and their habitat are significantly impacted by each alternative is crucial for the comparison, since this assessment step has to identify the best solution to reduce the amount of unavoidable impact, especially on priority habitats and species. The categories A–D, which are used to evaluate the conservation status of habitats and species in the standard data form, serve only to determine whether each site is worthy of being designated and are not adequate for the assessment of alternatives.

The comparative assessment of different alternatives (e.g. alternative location), requires adequate tools. The scope and intensity of assessment should be adjusted according to the severity of the predicted impacts. Although a full assessment of all the possible solutions is not mandatory, their respective examination must be sufficiently detailed to determine the most suitable alternative to reduce or avoid impacts on the conservation objectives of the Natura 2000 sites. The assessment should stress the differences between the various alternatives as well as the solution submitted by the proponent of the project, which are relevant for the decision-making.

The result of the comparison of alternatives establishes whether an alternative exists from a nature protection perspective that can reduce the impacts on the Natura 2000 site.

### **6.2.3 Ruling out disproportionate alternatives**

The decision to rule out alternatives as disproportionate has to comply with the principle of reasonableness as established by the EC Treaty.<sup>42</sup> An alternative designed to protect the Natura 2000 network may be ruled out if it causes efforts or constraints that are disproportionate to the attainable benefits for nature and the environment. As a rule, an alternative may be considered disproportionate, if it makes the realisation of the project economically impossible.

The scope of the efforts that can be reasonably expected is, therefore, closely related to the importance of the damaged environmental issues of community interest. The greater the need for protection and the greater the impact on the site, the greater the effort must be to protect the system (e.g. additional costs, time delays). Accordingly, a solution that fulfils the project's purpose unsatisfactorily may be acceptable. The number and importance of the severely damaged habitats and species, the magnitude of impact on the conservation objectives as well as the importance of the affected sites within the coherent Natura 2000 network can be suitable assessment criteria.

Moreover, if an alternative causes considerably less impact on the site in comparison to the solution favoured by the proponent, then greater expense (e.g. costs) is more acceptable than if the alternative

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<sup>42</sup> Article 5(3) of the EC Treaty.

offers only few advantages over the preferred alternative. In order to avoid significant impacts on Natura 2000 sites, it is possible that a clearly costlier or less effective alternative for transportation is still considered reasonably acceptable. A site particularly worth protecting may justify considering an alternative route close to a town, making active or passive noise abatement measures necessary.

After all the feasible alternatives have been examined with respect to their impact on the Natura 2000 network, the following second step of assessment has to establish whether the efforts related with some of the alternatives can be reasonably expected. The decision to rule out alternatives as disproportionate lies in the hands of the authorities, which are responsible for the authorisation of the project.

#### **6.2.4 Key issues of the evaluation of alternatives**

Based on the required information mentioned in Section 6.2.2 and 6.2.3, an objective decision must be made about the following:

- Do alternatives exist?
- Have all the alternatives that may reasonably be taken into consideration been examined, including those with greater impacts on other factors (e.g. additional costs, higher immissions, larger land consumption) and those that only partially achieve the transportation objective?
- Do alternative solutions exist that avoid or reduce the significant impacts on the Natura 2000 sites?
- Can certain alternatives be ruled out as disproportionate?
- Are the reasons why the proposed solution is favoured over other alternatives presented in an understandable manner?

Moreover, a comprehensive documentation of all of the examined alternatives is necessary.

It must be plausibly demonstrated that the chosen alternative is the best possible solution for the Natura 2000 network in terms of ecological as well as economical good judgement.

If the assessment of alternatives establishes the existence of an alternative with no impact or a less significant impact on a Natura 2000 site than the proposed solution, then the alternative with the better ecological value has to be adopted. In some cases, as far as the overall objectives of the project are achieved, unsatisfactory solutions are also acceptable.

If none of the alternatives can reduce the impacts on the Natura 2000 sites, then this conclusion should be justified in an understandable manner.

## **6.3 Imperative reasons of overriding public interest**

Only the authorities that are responsible for the authorisation of the project can decide whether imperative reasons of overriding public interest exist. As the evaluation of the efforts can be reasonably expected for an alternative solution, the proponent of the project may present his arguments.

### **6.3.1 Terminology**

The following aspects are relevant to the term “imperative reasons of overriding public interest”:

#### **Public interest**

Public interest includes all the concerns that serve the welfare of the public. In addition to the reasons mentioned in Article 6(4) HD, which include “human health” and “public safety” or “beneficial consequences of primary importance for the environment”, economic and social interests are also included, as well as transportation considerations.

The public interests that are in opposition to the project are also to be addressed.<sup>43</sup>

#### **Overriding**

The public interest can justify the authorisation of a project only if, in specific cases, it overrides the conservation requirements of the European network of Natura 2000 sites, which represent a public interest in and of themselves.

The fact that a given site is of community (i.e. of European) interest confers considerable weight to the concerns of nature and environment over other considerations. This importance is even more significant, the greater the role of the affected sites is for the coherence of the European Natura 2000 network, the greater the magnitude of the specific impacts. The higher the conservation values of the site and the stronger the impact, the greater the public interest pursued by the project must be in order to qualify as overriding.

#### **Imperative reasons**

The question of the presence of imperative reasons can be answered only in specific cases because almost all of the competing, i.e. divergent, public interests are to be taken into account in the sense that they are necessary requirements of the overall welfare. Therefore, the public interest promoted by the project should not only be more important than other issues (i.e. overriding), furthermore the implementation of the project has to be indispensable (i.e. imperative).

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For example, the protection of Annex VI species of the Habitats Directive is just as important as the protection of the Natura 2000 network, because the conservation of biodiversity is the primary objective of the Habitats Directive. Their protection is to be judged as well as an important requirement of the European common welfare. The protection of Annex VI species may be a relevant imperative reason of overriding public interest and may justify a significant impact of a Natura 2000 site.

### 6.3.2 Criteria for evaluating imperative reasons of overriding public interest

To determine whether an imperative reason of overriding public interest is present, the following points are to be considered:

- The specific functions of a site (e.g. key habitats such as feeding areas, linking ecological features such as corridors, etc.) for the conservation of species or habitats and the representativity of their occurrence (e.g. statewide or nationwide importance) can be used as indicators for the overall importance of a site for the Natura 2000 network. In terms of the severity of the impact, there is a difference between the degradation of a habitat that is widespread in a Member State and the loss of the last specimen of a relict species with an extremely restricted geographical distribution.
- The project itself must have imperative reasons (e.g. for transportation projects, closing a gap in TEN) in order to outweigh the European requirements for the protection of the Natura 2000. Not every regional or local transportation request can justify an exception (e.g. construction of a dual-carriageway road alongside an existing single-carriageway road).

A standardisation of evaluation criteria is not advisable. For example, the need for expanding the motorway network in Member States that already have a dense infrastructure is very different from that of countries in which such a project would mean a major impulse for the development of large remote regions.

According to the EU Commission, a project may be authorised only if the existence of the aforesaid reasons of overriding public interest can be proven, and then only within the frame in which the plan or project in question proves necessary for the fulfilment of the public interest in question.<sup>44</sup>

Whether reasons for overriding public interest exist can only be determined on a case-by-case basis. The importance of the nature protection requirements as addressed in the EU Directives must be taken into account in an appropriate way.

### 6.3.3 Requirements for the justification of imperative reasons of overriding public interest

The evidence of an imperative reason of overriding public interest must comply with strict standards for plausibility, quality of baseline information and accuracy of prognosis. Unspecific statements, e.g. about the basic importance of large infrastructure projects, are not sufficient to establish the existence of overriding public interest. The reasons why, despite significant impacts on a Natura 2000 site, a project must imperatively be implemented on the proposed site and in the proposed layout have to be presented in a comprehensible manner.

The following information is required for the analysis of the imperative reasons of overriding interest based on the criteria given in Section 6.3.2:

- Statement of the affected habitats and species, listed according to priority or non-priority status (i.e. in table form), as well as of other adverse interests.
- Presentation of reasons for public interest that apply to the project.
- Justification that these reasons are imperative and override the importance of the Natura 2000 network.

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<sup>44</sup> EU Commission / GD Environment (2000), p. 50.

## 6.4 Compensatory measures

### 6.4.1 Legal requirements for compensation measures / procedural aspects

Where there is no reasonable alternative to a project that causes significant impacts on the conservation objectives of the Natura 2000 site and if this project has to be pursued for imperative reasons of overriding public interest the necessary compensatory measures must be taken according to Article 6(4) HD for safeguarding the coherence of the European Natura 2000 network. The implementation of the compensatory measures is an indispensable prerequisite for the authorisation in the same terms as the proof of imperative reason of overriding public interest and the lack of an alternative. Thus, notification of the Commission is mandatory.

The competent authorities set up the compensatory measures. It is normally the task of the proponent of the project to provide information about possible compensatory measures during the authorisation process. Nevertheless, it is highly advisable to seek advice from the nature protection authorities responsible for the Natura 2000 site.

The type and scope of the compensatory measures must ensure a complete compensation for the predicted damages of functions of the coherent Natura 2000 network. The possibility to create or restore habitats is, however, in some cases very limited. Not all significant impacts can be remedied through compensatory measures. No short-term and efficient compensatory measures are actually available for natural habitats that develop over extremely long periods (e.g. active raised bogs). Since the compensatory measures must maintain the coherence of Natura 2000, they must, as a rule, address the damaged habitats,<sup>45</sup> Measures that are not related to the impacted habitats and species do not comply with this specific requirement. Likewise a payment as compensation is not possible.

The implementation of the compensatory measures includes an obligation to ensure their completion through suitable regulations.<sup>46</sup> If measures are implemented outside of the existing site, the areas of enlargement or the new sites must be designated as well as fully integrated into the Natura 2000 network.

The competent authorities have to communicate to the Commission the compensatory measures adopted. Neither the Habitats Directive nor the guidance documents published by the Commission make prescriptions concerning the adequate time of reporting. The same standards of transparency and plausibility apply as for other reported information to the Commission. The same form (Annex IV of the guidance "Managing Natura 2000 Sites": European Commission, GD Environment 2000, P 61-65) is to be used.

### 6.4.2 Scientific requirements for the compensatory measures

The compensatory measures must ensure that the site's contribution to the conservation of the favourable status of the protected habitats and species within the biogeographical region remained preserved.<sup>47</sup> They must sufficiently restore the functions of the Natura 2000 network which are

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<sup>45</sup> European Commission, GD Environment (2002), p. 51.

<sup>46</sup> See Section 6.4.3 "Procedures to ensure implementation".

<sup>47</sup> European Commission, GD Environment (2000), p. 46.

significantly damaged by the project. The coherence of the network must remain intact when the impacts occur.

The following basic functional, spatial and temporal requirements are to be considered.

Significant impacts on the favourable conservation status of the habitats and species in the Natura 2000 site which have been predicted in the appropriate assessment set the standard for establishing the type and scope of compensatory measures. Thus, functions of the affected conservation objectives for the network are a decisive issue for planning compensatory measures.

The following measures can be considered for safeguarding the coherence of the network:<sup>48</sup>

- The creation of a new habitat in another site or an enlarged site. The enlarged areas have to be integrated into the Natura 2000 network.
- The improvement of the habitat on part of the site or in a different Natura 200 site, in proportion to the loss that is caused by the project.
- In exceptional cases, the designation of a new site that can fulfil the same functions in the Natura 2000 network, inasmuch as it should not have already imperatively been designated.<sup>49</sup>

Areas with close geographical links to existing Natura 2000 sites should be the first choice. These do not necessarily have to be in the vicinity of the affected site itself, as long as the efficiency of the measures and the functions of the site are ascertained. The creation of new habitats or restoration of previously damaged habitats can fit to an adequate compensation approach, as far as the measures are able to restore completely the functions that will be damaged by the project (e.g. measures to improve the nutrition of a fauna species suffering losses of feeding areas).

Where compensatory measures are planned within an existing Natura 2000 site, then they must go beyond the measures adopted in the frame of the “normal” implementation of Article 6(1) and (2) of the Habitats Directive.<sup>50</sup>

As a rule, compensatory measures must be operational at the time when the damage occurs on the site in question. An exception is possible when it can be proven that the continuity of the affected functions is not necessary to ensure the site’s contribution to the Natura 2000 network. In some cases, a delay until the full restoration of a part of one habitat neither impedes the complete recovery of the habitat nor threatens the remaining areas of the habitat in the meantime (e.g. population of characteristic species of the habitat will not drop below the viable minimum. In the long run increased, but very slow, drainage will not alter the conservation status of a habitat before the compensatory measures are fully efficient.).

On the other hand, it may be necessary to ensure the continuity of suitable habitat conditions for a species that would be endangered by a disruption of its life cycle, even during a single generation. In this case, the compensatory measures must imperatively be operational at the time when the impact occurs.

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<sup>48</sup> European Commission, GD Environment (2000), p. 46.

<sup>49</sup> No compensatory measures for impacts in an SPA may be taken in areas that themselves already should have been imperatively notified as SAC.

<sup>50</sup> European Commission, GD Environment (2000), p. 45.

In summary, the following legal and scientific requirements for the compensatory measures apply:

- Each single measure is legally binding (e.g. specifically addressed in the authorisation documents).
- The implementation of the measures must be ensured among others from the administrative and financial point of view (e.g. through an official act)
- The measures must meet the specific needs and functional requirements of the significantly affected habitats and species.<sup>51</sup>
- They must compensate for the losses of habitats and species in comparable proportion to the impacts.
- They must be carried out in the same biogeographical region in order to ensure that the favourable conservation status for the affected habitats and species can be maintained in this region.
- Their areas of implementation must be integrated into the Natura 2000 network.
- They must normally be operational at the time when the impacts to the habitats and species occur.

#### **6.4.3 Required information for the compensatory measures**

Information must be suitable to fulfil the requirements given in Section 6.4.1 and 6.4.2. Information on the following points is normally required:

##### **Type and scope of significant impacts on the conservation objectives**

Significant impacts on the species and habitats are to be documented (e.g. loss of area, decrease in population, future limitation on restoration possibilities, loss of certain functions, fragmentation effects, etc).

##### **Baseline situation of the area selected for the implementation of compensatory measures**

The baseline conditions in the area of implementation are to be described with emphasis on the parameters and landscape features that are relevant for the intended compensatory effects.

##### **Type and scope of the intended compensatory measures and their location in the Natura 2000 network**

The type and scope of the proposed measures for creation, enlargement or improvement of Annex I habitats or habitats of Annex II species, are to be documented as well as the management required for their subsequent conservation. Moreover, information about the location within the Natura 2000 network is necessary (in an existing area, as an enlargement to an existing area, as a new site).

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<sup>51</sup> With respect to migratory bird populations that are significantly impacted through the loss of stop-over areas, this example means that additional staging-post areas must be created along the migratory route to take over the impacted function.

## **Efficiency of the compensatory measures**

The functional relationship between the impacted habitats or species and the compensatory measures must be established. For this, it may be necessary to address specific characteristics of the implementation area such as its location with regard to the accessibility for affected fauna species, location of the routes of migratory birds, etc.

Where measures are planned within an existing Natura 2000 site, it must be ascertained that their implementation does not have adverse effects on other conservation objectives of this site.

The time when the compensatory measures will be fully efficient is to be estimated. Furthermore, information is required about the timetable for the implementation. The efficiency of the measures with respect to the schedule of implementation is to be predicted. Consequences of potential delays in the implementation are to be addressed.

## **Prescribed regulations to ensure implementation**

The authorisation act has to include regulations concerning the necessary prerequisites for implementation and ensuring the measures long-term. Moreover there have to be guarantees about tenure of required areas (e.g. appropriate contracts or other legal provisions).

## **Monitoring procedures**

The monitoring programme set up to survey the implementation and the efficiency of the measures is to be designed in cooperation with the authorities responsible for the site's management. Specific information about type, scope and frequency of monitoring schemes can be necessary for a sound surveillance of efficiency.

The project's proponent is responsible for the monitoring issues until the efficiency of the compensation measures is fully established. Subsequently, they are integrated into the standard monitoring programme carried out by the competent authorities in charge of the Natura 2000 site.

## **6.5 Implications of the derogation procedure for the project**

If all three requirements are fulfilled (evidence that a reasonable alternative fails, imperative reasons of overriding public interest and the establishment of the necessary compensatory measures) the authorisation may be granted. In addition, as is required in Article 6(4) HD, prior opinion of the Commission is to be requested and taken into account if priority species or habitats are significantly affected. As long as one of the above-mentioned requirements is not fulfilled, then the project may not proceed.

## 7 References

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- European Commission, DG Environment (2000): Managing Natura 2000 sites. The provisions of Article 6 of the Habitats Directive 92/43/EEC. Office for Official Publications of the European Communities, Luxembourg.
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- European Environment Agency (2002b): Continental Region. Conclusions on representativity within pSCI of habitat types and species. Seminar held at Potsdam, Germany, November 2002. unpublished.
- European Commission, DG Environment (2003): Interpretation Manual of European Union Habitats, Eur 25 (April 2003).  
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- Wetland International (2002): Waterbird Population Estimates. 3rd Edition. Wetlands International Global Series No. 12. 226 pp.

## 7.1 Cited legal sources

Directive 79/409/EEC of the Council from 02. April 1979 (EU-Birds Directive) about the conservation of wild birds according to amended 91/2244/EEC from 06.03.1991, Abl. EG Nr. L 103/1 from 25.04.1979, last amended by the directive 97/49/EG, Abl. EG Nr. L 223/9.

Directive 92/43/EEC of the Council from 21. May 1992 for the conservation of natural habitats and wild animals and plants (Habitats Directive), Abl. EG L 206/7 from 22.07.1992, amended by directive 97/62/EG of the Council from 27.10.1997, Abl. EG L 305/42.

Directive 85/337/EEC of the Council from 27. June 1985 (EIA-Directive) about the environmental impact assessment of public and private projects, Abl. EG L 175/40, amended by the directive 97/11/EG of the Council from 03. March 1997, Abl. EG L 73/5.

Directive 2001/42/EC of the Council from 27. June 2001 (Plan-EIA-Directive) about the environmental impacts of plans and programmes, Abl. EG L 197/30.

## 7.2 Cited legal judgements

CoJEC, Judgement from 28.02.1991 - Rs. C-57/89 - Slg 1991 I 883 = <http://curia.eu.int/de/content/juris/index.htm> 1991, 247 - Leybucht

CoJEC, Judgement from 07.12.2000 - Rs. C-374/98 - Slg 2000 I 10837 = <http://curia.eu.int/de/content/juris/index.htm> 2001, 210 - Basses Corbières

## 7.3 Valuable links

### Natura 2000 Barometer

- EU-weit:  
[http://europa.eu.int/comm/environment/nature/nature\\_conservation/useful\\_info/barometer/barometer.htm](http://europa.eu.int/comm/environment/nature/nature_conservation/useful_info/barometer/barometer.htm)

### European Commission / Directorate-General for Environment

- <http://europa.eu.int/comm/environment>

### European Environment Agency

- <http://www.eea.eu.int>

### Implementation of the Habitats Directive in the Member States

- Bundesumweltministerium Deutschland: <http://www.bmu.de>
- Miljøministeriet, Skov- og Naturstyrelsen: <http://natura2000.sns.dk>
- Joint Nature Conservation Committee: <http://jncc.gov.uk>
- Ministère de l'environnement et de l'aménagement du territoire:  
<http://natura2000.environnement.gouv.fr>
- Umweltbundesamt Österreich: <http://www.umweltbundesamt.at>

## **Case law of the Court of Justice of the European Communities**

- <http://curia.eu.int/de/content/juris/index.htm>

## **Standard data form**

- [http://europa.eu.int/comm/environment/nature/nature\\_conservation/natura\\_2000\\_network/standard\\_data\\_forms/index\\_en.htm](http://europa.eu.int/comm/environment/nature/nature_conservation/natura_2000_network/standard_data_forms/index_en.htm)

## **Biodiversity**

- [http://europa.eu.int/comm/environment/nature/biodiversity/intro\\_en.htm](http://europa.eu.int/comm/environment/nature/biodiversity/intro_en.htm)
- <http://biodiversity-chm.eea.eu.int>

## Review check lists for the appropriate assessment

<b>Review check list – appropriate assessment</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> ZZZZ – 3ZZ						
No.	Review question	Source, documents	Assessment result			Assessment comments
			Requirements fulfilled	Requirements not fulfilled	Requirements partly fulfilled	
<b>A</b>	<b>Background</b>					
A.1	Is Article 6 HD as well as the state regulations correctly stated?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.2	Is the established case law of the CoJEC and the Member States considered?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.3	Are all of the relevant Natura 2000 sites identified and considered?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.4	Is the Natura 2000 site correctly labelled (as site of community importance or special protection area)?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.5	Is the official EU Code given?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.6	Is the provisional status of the Natura 2000 site stated in accordance with the reporting processes (e.g. candidate sites for the x-th complementary list)?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.7	Is each Natura 2000 site addressed individually?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>B</b>	<b>Area of investigation</b>					
B.1	Were both an area of investigation and a survey programme established? Did the appropriate assessment comply with agreements?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
B.2	If no, are the changes in the area and programme of investigation documented and justified?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Review check list – appropriate assessment</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> ZZZZ – 3ZZ						
No.	Review question	Source, documents	Assessment result			Assessment comments
			Requirements fulfilled	Requirements not fulfilled	Requirements partly fulfilled	
<b>C</b>	<b>Description of the Project</b>					
C.1	Is the description of the project’s physical characteristics as well as the construction and operational affecting factors sufficiently detailed to carry out a sound evaluation of impacts?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
C.2	Are the relevant affecting factors of the site identified and explained?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
C.3	Does the description of the relevant affecting factors and processes provide necessary information, detailing type, magnitude and range, duration and frequency?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>D</b>	<b>Delimitation and description of the area of investigation</b>					
D.1	Does the overall area of investigation include the whole site as well as the area of relevant functional relationships?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
D.2	Is the boundary of the area of investigation clearly justified?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
D.3	Does the description of the area of investigation contain the necessary information about the size and the site’s conservation objectives, detailing the surface area of habitats, size of species populations, their conservation status as well as relevant features for functional relationships?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>E</b>	<b>Baseline data and surveys</b>					
E.1	Has the data of the standard data form been taken into account?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E.2	Is available data up to date, sufficiently exhaustive and reliable? Were these criteria checked?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E.3	Are the sources and date of data and information adequately referenced?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Review check list – appropriate assessment</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> ZZZZ – 3ZZ						
No.	Review question	Source, documents	Assessment result			Assessment comments
			Requirements fulfilled	Requirements not fulfilled	Requirements partly fulfilled	
E.4	Has incomplete or insufficient data been supplemented by additional surveys and investigation of specific habitats and species of Birds and Habitats Directives?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E.5	Are type, scope, method and time period of additional surveys stated?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E.6	Have the additional surveys been carried out with appropriate methods, at a suitable time of the year, with sufficient scope and detail in order to evaluate the significance of possible impacts?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E.7	Have the special sensitivities of each habitat and species been evaluated with respect to the specific effects of the project?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
E.8	Have the remaining gaps in the data been identified and their relevance for the results of the AA discussed?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>F</b>	<b>Boundaries and description of the area of detailed investigation</b>					
F.1	Boundaries of the area of detailed investigation.					
F.1.1	Are the specific sensitivities of the potentially affected conservation objectives as well as the assumed range of the affecting processes considered for delimiting the area of detailed investigation?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F.2	Description of the conservation objectives and of the qualifying features of the site.					
F.2.1	Are the conservation objectives sufficiently concrete and specific for the studied area? Have the competent authorities been consulted?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Review check list – appropriate assessment</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> ZZZZ – 3ZZ						
No.	Review question	Source, documents	Assessment result			Assessment comments
			Requirements fulfilled	Requirements not fulfilled	Requirements partly fulfilled	
F.2.2	Are the qualifying Annex I habitats properly described? (priority/non-priority status, size, location, conservation status, necessary site-related requirements?)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F.2.3	Is the selection of the characteristic species of the Annex I habitats justified in an understandable manner?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F.2.4	Are the characteristic species assigned to the respective Annex I habitats and described with respect to their requirements and occurrence within the habitats?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F.2.5	Are the qualifying Annex 2 species and their habitats properly described? (priority/non-priority species status, population size, demographic attributes, population trends, necessary site requirements and interconnections with other keys habitats). Similar requirements apply to key characteristic species of Annex I habitats.		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F.2.6	Are key habitat structures and functions (even outside of the site) included that are relevant for the conservation status of the site's habitats and species?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F.2.7	Are restoration or enlargement potentials considered as stipulated by the competent authorities?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F.2.8	As far as restoration potentials have to be considered, does the description contain the necessary information about the spatial distribution of areas concerned, suitable physical and biotic conditions and management measures necessary to meet the restoration objectives?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F.2.9	Are the management requirements being taken into account as stipulated by the competent authorities?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Review check list – appropriate assessment</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> ZZZZ – 3ZZ						
No.	Review question	Source, documents	Assessment result			Assessment comments
			Requirements fulfilled	Requirements not fulfilled	Requirements partly fulfilled	
F.2.10	As far as management measures have to be considered, does the description contain the necessary information about type, scope and timetable for the implementation of the measures?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F.2.11	Have the relevant functional relationships to other Natura 2000 sites been identified and described?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>G</b>	<b>Identification and assessment of impacts</b>					
G.1	Are the applied methods and the evaluation criteria understandably documented?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.2	Are the applied criteria suitable to adequately assess the impacts on the favourable conservation status of the affected habitats and species?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.3	Is each step needed to establish significance clearly presented?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.4	Are type, scope and magnitude of the predicted impacts and the probability of their significance predicted with sufficient certainty and accuracy?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.5	Are existing gaps in information sufficiently addressed? Is the evaluation of significance of the predicted impacts sufficiently reliable to comply with all legal requirements?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.6	Are the remaining prognosis uncertainties and unavoidable gaps in information stated? Is their relevance for the evaluation of significance estimated?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.7	Is each conservation objective (habitats and species in Annex I or II with priority/non-priority status) treated individually in the assessment of the impacts?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Review check list – appropriate assessment</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> ZZZZ – 3ZZ						
No.	Review question	Source, documents	Assessment result			Assessment comments
			Requirements fulfilled	Requirements not fulfilled	Requirements partly fulfilled	
G.8	Have impacts on characteristic species been taken into account during the assessment of the impacts on habitats?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.9	Where needed, have possible restrictions of restoration potentials been treated?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.10	Where needed, have possible restrictions of management measures been treated?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.11	Have previous damages been identified and taken into account?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.12	Where needed, have impacts on functional relationships and linking ecological features been treated?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G.13	Have impacts with overall effect beyond the boundaries of the site been identified and assessed?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>H</b>	<b>Integration of mitigation measures</b>					
H.1	Where significant impacts are predicted, have the necessary measures for mitigation been planned?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
H.2	Are the planned mitigation measures suitably concrete and site-specific?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
H.3	Is the implementation ensured from a technical perspective?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
H.4	Is the implementation possible from a legal and financial perspective?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
H.5	Are the implementation time frame and dead lines stated?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
H.6	Are the explanations of the efficiency of the mitigation measures conclusive?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Review check list – appropriate assessment</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> ZZZZ – 3ZZ						
No.	Review question	Source, documents	Assessment result			Assessment comments
			Requirements fulfilled	Requirements not fulfilled	Requirements partly fulfilled	
H.7	Is there a prediction of the remaining residual impact on the particular conservation objective after the implementation of the respective mitigation measure?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>I</b>	<b>Integration of other plans and projects</b>					
I.1	Has it been examined whether there are other plans/projects that could cause significant impact on the site through interaction with the project?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I.2	Were the competent authorities consulted for identification of other plans/projects?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I.3	Is the non-relevance of certain plans/projects understandably justified?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I.4	Are the project’s characteristics and the affecting processes of other plans/projects sufficiently concrete and differentiated?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I.5	Are the applied methods and criteria used to evaluate the impacts due to cumulative effects suitable and presented in an understandable manner?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I.6	Have the type, scope and magnitude of the impacts of cumulative effects on the respective conservation objectives been predicted with sufficient certainty and accuracy?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I.7	Are existing gaps in information sufficiently addressed? Is the evaluation of significance of the predicted cumulative impacts sufficiently reliable to comply with all legal requirements?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I.8	When significant impacts have been predicted, are the necessary mitigation measures for cumulative impacts planned?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I.9	Does the information about the planned mitigation measures meet the requirements given under points H.2–H.7?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Review check list – appropriate assessment</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> ZZZZ – 3ZZ						
<b>No.</b>	<b>Review question</b>	<b>Source, documents</b>	<b>Assessment result</b>			<b>Assessment comments</b>
			<b>Requirements fulfilled</b>	<b>Requirements not fulfilled</b>	<b>Requirements partly fulfilled</b>	
I.10	Is the final assessment of significance of impacts in connection with other plans/projects regarding all mitigation measures conclusive?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>J</b>	<b>Presentational issues</b>					
J.1	Is the document conclusive, plausible and understandable?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
J.2	Does the final evaluation conclude with a clear result of the appropriate assessment (significant/non-significant impact)?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
J.3	Is cross-referencing to figures, tables and maps complete and correct?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
J.4	Are all sources of data properly referenced?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
J.5	Does the document include a summary of the results?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Review check list – derogation procedure</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> DE ZZZZ – 3ZZ						
No.	Assessment criteria	Source, document	Assessment results			Assessment comments
			Requirements fulfilled	Requirements not fulfilled	Requirements partly fulfilled	
<b>A</b>	<b>Derogation procedure</b>					
A.1	Are the project’s objectives stated and the necessity of its implementation justified?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.2	Is the selection of the examined alternatives justified in an understandable manner?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.3	Have all reasonable alternatives been compared from the perspective of the Natura 2000 requirements?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.4	Are the differences between the impacts of each alternative on the respective conservation objectives clearly recognisable?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.5	Is it stated whether significant impacts on Natura 2000 sites can be avoided or reduced by selecting an alternative to the project’s layout presently submitted for authorization?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.6	Where alternatives are estimated to cause constraints disproportionate to expected benefits for conservation issues of community interest, has this statement been plausibly justified?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
A.7	Is the justification for the choice of the proposed solution understandable and reliable? Is it plausibly set forth, that among all reasonably and suitably possible alternatives the chosen solution is the most favourable from the point of view of the Natura 2000 network?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Review check list – derogation procedure</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> DE ZZZZ – 3ZZ						
No.	Assessment criteria	Source, document	Assessment results			Assessment comments
			Requirements fulfilled	Requirements not fulfilled	Requirements partly fulfilled	
A.8	Where there is no possible alternative from the perspective of the project's proponent: Has this conclusion been plausibly justified?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>B</b>	<b>Statement of imperative reasons of overriding public interest</b>					
B.1	Is an overview given of the significant impacts, differentiated according to priority and non-priority status of the affected conservation objectives?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
B.2	Are the reasons for public interest stated that are pursued by the project?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
B.3	Are other interests that may oppose the whole project discussed?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
B.4	Is it plausibly justified that the reasons put forth for the project are imperative, and that they outweigh the intrinsic importance of the affected site for the Natura 2000 network?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>C</b>	<b>Compensatory measures</b>					
C.1	Are the type and scope of the significant impacts on the conservation objectives stated?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
C.2	Are the baseline conditions of the area explained, that have been selected for the implementation of the compensatory measures?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
C.3	Are type and scope of the necessary compensatory measures explained and agreed upon by the competent authorities?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

<b>Review check list – derogation procedure</b>						
<b>Project:</b> Xy						
<b>Natura 2000 site:</b> DE ZZZZ – 3ZZ						
No.	Assessment criteria	Source, document	Assessment results			Assessment comments
			Requirements fulfilled	Requirements not fulfilled	Requirements partly fulfilled	
C.4	Is the necessary information about location of the compensatory measures within the Natura 2000 network included (in an existing site, enlargement of an existing site, designation of a new site)?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
C.5	Is it established that the compensatory measures will restore all functions for Natura 2000 that are fulfilled by the impacted habitats and species?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
C.6	Are the legal regulations described that have been set up in order to ascertain the implementation of the compensatory measures?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
C.7	Are the regulations presented that are necessary to monitor the implementation and the functional efficiency of the compensatory measures?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>D</b>	<b>Presentational issues</b>					
D.1	Is the document conclusive, plausible and understandable?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
D.2	Is cross-referencing to figures, tables and maps complete and correct?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
D.3	Are all sources of data properly referenced?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
D.4	Does the document include a summary of the results?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

## Form for the submission of information to the European Commission according to Article 6 (4) of the Habitats directive

Member State:

Date:

### Information to the European Commission according to Article 6 of the 'Habitats' directive (Directive 92/43/EEC)

Documents sent for:

information  
(Article 6(4)1)

Opinion/  
(Article 6(4)2)

Competent national authority:

Address:

Contact person:

Tel., fax, e-mail:

Source:

European Commission / GD Environment (2000): Managing Natura 2000 Sites: The provisions of Article 6 of the 'Habitats Directive 92/43/CEE, Annex IV

## 1. Plan or project

Name and code of Natura 2000 site affected:

This site is:

- an SPA under the 'Birds' directive
- a proposed SCI under the 'Habitats' directive
- hosting a priority habitat/ species

Summary of the plan or project having an effect on the site:

## 2. Negative effects

Summary of the assessment of the negative effects on the site:

**NB:** The summary should focus on the adverse effect expected on the habitats and species for which the site has been proposed for the Natura 2000 network, include the appropriate maps and describe the already decided mitigation measures.

### 3. Alternative solutions

Summary of alternative solutions studied by the Member State:

Reasons why the competent national authorities have concluded that there is absence of alternative solutions:

## 4. Imperative reasons

Reasons to nevertheless carry out this plan or project:

- Imperative reasons of overriding public interest, including those of a social or economic nature (in the absence of priority habitat/species)
- human health
- public safety
- beneficial consequences of primary importance for the environment
- other imperative reasons of overriding public interest

Short description of the reason:

## 5. Compensatory measures

Foreseen compensatory measures and timetable: