

“Transport infrastructure and wildlife: how can EU nature legislation contribute to their coexistence?”

The European Commission's perspective

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EU nature legislation – the corner stone of the EU biodiversity policy

- 21 June 2011 – adoption of the EU biodiversity strategy until 2020 to „halt the loss of biodiversity and the degradation of ecosystem services in the EU by 2020, and restore them in so far as feasible, while stepping up the EU contribution to averting global biodiversity loss”.
- Target 1: full implementation of the Birds and Habitats Directives (i.e. reaching favourable conservation status of all habitats and species of European importance and adequate populations of naturally occurring wild bird species).



Birds and Habitats Directives

- **Positive conservation measures (Article 6(1) HD and 4(1)-(2) BD).**
- **Preventive measures:**
 - Natura 2000 sites: Article 6(2)-(4) HD;
 - Species protection (on and outside Natura 2000 sites): Articles 12-16 HD and Articles 5-9 BD.

Birds and Habitats Directives

- **Art. 6(2):** Member States must avoid on the Natura 2000 sites deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated.
- **Art. 6(3):** Any plan or project likely to have a significant effect on a Natura 2000 site has to be appropriately assessed. National authorities can agree to the plan or project when it will not adversely affect the integrity of the site concerned.
- **Art. 6(4):** If, in spite of a negative impact and in the absence of alternative solutions, a plan or project must be carried out for imperative reasons of overriding public interest the Member State has to take compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.

Procedure

1

Is a plan or project likely to have significant effects on the site?
(Screening)

YES



Impact assessment

2

Is the integrity of the site negatively affected?

YES



Assess alternatives

3

If there are no alternative solutions: are there imperative reasons of overriding public interest?

YES

- No priority habitats/species



Compensation measures (& Information to the EC)

- Priority habitats/species and reasons relating to human health, public safety or beneficial consequences of primary importance for the environment?



Compensation measures (& Information to the EC)

- Priority habitats/species and other reasons of overriding public interest



Opinion from the Commission &
Compensation measures

Step 1:

Screening for possible effects of a transport project on Natura 2000

Potential impacts of transport infrastructure on nature and wildlife

■ Direct impacts:

- habitat loss;
- habitat fragmentation;
- disruption of migration corridors (isolated populations, genetic impoverishment, local extinctions);
- road kills;
- noise;
- air, water and soil pollution;



Potential impacts of transport infrastructure on nature and wildlife

- spread of invasive alien species;
- hydrology disruption;
- human penetration;
- **Indirect effects:**
 - transportation networks encourage future developments;
 - CO₂ emissions;
- **Temporary impacts (construction phase)**
- **Permanent impacts (operational phase)**



Determining a likelihood of a 'significant effect'

- Emphasis on a 'likelihood' of potentially significant effects - not a certitude;
- Best available information should be the basis for decision;
- Precautionary principle to be applied;
- If there are doubts, assessment should be carried out;
- Significance must be established in the light, of the characteristics and specific environmental conditions of the site concerned by that plan or project (Case C-127/02 para. 46-48).
- Cases C-304/05, C-209/02: significance has to be assessed case-by-case. Sometimes even small spatial impact can have a significant impact on the coherence of the site.

Step 2:

Assessment of impacts of a transport project on Natura 2000 sites

Appropriate assessment

- Carried out when not possible to exclude significant effect on the integrity of the site; in view of its conservation objectives.
- It should enable to assess whether the plan or project, alone, or in combination with other plans or projects, will have an adverse impact on the integrity of the Natura 2000 site.
- The burden of proof is on demonstrating that there will be no adverse affects on the integrity of the site.

Knowledge base, i.e. gathering information about possible impacts of the project

- Sufficient information has to be gathered on both the road project and on the Natura 2000 site(s) that might be affected.
- Natura 2000 site: information about species and habitat types for which it has been designated, their conservation state and on the overall conservation objectives of the site.
- Standard Data Forms and maps: Natura 2000 viewer: <http://natura2000.eea.europa.eu/>
- Natura 2000 sites management plans.

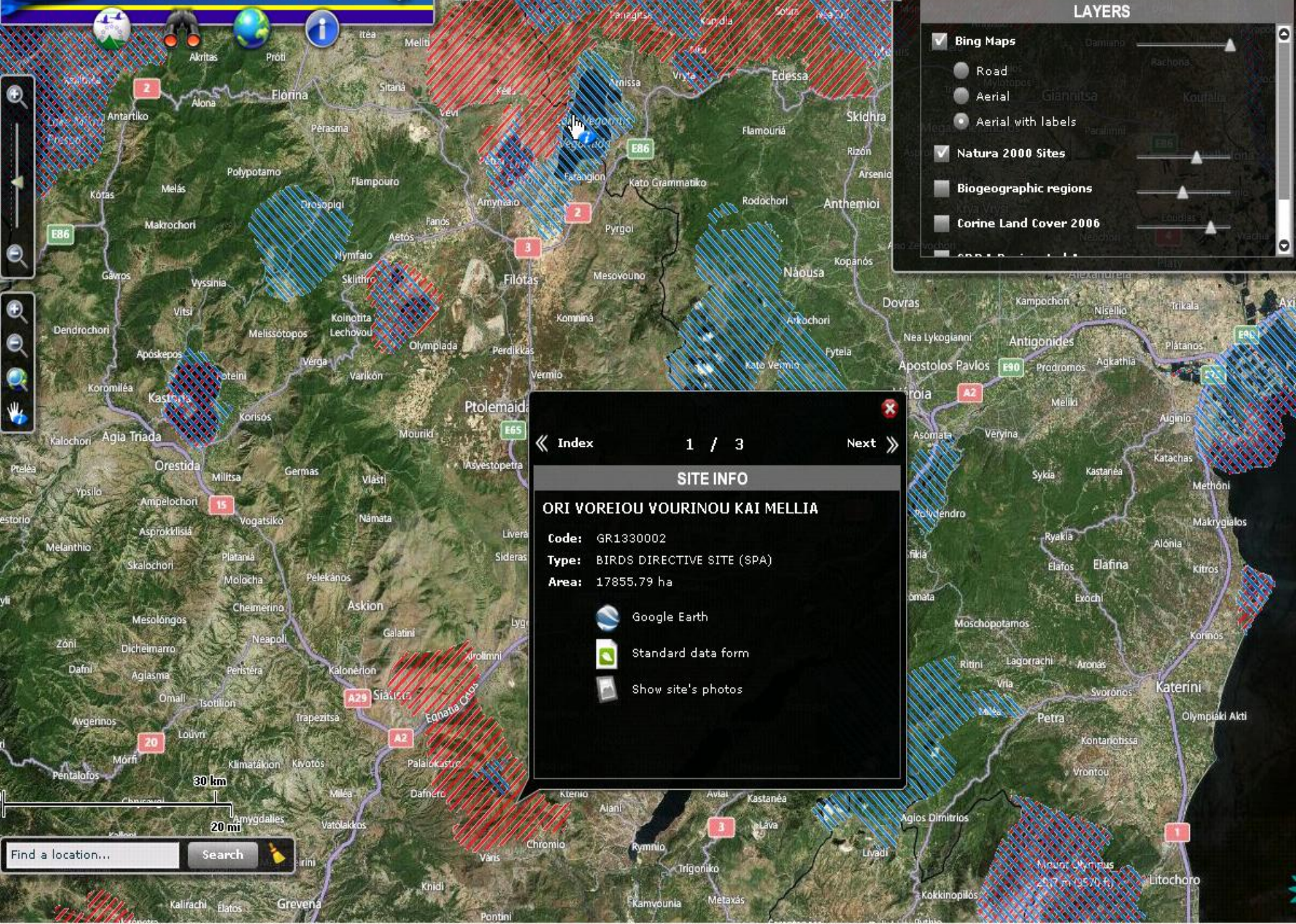
Assessing impacts on the integrity of a site

- Focus on demonstrating no adverse effects on the integrity of the Natura 2000 site;
- Integrity of the site ↔ site's conservation objectives.
- Usually defined as “the coherence of the site's ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or populations of species for which the site is classified” (EC 2000).

Looking at potential cumulative effects

- Plans or projects have to be assessed in combination with other plans or projects (completed or planned).





LAYERS

- Bing Maps
- Road
- Aerial
- Aerial with labels
- Natura 2000 Sites
- Biogeographic regions
- Corine Land Cover 2006

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SITE INFO

ORI VOREIOU VOURINOU KAI MELLIA

Code: GR1330002
Type: BIRDS DIRECTIVE SITE (SPA)
Area: 17855.79 ha

- Google Earth
- Standard data form
- Show site's photos

30 km
20 mi

Find a location... Search

Mitigation of adverse effects of a transport project on wildlife

- Mitigation → to eliminate or reduce negative effects;
- Directly linked to the likely negative effects;
- Changes to the location, design, scale of the project;
- Additional infrastructure such as wildlife passages, animal fencing, noise screens;
- Adapted to the character and scales of impacts;
- Planned at the early stages of project planning;
- Solid, long-lasting;
- Effective → monitoring programmes.

Step 3:

Alternatives assessment

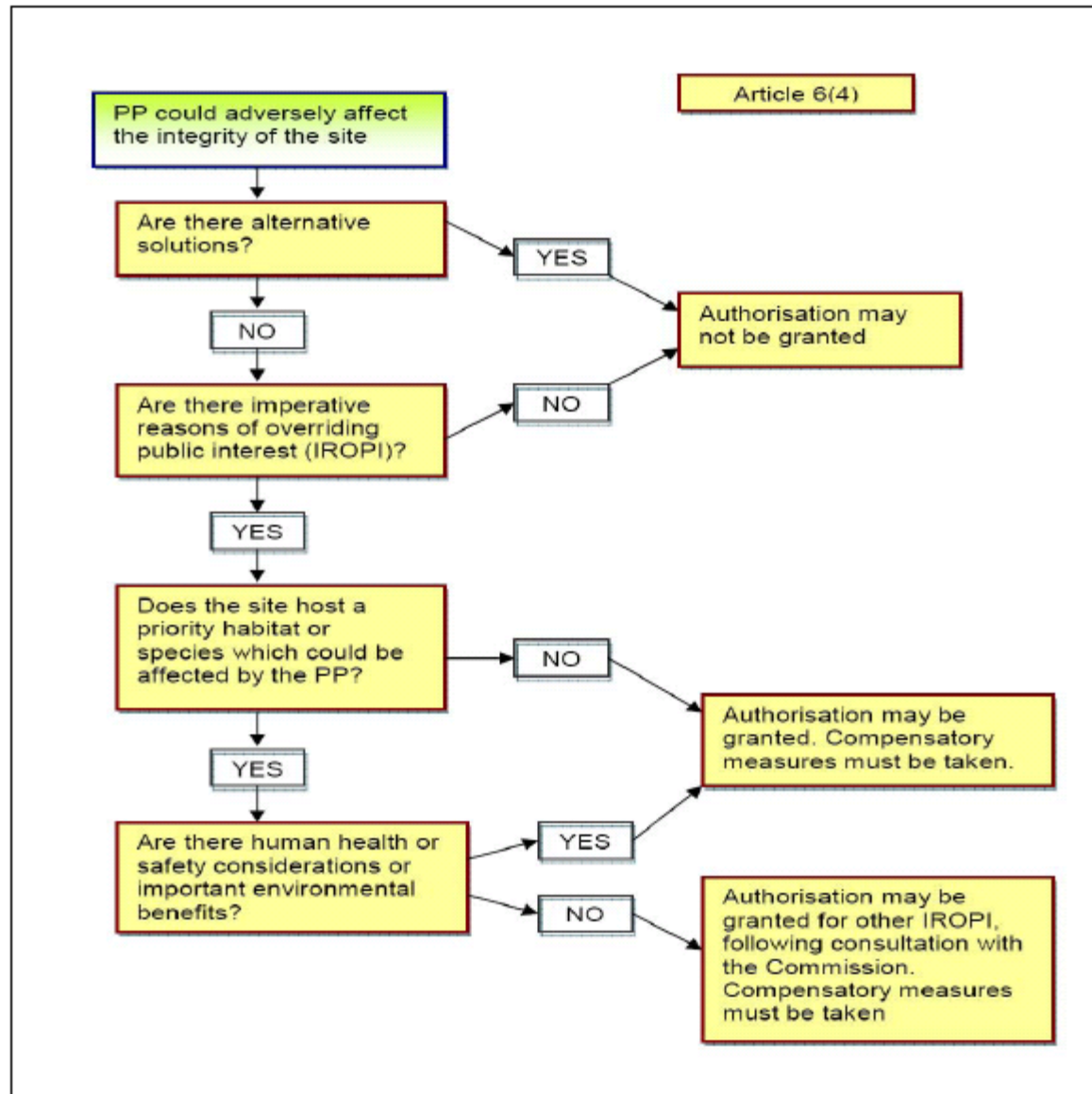
IROPI

Compensation

Derogation procedure of Article 6(4) of the Habitats Directive

- **Appropriate assessment → cannot be ascertained that a project will not adversely affect the integrity of the site;**
- **Plan/project should either be refused or Article 6(4) of the Habitats Directive should be applied.**
- **Following conditions have to be met:**
 - **Proposed alternative has to be least damaging for the Natura 2000 site; no other feasible alternative exists that would not adversely affect the integrity of any Natura 2000 site;**
 - **There are imperative reasons of overriding public interest (IROPI);**
 - **All necessary compensatory measures have been adopted.**

Flow chart of the Article 6(4) conditions:



Alternative solutions

- **Search for alternatives should be broad:**
 - alternative locations,
 - different scales,
 - or designs.
- **First the analysis of the need of the plan or project concerned → zero option should also be considered at this stage.**
- **Reference parameters for comparisons → impacts on the integrity of the site / ecological functions.**

Imperative reasons of overriding public interest (IROPI)

- Apply both to private and public project promoters;
- Balanced against the conservation aims of the Directive;
- Public interests may include:
 - human health,
 - public safety,
 - beneficial consequences of primary importance for the environment,
 - other interests of a social (e.g. employment) or economic nature.
- Public interest must be overriding: long-term, fundamental for the society.

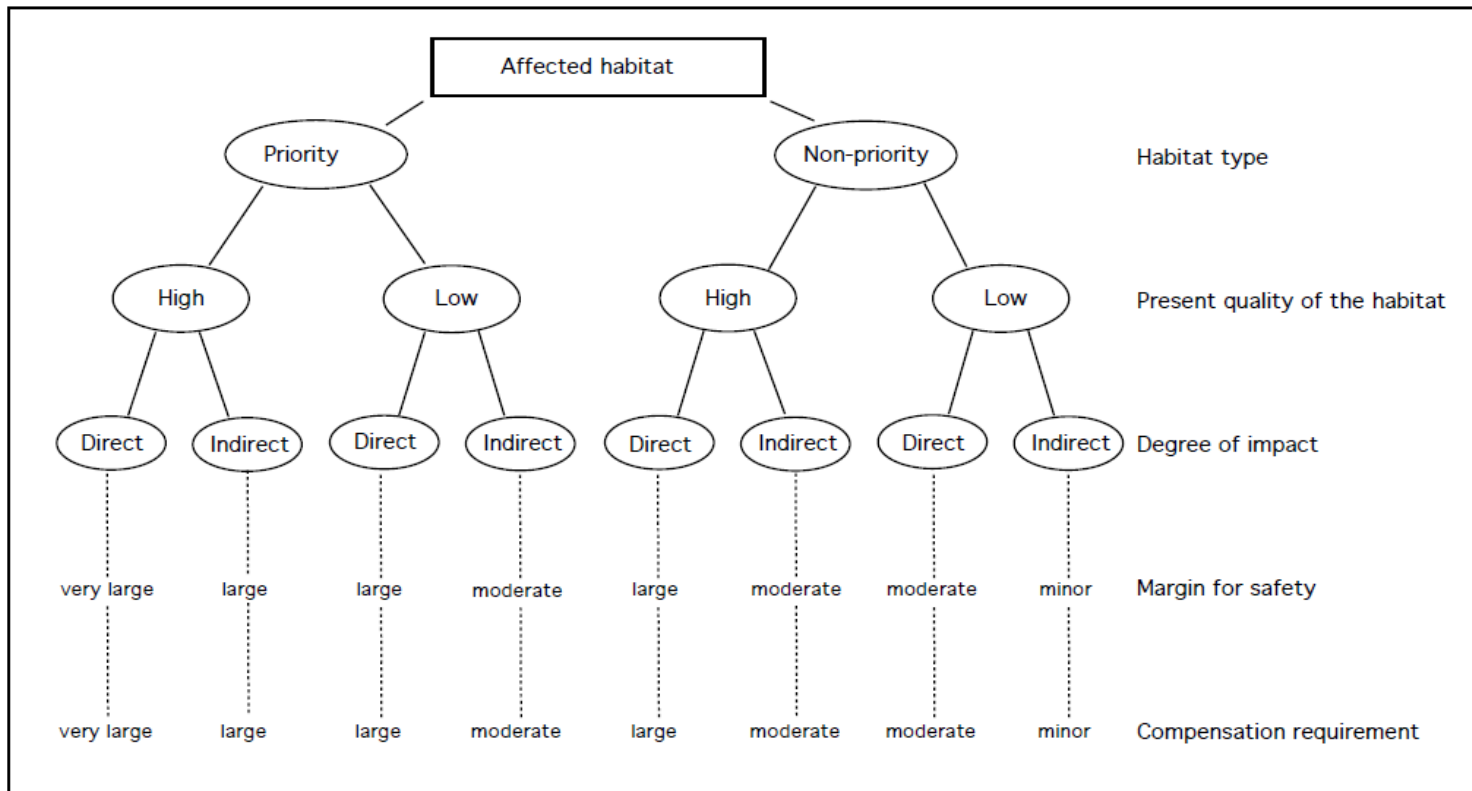
Adopting compensatory measures

- ❑ **Compensatory measures - not defined in the Habitats Directive;**
- ❑ **Specific to a project or plan;**
- ❑ **The weapon of "last resort";**
- ❑ **Compensatory measures have to be additional to the normal practice under the Birds and Habitats Directives.**
- ❑ **Have to secure the „coherence of the network“.**

Compensatory measures:

- Adequate to conservation objectives of the site;
- Address, in comparable proportions, the habitats and species negatively affected;
- Provide functions comparable to those which had justified the selection criteria of the original site;
- Distance between the original site and the place of the compensatory measures not necessarily an obstacle.

Scope of compensation

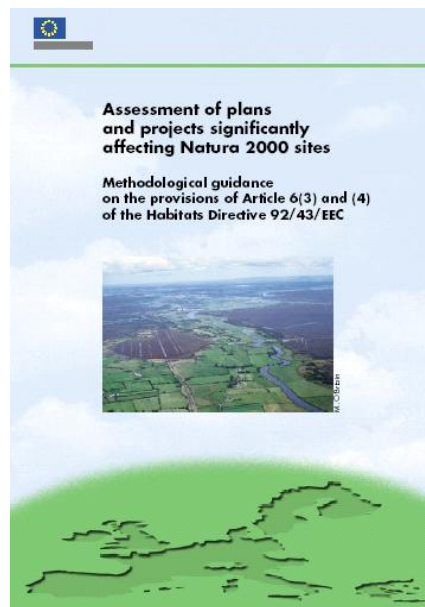
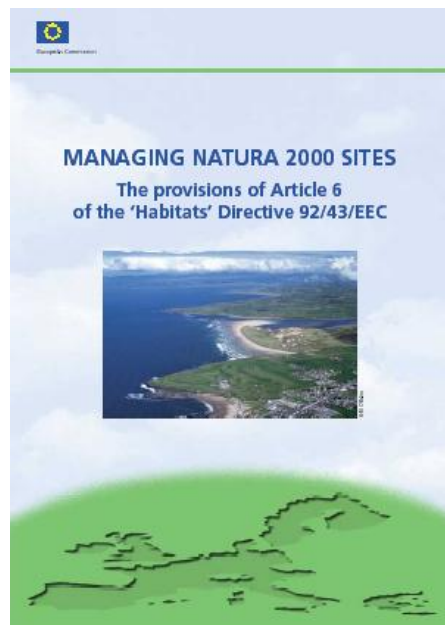


Source: Botnia Line plan of compensatory measures, management and financing, June 2004

Information to the Commission of the compensatory measures

- The competent national authorities have to inform the Commission of the compensatory measures adopted.
- To facilitate the process the Commission services have prepared a standard form (attached to the guideline document).
- It is **not the Commission's role** either to **suggest compensatory measures, or to validate them scientifically.**
- National authorities are only specifically obliged to communicate the compensatory measures adopted (information about alternative solutions and imperative reasons for overriding public interest should be also provided).

Guidelines of the European Commission



Guidance document on Article 6(4) of the Habitats Directive 92/43/EEC: Clarification of the concepts of alternative solutions, imperative reasons of overriding public interest, compensatory measures, overall coherence, opinion of the Commission

http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm#art6