

**Implementation of Article 6(4), first subparagraph,  
of Council Directive 92/43/EEC  
during the period 2004-2006**

**Summary Report**

**Directorate General Environment  
European Commission  
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## Introduction

Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive) obliges Member States to inform the Commission of the compensatory measures adopted in the framework of Article 6(4), first subparagraph<sup>1</sup>. The Commission had recalled the relevant authorities of such an obligation in several occasions as it had noticed that Member States did not systematically report on the compensatory measures adopted.

This legal provision of the Habitats Directive aims at enabling the Commission to consider whether the compensatory measures adopted are such as to ensure that the overall coherence of Natura 2000 is protected and, depending on the circumstances, to draw the appropriate conclusions.

Pursuant to written question E-1888/07, the Commission requested Member States to provide with the relevant information on the use of compensation measures that were taken in 2004, 2005 and 2006 according to Article 6(4) first subparagraph of the Habitats Directive. Three reminders were then sent to the relevant authorities to enable the Commission to collect the above-mentioned information.

The exercise undertaken by the Commission and reflected in this overview report has a dual-purpose. On the one hand, to provide with a sound response to the written question considering the available information at the present time and on the other hand, to explore how Member States apply the obligation laid down in Article 6(4), subparagraph 1. While doing this, the Commission has aimed to develop a coherent approach for the verification and the assessments of the submitted 6(4) information and thus ensure an equal treatment for all Member States.

The Commission would like to draw the attention to the fact that given that the designation of Natura 2000 sites is largely completed, it will now focus on the protection and management of the sites and will use this provision to exercise its verification role and give a full effect to the Habitats Directive.

## Overview of the information submitted by Member States

In total, 42 cases, where Article 6(4) subparagraph 1 was applied, have been reported for the period 2004-2006. These include 15 in Portugal, 10 in Germany, 7 in Spain, 4 in Italy, 2 in Hungary, 3 in Austria and 1 in Luxembourg. Eight Member States (CZ, DK, EE, LT, LV, NL, SE, and SK) have informed the Commission that Article 6(4) subparagraph 1 was not applied during the period 2004-2006. With regard to UK that usually notifies the compensatory measures applied, the Commission does not have a record of implementation of the referred legal provision within the period 2004-2006.

Unfortunately, other 10 Member States did not provide any substantial feedback to the Commission (BE, CY, EL, FI, FR, IE, MT, PL and SI).

The type of projects/plans concerned is largely diverse, from large infrastructures, including motorways (6), airports (4), train lines (1), to wind farms (11) and urban developments related to tourist resorts (5). Two of the reported cases are considered anecdotic, the restoration of a castle and the works in an archaeological site, both in Germany.

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<sup>1</sup> *"If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted."*

The vast majority of the cases concerned sites of Community importance or sites that are both sites of Community importance and special protection areas classified under Council Directive 79/409/EEC (Birds Directive). Just three were only referring to special protection areas. Besides, the variety of species and natural habitats implied is as large as the number of plans and projects, and no single site is affected by more than one project, with the exception of the sites "Comporta Galé" affected by three tourist resorts and "Montemuro" with four wind farms projects, both in Portugal. Furthermore, the effects on certain species were caused by different projects, as in the case of *Hieraaetus fasciatus* affected by four projects or the wolf by five projects.

### **Assessment by the Commission**

With a view to assess all the information notified by Member States in a coherent manner, and considering that compensatory measures should be focused on objectives and targets clearly addressing the Natura 2000 elements affected, the Commission services have firstly looked at the impacts produced in the Natura 2000 sites. This analysis has then allowed verifying if the compensation measures adopted in each particular case, referred to the structural and functional aspects of the sites and the related types of habitats and species populations that were affected.

- Quality of the information provided

The Commission recognizes that the Directive does not specify neither the form nor the purpose of communicating the compensatory measures adopted. However, in order to facilitate the process, the Commission had prepared a standard format for supplying the information according to the provisions of Article 6(4), subparagraph 1.

While undertaking this exercise for collecting information from Member States, the Commission realizes that Member States do not always make use of the provided format. In this sense, the information submitted by the Member States was considered insufficient in ten cases and additional clarifications had to be requested. The lack of basic information such as whether Article 6(3) was considered, the conclusions of the assessments or whether the plan or project was already approved and the lack of some indication of the location of the project with respect to the Natura 2000 site are issues that merit to be outlined.

Whereas the plan or project was or is subject to a complaint or infringement procedure, the Member States refer to the documents previously submitted and did not provide again with the relevant information.

- Quality of assessments under Article 6(3)

The Commission recognizes that Member States are struggling with the development of appropriate assessments as required under Article 6(3). Considering the information submitted by Member States, the assessments of the effects of projects are frequently vague and too general. The Commission is concerned by the way biodiversity matters and nature aspects are addressed. Given that the evaluation of impacts determines what needs to be compensated, both in quantity and in quality, this issue becomes crucial.

From the assessment developed, it can be concluded that the information transmitted does not reflect the impacts properly. There is scarce information on specific habitats and quantitative data such as number of hectares of the habitat affected, percentage of the habitat affected or the percentage of the site. Information regarding the quality and conservation status of the affected habitats is generally missing. With respect to species, there is a general lack of information in relation to the population size, degree of isolation or conservation status. Not to say about the respective role of the site within the network.

- Appropriate use of article 6(4)

On the basis of our preliminary assessments, it appears that in the majority of cases Member States have applied Article 6.4 appropriately. Indeed, Member States appear to apply a highly precautionary approach in ensuring the necessary protection of Natura 2000 sites

- Compensatory measures adopted

It can be acknowledged a misunderstanding of what a compensation measure means. Mitigation and compensation measures are not well distinguished and frequently mixed up under the heading of compensatory measure. For instance, in the case of a recycling plant within a special protection area hosting *Otis tarda*, the planting of trees to reduce disturbance to this species has been proposed as a compensatory measure. Various wind farms projects have proposed as compensatory measures the elimination of certain windmills.

Commonly, the compensatory measures proposed are not related to the impacts caused by the project and do not offset for its effects, for instance, building interpretation centres for the site. Besides, it is recognized that in some of the cases reported, the compensatory measures are not additional to the actions that are normal practice under the Habitats and Birds Directives or obligations laid down in the EC law as the monitoring of species or preparation of management plans.

In general, Member States have not provided information with respect to budget or time-frame for the compensatory measures. Technical feasibility of some measures, recreation of certain habitats, also raises concerns.

On the other hand, there are also well defined compensatory measures included in the cases assessed: reinforcement of prey species, restoration of habitats in existing sites and reduction of threats for species.

While undertaking this exercise, the Commission has noticed that Member States better design the compensatory measures when applying Article 6(4), second subparagraph, that is when priority habitats and species are affected and the opinion of the Commission is required.

## **Conclusions**

The Commission recognizes that Member States are not following a systematic approach in the way they apply Article 6(4), subparagraph 1. The difference in the times Article 6(4) has been applied during the period 2004-2006 across the EU, suggests different criteria and understanding.

While the national authorities are only specifically obliged to report on the compensatory measures adopted, the communication of certain additional elements relating to the assessments carried out under Article 6(3), the studied alternative solutions and the imperative reasons for overriding public interest are also proved to be necessary, insofar as these elements affect the choice of the compensatory measures.

As outlined in the Guidance document on Article 6(4), the information provided by the Member States should enable the Commission to appreciate the manner in which the conservation objectives of the site in question are pursued in the particular case. However, as stated in this report, this is not always the case.

While doing this exercise, and as mentioned above, the Commission has faced a lack of consistency in the manner information is reported. The information presented by Member States was frequently

partial, vague and insufficient. Besides, it is also remarkable the lack of understanding of the purpose of compensatory measures and the very common low quality of the measures proposed.

Subsequently, the Commission services believe that a systematic approach for collecting the appropriate information should be discussed and agreed with Member States with a view to improve the current situation. Although the Commission had in the past design a standard format, it has been proved that not all Member States make use of it. This fact has negative implications as highlighted in this report.

Such a systematic approach should therefore facilitate a better implementation of the obligations laid down in Article 6(4) of the Habitats Directive, both first and second subparagraphs.

To this end, the Commission has already considered this need in the framework of the streamlining reporting under the Nature Directives, which is at present being discussed with the Member States, and is currently working on the arrangements for establishing the adequate working format. This would allow developing an appropriate response to the problems encountered while undertaking this exercise.

It is worth noting that the information required to Member States correspond to the period 2004-2006. Later on, in 2007 the Guidance document on Article 6(4) with particular focus on compensatory measures was developed. The Commission therefore hopes that with the assistance of such guidelines, Member States will better apply this legal provision in the coming future.

However, taking into account the information submitted by Member States, it can be also remarked that the concept of imperative reasons of overriding public interest requires further reflection. Considering that the European Court of Justice has not yet given clear indications for the interpretation of this specific concept, it is highly recommendable that the Commission and Member States start debating around this concept.

## **Annexe 1**

List of the plans/projects for which the Commission received information in response to the written question E-1888/07 and regarding the implementation of Article 6(4), first subparagraph of the Habitats Directive:

### Germany (10 cases):

1. Extension of military airport Ramstein
2. Construction of Container terminal IV Bremerhaven
3. Overall operation plan for the coal mining Walsum
4. A 380 Werft on airport Frankfurt
5. Reallocation of farm land in the Community Lüneburg
6. Restoration of castle Sparrenberg, city of Bielefeld
7. Protection against flooding in Baden-Württemberg
8. Access and look-out for an archaeological site (Himmelsscheibe von Nebra)
9. Extension of the housing area "Obere Maden" near Pforzheim-Hoherwart in Baden-Württemberg
10. Construction of a plant for treatment of pit water

### Hungary (2 cases):

11. Regional airport affecting Szegedi úrges gyep
12. Recycling plant for acid automobile batteries in Vekerd

### Italy (4 cases):

13. Windmill park in Comuni di Monterenzio e Castel del Rio (BO), Casoli de Romagna
14. Road development between SS 62 Cisa and SP357R Fornovo (Ponte sul Taro)
15. Industrialization plan in the Municipality of Manfredonia
16. Road bypass between Trento Nord and Lavia. Toad lot Zambiana Vecchia-Fai della Pagnella

### Luxembourg (1 case):

17. Putting an existing railway line from a single track to a double track line

### Portugal (15 cases):

18. Tourist resort (Costa Terra) in Comporta Galé
19. Tourist resort golf (Costa Terra) in Comporta Galé
20. Tourist resort (Pinheiro) in Comporta Galé
21. High tension line in Caldeirao
22. High tension line in Monchique
23. High tension line in Moura Mourao Barrancos
24. Windfarm in Alvao/Marao
25. Windfarm in Alvao/Marao
26. Windfarm in Montemuro
27. Windfarm in Montemuro
28. Windfarm in Montemuro and Serras da Freita e Arada
29. Windfarm in Montemuro and Serras da Freita e Arada
30. Windfarm in Monchique
31. Windfarm in Malcata
32. Windfarm in Costa do Sudoeste

### Spain (7 cases):

33. Urban Plan San Ginés de la Jara. Cartagena. Tourist resort
34. Wind farm "La Solana" inside an SCI and wind farm "Del Morrón" next to the SCI
35. Motorway connecting A7 Santomera with the area of Mar Menor
36. Improvement of motorway N 332

37. Motorway A66, Cáceres-Mérida between Cáceres and Aldea del Cano
38. Open limestone quarry
39. Airport Don Quijote. Castilla la Mancha

Austria (3 cases)

40. Prolongation of a forest road and protection system against avalanches
41. Waste-water treatment plant
42. Hydropower plant