



Federal Ministry  
of Transport and  
Digital Infrastructure

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# Requirements of the Habitats Directive

Experience in German  
Federal Trunk Road Planning –  
Some Spotlights

JASPERS Networking Platform – Workshop on Habitats Directive – Key  
requirements for Project Preparation - 16 December 2019 DG REGIO Brussels

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# Article 6(1)

## Management Plans

Management plans should be obligatory for each site (SAC and SPA).

### key task:

- planning of conservation measures (maintaining and restoring at favourable conservation status); establish and implement!

### management plans can also perform other important tasks:

- hints for project planning, especially if they are foreseeable
- information about conservation status
- consequence: improvement of assessment of significant effects and competent suitable mitigation measures
- management plans are also very important to make proposals for suitable compensatory measures in distinction to conservation measures

# Article 6(2)

## Screening

The requirements of Art. 6(2) for land using seem to be less strict than those of Art. 6(3) for plans and projects!

Solution:

- maybe sensible: define some human activities as projects...
- better: establishing clever proceedings, methods and tools under 6(2)

Article 6(2) is difficult to use at roads:

- What are the concrete obligations while maintaining roads with a valid and final decision concluding the decision under 6(3)?
- Article 6(2) applies to all projects which were authorised prior to the inclusion of sites into the SCI list. Is there an obligation for an AA?

The distinction between 6(2) and 6(3) should be clearer.

# Article 6(3)

## Significant Effects

In Germany there are many guidelines for determining effects, e.g.

- quantity and quality of land consumption (TRAUTNER, LAMBRECHT, BERNOTAT)
- noise and birds (MIERWALD, GARNIEL)
- nitrogen and sensitive habitats (BALLA, UHL, KOCHER)
- bats and fragmentation (LÜTTMANN)

## Mitigation Measures

- Obligatory if reasonable to avoid or reduce effects (e.g. Ecoducts to avoid fragmentation)
- **Also possible:** reduce other effects at the habitats so that no significant effect remains (same location) (e.g. less nitrogen)
- **not possible:** compensatory measures for habitats (other location)
- **???:** New habitats of a species to avoid significant effects for the local population (but loss of original habitat); compare species protection)

# Article 6(3)

## Significant Effects

**„...in combination with other plans or projects...“**

Difficult to deal!

The goal is clear, the path is unclear.

The German practice is strongly discussed between nature administration, project authorities and the national administrative court.

- The searching, counting and adding of not significant effects of plans/projects since proposing the site is ineffective and impossible!
- Much information is not available or outdated.
- How to deal with old projects with missing or incorrect AA?
- Other developments and activities were not be considered.
- This problems will continue to increase – from year to year.

# Article 6(4)

## Alternative Solutions

### **Less harmful alternatives – what is less harmful?**

- for the habitats under annex I and the species under annex II and the coherence of the N2000 network?
- for the European birds and the species under annex II?
- for nature in general?
- for environment in general?

Alternatives shouldn't lead on to problems with other targets of the BHD.

### **Reasonable alternatives – what is reasonable?**

- for applicants (costs, reasons)
- for residents, other projects,...
- for other relevances (noise, property,...)

Alternatives shouldn't lead on to another project.

# Article 6(4)

## IROPI

For Federal Trunk Roads normally no problem, because there is a law, that these roads are indispensable.

But there is no automatism, the authorities have to weigh up the IROPI against the objective of conserving natural habitats wild fauna and flora.

The reasons „human health“ and „public safety“ are mostly not the main reasons, so a Commission's opinion is required (in case of priority).

# Article 6(4)

## Overall Coherence

### Compensatory measures

The location of compensatory measures should be implemented in the biogeographical region. Often better: in functional context to the impact (but outside of effective range!), inside the same site.

Distinction to mitigation measures: „easy“

Mitigation: no significant effect will be realised

Compensation: offset at another location

Distinction to conservation measures: „not that easy“

Which are the obligations of the member states to fulfil the requirements of the directive (without projects)? What are the possibilities / opportunities of projects to improve the status?



# Article 12

## Prohibitions

### **Killings**

Roadkills and Killings while construction: only when significant... (e.g. fragmentation of a main crossing structure); the guidelines should help

### **Disturbance**

Only when significant, this means: significant for the local population...

### **Deterioration / Destruction**

CEF is one possible solution; otherwise derogation is needed

# Article 12

## CEF

The path outlined in the species protection guidelines is very popular.

So there are many measures for continuous ecological functionality (new habitats in a direct contact, sometimes with active resettlement).

In Germany: Compensatory measures before construction.

But Attention! The new habitat has to work before beginning the building of the road. It is risky!

In case of failing: What is the reason? Wrong assumptions / plans? Or other landscape / land using changings? Responsibility?

# Article 16

## Derogation

What are the differences to Article 6(4)? almost the same...

- Absence of alternative solutions (Art. 6)
- no satisfactory alternative (Art. 16)
- imperative reasons of overriding public interest (Art. 6)
- imperative reasons of overriding public interest (Art. 16)
- The Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected
- the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range (Art. 16)

Is it conceivable to support special species programme to ensure the FCS?

# Article 12/16

## Temporary Nature

How to deal with essential impacts on rare and specialised animals / plants living at roads because of good ecological conditions, e.g.:

- lizards and toads while building in construction areas (=> afterwards destruction of temporary habitats)
- frogs and newts in drainage basins (=> every few years (heavy) disturbance / deterioration while maintaining of this technical habitat)
- adjusted animals and plants in roadside greenery (best conditions for hazel dormouse) (=> disturbance, cutting of several trees and bushes, but remaining of the habitat)

Nature Conservation Administration: no destruction, no disturbance is allowed without derogation decision.

⇒ Terrifying trend: maintaining to prevent any settlement...

⇒ no animal, no problem...

⇒ **Good solutions (for nature and projects) are urgently needed!**

# Thank you for your attention!

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# More Information

**For info or further questions on this seminar and the activities of the JASPERS Networking Platform, please contact the JASPERS Networking and Competence Centre at the following email:**

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