Natura 2000 – based on two EU Directives

HABITATS DIRECTIVE

National List of proposed sites (pSCI)

Sites of Community Importance (SCI)

Special Areas of Conservation (SAC)

BIRDS DIRECTIVE

Special Protection Areas (SPA)
State of progress in establishing Natura 2000

- 27,312 sites
- >1,100,000 km² (EU28)
- Terrestrial area: ~787,600 km²
- 18.1% of EU land
- Marine area: ~360,350 km²
- ~6% of EU seas
- Largest co-ordinated Protected Area network in the world
- Almost complete on land
- Work in progress at sea
Objective of both Directives

Within all Natura 2000 sites:

- Avoid damaging activities that could significantly disturb the species and/or habitats for which the site has been designated;

- Positive measures are taken, where necessary to maintain and restore those habitats and species to a favourable conservation status in their natural range

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

Translated in legal terms in Article 6 of the Habitats Directive (HD) BUT applies also to sites designated under the Birds Directive
Article 6: Protecting & Managing Natura 2000 sites

General regime for all Natura 2000 sites

6 (1) Positive and proactive conservation measures
Applies to SACs

6 (2) Avoidance of habitat deterioration and significant disturbance
Applies to SPAs, SCsI & SACs

Procedures for new developments

6 (3) Step by step procedure for development plans and projects affecting Natura 2000 sites
Applies to SPAs, SCIs & SACs

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

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

- **Art. 6(3)**
  - Any plan or project likely to have a significant effect on the site (whether located within the site or not), either individually or in combination with other plans or projects, must be subject to an Appropriate Assessment of its implications for the site in view of the site’s conservation objectives.
  - The competent authorities shall agree to the plan or project if the integrity of the site is guaranteed

- **Art. 6(4)**
  - In case of negative conclusion and absence of alternatives, PP can still authorised if: imperative reasons of overriding public interest evoked, compensation measures established, opinion of the Commission (if needed).
Step-by-step assessment & permitting of plans and projects affecting Natura 2000 sites

- Likely negative impact on Natura 2000 site?
  - No ⇒ OK
  - Yes ⇒ Appropriate Assessment (AA) re. site cons. objectives
    - No impact on site integrity ⇒ OK
    - Negative impact ⇒ no authorization
    - There are alternatives ⇒ new AA
    - No alternative ⇒ Imp. Reasons of Overriding Public Interest?
      - No IROPI ⇒ no authorization
      - IROPI ⇒ Priority habitats/species affected?
        - No ⇒ OK with compensation measures, notification to EC
        - Yes ⇒ Commission opinion required
Appropriate Assessment (AA) – key elements

- Triggered by the likelihood of significant effects ("screening")
- Assessment focusing on conservation objectives of the site on the basis of habitats/species for which it has been designated.
  - Consider cumulative effects.
  - Mitigation measures form integral part of the process.
- Objective and verifiable information required to enable the competent authorities to decide on the basis of the integrity of the site.
  - Authorisation if certainty, without any reasonable scientific doubt, that the plan or project will not affect the integrity of the site.
- Alternatives & compensation measures, if required, need to be properly analysed and implemented.
- Coordination with the EIA process is possible/advisable.
Plans and projects

• No definition of "plan" or "project" in Hab Dir

• Court supports a broad meaning

• Plans – wide interpretation (including land use or spatial plans, sectoral plans)

• Plans such as policy statements or other policy documents normally outside the scope

• Plans and projects related to conservation management excluded

• AA at plan level does not exempt projects from AA
Determining likelihood of significant effect

- **Likelihood vs. Certainty**
- **Precautionary principle** – if in doubt, go for the AA
- **Spatial scope** (plans/projects either inside or outside Natura 2000 sites)
- **Significant effect:**
  - No arbitrary (quantitative) definition → case by case approach;
  - Related to
    - specific features / ecological conditions of the site,
    - nature of impacts (magnitude, type, extent, duration, intensity, timing, probability, cumulative effects).
Cumulative impacts

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

- Information on each site in a Standard Data Form (SDF)
- As a minimum: no deterioration
- Article 6(1) → more ambitious objectives
- Management plans
- Guidance note of Commission services


<table>
<thead>
<tr>
<th>Code</th>
<th>Name</th>
<th>Population</th>
<th>Migratory</th>
<th>Site Assessment</th>
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<td>1337</td>
<td>Castor fiber</td>
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<td>B</td>
<td>A C A</td>
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<td>1355</td>
<td>Lutra lutra</td>
<td>I P</td>
<td>B</td>
<td>A C B</td>
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<td>Myotis daubentia</td>
<td>I P</td>
<td>C</td>
<td>B C C</td>
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<td>1324</td>
<td>Myotis myotis</td>
<td>I P</td>
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<td>B C C</td>
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<td>Triturus cristatus</td>
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<th>Population</th>
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<td>C</td>
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<td>Cobitis taenia</td>
<td>I R</td>
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<td>1124</td>
<td>Gobio albipinnatus</td>
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<td>A</td>
<td>A C A</td>
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<td>1099</td>
<td>Lampropterus fluviatilis</td>
<td>I V</td>
<td>C</td>
<td>B C B</td>
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Assessing the implications for the site

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

- The appropriate assessment should contain **complete, precise and definitive conclusions capable of removing all reasonable scientific doubt** as to the effects.
- Developer normally pays for AA........but authorities need to assure quality and consistency of assessments.
- *Competent authorities....are to authorise that plan or project only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects* (Case C-127/02 Waddenzee).
- Need to ensure sufficient **ecological expertise**
- Example: Approach of the Czech Republic – A System of special authorised persons for Natura 2000 & a special exam to be passed to be assessor.
Mitigation measures

- Aim to prevent negative effects or reduce them to a non-significant level
- Directly linked to the negative effects
- Must be described in sufficient detail
- Based on best available knowledge
- Integral part of the specifications of a plan or project
- Not to be confused with compensation measures under Art. 6(4) (Court case C-521/12): a project...which has negative implications for a type of natural habitat ...and which provides for the creation of an area of equal or greater size of the same natural habitat type within the same site, has an effect on the integrity of that site. Such measures can be categorised as ‘compensatory measures’
Compensation measures

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

- Many **similarities** but also important **differences** (scope, content, implications - see Table)

- **Streamlining**: Procedures, where appropriate, can be coordinated and/or run jointly (Art. 2(3), Amended EIA Directive) – AA can be part of EIA/SEA

- **But**:
  - SEA and EIA **cannot substitute** for the AA
  - In all cases **the AA must be clearly identifiable**, either within the EIA/SEA report or in a separate report, so that its conclusions can be distinguished from those of the overall impact assessment
## Comparison of Appropriate Assessment, EIA and SEA (1)

<table>
<thead>
<tr>
<th></th>
<th>Appropriate Assessment</th>
<th>EIA (amended Dir.)</th>
<th>SEA</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Which type of development covered?</strong></td>
<td><strong>Any plan or project likely</strong> to have an adverse effect on a Natura 2000 site</td>
<td>Projects listed in Annex I. Annex II projects determined on a case by case basis through thresholds or criteria (biodiversity taken into account for screening)</td>
<td>Any Plan or Programme (a) for certain sectors which set the framework for future development consent, or (b) that requires AA under Art. 6 HD</td>
</tr>
<tr>
<td><strong>What impacts need to be assessed relevant to nature?</strong></td>
<td>Assessment in view of the site’s conservation objectives (for species/habitats for which site designated)</td>
<td>significant effects on …. biodiversity, with particular attention to species and habitats protected under the Habitats and Birds Directives.</td>
<td>Likely significant effects on the environment, including on issues such as biodiversity, fauna, flora &amp; interrelationship</td>
</tr>
</tbody>
</table>
Comparison of Appropriate Assessment, EIA and SEA (2)

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

Environmental report & opinions expressed shall be taken into account during the preparation of the plan/program.
Concluding comments

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

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

Thank you for your attention!