



Guidance document

The strict protection of animal species of Community interest under the Habitats Directive

A summary



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The EU Nature Directives

The Birds and Habitats Directives are the cornerstones of the EU's nature and biodiversity policy. They enable all EU Member States to work together, within a common legislative framework, to conserve Europe's most endangered, vulnerable and valuable species and habitats, irrespective of political or administrative boundaries.

The objective of the two Directives is to ensure that the species and habitat types they protect are maintained and restored to a favourable conservation status throughout their natural range within the EU, while taking account of economic, social and cultural requirements and regional and local characteristics.

To this end, the Habitats Directive requires Member States to implement two main types of measures. The first relates to the conservation of natural habitats and habitats of species (Articles 3–11 of the Habitats Directive) and involves the designation of protected areas as part of the EU network called Natura 2000.

The second concerns the protection of species (Articles 12–16). For the latter, the measures apply across their entire natural range within Member States, both inside and outside Natura 2000 sites.

The Commission's guide

In October 2021, the Commission published an updated guidance document on the strict protection of animal species of Community interest listed in Annex IV(a) under the Habitats Directive. This leaflet provides a summary of its key aspects.

The guidance explains the obligations arising from Articles 12 (strict protection regime) and 16 (derogations) of the Habitats Directive. It is based on the numerous rulings of the Court of Justice of the European Union (CJEU) on this matter.

Various case studies are presented to help find practical and effective ways of applying the species protection provisions, while fully respecting the legal framework. Full references to the Court cases quoted throughout the guide are provided in an Annex, along with the list of animal species covered by the species protection provisions.

The document is aimed at national, regional and local authorities, conservation bodies and other organisations responsible for, or involved in, the implementation of the Habitats Directive, as well as all stakeholders interested in understanding the species protection provisions. Both Member States and stakeholders have been consulted on various drafts of the document.

Summary of the species protection regime under the Habitats Directive

Article 12	Provisions to implement a strict protection regime for animal species listed in Annex IV(a)
Article 13	Provisions to implement a strict protection regime for plant species listed in Annex IV(b)
Article 14	Provisions to ensure that the taking in the wild of species listed in Annex V is compatible with their being maintained at a favourable conservation status.
Article 15	Prohibition of the use of all indiscriminate means capable of causing local disappearance of, or serious disturbance to, populations of species listed in annex IV and V
Article 16	Provisions for derogating from the requirements of Articles 12–15



The souslik, *Spermophilus citellus*.

Article 12 – the strict protection provisions

Article 12 requires the protection of animal species listed in Annex IV(a) in their natural range. The article addresses direct threats to the species by prohibiting their deliberate capture, killing or disturbance, deliberate destruction or taking of their eggs, or the deterioration or destruction of their breeding sites or resting places.

Annex IV(a) encompasses a wide variety of species, from large, wide-ranging species like wolves and bears, to

species with very small home ranges, such as butterflies, beetles or amphibians. Some species are listed under both Annex IV and Annex II, thereby also benefiting from measures aimed at the conservation of core areas of habitats for these species within Natura 2000 sites.

Others are only listed in Annex IV which means that Article 12 is the primary provision for achieving their favourable conservation status within the EU.

Article 12

1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

- (a) all forms of deliberate capture or killing of specimens of these species in the wild;*
- (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;*
- (c) deliberate destruction or taking of eggs from the wild;*
- (d) deterioration or destruction of breeding sites or resting places.*

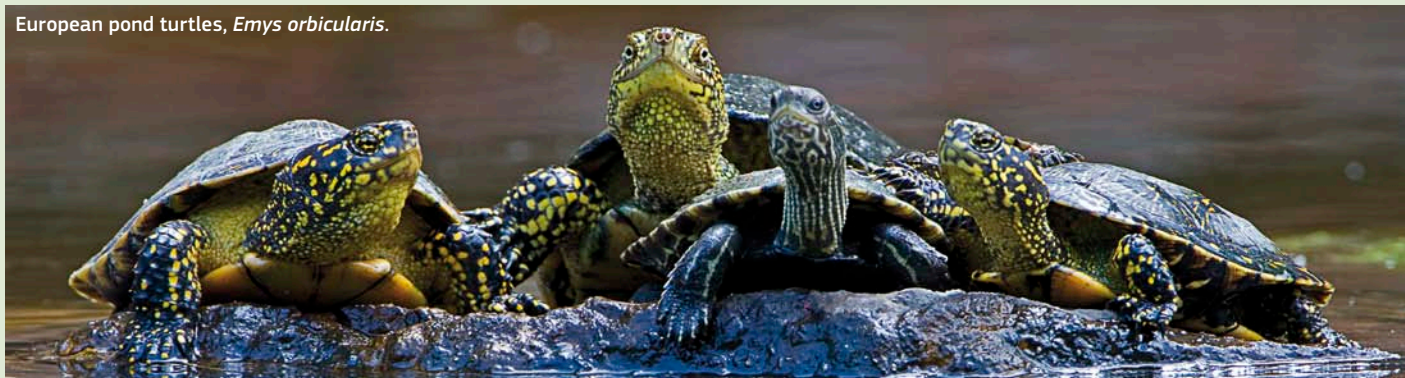
2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or

exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.

3. The prohibition referred to in paragraph 1(a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.

4. Member States shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV(a). In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.

European pond turtles, *Emys orbicularis*.



Establishing a coherent legal framework

The implementation of Article 12 requires Member States to establish a coherent legal framework for a strict protection of species listed in Annex IV (a) that is capable of addressing the specific problems and threats faced by these species.

It is up to the Member States to decide the means to achieve this result. However, the transposition of the EU Directive's species protection articles into national law must be clear and precise, faithful and have unquestionable binding force.

Whatever mechanisms are used, Member States must ensure that all three elements of the strict protection system are put in place to guarantee the full and effective application of Article.

The three elements are:

1. the establishment of a **coherent legal framework** for the strict protection system;
2. the application of a set of coherent and coordinated **preventive measures** and
3. concrete **enforcement measures** on the ground.

The strict protection provisions must also take into account the precautionary principle, as established in Article 191 of the Treaty on the Functioning of the European Union (TFEU) and contribute to maintaining or restoring these species to a favourable conservation status.

TO NOTE:

A species-by-species approach

- Provisions establishing a strict protection framework should expressly address the specific problems and threats of the species, or group of species listed in Annex IV.
- Different types of measures may be required for different species, depending on their ecological requirements and problems and threats they are facing.
- The species protection measures apply irrespective of whether the species has attained a favourable conservation status.

Applying Article 12 to economic activities

The use of preventive measures is especially important in the case of recurring or widespread activities such as agriculture, forestry or fisheries. Such activities can have negative impacts on species, even if unintended.

The use of preventive measures (such as planning regulations, systems of prior consent, codes of conduct, practical guidance and awareness raising measures) can help to ensure that the prohibited activities listed in Article 12 do not arise in the first place and that any illegal behaviour is immediately sanctioned.

This approach also has the added advantage of protecting the persons engaging in certain on-going economic activities from prosecution, provided of course that they adhere to the established preventive measures.

Preventive tools are however always complementary to the above-mentioned legal protection provisions and are not a replacement for them.

Some examples of preventive measures

- Information campaigns to raise awareness of the protection requirements for certain species and their location, and the location of their breeding sites and resting places.
- Action to ensure that species protection is taken into account by relevant economic activities (e.g. agriculture, forestry or fisheries). This could include training, codes of conduct, guidance documents, the adaptation of forestry or agricultural plans or fisheries practices, and best practice or administrative procedures.
- Active prevention of likely disturbances (e.g. restricting access to bat caves during sensitive periods to avoid disturbance or vandalism, modification or restriction of agricultural, forestry or fishing practices).
- The identification of particularly damaging activities that need to be subject to specific permits or local control.
- The integration into environmental impact assessment and strategic environmental assessment procedures of requirements to assess impacts of projects and plans on Annex IV species and their breeding sites and resting places.

The prohibition of certain activities: deliberate capture, killing, or disturbance of species

- *Deliberate capture and killing of specimens of Annex IV(a) species*

Article 12(1)(a) prohibits all forms of deliberate capture or killing of specimens of Annex IV(a) species in the wild. The term 'deliberate' is interpreted by the CJEU as going beyond 'direct intention'.

Thus, 'deliberate' actions are to be understood as actions carried out by a person or body who knows that their action will most likely lead to an offence against a species, but chooses to ignore the risks or consciously accepts the foreseeable results of his action.

In other words, the provision applies not only to a person who intends to capture or kill a specimen of a protected species but also to a person who is sufficiently informed and aware of the likely consequences of his/her action but goes ahead anyway.

- *Deliberate disturbance of Annex IV(a) species*

Any activity that deliberately disturbs a species to the extent that it may affect its chances of survival, reproductive ability or breeding success, or that leads to a reduction in the area occupied by the species or to its relocation or displacement, should be regarded as a 'disturbance' under the terms of Article 12.

A case-by-case approach is required to determine whether certain actions are causing deliberate disturbance, particularly during the period of breeding, rearing, hibernation and migration.

This will vary according to the species in question and its sensitivity. It will also depend on the duration, intensity and frequency of the action. Both direct and indirect impacts resulting in disturbance should be considered (e.g. when disturbed during hibernation, bats heat up and take flight, so are less likely to survive the winter due to high loss of energy resources).

Anti-poaching, livestock protection and communication to better protect wolves in the Italian Alps

The LIFE Wolfalps project (2013–2018) deployed a series of measures to actively fight and prevent the deliberate killing of wolves, which is illegal under the Habitats Directive. Specialised anti-poaching teams with sniffer dogs were trained up to counteract illegal actions towards wolves, such as the use of poisoned baits. This was accompanied by targeted communication actions aimed at conveying the message that such acts are not only illegal, but also unecological, immoral and very dangerous to humans, children, and pets.

In order to improve the co-existence between wolves and farmers, the project also set out to help farmers protect their livestock from wolf attacks. Following an initial analysis of the grazing systems in the different areas and of their vulnerability to predation, a tailor made intervention strategy was developed for each area, to identify the most suitable measures for protecting the livestock. These were then included in a series of ad-hoc mountain grazing plans.

Livestock breeders were subsequently given support to apply these measures (e.g. livestock guarding dogs, electric fences, fladry or acoustic devices). They were also offered training and technical assistance, as well as veterinary support, food for the guard dogs, and water supply points for livestock on alpine pastures.

Workshops have since been organised between livestock farmers of the newly recolonised areas of the Central Alps and those from the Western Alps who have a longer experience with such measures in order to share their experiences.

<http://ex.lifewolfalps.eu/en/>



The prohibition of certain activities: deterioration or destruction of sites

Working with fishermen for recovery of *Monachus monachus* in Greece

In 2009, the Hellenic Society for the Study and Protection of the Monk Seal (MOM) developed an *Action Plan for the mitigation of monk seal and fisheries interactions* to address the often conflictual relationship between fishermen and Mediterranean monk seals in Greece. The Action Plan identifies numerous legislative, management and technical measures to limit the risks to the species and protect its food source. These measures also limit the financial burden on fishermen resulting from damage caused to their fishing gear and to their fish catch.

Under the project, research has been undertaken to identify 'hot spots' where the risk of conflicts between fishermen and seals is potentially high. Fishermen also received training on how to act in the case of entangled monk seals, and experimental fishing methods have been tested with their help. Thanks to these actions, there has been a significant reduction in the number of monk seals accidentally caught or killed by fishermen and a steady recovery of the monk seal population in Greece.

https://europa.eu/youth/volunteering/organisation/50921_it

Protecting bat caves in Romania

The Pădurea Craiului, Bi-hor and Trascău Mountains in Romania, are riddled with spectacular underground caves of varying sizes. They are home to important colonies of different bat species that are protected under the Habitats Directive. Bats are very vulnerable to any form of disturbance, especially during their roosting and hibernating periods.

In order to safeguard the existing roosts from disturbance from tourists, a LIFE project was launched in 2010 to close the entrances to 15 caves hosting important bat roosts (100,000 bats in Huda lui Papară Cave alone). A specially designed grill or fence was placed at the entrance to each cave in order to control human access, but still allow the bats to fly in and out at will. Guided tours to these caves can still be conducted in small groups but they must follow a code of conduct to ensure they avoid disturbing the bats. Information panels have also been placed at the entrance of the caves to explain why the caves have been closed, and what kind of bats are being protected.

<https://bit.ly/3D80YzD>

- *Deliberate destruction or taking of eggs from the wild*

Any activity that deliberately leads to the destruction or taking of eggs from the wild is also prohibited. This could, for instance, involve protecting the beaches where the loggerhead sea turtle *Caretta caretta* lays its eggs by fencing off the nests, putting up sign boards to warn of the presence of turtle nests and the need to avoid damage, and regularly supervising nesting beaches for any illegal activities.

- *Deterioration or destruction of breeding sites or resting places*

Article 12(1)(d) does not concern the specimens directly but instead aims to protect important elements of their habitats, such as breeding sites or resting places. Such places are vital to ensure the favourable conservation status of the species.

That is why Article 12(1)(d) prohibits both the destruction of breeding sites or resting places and their deterioration which can occur gradually over time, thereby reducing the ecological functionality of the area. The measures put in place to implement Article 12(d) should therefore aim to safeguard the physical space occupied by such sites as well as their ecological functionality.

Article 12(1)(d) does not use the term 'deliberate'. This means that all acts resulting in deterioration or destruction of breeding sites or resting places must be prohibited, irrespective of whether they are deliberate or not. On the other hand, cases of deterioration or destruction resulting from natural causes (e.g. natural disasters), or caused by unforeseeable events, do not fall within the scope of Article 12(1)(d).

Bechstein's Bat, *Myotis bechsteinii*.



Dealing with the incidental capture and killing of Annex IV(a) species

Article 12(4) requires Member States to put in place systems to monitor the incidental capture and killing of any Annex IV(a) species, and, where necessary, take further research or conservation measures to ensure that this does not have a significant negative impact on the species concerned.

The emphasis in Article 12(4) is on the monitoring of the incidental – as opposed to the deliberate – capture and killing of species listed in Annex IV(a). Thus, wherever there is a potential risk of incidental capture or killing, a robust monitoring programme must be put in place to systematically collect reliable data in order to be able to estimate the rate of incidental capture and killing; the number of individuals actually killed/captured as well as the impacts on the population.

This in turn will allow an informed decision to be taken on whether targeted conservation measures are needed to prevent or reduce the negative impact on the species concerned to a non-significant level.

Where the data is lacking on the conservation status and/or the actual level of incidental capture and killing, the precautionary principle should be applied.

TO NOTE:

Examples of monitoring systems under Article 12(4)

- the monitoring of the by-catch of cetaceans or sea turtles in fishing gear, or of their killing by ship strikes,
- the monitoring of bat deaths around wind turbines,
- the monitoring of roadkills (e.g. mammals such as lynx or bear, or amphibians during spring migrations).

Common dolphin, *Delphinus delphis*.



EC Regulation 2019/1241

The Regulation 2019/1241 provides, amongst others, for the adoption of technical measures to prevent or mitigate the incidental capture or killing of species protected under the Habitats Directive.

In particular it:

- prohibits certain types of fishing gear and uses, such as driftnets of more than 2,5 km in length which are non-selective and could therefore be damaging to marine life.
- prohibits the catching, retention on board, transshipment or landing of fish or shellfish species on Annex IV of the Habitats Directive except when derogations are granted under Article 16 of that Directive. If caught accidentally the specimen must not be harmed and promptly released back into the sea, except for the purpose of allowing scientific research on accidentally killed specimens, provided this is in accordance with Article 16 of the Directive.
- prohibits the catching, retention on board, transshipment or landing of marine mammals or marine reptiles listed in Annexes II and IV of the Habitats Directive and of seabirds covered by the Birds Directive. When caught, specimens shall not be harmed and promptly released.

Furthermore, on the basis of the best available scientific advice a Member State may, for vessels flying its flag, put in place mitigation measures or restrictions on the use of certain gear. Such measures shall minimise, and where possible eliminate, the catches of the EU protected species. The Member States shall, for control purposes, inform the other Member States concerned of provisions adopted under paragraph 4 of this Article. They shall also make publicly available appropriate information concerning such measures.

Gulls resting on the beach with wind farm turbines out at sea.



Ways of preventing the incidental capture and killing of Annex IV(a) species

Preventing incidental impacts on marine mammals: Guidance to Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters

There has been increasing concern internationally about the potentially harmful effect of man-made sound on the marine environment and species therein. Whether it is intended or not, the introduction of man-made sound into the environments occupied by marine mammals (e.g., whales, dolphins, seals) carries with it potentially significant adverse impacts. The properties of water allow sounds of various kinds to travel great distances across diverse habitats and depth strata.

Against this background, Ireland has developed a robust regulatory and management regime for seismic exploration in order to avoid potentially significant impacts on all marine mammal species both within and outside Natura 2000 sites.

In 2014, The Department of Arts, Heritage and the Gaeltacht published a comprehensive guidance document on how to “Manage the Risk to Marine Mammals from Man-made Sound Sources in Irish Waters”. The Guide describes the kind of risks that may arise (e.g. from dredging, drilling, pile driving, geophysical acoustic surveys, blasting) and explains how to carry out a risk assessment, supported by examples.

It also describes the regulatory responses that should be given (e.g. no consent, consent with conditions, etc.)

<https://bit.ly/3z3W1XH>

The LIFE SAFE Crossing project – Preventing animal vehicle collisions

The LIFE SAFE-CROSSING project aims to reduce the impact of roads and traffic on large carnivores (bears, wolves and Iberian lynx) in four European countries: Italy, Spain, Greece and Romania. These species are severely threatened by road infrastructures, both through direct mortality as well as through the barrier effect.

The project uses an innovative tool for preventing collisions with vehicles that was developed under a previous LIFE project in central Italy. This so called Animal-Vehicle Collision Prevention System (AVC PS) consists of a set of passive infrared sensors that triggers an alert signal for drivers to slow down as soon as an animal is detected approaching a road and, when needed, emits a loud noise to scare the animal away. The AVC PS device was used successfully across 17 Natura 2000 sites in Italy and is now being installed in a further 29 Natura 2000 sites across all 4 countries.

Another innovative tool that was developed under the project is a virtual fence. This consists of a series of sound and light emitters, attached to posts on the road side that are activated by the headlights of approaching vehicles. The aim again is to scare any animals in the vicinity away from the road.

The standardisation of the methods and practices used in this project and the dissemination activities should encourage other countries to replicate these best practices across the EU.

<https://life.safe-crossing.eu/> • <http://www.lifetrade.it/index.php/en/>

Oil rig platform, in sparkling seas.



Warning sign for bears crossing main road in Italy.



Article 16 – The derogation system

Article 16 of the Habitats Directive provides for the possibility to derogate from the provisions of Article 12–15 under certain specific circumstances if the derogation is justified and all the conditions of Article 16 are met.

However, as the CJEU has ruled, **derogations should only be used as a last resort**. The derogation provisions need to be interpreted and implemented restrictively to avoid undermining the overall objective and key provisions of the Directive, namely to maintain or restore,

at a favourable status, natural habitats and species of Community interest.

Articles 12–15 and 16 of the Habitats Directive form a coherent body of provisions intended to protect the populations of the species concerned. Thus, any derogation undermining the objective of the Directive would infringe both the prohibitions set out in Article 12 and Article 16.

Article 16

1. Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15 (a) and (b):

- (a) in the interest of protecting wild fauna and flora and conserving natural habitats;*
- (b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;*
- (c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;*
- (d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants;*
- (e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping*

of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.

2. Member States shall forward to the Commission every two years a report in accordance with the format established by the Committee on the derogations applied under paragraph 1. The Commission shall give its opinion on these derogations within a maximum time limit of 12 months following receipt of the report and shall give an account to the Committee.

3. The reports shall specify: (a) the species which are subject to the derogations and the reason for the derogation, including the nature of the risk, with, if appropriate, a reference to alternatives rejected and scientific data used; (b) the means, devices or methods authorised for the capture or killing of animal species and the reasons for their use; (c) the circumstances of when and where such derogations are granted; (d) the authority empowered to declare and check that the required conditions obtain and to decide what means, devices or methods may be used, within what limits and by what agencies, and which persons are to carry out the task; (e) the supervisory measures used and the results obtained.

Conditions for issuing derogations

Article 16 lays down a series of conditions that must be respected before a derogation from Article 12 can be issued. The burden of proof to demonstrate that all conditions have been met lies on the competent authorities of the Member States. If just one condition is not respected, then the derogation cannot be granted.

The decision to authorise a derogation must be based on robust scientific information and the authorisation decision must contain a clear and reasoned statement justifying the derogation, as well as the conditions that must be respected during its execution (number of specimens, location, means to be used etc...).

It is also the responsibility of the competent authorities to supervise the implementation of the derogations and ensure that all the conditions in the decision have been respected while monitoring its impact on the species concerned. In addition, the authorities must monitor the overall impact of derogations at national level to prevent potential cumulative effects on the populations of the species concerned.

TO NOTE:

The three tests

Before granting a derogation, the competent authority must ensure that it fulfils the following three conditions:

- the derogation must be fully justified on the basis of one of the grounds listed in Article 16(1);
- there is no satisfactory alternative, and
- the derogation must not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.



Test one: is the derogation justified?

The first test involves checking that the derogation is justified for one of the reasons given under Article 16 (1) (a–d), or is acceptable because it is justified by another legitimate public interest and will be done under strictly supervised conditions, on a selective basis and to a limited extent (Article 16 (1)(e)).

In all cases, the competent national authorities must:

- Ensure that the objective of the derogation is stated in a clear and precise manner;
- Determine that the choice of the option under Article 16(1)(a) to (e) is fully justified;
- Establish, in light of rigorous scientific data, that the derogations are appropriate to achieve that objective;
- Specify the terms and conditions under which the derogation is authorised, including the number of specimens for which the derogation is allowed, by whom, where and when.

Experience has shown that one of the most common reasons for requesting a derogation *is to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property* under Article 16(1)(b).

For this derogation to be approved, it must be demonstrated that the damage is likely to be serious and highly probable, and that the control method proposed is appropriate. Authorities cannot derogate from the prohibitions under Article 12 merely because complying with such prohibitions would compel a change in agricultural, forestry or fish farm activities. Instead, damage prevention and compensation measures could eventually be used to further support affected stakeholders.



Derogations under Article 16(1)(e)

Derogations can also be issued under Article 16(1)(e) for the *“taking or keeping of certain specimens of the species listed in Annex IV, under strictly supervised conditions, on a selective basis and to a limited extent”*.

Contrary to the other provisions of Article 16(1), this one does not specify an objective to be pursued when requesting the derogation. Nevertheless, an objective must still be given and must be fully justified. It must also be different from those in Article 16(1)(a–d) and in line with the overall objectives of the Directive.

Moreover, the application of Article 16(1)(e) must only involve limited numbers of specimens, on a selective basis under strictly supervised conditions. The number of specimens has to be considered in light of the species’ population level, its annual reproduction and mortality rates (due to natural or other causes) and its state of conservation.

The competent national authority will need to use strict and rigorous scientific data to ensure that the derogation will not entail the risk of a significant negative impact on the structure of the population in question, even if it is not likely to be detrimental to maintaining the populations of species concerned at a favourable conservation status in their natural range.

As regards the last two conditions, the terms used clearly imply that any use of this type of derogation must be very selective and focus only on particular individuals or groups of individuals, for instance ‘problem’ animals. It must also be used only in a specified location, at a pre-determined time and under strictly supervised conditions.

TO NOTE:

Derogation reports

Every two years, Member States must report back to the European Commission on the derogations issued so that the Commission can check compliance with the provisions of Article 16.

The derogation reports are available from:

https://ec.europa.eu/environment/nature/knowledge/rep_habitats/index_en.htm

Large Carnivore Initiative for Europe (LCIE) guidance on ‘bold’ wolves

According to LCIE, a ‘bold wolf’ is a wolf that repeatedly tolerates people (being recognizable as people) within 30m, or even actively approaches people repeatedly within this distance. A prerequisite for bold behavior is strong habituation. Bold behavior might be linked to and reinforced by positive conditioning. This behaviour is influenced by many factors including genetics, own experience, age, sex, degree of hunger, maternal influences and sibling influences.

To know how to deal with ‘bold’ wolves, the LCIE has produced guidelines on different management actions that can be taken to respond to diverse problematic situations. The recommendations include measures to:

- prevent wolves from developing bold behavior in the first place,
- document situations where wolves become bold in order to build up knowledge that can help to better predict when such situations are likely to arrive;
- manage bold wolves, eg through deterrent actions, or the removal of the problem wolf in accordance with Article 16 of the Habitats Directive
- inform the general public about the presence of wolves in the area and manage their expectations concerning wolf behaviour, underlining that the mere presence of wolves in modern-day European landscapes is not a sign of problematic or risky behavior, but rather a testimony of the adaptability of the species.

Wolf, *Canis lupus*.



Test two: any other satisfactory alternatives?

The second test is to determine whether there is a satisfactory alternative to the derogation, i.e. whether the problem can be solved in a way that does not involve the killing, taking, disturbance of the animal, or taking of eggs, the destruction or deterioration of breeding sites and resting places. It is for the competent national authorities to make the necessary comparisons and to evaluate alternative solutions. This discretionary power is nevertheless subject to several constraints.

The alternatives must be assessed against the prohibitions listed in Article 12. For example, if the aim is to prevent serious damage to crops or livestock, preventive non-lethal means must first be implemented or, at least, seriously examined. This could involve for instance various wildlife deterrent devices (e.g. livestock guarding dogs) or preventive measures (e.g. fencing) to protect the resource. It could also involve targeted conservation measures to reduce the risk of damage, for instance by increasing the natural food sources such as the wild prey populations of the protected species or by providing alternative breeding places to lure the specimens away from the area of conflict.

When ascertaining whether another satisfactory solution exists for a specific situation, all ecological, economic and social pros and cons should be considered. Even if a measure is only partially satisfactory, it should be implemented first as it will help reduce or mitigate the problem. The decision on whether an alternative is satisfactory in a given situation must be based on objectively verifiable factors, such as scientific and technical considerations. An alternative solution cannot be deemed unsatisfactory merely because it would cause greater inconvenience or compel a change in behaviour.



Test three: a risk of impact on the species?

According to Article 16(1), derogations must not be “*detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range*”.

Generally, the overall conservation status of a species in a Member State is evaluated at the level of the relevant biogeographic region in that Member State, but the wording of Article 16 specifically mentions ‘*populations of the species concerned*’.

In this respect, the CJEU has clarified that derogations must be applied appropriately to deal with precise requirements and specific situations. It follows therefore that an assessment of their potential impact must also be done at a lower (than biogeographic region) level since the primary impact of the derogation will be on the local population of the species.

The assessment at a lower level would then have to be assessed against the situation at a larger scale (e.g. biogeographic, national or cross-border), for a complete evaluation of the impact of the derogation.

In any event, the net result of any derogation should be neutral or positive for the relevant populations of the species.

TO NOTE:

Species Action Plans

One way of ensuring an appropriate use of derogations, as part of a strict protection system, is to draw up and implement comprehensive species action plans which include the necessary measures to ensure the implementation of the provisions of Article 12 but also measures to support or restore the viability of the population, its natural range and the habitats of the species.

They could also include other measures to help reduce conflicts with human activities (i.e. non-lethal arrangements, prevention measures, incentives, compensations, etc.). In such cases, the plan, if properly implemented, could also provide an appropriate framework for issuing derogations in line with the objectives of the Directive.

Management of the European beaver in France

The European beaver is a strictly protected species in Annex IV(a), whose population has been expanding in recent years. Its presence is often highly beneficial for wildlife but, in France, the species has started to cause economic damage to commercial forestry activities through its habit of felling trees and constructing large dams.

This prompted the national hunting and wildlife agency (ONCFS) to set up a technical beaver network involving experts to help build up knowledge about the species and provide on-the-field assistance to individuals affected by damage caused by beavers. The experience gained is currently being written up as a good practice guidance to prevent damage to tree plantations and reconcile the maintenance of the species' habitats ecological functionality while preventing flooding.

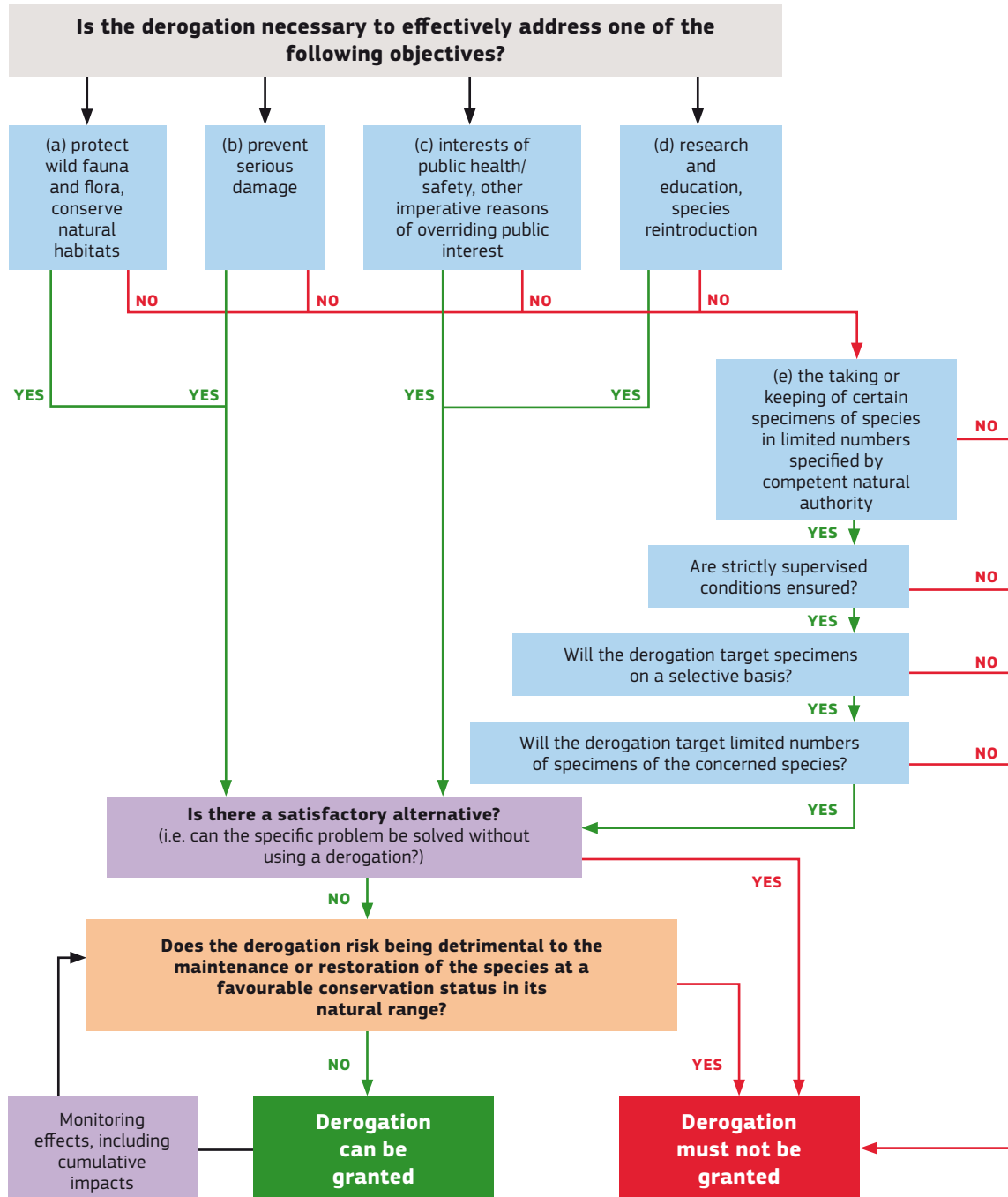
Various measures that aim to reduce conflicts are being progressively developed. They include technical solutions such as installing systems that prevent beaver digging, beaver pipes, beaver flow control devices, mechanical protection of trees and crops through the use of sleeves, stockades or electric fences, as well as the use of derogations for dam removal, displacement or notching, etc. These measures are adopted on a case-by-case basis.

On a larger scale, local management plans are also being drawn up to further reduce conflicts, for instance by designating natural areas for restoring beaver habitats to lure them away from conflict areas. This is accompanied by a strong monitoring and awareness raising programme.

Eurasian beaver, *Castor fiber*.



Flow chart for issuing a derogation under Article 16(1)



Further reading

- **Updated Commission guidance document on the strict protection of species of Community interest under the Habitats Directive (October 2021)**
https://ec.europa.eu/environment/nature/conservation/species/guidance/index_en.htm
- **Commission webpage on species protection**
https://ec.europa.eu/environment/nature/conservation/index_en.htm
- **EU Species Action Plans for selected species on the Habitats Directive**
https://ec.europa.eu/environment/nature/conservation/species/action_plans/index_en.htm
- **EU Platform on co-existence between people and large carnivores**
https://ec.europa.eu/environment/nature/conservation/species/carnivores/coexistence_platform.htm
- **EU LIFE projects on large carnivores**
https://ec.europa.eu/environment/nature/conservation/species/carnivores/life_projects.htm
- **Member State Derogation reports under Article 16**
https://ec.europa.eu/environment/nature/knowledge/rep_habitats/index_en.htm
- **Commission guidance on hunting under the Birds Directive**
https://ec.europa.eu/environment/nature/conservation/wildbirds/action_plans/guidance_en.htm

