

Minutes of
Follow-up bilateral meeting with The Netherlands
23 June 2021, 14:00-17:00, Video conference in Teams

Participants:

[REDACTED]

The meeting followed the pre-agreed agenda that included questions raised by the EC and by the NL authorities in advance of the meeting. The background of the EC questions is included in Annex 1, while Annexes 2 and 3 include the background of questions from the NL.

[...]

A) EUP(2013)5001 SAC designations

1) Designation of SACs (information available from previous correspondence is indicated below) :

[...]

2) Management plans

Question: Please provide an overview of the plans published, in draft or still not prepared. Please explain how management of the sites, including in relation to their protection (ref. Article 6(2)), is ensured where no management plan is published yet.

[Written replies provided in advance:](#)

Overview of Natura 2000-management plans:

- 142 plans have been published;
- 11 sites haven concept-plans and for 5 sites the plans are under preparation

- Geuldal
- Weerter- en Budelerbergen & Ringselven
- Oostelijke Vechtplassen
- Wierdense Veld
- Bergvennen & Brecklenkampse Veld)
- Kop van Schouwen
- Manteling van Walcheren
- Doggers Bank
- Klaverbank
- Friese Front
- Grensmaas
- For 3 sites the preparation of the plans has not yet started as the sites have not definitively designated
 - Maas bij Eijsden,
 - Krammer-Volkerak
 - Zoommeer

The management of the sites without Natura2000-management plan: The fact that some Natura2000 sites don't have a Natura2000 management plan does not imply that they are not protected and managed. Firstly, most of the Natura2000 sites have been since a long time in possession of nature conservation organizations. Partly thanks to their management and protection efforts nature values on these sites have been maintained. And because of this these sites could be selected as Natura2000 sites.

Since the 1990's the sites have been incorporated in the National Nature Network (NNN, at that time EHS). The NNN is legally protected and unavoidable losses in area have to be compensated. Conservation management of the land is subsidised and ensured through contractual agreements. Land owners in the NNN haven been supported in the implementation of management plans since then by national and / or provincial governments.

The Dutch Nature Protection Law states that provinces and other relevant authorities have to take measures as stated in article 6.1 and 6.2 of the Habitats directive. This requirement applies - by law- also to the sites where a Natura 2000-management plans has not been established. For these sites, the authorities are required to take measures to prevent deterioration and restore values if necessary. For this, all sites are monitored. Plans and projects that possibly could have significant adverse effects on the Natura 2000-sites are – as stated in de Natura Protection Law - subject to appropriate assessment in accordance with article 6.3 Habitats directive.

The conservation measures are generally incorporated in the Natura2000 management plans. These Natura2000 management plans contain mostly measures at site level. These plans have by now been established for all but 14 sites (see above).

Additional measures have been taken to address nitrogen deposition. In the period 2011-2015 it became clear that the problem of nitrogen deposition asked - and asks - for a combination of measures at both national / regional level and at Natura2000 site level. For this purpose additionally to the Natura2000 management plans, the program PAS was established. Under this program, for each Natura2000 site where nitrogen was and is a problem, an additional plan has been established, the so called "Gebiedsanalyse PAS". This was also the case for the sites for which a "regular" Natura2000 management plan had not been established yet. These "Site analyses PAS" contained the measures to mitigate effects of nitrogen deposition and to make the sites more resilient to nitrogen deposition and in such a way that

the sites were protected and deterioration was avoided. In 2019 the PAS as a Program under which Nature permits could be granted was halted due to a verdict of the Raad van State. However, since then the measures at site level of Gebiedsanalyses to avoid deterioration, continue to be implemented. Furthermore, the development of the so called Structural Approach Nitrogen has started. This program contains additional measures to reduce nitrogen deposition and to restore and strengthen nature. These measures also benefit sites that do not yet have a management plan published.

Discussions during the meeting:

The COM noted that for about 10% of the sites there are no finalised plans, and for 3 none at all, and asked about the timeline to complete them.

The NL replied that the timeline of terrestrial sites is different for each province and depends on local conditions and procedures (e.g. on public consultation). So no standard timeline is set and there is no guarantee that the work can be finished this year. For some of the sites the PAN analysis is available that included detailed management measures related to the N problem, which account for about 95% of required measures.

All sites are part of the NNN that are covered by agreements with landowners, or by PAN plans – these are being implemented, so the results are being achieved.

For marine sites the management plans texts are ready, public consultation will be completed after the summer. Adoption is expected by the end of 2021 or early next year.

The COM also noted that there is urgency as the management plans are long overdue. What is important is to have the plans and SSCO in place to ensure conservation results. The SSCOs are specific for SPAs and more general for SACs (based on the NL presentation at the Workshop on Conservation Objectives). The COM asked how can the NL make the appropriate assessments of plans and projects based on these general objectives for SACs.

The NL clarified that management plans elaborate further the objectives: e.g. what is the consequence for activities, like gillnet fisheries, in the case of harbour porpoise protection.

For birds the objectives are quantified in the designation decision, for habitats the decree includes generic objectives but the management plan elaborates further. Precautionary approach is used for appropriate assessments if there are no detailed objectives in the management plan.

Conclusion on site specific conservation objectives and on management plans:

- **since detailed protection measures are set in the management plans it is of key importance to have them in place for all sites as soon as possible.**
- **detailed objectives are necessary for all sites. COM urges the NL to make sure designation decrees and/or management plans contain sufficiently specific and detailed conservation objectives for both SACs and SPAs.**
- **The NL will inform the COM about the adoption of the plans and of the designation decrees.**

[...]

A) Updating conservation objectives

The NL sent in advance of the meeting a set of questions about the following three topics together with the related background to provide sufficient context (see Annexes 3A-B-C)

[...]

2) Proportionality of measures (see Annex 3B)

Questions for discussion:

- Does the Commission see objections to an application 'by analogy of 6(4)' in a situation where preventative measures under article 6(2) may be seen as not appropriate or proportional?

Discussions during the meeting:

COM stated that in cases such as the one described in Annex 3B Art 6(3) and 6(4) should be applied and not 6(2). Even in the case of an ongoing drinking water abstraction, the procedure under Article 6(3) could be triggered by the review of the relevant permit.

So if the activity of drinking water abstraction leads to negative impact, but IROPI and no alternatives can be demonstrated, measures to compensate for the deterioration can be applied, under Article 6(4).

The interpretation of Article 6(2) as proposed by the NL cannot be agreed. COM noted that the Grune liga case mentioned in the background document was about ex-post application of Article 6(4) and not 6(2).

NL reacted that many land managers find it difficult to take measures against deterioration, due to the social impact they may cause.

COM stated that we need to rely on the guidance from the EU Court of Justice.

Looking at that Grune liga case, if the removal of a dyke would be needed to improve the status (removing pressures) of protected features in a site, and the dyke was there before the Directive entered into force Article 6(3) can be applied ex-post and it may conclude on the necessity to apply Article 6(4) if the relevant conditions are met. So if an existing infrastructure prevents us from reaching conservation objectives we can assess it against Article 6(3) and 6(4) if relevant conditions are met.

NL enquired what is the proportionality, how much can be considered as reasonable cost. Could we have a dialogue on specific cases?

COM reacted that it is open to dialogue when needed.

The new guidance on Article 6 will be soon published – and will specify that ideally compensation should be within the same site as best option, and elsewhere if that is not possible.

[...]

Annex 3B-Example: Natura 2000 area Wierdense Veld (province of Overijssel)

The Natura 2000 objectives

- The objectives of the Natura 2000 area Wierdense Veld include the restoration of raised bog vegetation (approx. 380 ha of restorative bog and 125 m² of active bog). For this it is necessary to improve the water management in the area.
- Close to the area there are two drinking water extraction sites. The long-term average drinking water production of these extractions is resp. 6-7 and 2 million m³ of drinking water under the maximum licensed production capacity of resp. 8 and 2.5 million m³ per year. The drinking water extractions influence the water management in the Natura 2000 area.

Package of measures: sufficient for preservation; nevertheless some uncertainty

- A package of measures has been developed for improving water management. The ecological assessment shows that this package is in principle sufficient to prevent deterioration and to enable the start of the expansion of the active raised bog.
- In recent dry and warm summers, the demand for drinking water was high. This resulted in the two drinking water abstractions being used at maximum production capacity. There is a chance that dry and warm summers will occur more frequently as a result of climate change. Whether this will happen and to what extent is uncertain. More structurally more intensive use of the extractions can have consequences for the effectiveness of the package of measures. Ecological knowledge - partly based on expert judgment - is lacking to determine whether this is the case. And if so, to what extent. As a result, no complete scientific certainty can be given about future nature results. There remains a risk of deterioration.
- In principle, a measure is conceivable to remove this latter uncertainty: the reduction of drinking water production.

Situation of the drinking water supply in Overijssel

- A reduction in drinking water production at the Wierdense Veld is only possible if this is offset by increasing production in other drinking water abstractions.
- There are currently and in the near future no realistic options for this. There is insufficient space in the available production capacity.
- The situation is such that a reduction in drinking water production at the Wierdense Veld is only possible after new production capacity has been developed. This development is a process that takes at least 15 to 20 years.

The path that the Netherlands wants to choose in this situation

- The Netherlands wants to implement the package of measures that, according to current insights, will prevent the deterioration of the raised bog vegetation and ensure the preservation of the current raised bog values.
- The Netherlands does not want to endanger the drinking water supply - an imperative public interest - in Overijssel. The drinking water company that operates the extraction sites has a legal obligation to supply drinking water. In the absence of alternatives, the Netherlands is unable and unwilling to take measures to reduce drinking water production at the Wierdense Veld.
- The Netherlands will monitor the development of the raised bog vegetation and the effects of the measures to be implemented in the coming years.
- If, despite the implementation of the package of measures, deterioration takes place in the coming years due to a higher demand for drinking water in hot and dry summers and the associated higher drinking water production, the Netherlands will take additional measures.
- The Netherlands sees two scenarios in this regard:

- Reducing drinking water production at the Wierdense Veld as soon as it can be replaced by production capacity at a location yet to be developed. According to current insight, this takes 15 to 20 years.
- Accepting any deterioration in the current raised bog values in the Wierdense Veld. This is compensated for in another raised bog area. An article 6.4 type- approach. This option requires a timely commitment to compensation. And has the complicating factor that there may not be space and good conditions available for the development of (restorative) raised bog.

[...]