

# Guidance document for Environmental Impact Assessment and Appropriate Assessment procedural integration



## CReIAMO PA

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## **Preface**

This document was prepared as part of the activities of the LQS1 intervention line of the CREIAMOPA Project dedicated to Environmental Assessments, Strategic Environmental Assessment (SEA) and Environmental Impact Assessment (EIA), under the coordination of the Directorate General for Environmental Assessments of the Ministry of the Environment and Energy Security (MEES) and is aimed at a reasoned analysis on the procedural integration of Environmental Impact Assessment (EIA) and Appropriate Assessment (AA).

The document has been drafted by the Specialised Technical Unit of the Line of Intervention LQS1 on the basis of the survey of legal and technical documentation at European, national and regional level and by virtue of the contribution provided by the Italian Regions and Autonomous Provinces.

Providing guidance tools to support the activities of the competent EIA authorities and developers represents an important opportunity to guarantee a homogeneous application of the EIA discipline on the national territory: this objective is pursued by the CREIAMO PA Project through the publication of this Guideline document that, although not binding, can represent a valid guidance tool.

Gianluigi Nocco

Director General for Environmental Assessments

Ministry of Environment and Energy Security

## Acronyms and definitions

Habitat Directive	Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural and semi-natural habitats and of wild flora and fauna
<i>Bird Directive</i>	Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds
EIA Directive	Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment
DGEA	Directorate General for Environmental Assessments of the Ministry of the Environment and Energy Security
National Guidelines for Appropriate Assessment	National Guidelines for the Appropriate Assessment (AA) "HABITAT" Directive 92/43/EEC Article 6, paragraphs 3 and 4, adopted by Agreement of 28.11.2019 pursuant to Article 8, paragraph 6, of Law no. 131 of 5 June 2003, between the Government, the Regions and the Autonomous Provinces of Trento and Bolzano (Official Gazette of the Italian Republic General Series no. 303 of 28.12.2019)
MEES	<i>Ministry of the Environment and Energy Security</i>
CREIAMO PA Project	<i>Competences and Networks for the Environmental Integration and Improvement of Public Administration Organisations - PON Governance and Institutional Capacity 2014-2020</i>
P/P/P/I/A	Plans, Programs, Projects, Interventions, Activities
EU	European Union
STU	Specialized Technical Unit of the CREIAMO PA Project - Line of intervention LQS1 "Environmental assessments - Actions to improve the effectiveness of SEA and EIA processes for programmes, plans and projects "
EIA	Environmental Impact Assessment
SEA	Strategic Environmental Assessment
AA	Appropriate Assessment (AA) – HABITAT" Directive 92/43/EEC Article 6

# 1. INTRODUCTION

## 1.1 Aims and structure of the document

This document represents one of the products of the CREIAMO PA Project – and it is part of the AQS1.2 "Procedural integration" project activity of the LQS1 intervention line "Environmental Assessments - Actions to improve the effectiveness of SEA and EIA processes for programmes, plans and projects".

During the various technical meetings and exchanges of experiences held with several Regions and Autonomous Provinces, the STU proposed to draw up a shared technical documents on the EIA-AA procedural integration taking into consideration, in addition to the relevant regulations, the National Guidelines for the Appropriate Assessment published in the Official Journal on 28 December 2019.

The need arises from numerous questions and requests for explanations on the scope of application of the procedural integration of the AA in the context of EIA.

An uneven application of the EIA discipline in the national territory leads to possible significant problems and criticalities at a legal (European and national disputes) and procedural level (different fulfilments and related administrative burdens for businesses and public administrations).

In addition to the above, the identification of homogeneous criteria to standardize the integrated EIA-AA procedures at national level appears appropriate due to the following common elements, for the legal and a technical profile:

- Avoiding any European disputes (EU Pilot, etc.);
- Ensuring a continuity (longitudinal and areal), which goes beyond the administrative boundaries of Regions and Autonomous Provinces, and which requires a logic of management and protection on a national scale.

**This document represents a guidance tool intended to support both the competent authorities and the developers in the correct application of EIA and AA regulations, with particular, but not exclusive, reference to those Regions/Autonomous Provinces that do not have specific regulations on the subject. Therefore, it does not have a binding character (the current European and national regulations represent the only legally binding instruments) but represents the result of the technical collaboration between the STU of the CREIAMO PA Project and the stakeholders (Regions and Autonomous Provinces)**

Chapter 1 describes the methodology and tools adopted for the preparation of this document and sets out the issues and topics discussed during the online meetings held with the Regions, Autonomous Provinces, and competent authorities.

The first three paragraphs of Chapter 2 are dedicated to the relationship between projects and the Natura 2000 Network with regard to EIA-AA integration; they include an analysis of sector legislation and guidance acts at both the European and national level and also regional and autonomous province references, with laws and official acts adopted by the regions/autonomous provinces with regard to EIA-AA integration. Furthermore, paragraph 2.4 shows the questionnaires drawn up by the Regions regarding procedural integration from which the critical issues were extrapolated and analysed.

Finally, in paragraph 2.5 the proposals to overcome the aforementioned critical issues relating to the EIA-AA procedural integration are set out.

## **1.2 Methodology, document tools**

The roadmap for the preparation of the document included the following main milestones:

- On 2 February 2021, a technical meeting (by videoconference) was held with the Marche Region, the Sardinia Region and the Regional Agency for Environmental Protection of the Marche (RAEPM), during which the analysis of the specific regional regulations, both of Marche and Sardinia, regarding the integration of the procedures was shared, with the highlighting of the main discrepancies with the national regulations and the sharing of the main criticalities that emerged especially where subject to EIA screening and to EIA-AA relations and regarding the SEA-AA screening;
- An exchange of experiences between the Emilia-Romagna Region and the Puglia Region took place on 15 April 2021, during which the main critical issues that emerged, especially where subject to EIA Screening, and relations with AA with Article 6(3) and (4) stages (Screening and Appropriate Assessment) were discussed.
- On 13 July 2021, an exchange of experiences took place with the Lombardy Region and the Piedmont Region where the main criticalities encountered at the regional level concerning the integration of procedures and in particular concerning SEA procedures integrated with SEA-AA screening were examined. The practices adopted by both regions regarding the integration of EIA-AA and SEA-AA procedures were also shared.
- On 10 September 2021, a survey activity was launched involving the EIA and SEA proceedings of the Regions and Autonomous Provinces through the e-mail transmission of two EIA-AA and SEA-AA questionnaires.

### **Questionnaire submitted to the Regions regarding the EIA-AA integrated procedures.**

- 1. What are the main procedural critical issues encountered in the context of the EIA-AA integrated procedures?**
- 2. What are the main technical critical issues encountered in the context of the EIA-AA integrated procedures?**
- 3. If and with which criteria/methodologies was it possible to overcome them, also in relation to the changes introduced by the National Guidelines for the Appropriate Assessment?**
- 4. Have specific regulations and/or resolutions and/or guidelines been adopted on the subject of EIA-AA integration?**
- 5. Have the national AA Guidelines been officially transposed??**
- 6. Are there case studies and good practices of EIA-AA integration to be shared in the guideline document?**



**Questionnaire submitted to the Regions regarding the SEA-AA integrated procedures**

- 1. What are the main procedural issues encountered in the context of the SEA-AA integrated procedures?**
- 2. What are the main technical issues encountered in the integrated SEA-AA procedures?**
- 3. If and with which criteria/methodologies was it possible to overcome them, also in relation to the changes introduced by the National Guidelines for the Appropriate Assessment?**
- 4. Have specific regulations and/or resolutions and/or Guidelines been adopted on the subject of SEA-AA integration?**
- 5. Have the National Guidelines for AA been officially implemented?**
- 6. Are there any case studies on good practices for SEA-AA integration to be shared in the guidance document?**
- 7. Do the proceeding Authorities and the competent Authorities, both in the field of SEA and in the field of AA, use the document " SEA-AA". Proposal for the integration of contents" (MATTM, MIBAC, ISPRA, Regions, Autonomous Provinces, 2011) [MATTM SEA-AA Guidelines]?**
- 8. If so, indicate how the National Guidelines from MATTM for SEA-AA resulted as useful**

The questionnaires were designed to obtain information on procedural criticalities, technical criticalities and any criteria/methodologies adopted to overcome them, and whether, if any, specific regulations and/or decisions and/or guidelines on EIA-AA integration have been adopted; information on the official transposition of the national AA Guidelines and cases of good integration practices in EIA-AA.

- On 27 October 2021 technical meeting with Abruzzo Region, Friuli-Venezia Giulia Region, Abruzzo, Lazio and Molise National Park (ALMNP), Maiella National Park (MNP) regarding the critical issues encountered at the regional level, both in Abruzzo and in Friuli-Venezia Giulia, about the procedures and in particular on the SEA screening procedures integrated with the AA screening and, in particular, on the timing of the various procedural phases and sharing of the practices adopted.
- On 13 December 2021, during the workshop with the Italian Regions and Autonomous Provinces, held by videoconference, the structure of the document was shared and specific topics related to critical issues and related solutions were explored.
- On 23 February 2022 technical meeting with the Campania and Veneto Regions, based on the comparison of experiences on procedural integration, skills and knowledge and aimed at the promotion of the integration and coordination of the various actors involved in the environmental assessment procedures AA, SEA and EIA. The comparison and debate focused above all on the state of the art, on the critical issues and strengths of procedural integration. The structure of the document was shared and specific issues related to critical matters and related solutions were explored.
- On 23 March 2022, during the workshop held in videoconference with the Sicilian Region and the STC (Scientific Technical Committee) of the Sicilian Region, the objectives and aims of the activity on the integration of the EIA-SEA-AA environmental assessment procedures were discussed. Experiences regarding the EIA-AA integration in the Sicilian Region were shared and the regional transposition of the AA national Guidelines was illustrated; the document structure was therefore shared, and specific topics related to critical issues and related solutions were explored.
- On 18 May 2022, during the Exchange of experiences with the Regions of Abruzzo, Marche and Piemonte, the structure of the document was shared, the specific topics related to the critical issues

and the related solutions and the objectives and goals of the activity on the integration of the environmental assessment of EIA-AA and SEA-AA procedures were explored.

- On 20 October 2022, during the workshop held by videoconference with the Italian Regions, Autonomous Provinces and National Parks, the status of the documents was discussed and shared. The Regions of Puglia, Liguria and Lazio illustrated their experiences with regard to the integration of EIA-AA and SEA-AA; the critical issues of the different methodological approaches between SEA and AA were then discussed in depth, and finally, the possibility of using spatial analysis methods such as Sensitivity Maps was examined.

## **2. RELATIONSHIP BETWEEN PROJECTS AND THE NATURA 2000 NETWORK: EIA - AA INTEGRATION**

### **2.1 Overview of European legislation and Guidelines**

The Environmental Appropriate Assessment (henceforth 'AA') has its main legal basis in the European Union. In particular, it is regulated within the framework of Directive 92/43/EEC (henceforth Habitats Directive), which through Article 6 defines the general framework for the conservation and management of Natura 2000 network sites.

Within this framework, the AA assumes a decisive role, because it represents the necessary tool to reconcile the needs of local development and the guarantee of achievement of the conservation objectives of the Natura 2000 network. In fact, pursuant to par. 3 of the aforementioned art. 6: *“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public”*.

It is therefore an environmental assessment, the objective of which is clearly defined in the context of guaranteeing the conservation of the sites that constitute the Natura 2000 network.

For the purposes of this document, it is necessary to question the hypotheses in which this assessment concerns projects that are simultaneously subject to a further type of environmental assessment: the EIA (Environmental Impact Assessment).

Pursuant to art. 3 of Directive 2011/92/EU as amended by Directive 2014/52/EU (hereafter "EIA Directive"), in fact, *"The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of a project on the following factors: [...] b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC"*.

In these cases, therefore, there could be an overlap between the two assessments, despite having different purposes, and therefore coordination appears necessary, both to guarantee the efficiency of the assessment and in order to guarantee its effectiveness.

This wish is also present in terms expressed in the context of the EU legislation, and in particular, in the EIA Directive which in recital n. 37 states that: *"In order to improve the effectiveness of the assessments, reduce administrative complexity and increase economic efficiency, where the obligation to carry out assessments related to environmental issues arises simultaneously from this Directive and Directive 92/43/EEC and/or Directive 2009/147/EC, Member States should ensure that coordinated and/or joint procedures fulfilling the requirements of these Directives are provided, where appropriate and taking into account their specific organisational characteristics."* This recital is then declined in a mandatory rule within the scope of

the article, and precisely in art.2.3, where it is established that: *“In the case of projects for which the obligation to carry out assessments of the effects on the environment arises simultaneously from this Directive and from Council Directive 92/43/EEC (\*) and/or Directive 2009/147/EC of the European Parliament and the Council (\*\*), Member States shall, where appropriate, ensure that coordinated and/or joint procedures fulfilling the requirements of that Union legislation are provided for.”*

Coordination between procedures, however, is not left to the total autonomy of the Member States, but the role of providing Guidelines in this regard is entrusted to the Commission (*“The Commission shall provide guidance regarding the setting up of any coordinated or joint procedures for projects that are simultaneously subject to assessments under this Directive and Directives 92/43/EEC, 2000/60/EC, 2009/147/EC or 2010/75/EU”*).

Indeed, an important regulatory source, albeit a soft law, is the subsequent Commission Communication entitled: *Commission Guidance Document on Streamlining Environmental Assessments pursuant to Article 2(3) of the Environmental Impact Assessment Directive*.

Here, in the first place, the Commission clarifies that simplification is mandatory - 'where appropriate' - with regard to the EIA and the 'appropriate assessment' of impacts under the Habitats Directive, and/or the Birds Directive. The phrase 'where appropriate' refers to an assessment of the relevance of the simultaneous assessment.

As specified in the EIA Directive, the Commission reiterates that the two assessments can be the subject of a 'joint' procedure or a 'coordinated' procedure. The difference between the two hypotheses lies in the fact that in the 'joint' procedure there is a single environmental assessment, which therefore includes both the EIA and the AA, and consequently there is a single 'Environmental assessment Report' presented by the developer including all necessary information and conclusions, addressing the specific characteristics of each environmental assessment to be carried out in relation to the project.

In the 'coordinated' procedure, on the other hand, there are two different assessments, however coordinated by a competent authority, in this case also the 'Environmental assessment Report' differs for the two assessments, even if it can then represent a single document, or in any case there may be coordination between its contents.

In its analysis, the Commission concludes that: *the joint procedure involving both EIA and AA (ed. Appropriate Assessment) ensures better assessment quality, and it is the recommended way to conduct the two assessments.”*

**Communication from the European Commission "Guidance document from the Commission on streamlining environmental assessments carried out under Article 2(3) of the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU)" [2016/C 273/01]**

***par 2. Common and coordinated procedures conducted under Article 2(3) of the EIA Directive, as amended***

As Article 2.3 of the EIA Directive requires a joint or coordinated procedure between the EIA Directive and the Habitats Directive, Screening under the EIA Directive should go hand in hand with Screening under Article 6.3 of the Habitats Directive.

Where possible, the two requirements should be coordinated thereby allowing the transfer of knowledge/results from Screening under the Habitats Directive to Screening under the EIA Directive.

## 2.2 Reconnaissance of legislation and national Guidelines

### **Legislative Decree No 152 of 3 April 2006 Environmental Regulations ( Italian Official Journal No 88 of 14 April 2006)**

#### **Art. 10. Paragraph 3 of Legislative Decree 152/2006 Coordination of SEA, EIA, and AA procedures**

*The SEA and the EIA include the appropriate assessment procedures referred to in article 5 of decree no.357 of 1997; to this end, the **environmental report, the preliminary environmental study or the environmental impact study** contain **the elements referred to in annex G of the same decree n. 357 of 1997** and the assessment by the competent authority extends to the conservation purposes of the appropriate assessment or will have to acknowledge the outcomes of the appropriate assessment. The methods of informing the public give specific evidence of the procedural integration.*

In fact, although the art. 10 is classified with the term ‘coordination’, paragraph 3 regulates the ways in which the AA must be "integrated" into the EIA and SEA procedures, as clearly explained in the formulation of the provision which provides that the latter ‘include’, or involve the AA procedure in their respective procedures.

The ‘prevailing’ procedure, in this case, is represented by the EIA (or by the SEA), and is therefore conducted by the competent authority, and structured on the basis of the corresponding procedural discipline. However, the AA is "included", or integrated, in the context of this procedure.

In view of the numerous and relevant amendments introduced to Part Two of Legislative Decree 152/2006, subsequent to Legislative Decree 4/2008 and, in particular, by Legislative Decree 104/2017 implementing Directive 2014/52/EU, it appears advisable to provide some elements for an effective coordination between the aforementioned paragraph 3 of Article 10 and the rules, to date in force, on EIAs.

The aforementioned legislation identifies the EIA documentation that must contain the elements for the Appropriate Assessment.

For the EIA, the elaboration of the 'preliminary environmental study' and the 'environmental impact study' is prepared.

These documents are related, respectively, to the EIA screening procedure pursuant to Art. 19 of Legislative Decree 152/2006 and to the EIA procedures pursuant to Art. 23-27 of Legislative Decree 152/2006, at State level, and to Art. 27-bis at regional level.

Instead, as regards the environmental impact study, there are no possible uncertainties with respect to the procedure to which it is associated, that is the EIA both at the State and regional level, for the preliminary environmental study, although the legislation in force (Article 5, paragraph 1, letter g) defines it as a ‘document to be presented for the start of the EIA Screening procedure" in the EIA discipline, it is referred to in three different procedures:

1. EIA Screening (art. 19, Legislative Decree 152/2006)
2. definition of the contents of the environmental impact study (art. 21, Legislative Decree 152/2006) (Scoping)
3. preliminary phase to the single regional authorisation provision (PAUR - art. 26-bis, Legislative Decree 152/2006) preliminary consultation (State Council).

A legitimate doubt therefore arises with respect to the obligation, or not, to integrate the AA also in the procedures referred to in articles 21 and 26-b.

Considering the analogous purpose of the procedures governed by the aforementioned articles, declined respectively for the State (EIA) and regional (PAUR) spheres, linked to a preliminary and preparatory phase for the start of the procedures and aimed at defining the information to be entered in the environmental

impact study (so-called Scoping), this phase does not appear suitable for investigating detailed aspects relating to the AA and therefore to carry out the AA through the preparation of the documentation envisaged in the National Guidelines, whether relating to stage 1 (screening) or to stage 2 (appropriate assessment).

The preliminary environmental study and the work plan will rather have to provide the methodology and the information that will be used to fully carry out the AA which will be an integrated part of the environmental impact study.

Moreover, in these preliminary stages the development of the project may not be adequate and sufficient to provide all the elements necessary to evaluate the impact on the conservation objectives of the site/s of the Natura 2000 network.

This approach is also consistent with the viewpoint of procedural efficiency and non-duplication of fulfilments, both for the proponent and for the competent authority, since the AA represents a compulsory content of the environmental impact study that will be subsequently submitted to the outcome of the scoping procedure for the presentation of the EIA application.

As regards the EIA Screening, the projects referred to in annexes II-b (Projects subjected to EIA Screening under state jurisdiction) and IV (Projects subjected to EIA Screening under the jurisdiction of the Regions and Autonomous Provinces of Trento and Bolzano) to the second part of Legislative Decree 152/2006, relating to new construction works or interventions, which fall, even partially, within protected natural areas as defined by the law of 6 December 1991, n. 394, and/or within sites of the Natura 2000 network, must be subjected directly to a EIA (art. 7 paragraph b Legislative Decree 152/06) integrated with the AA. In addition, for new projects listed in Annex IV, the application of the criteria and thresholds defined in Ministerial Decree No. 52 of 30/03/2015 must also be considered.

In the case of projects that are not new constructions, but modifications and/or extensions, an EIA screening procedure integrated with the AA screening must be carried out.

As far as the EIA is concerned, this procedure must be integrated with the AA in the case of projects referred to in Annexes II (EIA Projects of State competence) and III (EIA Projects of competence of the Regions and Autonomous Provinces of Trento and Bolzano), which fall, even partially, within protected natural areas as defined by Law No. 394 of 6 December 1991, and/or within Natura 2000 network sites.

It should be noted that even for projects listed in Annexes II, II-bis, III and IV to Part II of Legislative Decree 152/2006, located outside Natura 2000 Network sites, an Appropriate Assessment may be required, where they could significantly affect one or more sites.

The identification of Natura 2000 sites that may be affected should be done by taking into consideration all aspects of the plan or project that could potentially affect any Natura 2000 site located in the area affected by the plan or project. This should consider all designating elements (species, habitat types) significantly present at the sites as well as their conservation objectives.

Finally, a soft law instrument has also been adopted at the national level concerning the implementation of the AA discipline, which also contemplates the hypotheses of procedural integration. It refers to paragraph 1.10, containing 'The Integrated Impact Assessment in the EIA and SEA procedures', of which the main steps are briefly reported below.

Notwithstanding that the art. 10, paragraph 3 of Legislative Decree 152/2006 does not provide for any form of integration between the preliminary assessment procedure pursuant to art. 6, paragraph 9 of Legislative Decree 152/2006, it should be noted that if, following the aforementioned assessment, the competent authority establishes that the modifications, extensions or technical adjustments should not be subject to environmental assessment procedures (EIA Screening or EIA), or do not fall within the categories referred to in paragraphs 6 or 7 of art. 6 of Legislative Decree 152/2006, the Appropriate Assessment, where necessary, takes the form of an independent and in any case binding procedure to be carried out pursuant to the provisions of art. 6.3 of the Habitats Directive and of the AA National Guidelines.

**par. 1.10 The Appropriate Assessment integrated in the EIA and SEA procedures**

The assessment of the effects on habitats and species of Community interest protected by the Habitats and Birds Directives is one of the key elements of the Environmental Assessment procedures (SEA and EIA) governed by Part Two of Legislative Decree 152/2006. For this reason, the definition of *appropriate assessment* was inserted by Legislative Decree 104/2017 in art. 5, paragraph 1, lett. b-ter), of Legislative Decree 152/2006, as: "procedure of a preventive nature to which it is necessary to submit any plan or project that may have significant effects on a site or a geographical area proposed as a site of the Natura 2000 network, individually or in conjunction with other plans and projects and taking into account the conservation objectives of the site itself". Legislative Decree 104/2017, where it modifies and supplements Article 5(1)(c) of Legislative Decree 152/2006, further specified that environmental impacts are defined as the significant direct and indirect effects of a plan, programme or project on various factors. These include 'biodiversity', with particular attention to species and habitats protected under Directive 92/43/EEC 'Habitats' and Directive 2009/147/EC 'Birds'.

**par. 2.8 Screening integrated into EIA and SEA procedures**

This paragraph highlights, among other things, that the outcome of the Appropriate Assessment procedure is binding; in fact, "the AA screening (Level I) in the EIA procedures reports the obligation to submit a specific project to a EIA if, for this project, the conditions exist for it to be subjected to an appropriate impact assessment (Level II) - pursuant to the Habitats Directive".

Therefore, the verification of the existence of possible impacts on the sites of the Natura 2000 network (negative outcome of the AA screening) carried out during the EIA screening, determines the subsequent subjection of the same to an Appropriate Assessment and to an EIA ".

**Final provision in the integrated procedures of EIA-AA and SEA-AA**

In the case of Appropriate Assessment integrated in the EIA or SEA procedures, the outcome of the Appropriate Assessment is binding for the expression of the SEA reasoned opinion or the EIA decision, which can only be positive if there is certainty regarding the absence of significant negative impact on Natura 2000 sites.

Since the assessment of the competent authority for the EIA or for the SEA "extends to the conservation purposes of the appropriate assessment", the outcomes of the AA within the scope of the final provision must be included and clearly distinguished and separated from those of the EIA/SEA. This is necessary to ensure the correct application of Article 6(3), stating that "the permit may only be issued after it has been satisfied that it will not adversely affect the integrity of the site in question".

A proper assessment can be included in the EIA or SEA report or in a separate report. In both cases, the relevant information and conclusions of the appropriate assessment must be evident and differentiated from those of the EIA or SEA.

**The institution of tacit consent is not applicable in the AA procedure**

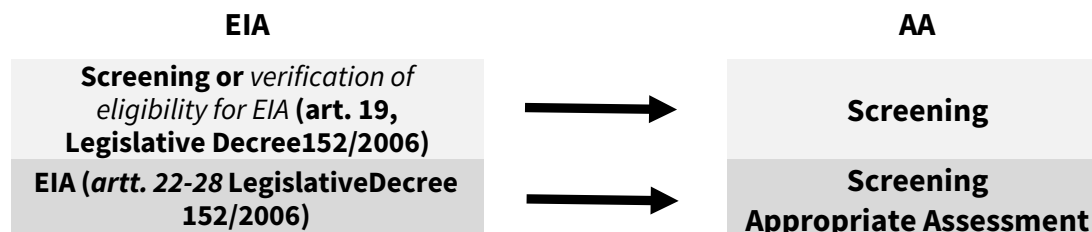
The art. 17bis, paragraph 4, of Law 241/90, regarding the institution of tacit consent, reports that: "The provisions of this article do not apply in cases where provisions of European Union law require the adoption of measures expressed".

Therefore the tacit assent is not applicable with reference to the acquisition of the evaluation measures descending from the application of the art. 6, paragraphs 3 and 4 of the Habitats Directive 92/43/EEC.

## ELEMENTS TO PAY ATTENTION TO

### Relationships between the EIA screening and AA screening

The results of the AA screening influence and condition the EIA screening; in fact, if the AA screening is negative it is not possible to exclude the P/I/A from the EIA and it is necessary to carry out an appropriate evaluation (Study for AA).



#### Screening results AA: BINDING

**Chap. 2.8 National Guidelines for AA (screening): if based on the elements provided it is not possible to exclude negative effects on the Natura 2000 Site, Level II (Appropriate Assessment) is started with the drafting of the Study for AA, integrated with the Environmental Impact Study**

It should be noted that some regions have regulated, within the context of the integrated EIA-AA procedure, some peculiarities that differ from the above.

For example, the Campania Region in the Resolution of the Regional Council n. 613 of 28/12/2021 provides for the possibility of integrating the AA both with a screening and with an appropriate assessment in the context of a verification of subjection to the EIA: «[...] Without prejudice to the obligation, where the terms are met, to integrate the AA in the verification of eligibility for EIA, the responsibility to request the verification of eligibility for EIA integrated with the AA (screening or appropriate assessment) lies with the proposer».

**Presidential Decree 357/97, as modified and integrated by the Presidential Decree. 120/2003 - Article 5 "Appropriate Assessment"**

#### Paragraph 8.

The Habitats Directive does not contain an explicit obligation to seek the opinion of PUBLIC OPINION when authorizing plans or projects subject to an appropriate assessment. According to the provisions of article 6, paragraph 3 (DIR 92/43/EEC), it is only necessary to do so "if necessary" even if, as indicated in par. "4.2. Public consultation and participation" European Commission Notice 2016/C 273/01 it is advisable to involve the public from the beginning of the procedure, to ensure a better quality of participation.

Consultation of the public is an essential element of the EIA Directive (DIR 2014/52/EU) - art. 6 par.5; consequently, in cases where the assessment envisaged by article 6, paragraph 3, is coordinated with the assessment under this directive, public consultation is required in line with the provisions of this directive.

### 2.3 Reconnaissance of the legislation, of the Guidelines of the Regions and Autonomous Provinces

The table below shows a summary of the Regional Council resolutions and regional laws concerning the regional implementations of the "National Guidelines for AA (Directive 92/43/EEC "Habitat" art. 6, Paragraphs 3 and 4) published on December 28, 2019.

The survey revealed that almost all of the regions/autonomous provinces have implemented the National Guidelines for AA.

Region - Autonomous Provinces	Provisions of the Regions and Autonomous Provinces on the procedural integration SEA-AA, regional implementations GUIDELINES Naz. AA of 28 December 2019
<b>Abruzzo</b>	Regional Council resolution no. 860 of 22 December 2021 of the Abruzzo Region - Understanding State-Regions-Autonomous Provinces 28 November 2019. Presidential Decree n. 357/97. L.R. no. 7/2020. Adoption of the "Regional Guidelines for the Appropriate Assessment", as implementation of the national Guidelines and simultaneous revocation of the Guidelines for the Appropriate Assessment Report referred to in ANNEX C of the document "Criteria and Guidelines on environmental procedures" approved with DGR n. ° 119/2002 – BUR n° 73 Special of 06.14.2002 and subsequent amendments and integrations in the Coordinated Text.
<b>Basilicata</b>	Regional Council resolution no. 473 of 11/06/2021
<b>Bolzano</b> (Autonomous Province of)	Resolution of the Provincial Council of the Autonomous Province of Bolzano - Alto Adige n. 1153 of 28 December 2021 - Adaptation to the national Guidelines of the documentation for the Appropriate Assessment in Natura 2000 sites
<b>Calabria</b>	Regional Council resolution no. 65 of the session of 28 February 2022, acknowledgment of the understanding of 28.11.2019 (GURI n.303/2019), article 8, paragraph 6, of the law of 5 June 2003, n. 131, between the Government, the Regions and the Autonomous Provinces of Trento and Bolzano on the National Guidelines for AA - Directive 92/43/EEC "HABITAT".
<b>Campania</b>	Resolution of the Regional Council n. 280 of 06/30/2021: Implementation of the "National Guidelines for AA - Directive 92/43/EEC "HABITAT" Art. 6, paragraphs 3 and 4. Update of the "Guidelines and Guidelines for carrying out the impact assessment in the Campania Region". DGR n. 207 of 28/04/2020 repeal of Reg.to Reg. 1/2010
<b>Friuli Venezia Giulia</b>	Resolution of the Regional Council no.1183 of 5 August 2022 "Application Guidelines on impact assessment following the transposition of the "National Guidelines for AA - Directive 92/43/EEC Habitats article 6, paragraphs 3 and 4"
<b>Lazio</b>	Regional Council resolution no. 938 of 27 October 2022. Implementation of the National Guidelines for the AA and interpretative, dispositional/technical-operational and procedural provisions aimed at making the implementation of art. 6, par. 3 and 4 of the "Habitats" Directive 92/43/EEC and of the art. 5 of Presidential Decree no. 357/97 and subsequent amendments.
<b>Liguria</b>	Regional Council resolution no. 211 of 03/19/2021 Regional law n. 28/2009. Transposition of the national Guidelines for AA and modification of the D.G.R. no. 30/2013. Approval of the new model of the proposing form for incidence screening.



<b>Lombardia</b>	<p>- Regional Council resolution No. XI/4488 03/29/2021</p> <p>Harmonization and simplification of the procedures relating to the application of the Appropriate Assessment for the transposition of national Guidelines covered by the agreement sanctioned on 28 November 2019 between the government, the regions and the autonomous provinces of Trento and Bolzano.</p> <p>Annex B to the Regional Council resolution 4488/2021: pre-assessment of impact for certain types of interventions, plans or activities</p> <p>Annex C to the Regional Council resolution 448/2021: Methods for verifying correspondence to the regional pre-assessment Annex D to the Regional Council resolution 4488/2021: Mandatory conditions;</p> <p>and update of Regional Council resolution XI/5523 OF 11/16/2021 "Harmonization and simplification of the procedures relating to the application of the AA for the transposition of the national Guidelines object of the agreement sanctioned on 28 November 2019 between the government, the regions and the autonomous provinces of Trento and Bolzano", published in BURL n. 14 of 7/4/2021.</p>
<b>Marche</b>	<p>Resolution of the regional council no. 1661 of 12/30/2020: State-Regions-Autonomous Provinces Agreement 28 November 2019. Presidential Decree n. 357/97. L.R. n.6/2207. Adoption of the regional Guidelines for the AA as transposition of the national Guidelines</p>
<b>Molise</b>	<p>Resolution of the Regional Council Session of 09/13/2021 no. 304: Transposition of the national Guidelines for AA – Directive No. 92/43/EEC “Habitats” Art. 6, par. 3 and 4, Directive Approval.</p>
<b>Puglia</b>	<p>Regional Council resolution no. 1515 of 27 September 2021,</p> <p>"Policy and coordination document for carrying out the AA procedure - Transposition of national Guidelines on AA - Amendments and additions to Regional Decree 304/2006</p>
<b>Sardegna</b>	<p>Resolution of the Regional Council no. 30/54 of 09.30.2022, the Regional Council of the Sardinia Region approved the new Regional Directives for AA and the related annexes, in transposition of the National Guidelines for AA - Directive 92/43/EEC "Habitats" article 6, paragraphs 3 and 4, adopted on 28.11.2019 with Agreement, pursuant to article 8, paragraph 6, of Law 5 June 2003, n. 131, between the Government, the Regions and the autonomous Provinces of Trento and Bolzano (GU General Series no. 303 of 28.12.2019).</p>
<b>Sicilia</b>	<p>Council decree no.036/GAB del 14/02/2022</p>
<b>Toscana</b>	<p>Resolution of the Regional Council no. 13 of 10 January 2022 of the Toscana Region " Policy and coordination document for the harmonization and simplification of procedures relating to the AA procedure in transposition of the national Guidelines".</p>
<b>Umbria</b>	<p>Regional Council resolution 360/21 Implementation of National Guidelines for AA</p>
<b>Valle d’Aosta</b>	<p>Resolution 30 December 2021, n. 1718. : "Approval, pursuant to article 7 of the regional law 8/2007, of the transposition of the National Guidelines for AA. Revocation of the Resolution of the Regional Council n. 970 on May 11, 2012.</p>

### 3. ANALYSIS OF THE MAIN PROCEDURAL CRITICAL ISSUES AND POSSIBLE SOLUTIONS

#### 3.1 Procedural issues and possible solutions

##### **Coordination issues for the acquisition of the AA hearing/opinion when the P/I involve a large number of Natura 2000 network sites.**

This criticality can occur, for example, in the context of the integrated EIA-AA procedures for the Authorization of large linear works involving the area of several Natura 2000 Network sites and which therefore will require the opinion of many managing bodies.

The "recovery" of the hearing/opinion of all the managing bodies involved could require longer times than those normally required of the subjects involved.

A good procedural practice is to foresee the convergence of the opinions given by the management bodies, as well as the possibility of a regional coordination as, for example, reported by the Regional Council resolution 1661/2020 of the new AA Marche Regional Guidelines which in paragraph 5.4 *Coordination for impact assessments involving multiple Natura 2000 sites, sites managed by multiple entities and adjacent sites* mentions: "In the case of plans or interventions of regional, interprovincial or provincial level which affect multiple sites and which, therefore, require the expression of Screening or AA opinion by multiple management bodies, this opinion is rendered by each in relation to their competence and then merged into a single text, transmitted by one of the management bodies delegated to it by the remaining managing bodies. In the implementation phase of the consolidated text, the competent regional office can contribute with a coordination action."

##### **Critical issues related to the procedural cases that provide for the coexistence of the proponent institution with the institution responsible for AA.**

In the subparagraph "Conflict of interest" by the EC in par. 5.2.1. "Opportunities and benefits of the rationalization of the EIA and of the appropriate evaluation" of the Communication of the European Commission "Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on article 6, paragraphs 3 and 4, of the Habitats Directive 92 /43/EEC" [ C(2021) 6913 final], it is reported that ... *Where the competent authority is also the developer, Member States shall at least implement, within their organisation of administrative competences, an appropriate separation between conflicting functions when performing the duties arising from this Directive.*

Therefore, in the event that a managing body of a Natura 2000 network site proposes a **new** project and/or intervention within the site, which falls within the EIA scope, can overcome this criticality by establishing a specialist office for the AA independent from the one assigned to the ordinary technical functions, as well as, for example, reported in paragraph 1.1 "Regional Authority" of the new AA Campania regional Guidelines (Regional Council resolution no. 280 of 06/30/2021);

or it can be foreseen that if the Projects/Interventions/Activities are proposed by the managing body of the Natura 2000 Site itself, the AA or the screening opinion are expressed by the Province or Metropolitan City and in the event that the managing body coincides with the Province or Metropolitan City opinion are expressed by from the Region as for example established with the resolution of the regional council no. XI/5523 of 2021 Lombardy Reg. "Harmonization and simplification of procedures relating to the application of the impact assessment for the transposition of national Guidelines".

## 1. Presidential Decree 357/1997, art.5, paragraph 7 *After consultation with the managing body of the national protected natural area*

*"The AA opinion of plans or interventions involving proposed sites of community importance, sites of community importance and special conservation areas falling, **wholly or partially, in a national protected natural area**, as defined by the law of 6 December 1991, n. 394, is carried out after consultation with the management body of the area itself".*

Scope of application: national protected natural areas pursuant to art. 8 National Law no. 394/1991 (national parks, state nature reserves, marine protected areas).

Depending on the regional laws, it may also be provided for regional parks (see National Guidelines for AA, page 75 "It remains within the discretion of the Region and the Autonomous Provinces, the right to insert the "heard" also for the protected areas of regional competence, identified in pursuant to Title III of Law 394/91, if the same is not identified as the managing body of Natura 2000 sites").

Binding provision for the EIA and EIA submission verification procedures (modifications of existing works).

On the basis of the Sardegna Regional Administrative Court sentence II no. 278 of 27 March 2019 it is equivalent to an "opinion" or "technical evaluation" and configures the application of art. 17, Law 241/1990:

- *"In accordance with the provisions of art. 17 of the law of 7 August 1990 n. 241, moreover, where in the procedure technical assessments must be acquired from entities or bodies other than the proceeding one, these must give their opinion within at least 90 days*
- *of the request (paragraph 1) and cannot disregard the acquisition of these assessments where they must come from by administrations "responsible for environmental, landscape- territorial protection and citizen health" (2nd paragraph)"*
- *The opinion of the Park Authority provided for by art. 5, paragraph 7, of Presidential Decree no. 357/1997 is unequivocally a mandatory opinion because it is imposed by law and attributable to the institutional functions of the Body. Therefore, it had to be certainly acquired during the proceedings, to complete the fulfillment of the consultative function underlying this provision".*

## "Heard" by the managing body of the Natura 2000 site

In the National Guidelines for AA, p. 50 "Expression of the reasoned opinion by the Authorities delegated to the AA" is reported:

*"The Screening and Appropriate Assessment procedures must be concluded with the expression of a reasoned opinion by the Competent Authority for AA. Before the expression of this opinion, the AA Authority acquires the "heard" of the managing body of the Natura 2000 site, if not coinciding with the same or of the managing bodies of the Natura 2000 sites in the case of several sites involved. What is expressed by the managing bodies must be taken into consideration in the drafting of the final opinion."*

Except as otherwise regulated at the regional level or in any case established as a practice, the opinion of the management body of the Natura 2000 site is not a mandatory fulfillment by law, unlike the opinion of the Park Authority.

## 2. Law 394/1991, art.13. No impediment

**Concessions or authorizations** relating to interventions, systems and works within the park are subject to **prior authorization from the Park Authority**. The authorization verifies the compliance between the provisions of the plan and of the regulation and the intervention and opinion is returned within sixty days

of the request. Once this deadline has elapsed, the no impediment document is deemed to have been issued. The denial, which can be contested immediately, is published simultaneously in the register of the municipality concerned and on the register of the Park Authority and the posting lasts seven days. The Park Authority informs by extract, with the same procedures, of the permits issued and of those determined due to the expiry of the deadline. Since the EIA in the state level does not take the form of a concession or authorization to carry out and operate the work, and neither the Verification of subjectability to EIA, the authorization of the Park Authority must not be acquired in the context of the related procedures of state competence but in the subsequent authorization phases. Otherwise, in the regional level where is applied the Single Regional Authorization Provision, pursuant to art. 27-bis of Legislative Decree 152/2006, EIA opinion takes the form of authorization to build and operate the work. This fulfillment is mandatory and the clearance from the Park Authority must be acquired as part of the aforementioned procedure.

### **3.2 Technical criticalities and possible solutions**

#### **Qualitative lack of the documents supplied for the AA**

As regards the technical criticality concerning the **qualitative lack of the drawings**, very often drawn up by the designers themselves and not by professionals with specific skills in the field, in paragraph 3.3 *"Determinations on the level of appropriate evaluation" of the National Guidelines for AA it is highlighted that :... the professionals in charge of drawing up the Study for AA must have actual skills for analyzing the degree of conservation of habitats and species, the conservation objectives of the Natura 2000 network sites, as well as for the evaluation of the Interferences generated by the P/P/P/I/A on the Natura 2000 site or sites concerned. Evidence must therefore be given in the regional Guidelines and the PP.AA that "the Study for AA must be drawn up according to the methodological criteria and contents described in these Guidelines and must preferably be prepared by an interdisciplinary group and necessarily signed by a professional with specific experience, documented in the naturalistic and environmental fields, as well as, if different, by the planner of the plan/programme/intervention/activity".*

#### ***Skills of the professional figures responsible for drafting the Study for AA.***

*The Studies for AA must be drawn up by professionals with proven expertise in the naturalistic/environmental and nature conservation fields, in the floristic-vegetational and faunal sectors, taking into account the habitats and species for which the Natura 2000 site/sites are /I have been identified.*

***Requirements and fulfilments required by the Regions and autonomous Provinces of the drafters of the Studies for AA.*** *The Competent Authority for Appropriate Assessment may in any case reserve the right to request the presentation of a specific curriculum vitae proving possession of the necessary specific professional skills.*

#### **This lack of technical quality of the impact assessment study is often found in an ineffective phase of investigation of the territory (large area) to be examined.**

In this regard, the use of **Sensitivity Maps** can help, as reported in the Assessment of plans and projects in relation to Natura 2000 sites - Methodological guide to Article 6(3) and 6(4) of the Directive Habitat 92/43/EEC Brussels, 28.9.2021 **C(2021)**. Sensitivity mapping is a method that is often used to identify areas that may be particularly sensitive to the development of sectoral activities. Sensitivity mapping approaches (Table 1) would not replace the need for an appropriate Environmental Impact Assessment (EIA) but maps can be employed during appropriate assessments/EIAs and following development consent issuance to inform site as well as possible management requirements.

## Multi-step approach to sensitivity mapping

- 1) Identify the types of developments (projects, activities, infrastructures, etc.) to be included and the species and habitats likely to be affected. To do so consider:**
  - species/habitats likely to coincide with development (at any stage of their life cycle) and consider all life history phases (breeding, migration, etc.);
  - different phases of development (e.g. construction, operational phases), as well as associated infrastructure;
  - which species/habitats are sensitive to development;
  - which species/habitats are of conservation concern (eg those listed within the Birds and Habitats Directives);
  - how species can be affected: e.g. habitat loss and degradation, collision with infrastructure, avoidance, displacement and barrier effects.
- 2) Compile distributional datasets on sensitive species, habitats and other relevant factors.**
  - Review what data is already available and decide whether additional data should be collected;
  - if datasets are spatially incomplete, consider using modeling based on habitat and landscape predictors to forecast distribution in under-sampled localities;
  - it is also important to highlight data deficiencies and other methodological shortcomings.
- 3) Develop a sensitivity scoring system.**
  - Assign sensitivity scores to species and habitats based on relevant characteristics (habitat fragility, conservation status, species behaviour, etc.).
- 4) Generate the map.**
  - Identify what is the most appropriate mapping format, GIS software, mapping unit, etc.;
  - generate a grid based on appropriate mapping unit and overlay the species distributions (or models) and potentially other useful datasets, including relevant buffer zones;
  - identify the species present within each grid cell;
  - for each grid square, calculate a score using the species sensitivity scoring systems.
- 5) Interpret the map**
  - Group sensitivity scores into categories indicative of their level of sensitivity (e.g. very high, high, medium, low) or that indicate a particular prescription (e.g. no-go vs low risk areas);
  - develop guidance material that explains what data are used, how the map is generated, how it should be interpreted and what caveats exist regarding interpretation.

*Tab.1: Multi-step approach to sensitivity mapping (see box 22 in the Assessment of plans and projects in relation to Natura 2000 sites - Methodological guide to Article 6(3) and 6(4) of the Directive Habitat 92/43/EEC Brussels, 28.9.2021 C(2021).)*

Another element of attention is that relating to the study and evaluation of the **cumulative effects** for which, in addition to the use of the aforementioned Sensitivity Maps, suitable tools can be used to identify potential impacts as reported in Commission Communication - 2021/C 437/01 - Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC:

- **Spatial analyzes** use geographic information systems (GIS) and overlay maps to identify where the cumulative impacts of a number of different actions may occur, as well as the interactions between those impacts. It can also overlay the effect of a project on selected receptors, elements, or resources to identify where the impact would be the greatest.
- **Panels of experts** can be formed to identify and assess cumulative impacts. Matrices can be used to evaluate the impacts and consider the cumulative impacts of multiple actions on a site or feature, as well as the interactions between the impacts;

## ELEMENTS TO PAY ATTENTION TO

### **Buffer Zone identify the areas within which to carry out the AA.**

*The 92/43/EEC "Habitat" Directive, the various Guidelines of the European Commission, as well as the D.P.R. 357/97 and subsequent amendments, do not provide for the identification of buffer zones with respect to Natura 2000 sites within which the P/P/P/I/A must be or not subject to the provision of art. 6.3 of the Directive.*

This concept is reaffirmed in Chap. 2.2 *Determinations on the Screening phase* of the National Guidelines for AA. It can be seen that the AA is a preventive, binding, case-by-case verification procedure, which *cannot provide for exclusions, nor the identification of buffer zones*, in the absence of appropriate preliminary site-specific assessments:

*"Therefore, within the technical discretion of the Regional Authorities and the Autonomous Provinces, the criterion relating to the identification of areas defined as buffers must correspond to pre-evaluations conducted on the direct and indirect effect of certain types of P/P/P/I/A against of individual sites, since the levels of interference may vary according to the type of initiatives and site-specific characteristics. For this reason, an a priori identification of buffer zones cannot be accepted, but must be identified in a differential way for the different sites and the different project categories, in consideration of the vast area of influence of the P/P/P/I/A.*

## ELEMENTS TO PAY ATTENTION TO

**Impossibility of identifying cases of exclusion from the AA procedure, as only through a careful analysis and proposal of pre-evaluations is it possible to speed up the screening procedures without, precisely, the use of lists of project/intervention types to be excluded a priori.**

As reported in paragraph 2.2 *"Decisions on the Screening phase"* of the National Guidelines for AA "lists of interventions a priori excluded from AA" must not be accepted.

The European Court of Justice ruled that the possibility to exempt certain activities from the Appropriate Assessment procedure does not comply with the provisions of article 6, paragraph 3 of the Habitats Directive (C-256/98, C-6/04, C-241/08, C-418/04, C-538/09). Therefore, lists of exclusions from the AA are not permitted, if not sufficiently motivated by site-specific preliminary technical assessments conducted by the regional authorities or by the site managing bodies which take into account the conservation objectives of the Natura 2000 sites, and can therefore be configured as a screening procedure. As regards the need for procedural simplifications, the correct identification of the conservation objectives and the detailed drafting of the Conservation Measures represent the necessary requirement for introducing simplifications in the screening procedure, as well as for overcoming the impossibility of using prescriptions in screening opinions.

**Mitigation and compensation measures in the EIA (EIA Directive) and in the AA (Directive 92/43/EEC, Presidential Decree 357/1997, National Guidelines for AA)**

At the national level, the Decree of the President of the Republic no. 357/97 and subsequent amendments and additions and the National Guidelines identify in the AA the tool through which the Proposer must qualitatively and quantitatively illustrate any significant impacts, also identifying adequate Mitigation Measures (also called attenuation measures) in order to mitigate and/or nullify the significant negative effect of the identified implications.

The current EIA regulation, in implementation of Directive 2011/92/EU, amended by 2014/52/EU Directive provides that the environmental conditions, possibly associated with the provision for verifying the subjectability to the EIA (art. 5, paragraph 1, letter o-ter) or with the EIA provision (art. 5, paragraph 1, letter o -quater), may provide, respectively:

- measures to **avoid or prevent** significant and negative environmental impacts;
- measures to **avoid, prevent, reduce** and, if possible, **compensate** for significant and negative environmental impacts.

From a rigorous reading of the above definitions, it would emerge that the environmental conditions of the provision for verifying the subjectability to EIA cannot provide for *ex post* measures either to reduce the impacts or even less to compensate them, as these conditions would prefigure the existence of significant and negative impacts which would necessarily imply the submission to the EIA procedure.

In the European Commission Guidelines for Screening <sup>1</sup> and for the Environmental Impact Study <sup>2</sup>, mitigation measures are defined as *measures envisaged to avoid, prevent or reduce any significant negative effects on the environment*, while compensation measures are defined as *measures envisaged to offset any significant adverse effects on the environment*.

No further definitions are available at both national and European level, however the European Commission in the aforementioned Guidelines for the Environmental Impact Study provides practical examples for the different types of measures, emphasizing the gradual nature of the measures primarily aimed at avoiding and preventing impacts, subsequently to reduce them and, if they cannot be avoided or further reduced, as a last resort it provides for the possibility of offsetting them.

The National Guidelines for AA instead contain the following definition of mitigation measures: *"Measures aimed at minimizing, or even eliminating, the negative impact of a plan, project or intervention, during or after its implementation. They constitute an integral part of the proposal and must contain initiatives aimed at reducing the interference generated on the Site by the action, without however causing further negative effects on the same"*.

In the screening (Level I) **mitigation measures cannot be envisaged** which, in this preliminary phase, would compromise the elements of the appropriate AA (Level II). Screening must therefore lead to an unequivocal result, as any uncertainties about the results must lead to the initiation of Level II of Appropriate Assessment.

Therefore, as reaffirmed in the National Guidelines for AA, *the inclusion of prescriptions and/or mitigations in the AA screening opinion must be excluded, also in the light of the judgment of the European Court of Justice in case C-323/17 of 04.12.2018, in which it is reported that any measure suitable to prevent effects on the Natura 2000 site must not be taken into consideration in this phase*.

Based on the above, **when the AA screening is carried out as part of the procedure for verifying the subjectability to EIA, the relative provision issued by the competent authority cannot contain environmental conditions relating to the mitigation of negative effects on the network site Natura 2000 as this condition prefigures the need to start the Level II of Appropriate Assessment and the EIA procedure**, as indicated in Chapter 2.8 of the National Guidelines AA:

*"If on the basis of the elements provided it is not possible to exclude negative effects on the Natura 2000 site\*, Level II (Appropriate Assessment) is started with the preparation of the Study for AA, integrated with the Environmental Impact Study (EIA)".*

With regard to the synergies between the scope of the AA and EIA screening, the aforementioned Guidelines of the European Commission on screening, when that the procedures are integrated as in the case of

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<sup>1</sup> <https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/a9f8a19a-fba5-440f-abf2-29d3f9ed7a63/details?download=true>

<sup>2</sup> <https://circabc.europa.eu/ui/group/3b48eff1-b955-423f-9086-0d85ad1c5879/library/b7451988-d869-4fee-80de-0935695f67f2/details?download=true>

national legislation, or coordinated pursuant to article 2.3 of the EIA Directive, indicate that *screening under the EIA Directive should go hand in hand with screening under Article 6.3 of the Habitats Directive and that wherever possible, and as far as possible, the two requirements should be coordinated thereby allowing for the transfer of knowledge/results from Habitats Directive Screening to inform EIA Screening.*

Otherwise, within the appropriate assessment (Level II) the mitigation measures are envisaged in the event that an adverse impact has been identified and are aimed at eliminating or limiting this impact below a significant level, during or after the implementation of the intervention/activity.

Therefore, **in the event that the appropriate assessment is carried out as part of the EIA procedure, the relative provision issued by the competent authority may contain environmental conditions relating to the mitigation of negative effects on the Natura 2000 network site.**

As indicated in Chapter 3.3 of the National Guidelines for AA, these measures therefore have the specific and exclusive purpose of reducing interference on habitats and species of Community interest, ensuring that the achievement of conservation objectives and the containment of negative effects on the integrity of the Natura 2000 site(s) below the significance threshold are not jeopardised.

The following Figs. 1 and 2 show some examples of measures for the prevention and reduction (mitigation) of environmental impacts pursuant to the EIA directive and the Habitats directive which show a substantial convergence of objectives and methods of intervention, without prejudice to the specific objective (target) of conservation of the integrity of the Natura 2000 site relating to the Habitats Directive.

type of measure	type of measure
measures to prevent	prevent the impact <ul style="list-style-type: none"> <li>• changing means or techniques, not implement certain designs or employ design components that could cause adverse impacts</li> <li>• change sites, avoid environmentally sensitive areas</li> <li>• put preventive measures in place to block negative effects that may occur</li> </ul>
measures to reduce	reduce the impact <ul style="list-style-type: none"> <li>• resize or move the project</li> <li>• redesign project elements</li> <li>• use a different technology</li> <li>• consider additional measures (noise barriers, exhaust gas treatment, type of road surface ...) to reduce impacts at both source and receiver</li> </ul>

*Fig. 1 – Examples of mitigation measures to reduce negative environmental impacts. Source: European Commission Guidelines for Environmental Impact Assessment, 2017. Box 34 – Types of mitigation measures*

prevention of the incidence
<ul style="list-style-type: none"> <li>• technical solutions to prevent the negative effects of the plan and the project (such as noise or light or dust suppression devices)</li> <li>• positioning of project elements to avoid sensitive areas (entire Natura 2000 sites or key areas within them or areas connecting sites of the Natura 2000 network)</li> <li>• protective fences or other measures to avoid damage to vegetation and/or wildlife</li> <li>• optimization of work coordination to avoid negative effects</li> </ul>
incidence reduction
<ul style="list-style-type: none"> <li>• noise barriers</li> <li>• pollutant interceptors</li> <li>• controlled access to sensitive areas during construction/operation</li> </ul>



- wildlife crossing (bridges, tunnels, ecological conduits)
- adaptation of the actions that generate incidence to reduce the effects as much as possible (from noise, from lighting, from dust, ...)

Fig. 2 – Examples of mitigation measures. Source: EC Communication (2021) 6913), Table 6

It should be noted that a clear planning of how the mitigation measures will be implemented (methods and timing) must be included in the environmental monitoring project as an integral part of the environmental impact study pursuant to art. 22, paragraph 3, letter e), to make the proposal more solid and allow the verification of the effective implementation by the competent authority.

### Compensation measures

In the AA, in the event of significant negative effects on the Natura 2000 network site which persist despite the mitigation measures defined in AA (Level II), and once examined and evaluated all possible alternative solutions, including the option "zero", in the presence of imperative reasons of significant public interest (IROPI - *Imperative Reasons of Overriding Public Interest*) suitably motivated and documented, the procedure pursuant to art. 6.4 of the Habitats Directive, which is the **Level III of the Impact Assessment**, corresponding to the identification of **compensation measures** (art. 5, paragraphs 9 and 10, of Presidential Decree 357/1997).

In the EIA, according to the aforementioned Guidelines of the European Commission on the study of environmental impact, the compensation measures are also identified as a last option in the presence of residual and unavoidable impacts despite the fact that, according to a gradual approach, the measures to avoid, prevent and reduce impacts and are described as measures to compensate for residual negative impacts that cannot be avoided or further reduced in a given area, through improvements made in other locations.

Referring to the National Guidelines for AA and to the "Technical support document for the definition of the Compensation Measures of the 92/43/EEC Habitats Directive (Level III of the Impact Assessment) and to the compilation of the Form to be sent to the European Commission" - prepared by the Line LQS2 of the CREIAMO PA Project for all the technical and procedural insights on compensation measures pursuant to the Habitats Directive, regarding synergies and/or differences with the EIA Directive, it should be noted that the binding condition envisaged by the Habitats Directive which limits the possibility to compensate for significant impacts only if there are valid imperative reasons of overriding public interest (IROPI), including those of a social or economic nature, is not expressly foreseen in the EIA Directive to compensate for significant negative impacts in relation to the various environmental factors.

If for the Habitats Directive, the compensations are configured as measures of an exceptional and derogatory nature of the provisions of art. 6, paragraph 3, aimed at guaranteeing the conservation objectives of the sites and the coherence of the Natura 2000 network, it should be noted that even in the EIA discipline the compensations are to be considered as an EIA residual routes solution, following a complete evaluation of the design alternatives (location, technological, dimensional, etc.) and the application of all possible measures to prevent, avoid and mitigate impacts.

### Impacts on **biodiversity** (EIA) and effects on the Natura 2000 network (AA)

Article 3, paragraph 1 of the EIA Directive establishes that the environmental impact assessment must identify, describe and evaluate, in an appropriate way, for each particular case, the significant effects, direct and indirect, of a project on various factors, such as **biodiversity**, with particular attention to species and habitats protected under Directive 92/43/EEC and Directive 2009/147/EC.

The reference to the impacts assessment on the "biodiversity" factor was introduced by Directive 2014/52/EU, while in the previous regulation reference was made only to "Fauna and Flora".

This change is very significant since fauna and flora taken individually refer to plant and animal life at a particular time or in a particular area, which implies a somewhat subjective point of view, while

**biodiversity**" refers to the interactions, variety and variability within species, between species and between ecosystems and therefore represents a much broader concept than the mere consideration of impacts on fauna and flora.

This important change is coherent with the European Biodiversity Strategy 2020 which has set itself the objective of halting the loss of biodiversity and the degradation of ecosystem services in the EU by 2020 and restoring them as far as possible and also with the new 2020 EU Strategy which reaffirms and strengthens the objectives of protecting and restoring nature to be achieved by 2030 ("Bringing nature back into our lives", COM(2020) 380 final).

The aforementioned Guidelines of the European Commission on the environmental impact study highlight a series of relevant issues that must be addressed regarding the assessment of impacts on biodiversity which include, for example, the degradation of ecosystem services, the loss and degradation of habitats, the loss of species diversity and loss of genetic diversity. In 2013 the European Commission published the Guidance on Integrating Climate Change and Biodiversity into Environmental Impact Assessment which identifies the main considerations on which to base the assessments and includes examples of key questions that should be asked, in order to evaluate impacts on biodiversity effectively.

In the Communication of the European Commission C(2021) 6913 final "Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on article 6, paragraphs 3 and 4, of the Habitats Directive 92 /43/EEC" regarding the relationships between EIA, AA and the strict provisions of the Habitats and Birds Directives on the protection of species the directives, in addition to the site protection governed by Article 4 of the Birds Directive and Article 6 of the Habitats Directive, also establish a system of strict protection of certain species throughout their natural range within the EU, i.e. **both inside and outside Natura 2000 sites**.

Therefore, **without prejudice to the AA which focuses on the protection of Natura 2000 sites**, i.e. areas of high value in terms of biodiversity of European importance and therefore requires more stringent checks and the results of which are binding for the purposes of authorizing a project, for the assessment of the impacts on biodiversity not included in the Natura 2000 network, the European Commission (C(2021) 6913 final) recalls the **protection measures that apply to the species listed in Annex IV of the Habitats Directive** (animal and plant species of Community interest requiring strict protection) **and to all wild bird species as defined in Article 5 of the Birds Directive and Articles 12 (for animal species) and 13 (for plant species) of the Habitats Directive**.

In addition to the deliberate capture or killing of species, the prohibitions also include the deliberate disturbance of these species, in particular during the breeding, rearing, hibernation and migration periods, the deterioration or destruction of breeding sites or rest areas, the deliberate destruction of nests and eggs, or the uprooting or destruction of specimens of protected plants.

The implementation and operation of a project, even outside of Natura 2000 sites, may be in conflict with these strict provisions on the protection of species and may require the application of derogations (Article 9 of the Birds Habitats Directive and Article 16 Habitats Directive) which are however permitted in limited cases, such as the interest of public health and safety, provided that there is no other satisfactory alternative and that the consequences of such derogations are not incompatible with the general objectives of the directives.

Competenze e Reti  
per l'integrazione  
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