

EN
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Answer given by Ms Roswall
on behalf of the European Commission
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Article 12(1)(d) of the Habitats Directive¹ aims at safeguarding the continued ecological functionality (CEF) of breeding sites and resting places of species listed in Annex IV(a). Measures to ensure CEF² must have the character of preventive mitigation measures³. They may also include measures that actively improve or manage a certain breeding site or resting place in such a way that it does not suffer from a reduction or loss of ecological functionality. The preventive nature of the measures implies that they must be effective before the activity with the expected impact is carried out. If such measures cannot ensure the continued ecological functionality of the site concerned, the activity requires a derogation under Article 16.

Implementing CEF measures is a way to comply with the requirements of Article 12 of the Directive and avoid the need for a derogation under Article 16. A possible delay of the project caused by the implementation of CEF measures is per se not a valid justification to put in question an alternative solution in the meaning of Article 16. It is rather for the project developer to avoid possible delays of the project by considering compliance with the species protection requirements at an early stage of the planning process.

While the Commission considers that national instruments such as a state-managed species protection fund may contribute to the maintenance and restoration of the favourable conservation status of species, it notes that such a fund should be established in a way that respects the requirements of Article 16 of the Directive and complies with the EU Treaty principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay⁴.

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7–50.

² As described in Commission notice ‘Guidance document on the strict protection of animal species of Community interest under the Habitats Directive’, C/2021/7301 final.

³ i.e. measures minimising or even cancelling out the negative impact to a high degree of certainty.

⁴ Article 191 (2) of the Treaty on the Functioning of the European Union.