The avosetta group having deliberated the issue at its meeting in Krakov on January 13/14, 2006, proposes the following on the interpretation and further development of the EC Natura 2000 legislation:

I. Interpretation guidance

1. Art. 226 EC:

Art. 226 EC should, in the light of Art. 255 EC, be read to provide that the reasoned opinion is accessible for the public

2. Management (Art. 6 (1) and (2))

- Art. 6 (1) asks for an active management of a N2000 site. This implies that site specific and detailed maintenance and development plans have to be drafted.

- Art. 6 (1) and (2) should be understood to allow for a „natural" change of the site, i.e. to direct protection to the dynamics of the natural succession rather than only to the specific type of species or habitat.

3. Screening and Assessment (Art. 6 (3))

- the term „project" goes beyond those activities which are subject to authorisation or EIA requirements under national legislation

- the impact assessment of Art. 6 (3) can be integrated into a SEA or EIA if these are required by EC and/or national law, provided that it is conducted with regard to the site's conservation objectives

- guidance should be produced stating the basic environmental parameters to be considered when carrying out the screening and appropriate assessment of encroachments on protected areas

- „adverse effect" should be read to include the cutting into parts or the significant diminution of a protected area

- compensation measures as provided in Art. 6 (4) cannot be counted at the stage of the determination of adverse effects

4. Art. 6 (4)

- „imperative reasons of overriding public interest" cannot be defined once for all but only in a topical way developed through case law

- topoi to be considered include:

    - whether a public service is rendered by the project

  - whether regional interests of sustainable development are involved, and evidence is provided for the predicted benefit

  - whether public health or the environment shall be furthered

- the Commission opinion rendered in cases of Art. 6 (4) subpara. 2 should be accessible to the public

- wild birds included in Annex I Dir 79/409 and migratory birds referred to in Art. 4 (1) should be included in the notion of prioritary species in Art. 6 (4) Dir. 92/43

- „alternative solution" should be construed in view of the public interest persued by the project or plan

- „solution" implies that alternatives can go beyond the dimension of geographical location

- it is not necessary that the initiator of a project must be capable of realising the alternative option; essential is that the alternative can be realised at all, i.e. by any developer or administrative body

- the costs of the alternative option can go beyond those of the primary option provided that they are not excessive

- the operator must, before the authorisation is granted, prove that he or she is able to take the needed compensatory measures, and that these measures provide effective compensation

5. Preliminary protection

- the preliminary protection regime postulated in the ECJ Draggagi judgment should be extended to sites which are eligible as Bird or Habitat Protection Sites (SPA or SAC) but have not yet been notified to the Commission

- the protective regime should be understood to come close to the requirements of Art. 4 (4) Dir. 79/409 and Art. 6 Dir. 92/43 respectively.

II. Revision of the directives

Any legal regime for nature conservation which does not allow for continuous assessment and review of already protected sites or additional sites in need of protection will become obsolete after some time. Therefore Natura 2000 should be amended to require the designation of new sites for the Natura 2000 network. Whilst the designation of Bird Protection Areas (SPAs) was established as a continuous obligation in Art. 4 (1) and (2) Dir. 79/409, the continuance of the designation of further Habitat Protection Areas (SACs) would need a modification of the relevant provisions of Dir. 92/43.

Further informsation on the avosetta group can be obtained from www.avosetta.org. Contact address: Prof. Gerd Winter, University of Bremen (feu@uni-bremen.de)