

# Session III – Legal Issues



## 1) Compensation and mitigation – Compulsory measures | group A (K. Čivić)

- This is site specific based on situation and goals (FSC) – no universal answer/list
- Compensation/restoration type of measure can be the same, but compensation is in addition

## 2) Dealing with restoration measures: Change and the legal perspective | groups B (Prof. Elliott), C (R. Morris)

- The law has to be able to cope with the uncertainties and dynamics in estuaries
- The habitat directive is more suited to terrestrial systems than dynamic estuarine systems (written by lawyers, who don't understand the complexity of the system)
- The member state should develop a favorable conservation state (national law <-> directive)
- Overlapping objectives e.g. bird versus habitat (directives)
- Way forward strategy with milestones + review
- Providing you are making progress you are working within the law.



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## 3) How effective must compensatory measures be? | groups D (B. Netz), E (E. Hawthorne)

- Leave space for dynamics
- Confining clear objectives and a good monitoring
- It needs a body with long-term responsibility for measures
- We need a positive objective for the Natura 2000 network
- Very specific definition (reducing theoretical uncertainty)
- Not taking account of (or knowing) wider estuary systems + dynamics
- Importance of what was agreed beforehand, specific objectives. If not met, clearly set out what happens + who

## 4) Referring to current ECJ Judgements: Nature inclusive design of | group G (F. Neumann)

- When in doubt if a measure is mitigation or compensation: apply 6.4!
- Opportunities for proper mitigation & effective avoidance should be seized however.



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## 5) The legal framework for “temporary nature” projects | group F (H. Schoukens)

- Examples? Yes, in the Netherlands (2000 ha) and Flemish Region (part of comp. plan). Has no been used in Germany since lawyers deem it to be contradictory to German nature conservation law
- Solutions. Apply for a derogation in advance (NL), grant legal certainty before nature is allowed on the land
- What if unexpected species settle – a generic derogation could address this scenario but legally contested.
- Make a distinction between mitigation/compensation + temporary nature