



EUROPEAN COMMISSION

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COMMISSION OPINION

of 29.5.2012

delivered upon request of Germany pursuant to Art. 6(4) sub par. 2 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, concerning the construction of the B 252/B 62, bypass of the municipalities Münchhausen, Wetter and Lahntal (Germany/Hesse)

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I. The legal framework

Article 6(3) of Directive 92/43/EEC (the 'Habitats Directive') requires that 'any plan or project not directly connected with or necessary to the management of a Natura 2000 site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, be subject to an 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 its implications for the site and subject to the provisions of paragraph 4, the competent national authorities may 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'.

According to Art. 6(4) of Directive 92/43/EEC, a plan or a project 'may be carried out in spite of a negative assessment of the implications for a Natura 2000 site, in the absence of alternative solutions, if it is justified for imperative reasons of overriding public interest, including those of a social or economic nature. In this case the Member States shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected and it shall inform the Commission of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species, and if considerations relating to human health, public safety or beneficial consequences of primary importance for the environment cannot be invoked, the project can be justified, further to an opinion from the Commission, by other imperative reasons of overriding public interest'.

II. The German request

On 12th September 2011, the Commission received a letter dated 31st August 2011, together with accompanying technical files, from the German Permanent Representation requesting an opinion from the Commission pursuant to Art. 6(4) of the Habitats Directive concerning the construction of the B 252/B 62, a bypass of the municipalities Münchhausen, Wetter and Lahntal (Hesse).

III. The project

The project concerns the construction of a National Road which is shown in figure 1. It will start in the north of the Münchhausen municipality and end in the south of Lahntal-Göttingen connecting to the existing B 62. The new road will run to the west of the existing B 252 and will be of a total length of 17.56 km. Within the framework of this project additional adjustments, redimension and relocation of public infrastructure, such as communal roads, energy grids, a railway and a gas pipeline, are foreseen.

IV. The sites

The site DE 5118-302 “Obere Lahn und Wetschaft mit Nebengewässern” is a site of Community Importance (SCI) and is designated under the Habitats Directive. It covers the natural course of the river Lahn, Wetschaft, their tributaries and river shores and has a dimension of 374.1 ha. According to the standard data form, the site has been established mainly for the conservation of the following habitat types of community interests:

3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition type vegetation,

3260 Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation,

6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels,

91E0* Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*,

The SCI site DE 5017-305 “Lahnhänge zwischen Biedenkopf und Marburg” is situated very close to the project in the west.

The site DE 5018-401 “Burgwald” is a site classified as Special Protection Area (SPA) pursuant to the Birds Directive 2009/147/EC.

All sites are situated in the continental bio-geographical region.

V. Implications of the project on the site

An appropriate assessment according to Art. 6(3) of the Habitats Directive was carried out for the project. It concluded that the site DE 5017-305 „Lahnhänge zwischen Biedenkopf und Marburg“ would not be adversely affected by the project. Site DE 5018-401 „Burgwald“ will be positively effected by the project because the project will be further away from the site and will reduce most of the traffic load of the existing National Road B 252.

On the other hand, the impact assessment concluded that there will be significant impacts on the Natura 2000 site DE 5118-302 "Obere Lahn und Wetschaft mit Nebengewässern". The course of the National Road B 252/B 62 crosses the site at three locations (see fig. 1):

1. Wollmar, in the north of Münchhausen;
2. Treisbach, in the middle part at Amönau;
3. Wetschaft, in the south of Göttingen.

At all three intersections, the priority habitat type of Community interest 91E0* (alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*), habitat type 3260 (water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation) and the species of Community interest, *Cottus gobio* (Freshwater sculpin) and *Lampetra planeri* (Brook lamprey) are affected by barrier effects (for 91E0* and its inhabiting species), additional deposition of nitrogen gases by traffic (for all habitats) and additional sediment

deposition (for all water-living species). The project damages directly and indirectly habitat type 91E0* through fertilizing and acidifying by nitrogen gases.

As the project will adversely affect the integrity of a Natura 2000 site hosting one priority habitat type, the project may only be authorised if it satisfies the requirements set down in Article 6(4) of the Directive.

VI. Fulfilment of the requirements under Art. 6(4)

- Alternative solutions

The German authorities assessed twelve potential alternatives, together with the zero alternative. All alternative solutions lead to significant effects on Natura 2000 sites including those hosting the priority habitat 91E0* alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*. All of them cross the Natura 2000 site DE 5118-302 "Obere Lahn und Wetschaft mit Nebengewässern". None of them cause significant lower impact than the chosen option because they would either cover more surface of Natura 2000 site than the proposed project or they would lead to more nitrogen deposition. The zero alternative does not fulfill the project criteria of relieving the municipalities Münchhausen, Wetter and Lahntal.

The competent authorities therefore consider that the current proposed solution is the best balance between ecological and economic objectives.

- Imperative reasons for overriding public interest

The National Road B 252 is an important north-south connection between the regions Paderborn-Korbach and Marburg-Gießen. The National Road B 62 links Biedenkopf via Cölbe to the long-distance axes Gießen-Marburg-Kassel.

The German authorities submitted a sound forecast for the year 2020 showing that the bypass has importance for long-distance traffic: Without the bypass the daily traffic load is estimated in Münchhausen to be from 13,100 to 13,900, in Wetter from 13,900 to 15,900 and in Lahntal-Göttingen from 19,200 to 24,900 vehicles. After completion of the project, traffic will decrease in Münchhausen to a daily level of from 1,800 to 4,400, in Wetter to a level of from 800 to 2,800 and in Lahntal-Göttingen to 5,800 to 6,700 vehicles. On average, this represents a reduction of between 68% and 94% in the municipalities concerned. This figure shows the dominance of long-distance traffic on the existing National Road and that it has a national rather than just a local importance.

- Impact mitigation

Mitigation measures foreseen include postponing the time frame for construction work during the reproduction phase of fish, building protection walls to avoid possible input of sediments into the Wollmar and Treisbach streams as well as other measures. This limits the extent of negative impacts on species of Community interest which are characteristic for the habitat type 3260, like *Cottus gobio* and *Lampetra planeri*. Protection walls will mitigate against noise and visual disturbance.

- Compensatory measures

The expected impacts of the project on the coherence of the Natura 2000 network, the affected target feature – habitat type 91E0* alluvial forests with *Alnus glutinosa* and *Fraxinus*

excelsior – will be compensated. Three measures are foreseen to compensate the loss of habitat type 91E0* by the project directly and indirectly caused by fertilizing and acidifying through nitrogen gases. Direct impacts into the priority habitat type 91E0* are compensated by the ratio of 1:3,3 and the indirect loss by 1:2.

VII. Opinion of the Commission

According to the information submitted, the construction of the B 252/B 62 bypass for the Münchhausen, Wetter and Lahntal municipalities is justified as an important project of overriding public interest for which there are no alternatives. Mitigation measures will be implemented which will limit the negative effects of the construction of the project. The project will however have significant impact on the integrity of one Natura 2000 site, in particular on priority habitat type 91E0* alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*.

The negative effects will be compensated for by the creation of equivalent habitats on a total area that will be larger than the area that will be affected. The German authorities committed themselves to implement a concrete and timed monitoring and implementation scheme. The protection of the overall coherence of the Natura 2000 network will therefore be ensured. **On the basis of the detailed information and explanations provided by the German authorities and taking into account in particular the issues set out in the present document, the Commission is of the opinion that the adverse effects of the construction of the B 252/B 62, bypass of the municipalities Münchhausen, Wetter and Lahntal (Hesse) are justified by imperative reasons of overriding public interest.**

The opinion is subject to the following conditions:

- The mitigation and compensatory measures will be implemented and monitored as described in the documents submitted to the Commission by the German authorities.
- Detailed reports on the implementation and monitoring of these measures will be made available to the broad public via internet as committed to by the German authorities.
- The results of the accompanying monitoring programme regarding Natura 2000 sites will be taken into account in that it may, if need be, lead to appropriate rectification of the project design or to additional compensation and/or mitigation measures.

Done at Brussels, 29.5.2012

For the Commission
Janez Potočnik
Member of the Commission

Annex

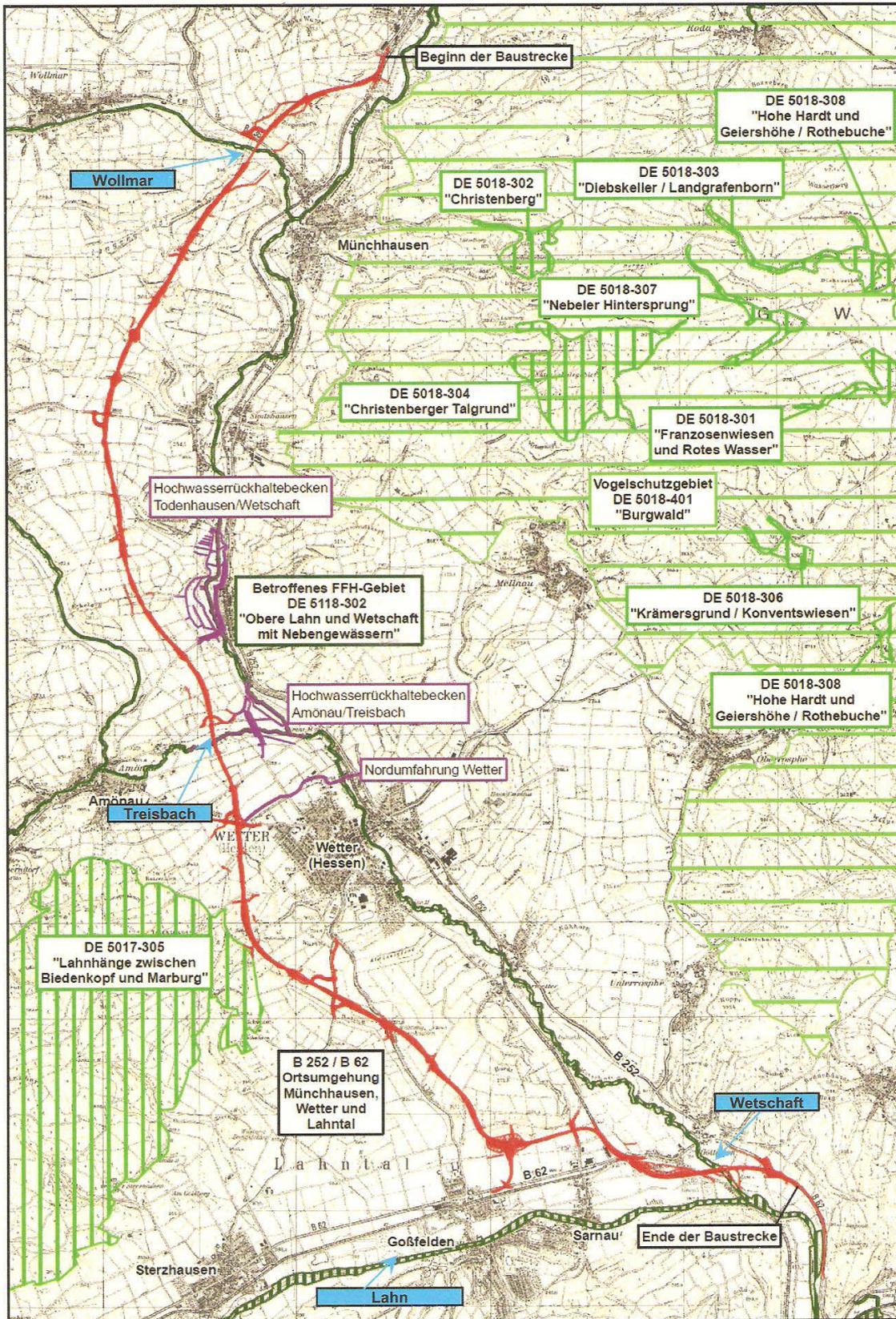


Figure 1: Overview of the construction project and Sites of Community Importance in the construction zone.