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COMMISSION OPINION

of 3 December 2010

on 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 extension of the motorway A 49 by linking the end of the completed A 49 at Neuental with A 5 in Hesse (Germany)

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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 article 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 5 July 2010, the Commission received a letter, together with accompanying technical files, from the German Permanent Representation requesting an opinion of the Commission pursuant to Art. 6 (4) of the Habitats Directive. The request concerns the authorization of the extension of the motorway A 49 from its present end point at Neuental to the link with the A 5 motorway at Gemünden. This section is situated in Hesse.

III. The project

The highway A 49 is part of the trans-European road-network. The project includes the construction of the new section between Neuental and Gemünden. The proposed section will run through the western part of the Natura 2000 site "Herrenwald östlich Stadtallendorf" (DE 5120-303), cutting through this area on its margin. The project also includes the construction

of a bridge with a height of 6 – 11 meter and a length of 350 meter, crossing the river "Joßklein".

IV. The sites

The site DE 5120-303 „Herrenwald östlich Stadtallendorf“ is a Site of Community Importance (SCI) designated under the Habitats Directive. It is situated in the Continental biogeographical region and covers an area of 2,688 hectares. It is characterised by structurally diverse, heterogeneous woodland with some old stands of beech and alder. The most significant habitat type of Community interest in the SCI is the '*Luzulo-Fagetum* beech forest' which covers 452 ha. Combining open spaces and numerous small watercourses in a military training area in the south eastern part of the site, the area is also of extraordinary importance to amphibians. It hosts a nationally significant population of the great crested newt (*Triturus cristatus*). In addition the Herrenwald is of great importance as hunting grounds and summer roosts for the Bechstein's bat (*Myotis bechsteini*). The site includes the river Joßklein, accompanied by the priority habitat type 'Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*'. According to its standard data form, the SCI "Herrenwald östlich Stadtallendorf" has been designated mainly for the conservation of the following species and habitat types of Community interest (Annexes I and II of the Habitats Directive):

The Bechstein's bat (*Myotis bechsteini*),

The Greater mouse-eared bat (*Myotis myotis*),

The Great crested newt (*Triturus cristatus*),

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

9110, *Luzulo-Fagetum* beech forest,

3150, natural eutrophic lakes with *Magnopotamion* or *Hydrocharition*-type.

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 proposed motorway section. It concluded that the construction of this section and the associated construction of a bridge will have a significant impact on the Natura 2000 site "Herrenwald östlich Stadtallendorf" in particular on two habitat types, the '*Luzulo-Fagetum* beech forest' (9110) and the priority habitat type 'Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*' (91 EO*). The total loss of the habitat types 9110 and 91EO* will be limited to approximately 0,96 ha. The priority habitat type 91EO* will be affected on 0,09 ha by the placement of bridge abutments and the construction of the motorway. Changes that will be caused to the local micro-climate, notably by light and rain interception by the new bridge, have been assessed. Increased nitrogen depositions from road traffic will affect the habitat type 91EO* and its characteristic plant species over an area of 5,50 ha. A possible deterioration of the conservation status of this priority habitat type is therefore expected.

No significant impacts are expected on the Annex II species *Myotis bechsteini* and *Myotis myotis*. Significant impacts on the species *Triturus cristatus* can also be ruled out.

As the project will, however, adversely affect the integrity of a Natura 2000 site hosting several protected habitats, including one priority habitat type, the project may only be authorized 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

Twelve possible alternative routes have been assessed. According to Germany none of the investigated alternative solutions can adequately reach the goals of the national traffic concept plan without affecting the Natura 2000 site. All alternatives lead to significant impacts on the site, in particular on the priority habitat 91EO*, as all these routes would also require crossing the Joßklein river. Only one variant (the so called 'M1-variant') would have less impacts on the site, but it would not allow achieving all the objectives of the project.

The competent authorities therefore consider that there is no alternative solution that would allow reaching the objectives of the project in the light of the national traffic concept plan.

- Imperative reasons of overriding public interest

As part of the trans-European road network, the A 49 has the objective of enhancing the development of the region, and in particular the development of the economic centre of Stadtallendorf. Regional economic models suggest that this development will create up to 13.600 jobs in different companies. As an important positive result, traffic density on the subordinate road network will be reduced by 100.000 vehicles/day. This will reduce local air pollution by up to 75 %. Also the noise levels will be reduced by almost 10 dB(A). The probability of accidents will be decreased by 60 %. The construction of the new section of the A 49 is therefore considered to be of overriding public interest.

- Impact mitigation

Activities directly or indirectly linked to the construction of the new motorway section are considered not to be likely to have any significant effects on the site as comprehensive mitigation measures will be implemented. These measures include for example keeping the duration of the building activities as short as possible and utilising the existing industrial and forestry tracks as service roads. Other temporary roads will be removed after completion of the new bridge. The Joßklein river and its riverbanks will not be directly affected by the bridge construction.

The bridge itself is part of the mitigation concept. It is proposed to bridge the alluvial area of the Joßklein river by means of a wide-span viaduct which is being constructed in line with the valley geometry. Therefore the impact on the habitat type 91EO* is limited to the construction of the fundamentals which are reduced to a minimum due to an extremely light-weight construction. As a further result this type of bridge will not affect the dynamics of the alluvial area. With a view to avoiding noise and other disturbances, noise barriers with a height of 4 meters will be installed. These will also help avoiding direct inputs of pollutants into the Joßklein river. Surface water from the road and its embankments will be diverted.

- Compensatory measures

To compensate the expected impacts of the project on the coherence of the Natura 2000 network measures are planned in the near-by Natura 2000 sites "Brückerwald und

Hußgeweid" and "Herrenwald östlich Stadtallendorf". Additionally it is planned to enlarge the site "Brückerwald und Hußgeweid" by adding the area "Kleinaue" (all actions have undergone a Natura 2000 impact assessment).

The objective of the proposed compensatory measures is the creation of an extensive alder-ash alluvial forest complex of the Habitat type 91EO* in the river system of the Joßklein and Klein rivers. Within the Natura 2000 sites "Herrenwald östlich Stadtallendorf" and "Brückerwald und Hußgeweid" ca. 12 ha of the habitat type 91EO* will be created. The Natura 2000 site "Brückerwald und Hußgeweid" will be enlarged by ca. 1,09 ha. The implementation of the compensatory measure will increase the local area of the habitat type 91EO* by 23 %.

Apart from the restoration of additional areas of the habitat type 91EO*, the most important compensatory measures are the renaturation of the Joßklein river and the structural improvement of the alluvial areas of these rivers. These measures are intended to improve the ecological quality of the existing alder-ash alluvial forests. They will lead to a coherent system of areas with high ecological quality, linking the two Natura 2000 sites "Herrenwald östlich Stadtallendorf" and "Brückerwald und Hußgeweid" and creating an ecologically coherent area over a total length of 18 km.

The German authorities confirmed that the compensation measures will be realised timely and before the expected damage to protected habitat types will occur. The measures will completely protect the coherence of the Natura 2000 network with immediate effect. Long-term habitat monitoring is part of the compensation measures.

VII. Opinion of the Commission

According to Article 6.4 sub par 2 of Directive 92/43/EEC and upon request by Germany the Commission emits the following opinion.

Based on the information submitted by the competent German authorities, the Commission concludes that the extension of the A49 and its cutting through the western part of the Natura 2000 site "Herrenwald östlich Stadtallendorf" in Hesse as well as the bridging of the Joßklein river are justified by imperative reasons of overriding public interest and that there are no viable alternatives to the planned project.

Twelve alternatives have been assessed, but the objectives pursued with the construction of the motorway, such as transport safety and regional development would not be achieved without affecting the Natura 2000 site. Therefore the planned route for the extension of the A49 results as the only possibility to reach the objectives of the project in the context of the trans-European road-network. The Commission holds the view that the assessment of possible alternatives to the project was carried out in a satisfactory way and that it can be accepted that there exist no alternatives to the project.

With regard to mitigation measures, the Commission considers (on the basis of the available information) that the actions to be implemented will limit the negative effects of the construction and operation of the motorway. The mitigation measures are adequate and follow the precautionary approach. The project will however have adverse effects on the priority habitat type '91EO* Alluvial forests'. These effects will be compensated by the creation of equivalent habitats on a total area of 12,84 ha. This will increase the local area of the habitat type 91EO* by 23 %.

The location of the compensation areas will protect the coherence of the Natura 2000 network. No significant impacts are expected on species present in the Natura 2000 site and listed in Annex II and IV to the Habitats Directive (*Myotis bechsteini*, *Myotis myotis* and *Triturus cristatus*).

In the light of the above, the Commission considers that the proposed compensatory measures are acceptable and appropriate to protect the overall coherence of the Natura 2000 network.

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 building the new section of the motorway A 49 on the Natura 2000 site DE 5120303 “Herrenwald östlich Stadtallendorf” are justified by imperative reasons of overriding public interest.

The opinion is subject to the following conditions:

- The compensatory measures will be implemented and monitored as described in the documents submitted to the Commission by the German authorities.
- A detailed report on the implementation and monitoring of these measures will be submitted to the Commission.