



COMMISSION EUROPÉENNE

SECRETARIAT GENERAL

14 avril 2000

Bruxelles, le

F-D-E

C(2000)1079

NOTE POUR LES MEMBRES DE LA COMMISSION

PROCEDURE ECRITE

E/610/2000

ACCELEREE

Délai:

MERCREDI 19 AVRIL 2000 - 12 H

Observations éventuelles : service des procédures écrites SG-A-2
BREY 13/12 - Fax : 64316 - Tél.: 52362 / 52363
(responsable P. LAFILI - Tél. 52364)

Objet : Directive Habitats
- Mühlenberger Loch

D.G. ENV	A
18 -04- 2000	
ATTR: Dz	
INFO: A7	

Proposition de Mme WALLSTRÖM

Décision proposée :

- approuver le projet d'avis de la Commission émis à la demande de l'Allemagne, conformément à l'article 6, paragraphe 4, de la directive 92/43/CEE du Conseil du 21 mai 1992 concernant la conservation des habitats naturels ainsi que de la faune et de la flore sauvages, et relatif à l'extension du site de la société Daimler Chrysler Aerospace Airbus GmbH (DASA) à Hamburg-Finkenwerder, en Allemagne, pour accueillir un projet notifié à la Commission avec le détail de ses caractéristiques économiques et techniques ainsi que son impact prévu sur le site Natura 2000 de Mühlenberg Loch;
- le texte en langue allemande est le seul faisant foi;
- ne pas publier au JOCE.

Commentaire :

Ce projet concerne l'élargissement d'une usine DASA existante pour la finalisation de la construction d'un avion gros porteur, l'airbus A3XX.

Selon le service responsable, ce projet ne comporte pas d'incidences financières sur le budget communautaire.

Vu l'urgence, Monsieur le Président a marqué son accord sur l'engagement d'une procédure écrite accélérée.

Carlo TROJAN
Secrétaire général

Destinataires : MM. CURRIE, RAVASIO, COLASANTI, SCHAUB, LAMOUREUX, DEWOST
Pour information : M. EBERMANN

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NOTE DU SECRETARIAT GENERAL

PREPARATION DU DOCUMENT

Direction générale responsable

ENV Environnement

Services Associéspour accord

SG	Secrétariat général	: Accord
ECFIN	Affaires économiques et financières	: Pas de réponse
ENTR	Entreprises	: Accord
COMP	Concurrence	: Accord
TREN	Energie et Transports	: Accord

pour avis

SJ Service juridique : Avis favorable

Langue originale : EN

COMMUNICATION FROM MRS WALLSTRÖM TO THE MEMBERS OF THE COMMISSION

Subject Opinion of the Commission pursuant to directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora concerning the extension of the site of Daimler Chrysler Aerospace Airbus GmbH (DASA) in Hamburg-Finkenwerder (Germany) for the construction of the airbus A3XX.

By letter of 21th October 1999, the Federal Republic of Germany requested the Commission to give an opinion pursuant to article 6 paragraph 4 of the directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitat directive).

The request refers to a project concerning the enlargement of an existing DASA plant to complete the production of a jumbo passenger airliner, the airbus A3XX.

According to the project, the extension is to be located on 171 Ha of an existing river basin (the Muehlenberger Loch) designated by Germany as a Special Protection Area under directive 79/409/EEC on the conservation of wild birds and proposed as a Site of Community Importance under directive 92/43/EEC. In addition Germany has notified the site as a wetland of international importance under the RAMSAR Convention (1971). The protected area concerned is hosting several habitats and species covered by the annexes of the directives and in particular a threatened priority plant species according to the Habitats directive.

The impact assessment carried out by Germany shows that the extension of the industrial plant will have a significant effect on the site.

In such a case, in the absence of alternative solutions, the project can be justified only by considerations related to human health or public safety. Other imperative reasons of overriding public interest can be evoked only further to an opinion from the Commission (Article 6 paragraph 4 of the Habitats directive).

The German authorities have informed the Commission that, based on cost-effectiveness considerations and functional requirements there is no alternative location, which meets the criteria to realise the concerned project in Germany.

The German authorities have demonstrated that the project is of outstanding importance for the region of Hamburg and for northern Germany as well as the European aerospace industry. The project will generate an important number of highly qualified new jobs that will counterbalance the considerable loss of jobs in the industrial sector in the region. The project will have a positive impact on the competitiveness of the European aeronautic industry. It will contribute to the technological advance and foster the European co-operation in the aviation business.

If a project having significant effect on a Natura 2000 site "*must be carried out for imperative reasons of overriding public interest...*, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected". The Commission notes that Germany has not completed its site

proposal for Natura 2000 (infringement procedure underway) and has announced further sites in particular for the priority plant species. For the time being and in the absence of such proposals, the Commission is not in position to assess the relevance of the compensation in view of the coherence of the Natura 2000 network.

It is therefore proposed to the Commission to:

- Note that Germany has committed to propose additional sites but that the Commission is not yet in a position to fully assess whether the compensatory measures and their timing will ensure the overall coherence of the Natura 2000 network.
- Approve the draft opinion which confirms, in principle, the existence of imperative reasons of overriding public interest and, thus, the justification of the negative implications of the extension of the existing DASA plant along the Elbe river with a view to complete the production of the Airbus A3XX on the Natura 2000 site Mühlenberger Loch.
- Transmit the opinion to Germany.

a re pas / 2000

COMMUNICATION FROM THE COMMISSION

Opinion of the Commission of x/y/2000

Delivered upon request of Germany according to Art. 6 (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, concerning the extension of the site of Daimler Chrysler Aerospace Airbus GmbH (DASA) in Hamburg-Finkenwerder, Germany, to host a project notified to the Commission together with its economic and technical details and its expected impact on the Natura 2000 site Mühlenberger Loch

(2000/.../EC)

The German request

On 25/10/99, the Commission received an official note and file dated 21/10/99 from the German Permanent Representation requesting an opinion of the Commission pursuant to Art. 6 (4) of the Directive 92/43/EEC (in the following: "the directive") concerning the extension of an existing (DASA) plant for a project on a Natura 2000 site in the Mühlenberger Loch in Hamburg.

On 20/1/2000, after a thorough analysis of the file and the comprehensive annexes submitted by Germany the Commission addressed a letter to the German Permanent Representation requesting additional information. A reminder was sent on 28/2/2000.

On 28/2/2000, the German authorities submitted additional information to the Commission.

On 27/3/2000 a meeting took place between Commission and German officials where further information was been delivered to the Commission.

On 5/4/2000 a reminder was sent to the German authorities to request the information which were promised on other substantial sites for the Annex II priority plant species (*Oenanthe conoides*).

The project

The project concerns the extension of an existing DASA plant along the Elbe River in Hamburg on a site named Mühlenberger Loch. The aim of the project is to enlarge an existing plant located close to a runway to realise the project as defined by the German authorities in their request to complete the production of a jumbo passenger airline, the airbus A3XX (in the following: the project). The extension is planned on 171 ha of an existing river basin.

The site

The Mühlenberger Loch is already part of the Natura 2000 network.

- It has been classified in 1997 as a Special Protection Area (750 Ha) pursuant to Directive 79/409/EEC (Birds directive). According to the standard data sheets submitted by Germany, the site hosts:

- 6 species of Annex I of the Bird directive -using the site during migration- and

- 10 other migrating species. For three of them the site hosts an important share of the flyway and has been designated by Germany as a wetland of international importance under the RAMSAR Convention.

- It has been proposed in 1997 also as a Site of Community Importance (795 Ha) pursuant to the directive. According to the standard data sheets submitted by Germany, the site hosts:

- 3 habitats of Annex I of the directive, of which one is a priority habitat,
- 5 fish species of Annex II of the directive,
- 1 priority plant species of Annex II of the Directive (**Oenanthe conioides*). This is a rare endemic species of the upper part of the Elbe estuary.

Implications of the project on the site

The exploitation of about 20% of the site will, according to the German authorities, adversely affect a large area of one of the last huge German fresh water waddens. These belong to the habitat type "estuary", listed in Annex I of the directive and act, among other functions, as a seed bank for the above mentioned priority plant species.

With regard to the Birds Directive, the migration and foraging area of important bird's populations will also be considerably reduced.

There is no doubt that the project will adversely affect in the sense of Art. 6 (3) of the directive the integrity of a site of the Natura 2000 network hosting several habitats, including a priority one and being of a particular European importance for several species, including one priority species and also being a wetland of international importance.

In such a case the project may only be carried out if it complies with the requirements set up by Art. 6 (4); of the directive.

According to Article 6 (4) of the directive a project may be carried out in case of a negative assessment of the implications for the site only in the absence of alternative solutions. It has to be justified by imperative reasons of overriding public interest. The Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. Where the site concerned hosts a priority natural type and/or a priority species and if considerations relating to human health or public safety or, to beneficial consequences of primary importance for the environment can not be invoked the project has to be justified further to an opinion from the Commission, by other imperative reasons of overriding public interest.

Since the implications of the project for the site are negative, as acknowledged by the German authorities, the fulfilment of the following requirements is to be assessed:

- Alternative solutions

The German authorities informed the Commission that the decision had already been taken by Airbus Industry that there are no alternative locations which meet the criteria for the A3XX project. They explained that this decision was based on the cost-effectiveness derived from using existing facilities and trained manpower to the maximum possible extent. This effectiveness excluded the use of other sites if the project was to lead to the necessary productivity gains.

The German authorities have informed the Commission that the project could only be realised as an extension of an already existing site of the developer, the only existing site in Germany being situated in Hamburg-Finkenwerder.

With a view to the specificity of the project the German authorities refer in particular to the outstanding technological requirements of the project which makes it a condition to use already existing facilities, infrastructure and highly qualified know-how present at the said site. These requirements are fulfilled in Germany only at the site situated in Hamburg-Finkenwerder.

As regards the competitive environment the German authorities refer to the strong competition of the developer of the project on the international level. Given this situation the developer has decided for technical and economy of scale considerations that the project would only be realised at an already operating site.

With regard to possible locations within Hamburg the German authorities have informed the Commission that three other locations in the surroundings of the site at Hamburg-Finkenwerder have been examined and assessed. However, none of the other locations are acceptable as alternatives. The reasons are related to the functional requirements of the site, to the size of the A3XX and the consequential need to extend the present hangar, standing and other related facilities. According to Germany expropriations of owners located within the territories of the other alternative locations are excluded by federal constitutional law for such a private project.

Imperative reasons of overriding public interest

The German authorities state that the project is justified by imperative reasons of public interest. They have demonstrated that the project is of outstanding importance for the region of Hamburg and northern Germany and the European aerospace industry.

With regard to the region of Hamburg the German authorities refer to a number of aspects pleading strongly for the realisation of the project in Hamburg-Finkenwerder. In particular they refer to the important number of highly qualified new jobs both directly and indirectly linked to the project. These are needed to counterbalance the considerable loss of jobs in the industrial sector of the region.

The German authorities have furthermore demonstrated that the project has a significant positive effect on the economical and social situation of the bordering regions, in particular Schleswig-Holstein and Niedersachsen.

Finally the German authorities underline the positive impact of the project on the competitiveness of the European aeronautic industry. They stress that the project will also contribute to the technological advance and foster the European co-operation in the aviation business.

With regard to the need to counterbalance the interests involved the authorities stress the high value of the site for nature protection, the importance of the site even on global level and the expected negative effect of the project on the site. The authorities state, however, that the site is affected only partially. Slightly over 170 ha of the territory will be affected, more than 500 ha remain intact. Given its impact on the site, the eminent importance of the project overrides the interest to abstain from the extension of the existing site of the developer into the Mühlenberger Loch.

Compensatory measures

As far as the compensatory measures are concerned, the German authorities have foreseen three compensation sites:

1.) Hahnöfer Sand (Niedersachsen), an area nearly bordering the Natura 2000 site Mühlenberger Loch - here on an existing Elbe island huge excavation measures are foreseen to regain wetland habitats.

2.) The area Twielenflether Sand/ Haseldorfer Marsch (Schleswig-Holstein), situated less than 20 km downstream the Elbe -. Here -within an existing Natura 2000 site - by reopening of embankments a recreation of estuary conditions is foreseen. However this newly created habitat will reduce other existing interests eg foraging or resting places for birds. Therefore as a further compensation for the impact in the site just mentioned:

3.) The area Hörner Au (Schleswig-Holstein) - situated approximately 30 km in the north of the Haseldorfer Marsch.-. This site is foreseen for recreation of wetlands and wet meadows in particular for birds.

The area foreseen for the compensation is significantly larger than the area exposed to the significant impact. The German authorities are confident, that the compensation will work and that additional surface for the habitats and species concerned might be gained in the future.

4. Opinion of the Commission

Given the factual situation as well as its assessment as described above, the Commission is of the opinion that the negative implications of the project concerning the extension of an existing DASA plant along the Elbe River in Hamburg with a view to complete the production of the Airbus A3XX on the Natura 2000 site Mühlenberger Loch is justified by imperative reasons of overriding public interest.

With regard to the compensatory measures as envisaged by Germany the Commission notes the following:

Germany has not yet proposed a sufficient number of sites according to Article 4 of the Directive.

Therefore the Commission is not in position to fully assess whether the compensatory measures and their timing will ensure the overall coherence of the Natura 2000 network.

In this context the Commission notes that Germany has taken the commitment to propose further sites, among others, for the priority species **Oenanthe conioides* in order to comply with its obligations under Article 4 of the Directive.