

**EN**



Brussels, 24/04/2003

**OPINION OF THE EUROPEAN COMMISSION OF 24/04/2003**

**delivered upon request of Germany according to Art. 6(4) Sub Par. 2 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of the natural habitats as well as the wild animals and plants<sup>1</sup>, concerning the creation of a new industrial and commercial area “Siegerland” within the former military training area Trupbach near Siegen/Freudenberg (North Rhine-Westfalia)**

**I. The legal framework**

Article 6(3) of directive 92/43/EEC (“Habitats Directive”) prescribes 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 9.6.2000 DG ENV received an official note and file dated 22.5.2000 from the German Federal Ministry of Environment, Nature Protection and Nuclear Safety requesting an opinion pursuant to Article 6(4) of the Directive 92/43/EEC concerning the creation of a new industrial and commercial area within the former military training area Trupbach near Siegen/Freudenberg in North Rhine-Westfalia.

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<sup>1</sup> O.J. No. L206 of 22.7.1992, p. 7

When the Commission opinion was requested in May 2000, the area had not yet been formally proposed by Germany as a Site of Community Importance (pSCI) under the Directive 92/43/EEC.

On 22 June 2000 the Commission informed Germany that an opinion pursuant to Art.6(4) of the Habitats Directive could only be issued by the Commission if the area had been formally designated as a pSCI.

On 23 March 2001 the area “Heiden und Magerrasen Trubbach”, N° DE 5113-301 was proposed as a Site of Community Importance (pSCI) by the German government.

### **III. The project**

The project consists in the creation of a new industrial and commercial area of 140 ha within the limits of the former military training area Trubbach (total area = 295 ha), whereof 85 ha have been designated as a pSCI. The affected area had been used in the past as a military training area by the German and Belgian armies.

### **IV. The site**

In 2001 large parts of the former military training area were proposed by the German government as a Site of Community Importance (pSCI), with the designation “Heiden und Magerrasen Trubbach”, N° DE 5113-301. The area is characterised by a rich complex of habitats, including the following habitats of Annex I of the Habitats Directive: 4030, European dry heaths (“Europäische trockene Heiden”), \*6230, Species-rich *Nardus* grasslands, on silicious substrates (“Artenreiche Borstgrasrasen montan (und submontan auf dem europäischen Festland)”) and 6510, lowland hay meadows - *Alopecurus pratensis*, *Sanguisorba officinalis* (“Extensive Mähwiesen der planaren bis submontanen Stufe”).

The area also hosts relevant populations of the Wood Lark (*Lullula arborea* - “Heidelerche”) and the Red-backed Shrike (*Lanius collurio* - “Neuntöter”), two birds species of Annex I of the Birds Directive (79/409/EEC). Two other species mentioned in that annex are also present on the site: the Common Crane (*Grus grus* - “Kranich”) and the Honey Buzzard (*Pernis apivorus* - “Wespenbussard”).

### **V. Implications of the project on the site**

An assessment of the impact of the project on the habitats and species protected under the Habitats Directive was carried out in the context of a general feasibility study of the project. That assessment concludes that the project would lead to a large scale destruction of the above mentioned habitat types. It would have a significant impact on the proposed Site of Community Importance, causing among others the destruction of an exceptionally rich habitat complex, with very high conservation value. The project would have an irreversible and significant negative impact on all habitat types and species for the conservation of which the area had been designated, as well as on the structural diversity and the integrity of the site as a whole. Following the competent authorities, mitigation measures would make no sense as a significant negative impact on the protected habitats and species cannot be avoided.

There is no doubt that the project will adversely affect in the sense of Art. 6 (3) of the directive the integrity of the site “Heiden und Magerrasen Trubbach” hosting a priority natural habitat.

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.

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

Since the implications of the project for the site are negative, as acknowledged by the German authorities, the fulfilment of the requirements under Art. 6(4) is to be assessed:

### **- Alternative solutions**

The need for a new industrial area in the neighbourhood of the city of Siegen is being explained by an insufficient availability of areas for industrial settlement. In 1993 the need for industrial areas in the region of Siegen, Freudenberg and Kreuztal was estimated to be around 158 ha for the period up to 2010. Seven other potential areas were assessed as potential alternatives to the proposed area “Siegerland/Trupbach”. However, only two suitable alternative areas were found, covering altogether an area of 56 ha. Although it was decided that these two areas could be used during a transition period, they were not regarded as being a suitable long term alternative to a single new large industrial area on the Trupbach site.

On 30 May 2001 the City Council of Siegen decided to launch a new study on the availability of industrial areas in the region. In that context the feasibility of creating new industrial areas on a number of sites was assessed or reassessed. A draft of the resulting ‘Plan for commercial and industrial areas’ (“Gewerbe- und Industrieflächenkonzept”), dated from October 2001, was made available to the Commission in early 2002. From that document it appears that at least three additional areas can be considered as possible alternatives for providing new space for industrial settlement to the city of Siegen. These areas are the following:

1. “Leimbachtal / Faule Birke / Eisernhardt” in Siegen / Eisern (63.8 ha)
2. “Oberschelden / Seelbach” (41.3 ha).
3. “Haardter Berg” (15.1 ha),

The site n° 1 could easily be increased by including an additional area situated on the territory of the neighbouring commune of Wilnsdorf. By doing so, an ‘inter-communal’ industrial area could be created. A part of the site n° 1 will be available only in 2005, as it is still in use as a dumping ground for inert materials. The site n° 3 would be available only after 2009 as it is for the time being still being used as a disposal area for slag from the steel industry.

### **- Imperative reasons of overriding public interest**

The claim that there exist imperative reasons of overriding public interest is based on the arguments that, following an assessment carried out in 1993 by the government of the District Arnsberg (“Bezirksregierung”), there exists an overall deficit of industrial areas for the district of Arnsberg (cities of Siegen, Freudenberg and Kreuztal) of 158 ha, whereof about only 50 ha can be covered by two other planned sites. The creation of a new industrial area of more than 100 ha within the former military training site of Trupbach would allow to fill this deficit and contribute to the economic development of the region by improving its economic structure. This new area would therefore be essential for maintaining and securing employment in the region. The concentration of commercial and industrial activities on one single site would have advantages from the economic and traffic point of view and enhance the inter-communal co-operation between the cities of Siegen, Freudenberg and Kreuztal.

## **- Compensatory measures**

No particular compensation measures have been proposed so far by the competent authorities.

## **VII. Opinion of the Commission**

The Commission holds the view that the above mentioned sites may represent relevant alternatives for providing additional areas for industrial settlement to the city of Siegen. The Commission also believes that existing industrial areas, which are already available but currently not in use, should be better integrated in the planning, before deciding on the creation of new industrial areas. Following a local citizens initiative, more than 370 ha of such unused industrial areas are still available in the district of Siegen-Wittgenstein. Moreover, the search for alternative sites for industrial and commercial development must not be limited by the boundaries of local municipalities. Alternative sites in neighbouring municipalities and 'inter-communal' sites could also provide additional space for industrial settlement in the region. Disadvantages resulting from such alternatives, e. g. with regard to taxation revenue, cannot justify to ignore them. It is the responsibility of the Member State concerned to resolve such difficulties.

Consequently, the Commission holds the view that the assessment of possible alternatives to the project was not carried out in a fully satisfactory way and that it cannot be accepted that there exist no alternatives to the project, as requested by Art. 6 (4) of the Directive 92/43/EEC.

With regard to the public interest of the project, the Commission holds the view that the effective need for additional industrial areas in and around the city of Siegen, as evaluated in 1993, needs to be re-evaluated while better taking into account the areas which are already available but currently not in use, as well as the economic situation of today, some 10 years after the latest evaluation of the situation was carried out.

Even if the existence of a certain public interest for making available additional industrial areas in the Siegen region could be acknowledged, the Commission nevertheless holds the view that there are no particular imperative reasons of overriding public interest for creating one single additional industrial area on the Trupbach site, whereas there is no convincing proof for the absence of alternative sites in the region. The Commission is furthermore not convinced of the argument that, as far as the employment situation is concerned, one single industrial area would represent a significant advantage when compared to step by step development of several smaller areas.

**On the basis of its assessment of the information available, the Commission is of the opinion that the adverse effects of creating a new industrial and commercial area within the former military training area Trupbach on the proposed Site of Community Importance "Heiden und Magerrasen Trupbach", N° DE 5113-301, are not justified by imperative reasons of overriding public interest.**