COMMISSION OPINION

of 5.4.2013

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 (the 'Habitats Directive'), concerning the deepening and widening of the ship fairway of the river Main at the sections Wipfeld, Garstadt and Schweinfurt (Bavaria/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 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 21st March 2012, the Commission received a letter dated 5th March 2012, 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 authorization of the deepening and widening of the shipping fairway of the river Main at the sections Wipfeld, Garstadt and Schweinfurt (Bavaria/Germany).

III. The project

The main purpose of the project is to widen the existing fairway of the river Main (see fig. 1) between the floodgates Wipfeld (milestone km 316.12) and Ottendorf (milestone km 345.29) from 36 m to 40 m and to deepen the river's waterway from currently 2.50 m to 2.90 m. At the river bends the widening will be scaled up to 58 m based on physical manoeuvrability of boats. The project's dimension is appropriate to the existing extension stage of the Lower

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Main and the Main-Danube-Canal and is part of the Trans-European Network (TEN). This will create a continuous navigation channel with uniform minimum width and depths and is mainly limited to the existing riverbed.

IV. The sites

The sites DE 6127-371 'Mainaue zwischen Grafenrheinfeld und Kitzingen' and DE 5927-371 'Maintal bei Sennfeld und Weyer' are sites of Community Importance (SCI) and designated under the Habitats Directive. They have a dimension of 1706 ha. According to the standard data form, the sites have been established mainly for the conservation of the following habitat types of community interests:

- 3150 Natural eutrophic lakes with Magnopotamion or Hydrocharition,
- 6430 Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels
- 6510 Lowland hay meadows,
- 9170 Galio-Carpinetum oak-hornbeam forests,
- 91E0* Alluvial forests with Alnus glutinosa and Fraxinus excelsior,
- 91F0 Riparian mixed forests of Quercus robur, Ulmus laevis and Ulmus minor, Fraxinus excelsior or Fraxinus angustifolia, along the great rivers (Ulmenion minoris).

The site DE 6027-471 'Maintal zwischen Schweinfurt und Dettelbach' is 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 Article 6(3) of the Habitats Directive was carried out for the project. It concluded that there would be no significant effects on the site 'Maintal zwischen Schweinfurt und Dettelbach' (SPA), but that there would be significant impacts on the Natura 2000 sites 'Mainaue zwischen Grafenrheinfeld und Kitzingen' and 'Maintal bei Sennfeld und Weyer', both SCI. Particularly affected would be the priority habitat type of Community interest 91E0* 'Alluvial forests with Alnus glutinosa and Fraxinus excelsior' and the habitat type 6510 'Lowland hay meadows'. Both habitat types would be damaged directly involving a surface loss of 9.460 m² for 91E0* and 6.440 m² for 6510.

As the project would adversely affect the integrity of Natura 2000 sites hosting protected habitat types, including 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 a number of potential alternatives, together with the zero alternative. One alternative foresees the widening of the fairway equally on both riverbanks instead of the proposed project. This would reduce the required space affecting habitat type 91E0* by 7.5%. However, this alternative would negatively affect another Natura 2000 site (DE 6027-471 'Maintal zwischen Schweinfurt und Dettelbach' which won't be affected by the proposed project) and would lengthen both the construction time and the spatial extent of the project. Furthermore, the priority habitat type 'alluvial forests with Alnus glutinosa and Fraxinus excelsior' would still be negatively affected. As a consequence, this alternative was not taken into consideration.
Another alternative foresees the widening at the outside bend of the Main near the municipality of Schonungen instead of the proposed widening by altering at both sides. This would have approximately 25% less surface impact on the priority habitat type 91E0* and would have less adverse ecological impact. However, the widening at the outside bend would not improve the nautical characteristics of the river, which is one of the objectives of the project. On the contrary, the curve would be intensified. Furthermore, the priority habitat type 'alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*' would still be negatively affected. As consequence, this alternative was not taken into consideration.

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

- **Imperative reasons for overriding public interest**

The German authorities submitted well-founded arguments concerning the economic importance of the river Main functioning as a cross-border traffic route for goods connecting Rotterdam (NL) and Konstanza (RO). The river Main is part of the Trans-European Network (TEN) and is the only inland waterway connecting several Memberstates with the south-east of Europe. The project is one of the last missing links needed to adjust this fairway to the changed political and economic developments and requirements of an enlarged European Union. Currently, this part of the river Main still creates a bottleneck of 30 km where ships are still limited in their dimension in width and deep.

- **Impact mitigation**

Mitigation measures such as postponing the time frames for felling of trees during breeding season and the use of low-noise constructing machinery ensures that the Natura 2000 site DE 6027-471 'Maintal zwischen Schweinfurt und Dettelbach' will not be negatively affected. Newly constructed river banks will be re-cultivated close to nature and by respecting ecological succession. Dredging activities will be carried out in a successive way to mitigate impacts on invertebrates which are part of the food chain of *Aspius aspius* and the European Bitterling (*Rhodeus sericeus amarus*), both protected under Annex II of the Habitat Directive.

- **Compensatory measures**

The expected impacts of the project on the coherence of the Natura 2000 network, the two affected target features – habitat type 6510 'Lowland hay meadows' and the priority habitat type 91E0* 'Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* ' – will be compensated.

Habitat type 6510 will be compensated in the proportion of almost 1:7; the priority habitat type 91E0* will be compensated in the proportion of almost 1:4 taking into account that it requires a very long re-creation period which can go beyond several decades. The responsible authority reflected on this argument by increasing the proportion of compensation accordingly. As the local situation fully corresponds to the ecological needs of habitat type 91E0* the outlook for successful compensation areas is positive. The affected Natura 2000 sites will be enlarged by the proposed compensatory measures and subsequently designated and notified by the Member State.

In total, 10 measures are foreseen in the flooding area Schweinfurt and Wipfeld (see fig. 2).

**VII. Opinion of the Commission**

According to the information submitted by the German Authorities, the deepening and widening of the ship fairway of the river Main at the sections Wipfeld, Garstadt and
Schweinfurt 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 project. However, the project will have significant impact on the integrity of two Natura 2000 sites, in particular on the priority habitat type 91E0* 'alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior'* and the habitat type 6510 'lowland hay meadow'.

The negative effects will be compensated for by the designation of additional Natura 2000 surface and the creation of equivalent habitats on a total area that will be significantly larger than the area that will be affected. The German authorities have committed themselves to implement a concrete and timed monitoring and implementation scheme. The protection of the overall coherence of the Natura 2000 network will in this way 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 deepening and widening of the ship fairway of the river Main at the sections Wipfeld, Garstadt and Schweinfurt (Bavaria/Germany) 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. The affected Natura 2000 sites will be enlarged by the proposed compensatory measures and subsequently designated and notified by the Member State.

– 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 in the years 1, 3 and 10 starting after the implementation of the measures. Concerning the priority habitat type 91E0* and its long-term development, the monitoring will be undertaken for at least 30 years according to the agreed time intervals and will be prolonged – if needed - until a viable floodplain population in good conservation status is established.

– 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, 5.4.2013

*For the Commission*

*Janez Potočnik*

*Member of the Commission*
Figure 1: Overview of the construction project (map no. 1 of the plan approval document, modified).
Map 5a: Coherence measures in areas surrounding the Wipfeld and Garstadt dams

Measures to ensure coherence:

- Development target 'Residual alluvial forest' (habitat type 91E0)
- Development target 'Eutrophic tall herbs' (habitat type 6430)
- Development target 'Lowland hay meadows' (habitat type 6510)
- Development target 'Natural eutrophic lakes' (habitat type 3150)

Protection areas:

- Flora fauna habitat protection areas with name
- European bird protection area with name

Others:

- Waterway

K6
In a meadow area where the river had been artificially widened, the riverbank has been restored to create a much larger expanse of land. The natural succession of residual alluvial forest is now taking place in the restored area (habitat type 91E0).

K5
In a meadow area where the river had been artificially widened, the riverbank has been restored to create a much larger expanse of land. The natural succession of residual alluvial forest is now growing in the restored area (habitat type 91E0).

K4
The riverbanks are being restored to near-natural condition through the creation of curved banks and berms. Residual alluvial forest is now growing on the berms through natural succession (habitat type 91E0).

K3
An extensive meadow with the characteristics of a lowland hay meadow (habitat type 6510) has been replanted. A 100 metre-wide pasture belt is now establishing itself along the river Main.

K2
The riverbank areas are being restored to near-natural condition through the creation of curved banks, berms and bays. Eutrophic tall herbs (habitat type 6430) are now growing on the new riverbank areas.

K7
The riverbanks are being restored to near-natural condition through the creation of a berm. Residual alluvial forest is growing on the berm (habitat type 91E0).

K8
The riverbank areas are being restored to near-natural condition through the creation of curved banks and berms. Eutrophic tall herbs (habitat type 6430) are now growing on the new riverbank areas.

K9
An extensive meadow with the characteristics of a lowland hay meadow (habitat type 6510) has been replanted. An approximately 60 metre-wide pasture belt is now growing along the river Main.

K10
The riverbank areas are being restored to near-natural condition through the creation of curved banks and berms. Eutrophic tall herbs (habitat type 6430) are now growing on the new riverbank areas.

K1
The riverbanks are being restored to near-natural condition through the creation of curved banks and berms. Residual alluvial forest is now growing on the new riverbank areas (habitat type 91E0).

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The riverbanks are being restored to near-natural condition through the creation of curved banks and berms. Residual alluvial forest is now growing on the new riverbank areas (habitat type 91E0).

Figure 2: Location of the compensation measures (maps no. 5a+b of the plan approval document, modified).