



Brussels, 06/06/2005  
C (2005) 1641

**COMMISSION OPINION  
OF 06/06/2005**

**Delivered at the request of Germany on the planning approval procedure launched under aviation law for the expansion of Karlsruhe/Baden-Baden Airport, pursuant to Article 6(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora<sup>1</sup>**

**I. LEGAL FRAMEWORK**

Pursuant to Article 6(3) of Directive 92/43/EEC, any plan or project not directly connected with or necessary to the management of a special site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, are subject to an 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 the implications for the site and subject to the provisions of Article 6 (4), the competent national authorities are to 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.

Pursuant to Article 6(4) of Directive 92/43/EEC a plan or project may, in spite of a negative assessment of the implications for a Natura 2000 site and in the absence of alternative solutions, be carried out for imperative reasons of overriding public interest, including those of a social or economic nature. In such cases, Member States are to take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected and are to inform the European Commission (hereinafter "the Commission" ) of the compensatory measures adopted. Where the site concerned hosts a priority natural habitat type and/or a priority species and no considerations may be raised relating to human health or public safety or to beneficial consequences of primary importance for the environment, the project concerned may, further to an opinion from the Commission, be justified by virtue of other imperative reasons of overriding public interest.

On 13 January 2005, case C-117/03, "Dragaggi", the Court of Justice has ruled as follows:

*"... the protective measures prescribed in Article 6(2), (3) and (4) of that directive are required only as regards sites which, in accordance with the third subparagraph of Article 4(2) of the directive, are on the list of sites selected as sites of Community importance adopted by the Commission of the European ....*

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<sup>1</sup> OJ L 206, 22.7.1992, p. 7

*In the case of sites eligible for identification as sites of Community importance which are included in the national lists transmitted to the Commission and, in particular, sites hosting priority natural habitat types or priority species, the Member States are, by virtue of Directive 92/43, required to take protective measures that are appropriate, from the point of view of the directive's conservation objective, for the purpose of safeguarding the relevant ecological interest which those sites have at national level."*

## **II. REQUEST BY GERMANY**

By letter of 5 May 2004, the Permanent Representation of Germany forwarded the request of the Karlsruhe Regional Government Office for a Commission opinion pursuant to Article 6(4) of Directive 92/43/EEC ("Habitats Directive") concerning the expansion of Karlsruhe/Baden-Baden Airport. The following documents were submitted:

- Impact assessment evaluation with regard to nature conservation and legal requirements and evaluation of the subsequently required derogation analysis by the competent higher nature conservation authority (Unit 15, Karlsruhe Regional Government Office) in collaboration with the Karlsruhe District Office for Nature Conservation and Landscape Management;
- Form for submission of information to the European Commission according to Article 6(4);
- Habitats Directive impact assessment for the Baden-Airpark aerodrome;
- Imperative reasons of overriding public interest;
- Traffic forecast (summary);
- List of available opinions on the expansion of Karlsruhe/Baden-Baden Airport;
- Expansion project timetable.

The following additional documentation concerning the request for an opinion was forwarded by the Karlsruhe Regional Government Office (letter of 19 October 2004 from the Permanent Representation of Germany) and is being considered as an integral part of Germany's request:

- Imperative reasons of overriding public interest – additional information;
- Consideration of variants, with particular reference to the impact on priority habitats;
- Extract from the impact assessment made in connection with the planning approval application – Jersey tiger moth (*Callimorpha quadripunctaria*) and large copper butterfly (*Lycaena dispar*);
- Extract from the landscape mitigation plan accompanying the planning approval application concerning the compensation areas, including the eastern drainage collector (*Entwässerungssammler Ost*) and special measures;
- Description of measures and timetable - *Nardus* grassland experimental plot;

- Natura 2000 impact assessment for the ‘Stollhofener Platte’ conservation area;
- Natura 2000 impact assessment for the ‘Rheinniederung’ special protection area.

### **III. THE PROJECT**

The project concerns the expansion of Karlsruhe/Baden-Baden Airport. The planning approval procedure provided for in Section 8 *et seq.* of the German Aviation Act (LuftVG) was launched in February 2003.

The expansion project includes:

- renovation of the runway;
- moving the parallel taxiway 'Golf';
- renovation of existing taxiways and building of new taxiways;
- building of new aprons;
- construction of buildings above ground level to increase land-side capacity;
- modification of airport pavement drainage.

Expansion is considered necessary because:

- the existing pavements and the aviation-related land-side facilities at the airport are unable to cope with the traffic growth forecast by experts;
- the existing runway no longer meets current safety standards, and
- the competent water authority no longer considers the existing drainage system to be acceptable.

### **IV. NATURA 2000 SITES AFFECTED**

The project affects in particular the ‘Baden-Airport’ DE 7214-804 proposed site of Community interest (hereinafter “pSCI”), which the German Government put forward to the Commission in its communication of 23 February 2004. The site covers an area of 225 ha and hosts the following habitat types and species:

- 2330 Open grassland with *Corynephorus* and *Agrostis* of continental dunes;
- 4030 Dry heaths;
- 6230\* *Nardus* grassland in mountain areas (and submountain in continental Europe);
- 6510 Lowland hay meadows (*Alopecurus pratensis* and *Sanguisorba officinalis*);
- 1078 Jersey tiger moth (*Euplagia quadripunctaria*);

1060 Large copper butterfly (*Lycaena dispar*).

Directly adjacent to the pSCI 'Baden-Airport' is the 'Stollhofener Platte' DE 7214-302 site of Community interest.

Furthermore, the following sites are located close to the planned project: 'Bruch bei Bühl' DE 7214-301, 'Niederwald bei Sandweier' DE 7115-301 and 'Rheinniederung von Iffezheim bis Karlsruhe' DE 7015-301, as well as the 'Rheinniederung von der Rench- bis zur Murgmündung' DE 7114-401 special protection area (3035 ha).

## V. IMPACT OF THE PROJECT ON THE SITES AFFECTED

### Preliminary Remarks

In the light of the before mentioned ruling, the request of the German authorities for a Commission opinion pursuant to Article 6(4) of Directive 92/43/EEC concerning the expansion of Karlsruhe/Baden-Baden Airport will have to be dealt with in two different ways.

Whereas the sites 'Stollhofener Platte' DE 7214-302, 'Bruch bei Bühl' DE 7214-301, 'Niederwald bei Sandweier' DE 7115-301 and 'Rheinniederung von Iffezheim bis Karlsruhe' DE 7015-301 figure on the lists in 2004/798/EC<sup>2</sup> adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Continental biogeographical region, as a result of the first paragraph of the dictum of the "Dragaggi" ruling, the Articles 6(2) to 6(4) of the Habitats Directive have to be applied.

Moreover, on the basis of Article 7 of Directive 92/43/EEC, the same provisions have to be applied to the special protection area - in the sense of the Birds Directive – "Rheinniederung von der Rench- bis zur Murgmündung", DE 7114-401.

With regard to sites that have not been retained on the Commission list - in the present case "Baden-Airport" DE 7214-804 - Member states are not free to disregard the relevant ecological interest which those sites have. Indeed, the Court has ruled that in those cases "*the Member States are, by virtue of Directive 92/43, required to take protective measures that are appropriate, from the point of view of the directive's conservation objective, for the purpose of safeguarding the relevant ecological interest which those sites have at national level*".

By making an analyse in the sense of Articles 6(3) and 6(4) of the Habitats Directive with regard to "Baden-Airport" DE 7214-804, the Commission is of the opinion that the German authorities have acted in line with the the "Dragaggi" ruling.

### In general

The project has implications for the sites affected owing to construction, civil engineering works and operational activities.

The effects of civil engineering works are relevant only for the pSCI 'Baden-Airport', as only areas within that site will be used.

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<sup>2</sup> 2004/798/EC adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Continental biogeographical region OJ L 382, 28.12.2004, p.1

However, the effects of operational activities and, in some cases, construction activity will have an distant effect and may therefore also affect the SCI ‘Stollhofener Platte’ and the SPA ‘Rheinniederung von der Rench- bis zur Murgmündung’.

Optimised planning has in many respects led to a reduction in the adverse effects originally expected and, overall, mitigation measures have considerably reduced the need to use areas occupied by the habitat types concerned.

### **Impact of construction activity**

- Use of land entailing the shifting and compaction of soil and the removal of vegetation in connection with the provision of construction roads, parking and storage areas, construction site facilities, etc.;
- Construction site operations and traffic, generating noise and vibration;
- Construction site operations and traffic, generating emissions of dust and pollutants;
- Light emissions from lighting used for night-time construction work.

The impact of construction activity connected with the project is unlikely to significantly affect the habitat types and species of the various sites concerned in view of their conservation objectives.

### **Impact of civil engineering works**

- Use of land for the construction of airport pavements;
- Use of land for terrain modelling purposes and the installation of soakaways;
- Use of land for the purpose of removing impermeable surfaces.

Even after optimised planning measures, the habitat types 2330<sup>3</sup> and \*6230<sup>4</sup> of the pSCI “Baden-Airport” are significantly affected in view of their conservation objectives caused by the use of land.

### **Impact of operational activities**

- Changes in local conditions owing to the channelling of water into the remodelled soakaways and the infiltration of pollutants and nutrients;
- Changes in local conditions owing to occasional seepage of water from drainage channel overflows;
- Lighting of aprons, operational areas and buildings, acting as a light trap for insects;

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<sup>3</sup> Open grassland with *Corynephorus* and *Agrostis* of continental dunes

<sup>4</sup> *Nardus* grassland in mountain areas (and submountain in continental Europe)

- Increase in the number of take-offs and landings;
- Increase in noise;
- Increase in air pollution.

If appropriate mitigation measures are taken, it is unlikely that operational activities connected with the project will significantly affect the habitat types and species of the sites concerned in view of their conservation objectives.

### **Summary assessment**

The impacts of civil engineering works (use of land) of the project significantly affect the habitat types 2330 and \*6230 of the pSCI “Baden-Airport”. ‘The integrity of the site concerned’ is therefore adversely affected by the project. This being the case, the project may be implemented only if it complies with the conditions laid down in Article 6(4) of the Habitats Directive.

## **VI. COMPLIANCE WITH THE REQUIREMENTS OF ARTICLE 6(4)**

### **1. Alternative solutions**

A total of seven planning alternatives were drawn up. Two planning variants providing for refurbishment of the existing airport pavements without any other expansion measures were not pursued further<sup>5</sup>. The following five alternatives were weighed against each other:

Variant 1:

Building of a new runway about 100-150 m to the west of the existing runway

Variant 2:

Realignment of the runway by about 8.5° in a north-westerly direction

Variant 3:

Complete realignment of the runway so as to be oriented east-west

Variant 4:

Extension of the runway within the existing airport precincts

Variant 5:

Variant 4 with an additional grass runway to the west of the runway

The advantages and disadvantages of the five alternatives were weighed against each other with regard to unrestricted air traffic, aircraft noise, obstacles and nature conservation and landscape management objectives. Variant 4 is to be implemented.

Although Variants 1 and 3 would result in fewer adverse effects on priority *Nardus* grassland, they would have adverse effects on large areas of the ‘Stollhofener Platte’ and ‘Rheinniederung von der Rench- bis zur Murgmündung’ sites, which are not affected by Variant 4. Variant 2 would also adversely affect the ‘Stollhofener Platte’ site, but without any

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<sup>5</sup> The explanatory statement setting out the imperative reasons of public interest contains a detailed explanation of the reasons why expansion of the airport is necessary.

mitigating effects as far as the *Nardus* grassland is concerned, although it would reduce the noise impact on the town of Rastatt. Variant 5 increases the adverse effects on the *Nardus* grassland and also requires use of areas which form part of the 'Stollhofener Platte' site.

To sum up, the decision that, from a nature conservation point of view, Variant 4 (runway extension within the existing airport precincts) is best suited to reduce the impacts on the sites concerned to a minimum, may be endorsed.

## **2. Imperative reasons of overriding public interest**

The increase in passenger numbers, from 189 000 in 2001 to 278 000 in 2003, shows that Karlsruhe/Baden-Baden Airport has been growing. Under the 2002 *Land* Development Plan drawn up by the *Land* Government of Baden-Württemberg, regional airports and commercial airfields are to provide links to the national and international air transport network and are to be developed accordingly. For the Oberrhein region of Baden-Württemberg, Karlsruhe/Baden-Baden regional airport provides an important link to Stuttgart Airport.

In order to determine future demand and capacity at Karlsruhe/Baden-Baden Airport, passenger and freight traffic figures and flight movements were calculated for the key forecast year, 2015, using a scientifically based forecasting method. The existing facilities will not be able to handle the volume of traffic forecast. Karlsruhe/Baden-Baden Airport is an airport of common interest within the meaning of Decision 1692/96/EC, and expansion of the airport is therefore in the public interest.

Moreover, it is argued that the expansion project is also in the public interest on environmental protection grounds. Hitherto, all rainwater falling on the aerodrome has seeped away – a relic of the period when the airport was used for military purposes. The expansion project also serves to meet pressing requirements under water management legislation and to establish a drainage system which meets current environmental standards.

On the other hand, expansion of the airport will adversely affect the proposed 'Baden-Airport' Habitats Directive site, and the *Nardus* grassland priority habitat type in particular will be substantially affected, as stated above. Since this is an extremely rare habitat type, the preservation of this site intact stands conflicts with the expansion of the airport.

However, it is precisely because of the current flight operations and the maintenance measures taken that this habitat type exists there. Compensatory measures are to be taken to ensure that there will be no overall reduction in the area occupied by this habitat type, so that the overall coherence of the Natura 2000 network is not jeopardised.

To sum up, the Commission therefore accepts the position set out by Germany, namely that there are imperative reasons of public interest for the expansion of Karlsruhe/Baden-Baden Airport which, in this case, outweigh the nature conservation aspects.

## **3. Compensatory measures**

The following measures are planned to mitigate the expected effects and preserve the overall coherence of the Natura 2000 network:

**Habitat type 2330**

(area covered: 3.99 ha, loss: 1.5 ha, temporary use: 0.47 ha)

Measures:

- Restoration (following temporary intrusions) and planting of new areas covering about 5 ha on modelling plots at the aerodrome;
- Planting of new areas covering about 4 ha on land from which impermeable surfaces have been removed at the aerodrome;
- Upgrading of about 2.3 ha in the south-west of the ‘Stollhofener Platte’ site and about 0.7 ha in the south-east of the site;
- In the ‘Niederwald bei Sandweier’ site, about 23 ha is to be newly developed and about 8 ha is to be upgraded;
- Creation of stepping-stone biotopes, amounting to about 2 ha, between the ‘Baden-Airport’ and ‘Niederwald bei Sandweier’ sites.

In total, a compensation area of approximately 45 ha will thus be created for habitat type 2330. This habitat type covers a relatively small area, amounting to about 4 ha, in the ‘Baden-Airport’ site. About half of this will either be completely lost or used temporarily. These adverse effects are more than adequately offset by a compensation area of 45 ha. This area and the creation of stepping-stone biotopes will, overall, actually result in an improvement in the conservation status of this habitat type in the region.

**Habitat type 4030**

(area covered: 0.05 ha, temporary use: 0.02 ha)

Measures:

- Upgrading of existing areas and planting of new areas amounting to about 1.5 ha in the ‘Baden-Airport’ site;
- Upgrading of about 0.5 ha in the ‘Stollhofener Platte’ site.

In total, a compensation area of about 2 ha is to be created for habitat type 4030. Given that a very small area (0.02 ha) is to be used only temporarily, the compensation area actually helps, overall, to improve the conservation status of this habitat type in the region.

**Habitat type 6230\***

(area covered: 25.47 ha, loss: 3.32 ha, temporary use: 2.88 ha)

Measures:

- Restoration of about 2.9 ha on modelling plots at the aerodrome;
- Planting of a new area of about 2.0 ha on modelling plots at the aerodrome, on the margins of the restored habitat type;



- Planting of a new area of about 1.55 ha in the south-east of the ‘Baden-Airport’ site. This is part of an experimental plot on which different methods of planting new areas are to be tested. The experiment began in early 2004. The experimental plot which has been prepared covers a total area of 3.86 ha. It is thus possible that, if the experiment is successful on the 1.55 ha, the habitat type can be extended to occupy the whole plot. This would create an additional 2.3 ha or so of this habitat type.

In total, a compensation area of approximately 3.5 ha is to be created for habitat type 6230\* by means of planting new areas, with an optional additional area of about 2.3 ha. The 2.88 ha of land used temporarily is to be restored. In terms of extent, the compensation area offsets the area of priority habitat type adversely affected, thus preserving the network’s coherence. There is, however, a certain amount of uncertainty as to whether the planting of new areas of this habitat type on the experimental plot will succeed. At worst, there could be a deterioration in the situation, i.e. a 1.55 ha reduction in the area covered by the habitat type – out of a total area of 25.47 ha in the ‘Baden-Airport’ site. Nevertheless, there is no other alternative compensatory measure, as this type of *Nardus* grassland is extremely rare.

### **Habitat type 6510**

(area covered: 60.6 ha, loss: 3.28 ha, temporary use: 10.17 ha)

Measures:

- Restoration of about 10.2 ha on modelling plots at the aerodrome;
- Upgrading of existing areas and planting of new areas covering about 10 ha in the ‘Baden-Airport’ site.

In total, a compensation area of about 10 ha is to be created for habitat type 6510 by planting new areas or upgrading existing areas. The areas used temporarily are to be restored. A compensation area of 10 ha adequately offsets the adverse effects of the project and will, overall, lead to an improvement in the conservation status of this habitat type in the region.

The proposed compensatory measures are adequate for safeguarding the overall coherence of Natura 2000 with regard to the project’s adverse effects, in particular because:

- the measures are to be carried out in the same geospatial unit as that in which the adverse effects occur, thus ensuring geographical coherence, and
- the adversely affected habitat types are to be brought back into the network, in terms both of quality and of quantity, by means of upgrading and the planting of new areas.

## **VII. COMMISSION OPINION**

On the basis of the arguments set out above, the Commission holds the view that the project concerning the expansion of Karlsruhe/Baden-Baden Airport, as described in documentation sent by the German authorities, can be executed for reasons of overriding public interest on the condition that all necessary compensatory measures to ensure overall protection of the coherence of Natura 2000 be taken in good time.

The Commission takes note and accepts that, after examination of various alternatives, the outlined variant providing for the extension of the runway within the existing airport precincts

has been found to be the most appropriate option and that there are imperative reasons of overriding public interest for the expansion of Karlsruhe/Baden-Baden Airport, as argued by the German authorities.

The Commission notes that mitigation measures have been applied thanks to optimised planning, resulting in markedly less use of areas containing the relevant habitat types.

Moreover, with regard to the opinion expressed in this document the Commission notes the following:

- this opinion is valid for this particular project, as described in the documents submitted to the Commission by the German authorities and cannot be considered as applicable to any other similar kind of development in a Natura 2000 site.
- this opinion presumes that the results of accompanying monitoring programmes regarding Natura 2000 will be taken into account in that they may, if need be, lead to appropriate rectifications to project design or to additional compensation and mitigation measures.