



Press and Information

Court of Justice of the European Union

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Judgment in Case C-226/08

Stadt Papenburg v Bundesrepublik Deutschland

Member States can only refuse to give their agreement to the list of sites of Community importance drawn up by the Commission on environmental grounds

Dredging operations planned in the river Ems after the inclusion of certain parts of that river on the list of sites of Community importance must respect the general obligation of protection under the Habitats Directive.

'Natura 2000', which is provided for by the Habitats Directive¹, is a coherent European ecological network of special areas of conservation. That network is composed of sites hosting the natural habitat types and habitats of the species listed in the directive. It seeks to ensure that they are maintained at or restored to a favourable conservation status.

According to the directive, each Member State transmits to the Commission a list of sites that may be protected as sites of Community importance. Next, the Commission establishes, on the basis of environmental criteria and in agreement with the Member States, a list of sites of Community importance.

Any plan or project likely to have a significant effect on a protected area must be subject, at national level, to an appropriate assessment of its implications for the site concerned in view of that site's conservation objectives. The national authorities can agree to plans or projects only if they will not adversely affect the integrity of the site concerned.

Papenburg is a port town in Lower Saxony (Germany) on the river Ems, where there is a shipyard. In order to enable large ships to navigate between the shipyard and the North Sea, the Ems must be deepened by means of dredging operations. In 1994, Stadt Papenburg (the municipality of Papenburg) was granted permission to dredge that river. The permission is definitive and means that future required dredging operations are considered to have been granted permission.

The Commission included parts of the Ems situated downriver from Stadt Papenburg's local authority area in its draft list of sites of Community importance and requested Germany to give its agreement thereto.

Stadt Papenburg brought an action before the Verwaltungsgericht Oldenburg (Administrative Court, Oldenburg) seeking to prevent Germany from giving its agreement and to ensure that the dredging required for the Ems to remain navigable would not in future, and in every case, have to undergo an assessment of the implications within the meaning of the directive.

The German court asked the Court of Justice to clarify the circumstances in which a Member State can refuse to agree to a draft list of sites of Community importance. It wished also to know whether the continued dredging planned in the Ems and granted permission by the German authorities before the expiry of the time-limit for transposing the directive must undergo the assessment provided for in that directive.

The Court of Justice holds, first of all, that the criteria for assessing the Community importance of a site have been defined on the basis of the **objective of conserving** the natural habitats or the wild

¹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as amended by Council Directive 2006/105/EC of 20 November 2006 (OJ 2006 L 363, p. 368).

fauna and flora listed in the directive, and of the **objective of coherence** of Natura 2000. Those criteria are environmental.

Consequently, the Member States can refuse to agree to the inclusion of a site on the list of sites of Community importance drawn up by the Commission only **on environmental grounds**. Such a refusal cannot be based on economic, social and cultural grounds and regional and local characteristics.

Next, the Court states that the fact that dredging in the Ems was definitively authorised under German law before the expiry of the time-limit for transposition of the directive does not constitute, in itself, an obstacle to regarding it, at the time of each intervention in the navigable channel, as constituting distinct projects. In that case, each of those projects must, to the extent that they are likely to have a significant effect on the site concerned, undergo an assessment of their implications pursuant to the directive.

However, if, having regard in particular to the regularity or nature of the maintenance works at issue or the conditions under which they are carried out, they can be regarded as constituting a single operation, in particular where they are designed to maintain the navigable channel at a certain depth by means of regular dredging necessary for that purpose, those maintenance works can be considered to be one and the same project for the purposes of the directive. In that case, if such a project has been authorised before the expiry of the time-limit for transposing the directive, it will not be subject to the prior assessment of the implications of the project for the site concerned.

Nevertheless, if a site is included on the list of sites of Community importance drawn up by the Commission, the carrying out of works will be subject to a general obligation of protection under the directive consisting in avoiding deterioration of natural habitats and species' habitats and significant disturbance that affects the species for which the protected area has been designated.

Finally, the Court states that once a site is included on a national list transmitted to the Commission for the purpose of being included on the list of sites of Community importance, such a site should not be subject to interventions which risk seriously compromising its ecological characteristics.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of an act of the European Union. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which the same issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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