

Draft Commission opinion of 27 April 1995 on the planned A 20 motorway (Germany) which will intersect the Trebel and Recknitz Valley pursuant to Article 6 (4) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

(95/C 178/03)

Within the 'Deutsche Einheit' transport projects, Germany is planning to build the A 20 motorway linking Lübeck, Stralsund and Stettin. This motorway will cross areas which have been designated as special protection areas and which host priority natural habitat types according to Directive 92/43/EEC. The Commission therefore has to give an opinion.

1. The motorway A 20

1.1. A total of 17 transport projects 'Deutsche Einheit' shall complete, after the German unification, the missing links between the former and the new German Länder and encourage economic development in the new German Länder. The motorway A 20 is to cross the whole territory of Mecklenburg-Western Pomerania and is, with a length of approximately 300 km, the biggest transport project of the projects 'Deutsche Einheit'.

1.2. The transport objectives pursued with the construction of the motorway are

- the creation of an extensive east-west link road by providing links to the existing motorways in the west and the south-east,
- the linking of the Baltic Sea ports of Rostock and Stralsund,
- the linking of these ports as well as the coastal region and its recreation areas to the existing road network.

In Mecklenburg, construction work started on a section of the motorway in May 1994. On the territory of Western-Pomerania construction shall start as soon as possible. It is aimed to complete the project, which will cost approximately DM 4 Billion, within 10 years.

1.3. Two governmental decisions gave top priority to the A 20 motorway project on the ground that there needs to be significant improvement to the existing road network in order to give a boost to the economy in Mecklenburg-Western Pomerania where there is a high level of unemployment. Through the law on road development of 15

November 1993, the Bundestag has stated the need for this motorway.

The unemployment rate in Mecklenburg-Western Pomerania, measured as a percentage of all working population, amounted in February 1995 to 15,7 % ⁽¹⁾. The percentage in all of the new Länder amounted to 14,7 %, whereas it amounted to 8,8 % in the old Länder. The unemployment rate in the Federal Republic as a whole amounted to 9,9 %. Therefore the unemployment rate in Mecklenburg-Western Pomerania is almost double that in the old Länder, and this since 1992.

With 2,3 % of the German population, Mecklenburg-Western Pomerania added approximately 1,1 % to the gross national product (estimated figures for 1994) ⁽²⁾. The gross national product created in Mecklenburg-Western Pomerania, as compared to the percentage of the population, is therefore significantly lower than the gross national product created on average.

Mecklenburg-Western Pomerania is an Objective 1 area within the meaning of the Regulation on the Structural Funds ⁽³⁾. These areas are areas whose development is 'lagging behind' and whose development and structural adjustment shall be promoted in order to strengthen the economic and social cohesion of the Community.

1.4. The motorway A 20 is part of the trans-European road network ⁽⁴⁾. This network, as a part of the trans-European networks (Article 129b of the EC Treaty), shall be improved in order to ensure the functioning of the internal market and to enable citizens of the Union, economic operators and regional and local communities to benefit from an area without internal frontiers. The road network particularly aims at linking peripheral or isolated regions to central Community regions in order to strengthen the economic and social cohesion in the Community.

⁽¹⁾ Source: Bundesanstalt für Arbeit.

⁽²⁾ Source: Statistisches Bundesamt.

⁽³⁾ Council Regulation (EEC) No 2081/93, OJ No L 193, 31. 7. 1993.

⁽⁴⁾ Council Decision 93/629/EEC of October 1993, OJ No L 305, 10. 12. 1993.

1.5. According to the plans, the motorway will intersect two protected areas within the meaning of Directive 79/409/EEC on the conservation of wild birds. The two areas are 'Mecklenburgische Schweiz; Recknitz- und Trebeltal' (area No 425) and 'Peenetal vom Kummerower See bis Schadfähre' (area No 512). These areas, which have been notified by Germany to the Commission as protected areas under Directive 79/409/EEC, belong to the European network of special protected areas called 'Natura 2000'.

1.6. Extensive ecological studies were carried out from 1991 to 1994, in particular from Rostock eastwards. In order to prepare the decision on the route, corridors were selected during the environmental impact assessment, within which different routes were studied. To avoid the traversal of the designated protection areas, the route should go 50 km further south as the examined corridors and would therefore not allow for a link between Stralsund and Rostock.

As regards the crossing of the Trebel and the Recknitz, the options examined in more detail were at Damgarten, to the south of Tribsees at Langsdorf as well as to the north of Bad Sülze ('Richtenberg route'). The Richtenberg route, most favourable from a transport and regional planning point of view, was not pursued with regard to eagles and other birds of prey in that area. Because of the comparatively low number of species affected and harm already caused by Landesstraße 19, the Trebel crossing south of Tribsees was regarded as the most favourable and proposed to the Federal Minister of Transport in view of a decision on the route. The environmental authorities of Mecklenburg-Western Pomerania have agreed to this solution.

As regards the Peene crossing, the options examined were namely to the west of Loitz, west of Jarmen and beyond an industrial area east of Jarmen. The preferred route was the one east of Jarmen.

1.7. According to an environmental impact assessment carried out by the German Government, these traversals will have a considerable effect on the designated protected areas through land loss and indirect damage. Both areas include fenland which are defined under the paragraph on 'raised bogs and mires and fens' as a priority natural habitat type (Annex I, No 53.3 of Directive 92/43/EEC, 'Calcareous fens with *Cladium mariscus* and *Carex davalliana*'). There is also bog woodland which is also designated as a priority habitat type in Annex I, No 44.A1 — 44.A4 of Directive 92/43/EEC.

2. Provisions of Community law

2.1. Areas designated pursuant to Directive 79/409/EEC are subject to special provisions for their protection. With the coming into force of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora ('Habitat Directive') in June 1994 the obligations arising under the first sentence of Article 4 (4) of Directive 79/409/EEC have been replaced by the provisions of Article 6 (2), (3) and (4) of the Habitat Directive.

2.2. Article 6 (2) of the Habitat Directive stipulates that the deterioration of habitats shall be avoided in special areas of conservation. According to Article 6 (3) of the Directive, projects that are likely to have a significant effect on these areas, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. Article 6 (4) reads as follows:

'If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest'.

According to these provisions, alternative solutions have to be sought in case that the assessment is negative; if alternative solutions exist, they have to be realized. Only in the absence of alternative solutions does Article 6 (4) of the Habitat Directive allow for exceptions. In contrast to Directive 79/409/EEC social and economic reasons may justify negative effects on a special protection area. However, this possibility for an exception, which is wider than the one foreseen under Directive 79/409/EEC, is restricted, if the site concerned hosts a priority natural habitat type and/or priority species. In that case, reasons other than human health and public safety may only be raised further to an opinion from the Commission.

2.3. The moment at which this opinion has to be in hand, follows from Article 6 (3) of the Habitat Directive. According to that provision, the competent authorities only agree to the project if the site is not adversely affected. If the competent authority wants to agree to a project inspite of negative effects on the site, it may do so only in the exceptional cases specified in Article 6 (4). The agreement of the national authorities to a project therefore implies a decision on these exceptions. For that reason, if an opinion from the Commission is required, the national authorities may not agree to the project before such an opinion is given.

3. Procedure

3.1. In letters of 31 August and 8 September 1994 the German Government asked the Commission for its opinion pursuant to Article 6 (4) of the Habitat Directive. The Commission asked for further information with letter of 13 September 1994, which was transmitted on 20 September 1994. A discussion with Government representatives took place on 29 September 1994. Following this discussion and further telephone conversations, the Commission received additional information with letters of 7, 10 and 20 October as well as of 15 December 1994, mainly relating to transport and planning aspects.

3.2. With a letter of 11 January 1995 the Federal Ministry of Transport informed the Commission of its intention to decide on the route. It argued that from the absence of a Commission opinion it could be assumed that the Commission had left the choice of the crossing to the Federal Government. With a letter of 20 January 1995, addressed to the Ministry of Economic Affairs of Mecklenburg-Western Pomerania, the Federal Ministry of Transport decided on the route. With reference to Article 6 (4) of the Habitat Directive, the Commission in a letter of 30 January 1995 asked for this decision to be suspended until the Commission had given its opinion. In its reply of 15 February 1995, the Federal Government stated that it did not consider itself obliged to suspend its decision.

3.3. On 10 March 1995, the Ministry of Transport informed the Commission that the plans for the crossing of the Peene near Jarmen had been changed and that its request of 8 September 1994 had become irrelevant. Only in the light of new plans could it be established whether an opinion from the Commission on the Peene crossing was necessary.

For this reason the present opinion only concerns the crossing of the Trebel and Recknitz valley in the special protection area 'Mecklenburgische Schweiz, Recknitz- und Trebeltal' by the planned A 20 motorway.

4. Conclusions

4.1. The protected area which will be affected by the A 20 motorway includes two priority natural habitats. The assessment of the compatibility of this motorway with the aim to conserve the protection area 'Mecklenburgische Schweiz, Recknitz- und Trebeltal' was negative. The Federal Government justifies the deterioration of the protection area with economic and social reasons. Such considerations can, in principle, not justify negative implications for the site, only in very special circumstances may they be raised as 'other imperative reasons of overriding public interest' within the meaning of Article 6 (4) of the Habitat Directive.

4.2. Mecklenburg-Western Pomerania suffers from exceptionally high unemployment. Its unemployment rate almost doubles the one of the old Länder already since several years. The gross national product created in Mecklenburg-Western Pomerania, as compared to the percentage of the population, is significantly lower than the gross national product created on average.

4.3. The Community takes account of the special situation of Mecklenburg-Western Pomerania by specially promoting its development through the Structural Funds. The A 20 is furthermore part of the trans-European road network. The Structural Funds as well as the trans-European networks have the aim of establishing the internal market and of strengthening the economic and social cohesion of the Community. In this respect, an east-west link has to be created in Mecklenburg-Western Pomerania in order to link it with central regions of the Community.

4.4. The special value of the A 20 as part of the 'Deutsche Einheit' transport projects is reflected in the top priority given to it by the German Government as well as in the Bundestag's classification of this motorway link as a necessity.

- 4.5. A less damaging crossing of the valley of Trebel and Recknitz is not possible. Alternative solutions in the meaning of Article 6 (4) of the Habitat Directive therefore do not exist. The Commission has noted the compensatory measures described in the German Transport Ministry's letter of 20 September 1994, in particular 'the area at the edge of the valley between Trittelwitz and Demmin' or of the 'Tollenseetal' as possible compensatory areas and asks the Federal Government to adequately inform the Commission on the measures taken.
- 4.6. The Commission therefore concludes that because of the special economic and geographical situation of Mecklenburg-Western Pomerania imperative reasons of overriding public interest justify the

deterioration of the special protection area 'Mecklenburgische Schweiz, Recknitz- und Trebeltal', if all necessary compensatory measures are taken in order to protect the global coherence of 'Natura 2000'.

In accordance with Article 6 (4) of Directive 92/43/EEC the Commission, therefore, delivers the following opinion:

The deterioration of the protection area 'Mecklenburgische Schweiz, Recknitz- und Trebeltal' through the planned A 20 motorway to the south of Triebsees is justified by imperative reasons of overriding public interest.

Notice of initiation of anti-dumping proceedings concerning imports of flat pallets of wood originating in Poland

(95/C 178/04)

The Commission has received a complaint pursuant to Article 5 of Council Regulation (EC) No 3283/94⁽¹⁾, alleging that imports of flat pallets of wood originating in Poland are being dumped and are thereby causing material injury to the Community industry.

1. Complaint

The complaint was lodged by Anton Heggenstaller AR, Unterbernbach/Bayern, Germany.

2. Product

The product allegedly being dumped is flat pallets of wood currently classifiable under CN code 4415 20 10. This CN code is only given for information and has no binding effect on the classification of the product.

3. Allegation of dumping

The allegation of dumping is based on a comparison of constructed normal value in Poland with the export prices of the product concerned to the Community. On this basis the dumping margins calculated are substantial.

4. Allegation of injury

The complainant alleges and has provided evidence that imports from Poland have increased significantly in absolute terms and in terms of market share.

It is further alleged that the volume and prices of the imported products have, among other consequences, had a negative impact on the quantities sold and the prices charged by the Community producers, resulting in a substantial adverse effect on the financial situation of the Community industry.

5. Procedure for determination of dumping and injury

Having determined, after consultation within the Advisory Committee, that the complaint has been lodged on behalf of the Community industry and that there is sufficient evidence to justify the initiation of proceedings, the Commission has commenced an investigation pursuant to Article 5 of Regulation (EC) No 3283/94.

(a) *Sampling for examination of dumping*

In view of the apparently large number of exporters in Poland, the Commission may apply sampling techniques, in accordance with Article 17 of Regulation (EC) No 3283/94. In order to enable the Commission to decide whether sampling is necessary and, if so, to select a sample, exporters, or representative associations acting

⁽¹⁾ OJ No L 349, 31. 12. 1994, p. 1.