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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION OPINION

of 18 December 1995

on the intersection of the Peene Valley (Germany) by the planned A 20 motorway pursuant to Article 6 (4) of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

(96/15/EC)

1. **The Motorway A 20**

- 1.1. The Federal Republic of Germany plans to build, within the framework of the *Deutsche Einheit* transport projects the A 20 motorway linking Lübeck, Stralsund and Stettin.

According to the route plans, the motorway will intersect, in the territory of Mecklenburg Western-Pomerania, two special protection areas under Council Directive 79/409/EEC of 2 April 1979⁽¹⁾ on the conservation of wild birds. These areas host priority natural habitat types which could be affected by the motorway. The German Government raises imperative reasons of overriding public interest other than those relating to human health or public safety. Therefore, the Commission has to give an opinion pursuant to Article 6 (4) of Council Directive 92/43/EEC of 21 May 1992⁽²⁾ on the conservation of natural habitats and of wild fauna and flora (Habitats Directive).

- 1.2. As far as the intersection of the Trebel and Recknitz Valley is concerned, the Commission stated in its opinion of 27 April 1995⁽³⁾ that the deterioration of the protection area was justified by imperative reasons of overriding public interest. The intersection of the Peene Valley was not the subject of this Commission opinion, because the route plans for this section were reconsidered by the German authorities in order to evaluate less damaging routes.

In its letter of 3 August 1995, the Germany Ministry of Transport informed the Commission that the new route plans for the crossing of the Peene had been finished and asked for an opinion pursuant to Article 6 (4) of the Habitats Directive. At the Commission's request, further information and detailed vegetation and bird maps were transmitted with a letter dated 6 October 1995. On 24 October 1995, the Commission undertook an on-the-spot appraisal of the possible crossings of the protection area.

- 1.3. As the Commission has outlined in its opinion of 27 April 1995, 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.

⁽¹⁾ OJ No L 103, 25. 4. 1979, p. 1.

⁽²⁾ OJ No L 206, 22. 7. 1992, p. 7.

⁽³⁾ 95/C 178/03 (OJ No C 178, 13. 7. 1995, p. 3).

The unemployment rate in Mecklenburg-Western Pomerania, measured as a percentage of all working population, amounted in October 1995 to 15,2 % ⁽¹⁾. The percentage in all of the new *Länder* amounted to 13,8 %, whereas it amounted to 8,1 % in the old *Länder*. The unemployment rate in the Federal Republic as a whole amounted to 9,2 %. 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 Council Regulation (EEC) No 2081/93 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.

2. The protection area

The planned motorway will cross the protection area 'Peenetal vom Kummerower See bis Schadefähre'. The area follows the valley of the river Peene for a length of 70 km ; it forms a corridor with a width varying between 1 and 5 km, situated between the coast and the south-east of Mecklenburg-Western Pomerania. It hosts the biggest and, as far as fauna and flora is concerned, the richest alluvial alkaline fens in northern Germany. It is a breeding and resting place for a considerable number of rare and endangered birds including migratory species. The whole area hosts bog woodland and residual alluvial forests, both priority habitat types under the terms of the Habitats Directive (Annex I, No 44.A1 to 44.A4 and 44.3).

With the exception of four settlements located in the protection area (Anklam, Jarmen, Loitz, Demmin), large stretches of the valley are unused by man.

3. The route plans

For the Peene crossing, the Federal Republic examined as main alternative solutions the area west of Loitz and the areas east and west of Jarmen. For economic and structural reasons, in particular the time-saving linking of Grimmen and Greifswald with other economic centres, the Federal Republic favoured the crossing east of Jarmen.

On 20 January 1995 the Federal Ministry of Transport decided that the route should be east of Jarmen. The Ministry of Economic Affairs of Mecklenburg-Western Pomerania was instructed to seek a solution for the Peene crossing which would ensure compliance with national and European environmental objectives.

⁽¹⁾ Source : Bundesanstalt für Arbeit.

⁽²⁾ Source : Statistisches Bundesamt.

⁽³⁾ OJ No L 193, 31. 7. 1993, p. 5.

⁽⁴⁾ Council Decision 93/629/EEC of October 1993, OJ No L 305, 10. 12. 1993, p. 11.

Thus alternative routes located west of Jarmen or Loitz could no longer be considered by the authorities of Mecklenburg-Western Pomerania. The Commission, however, has to ensure, pursuant to Article 6 (4) of the Habitats Directive, that adverse effects on a site are only accepted in the absence of alternative solutions. It has therefore to evaluate whether a solution less damaging than the route proposed for east of Jarmen exists.

3.1. *The crossing of the river Peene east of Jarmen as originally favoured*

According to the originally favoured route plans, the A 20 motorway was to cross the river Peene with a bridge located at about 1 000 m east of the existing crossing of the valley near Jarmen. Within this section of the protection area, the alluvial alkaline fens and the bog woodland, a priority habitat type, do not appear to have suffered adverse effects from existing uses. The number of species, using this section of the Peene as feeding and nesting habitat, is accordingly high. To mention but a few examples, the corncrake (*Crex crex*), the bluethroat (*Luscinia svecica*) and the white stork (*Ciconia ciconia*) are found here.

This route would have directly affected bog woodland over a stretch of approximately 150 m. Indirect effects (noise, pollution, light, changing of diversity of species) would have been felt in an area of about 1 000 m of both sides of the motorway.

3.2. *The crossing of the river Peene at Loitz*

To the west of Loitz, adverse effects on the area are caused to some extent by a high voltage transmission line. Although the route would not directly affect priority habitats, remarkable alkaline fens would be destroyed within a considerable distance. More importantly, habitats of the little crane (*Porzana parva*), the bluethroat and the lesser spotted eagle (*Aquila pomarina*) would be damaged. The lesser spotted eagle, in particular, is extremely rare in Germany and does not breed elsewhere in middle and western Europe.

3.3. *The crossing of the Peene west of Jarmen*

This possible alternative route would be located 2,5 km west of the originally planned crossing at Jarmen east. As priority habitats, residual alluvial forests would be directly affected; bog woodland, another priority habitat type, is to be found at about 150 m from the proposed route and would therefore be affected indirectly. Breeding or feeding places for bluethroat and white stork would also be damaged.

3.4. *The crossing of the Peene east of Jarmen as currently planned*

According to the current route plans, the A 20 motorway is to cross the river Peene 300 m east of the existing crossing by the national road B 96 and close to a commercial distribution centre. Priority habitats would not be directly affected, the nearest being 300 m from the planned bridge. The route would, however, affect other species of Community interest such as otter (*Lutra lutra*), beaver (*Castor fiber*), kingfisher (*Alcedo atthis*) and the large copper butterfly (*Lycaena dispar*). These species, however, occur in the whole protection area or, as far as the copper butterfly is concerned, at least in some other parts of the protection area.

4. Conclusions

4.1. *Implications for the site*

Among the four possible crossings inside the protection area, the one currently proposed is the least damaging. Priority habitats are not directly affected. No particularly rare birds, whose presence has been the reason for the designation of the

valley as special protection area, will be directly affected. By situating the route close to the existing crossing, an intersection of an unspoiled part of the valley is avoided, new negative effects are being grouped with existing strain on the area coming from the nearby village, the existing bridge and industrial uses. For these reasons, the implications of the motorway on the site as a whole seem tolerable.

4.2. *Imperative reasons of overriding public interest*

As the Commission has outlined in its abovementioned opinion of 27 April 1995, Mecklenburg-Western Pomerania suffers from an 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.

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.

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.

An alternative solution has not been found. Due to its length and location, it is not possible to avoid an intersection of the protection area; the objectives pursued with the construction of the motorway as well as the desired grouping of traffic would not be achieved.

4.3. *Mitigation and compensation measures*

The intersection will, however, create a new artificial obstacle for the migration of species in the Peene valley and will create disturbances to other habitat types important for species listed under the Birds and the Habitats Directive. For this reason, sufficient compensation measures ensuring the global coherence of Natura 2000 have to be taken. The Commission has noted the compensatory measures described in the German Transport Ministry's letter of 30 October 1995 foreseeing and furthering the creation or restoration of seven different habitat types in an area of nearly 100 hectare in the Peene valley between Jarmen and Loitz. These measures have to be taken simultaneously with the construction works and the Commission requests that the Federal Government to keep it adequately informed on these measures.

The Commission has also noted the measures foreseen in order to reduce the impact from the motorway during and after its construction as last resumed in the Transport Ministry's letter of 30 October 1995. Construction will be made from pontoons in order to restrict, as far as possible, damage to the area, the number of pillars in the alluvial plane will be reduced to the necessary minimum. Furthermore, protective measures will be taken against emissions from the motorway such as noise barriers on both sides of the bridge. These barriers will also be used as barriers to mitigate the light attraction and disturbance of nocturnal animals by the headlights of cars passing over the bridge. Furthermore, additional appropriate measures have to be taken in order to retain potential oil run-offs, guaranteeing that, also in case of accidents, oil or other hazardous substances will not pollute the protection area.

Taking into account the foreseen compensation and mitigation measures and considering that the least damaging alternative solution has been chosen, the Commission, in accordance with Article 6 (4) of Directive 92/43/EEC, delivers the following opinion :

Adverse effects on the protection area 'Peenetal vom Kummerower See bis Schadfähre' through the planned A 20 motorway east of Jarmen are justified by imperative reasons of overriding public interest.

Done at Brussels, 18 December 1995.

For the Commission

Ritt BJERREGAARD

Member of the Commission
