



EUROPEAN COMMISSION

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COMMISSION OPINION

of 11.06.2010

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, concerning the construction of the new section 3 of the motorway A 20 'B 206 West of Wittenborn to B 206 West of Weede' south of Bad Segeberg in Schleswig-Holstein (Germany)

Draft

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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 article 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 28 July 2009, the Commission received a letter, together with accompanying technical files, from the German Permanent Representation requesting an opinion of the Commission pursuant to Art. 6 (4) of the Habitats Directive concerning the authorization of the construction of the section 3 of the motorway A 20 "B 206 West of Wittenborn to B 206 West of Weede". This section is situated in the South of Bad Segeberg in Schleswig-Holstein.

III. The project

The highway A 20 is part of the traffic-concept plan of Germany for tackling the traffic situation in North-Germany, taking into account the increasing volume of traffic since the reunification of Germany. It is also part of the trans-European road-network. The project

includes the construction of the new section 3 of the motorway A 20 in the South of Bad Segeberg between Weede and Wittenborn with a total length of ca. 10 km (see fig. 1, Annex). The project also includes the construction of a bridge with a height of 19 meter, a length of 250 meter and a width of approx. 55 meter, crossing the Natura 2000 site "Travetal" (DE 2127391) in a total section-width of approx. 90 meter.

IV. The site

Site DE 2127391 „Travetal“ is a Site of Community Importance (SCI) designated under the Habitats Directive. This site, situated in the continental bio-geographical region, covers an area of 1,280 hectares and extends over a total length of approximately 20 km close to Bad Segeberg in North-South-direction. The site includes the river Trave as well as several forest habitat types and belongs to the most important biotope complex in the South-East of Schleswig-Holstein. It hosts countrywide relevant populations of two species of Community interest listed in the Annex II to the Habitats Directive: *Unio crassus* and *Cobitis taenia*. In addition the Travetal is of great importance for bats, also listed in Annex II to the Habitats Directive. The Travetal is used as a flight route by bats which winter in a cave in Bad Segeberg (site of Community importance DE 2027-302 "Segeberger Kalkberghöhlen").

The part of the area affected by the construction of the bridge belongs to the two most natural parts of the entire Trave vally; the forest belt concerned is one of the longest, not fragmented slope forests of the Natura 2000 site. The forests surrounding the planned crossing of the A 20 with the river Trave are characterised by three priority habitat types of Annex I to the Habitats Directive:

7220*, Petrifying springs with tufa formation –

9180*, *Tilio-Acerion* forests of slopes, screes and ravines –

91E0*, Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* –

as well as non-priority habitat types such as:

9130, beech forests (*Asperulo-Fagetum*) and

9160 oak-hornbeam forests (*Carpinion betuli*).

The priority habitat types 7220* "Petrifying springs with tufa formation (*Cratoneurion*) and 9180* " *Tilio-Acerion* forests of slopes, screes and ravines" are very rare in North Germany.

The location of the site is illustrated in fig. 2 (Annex).

V. Implications of the project on the site

An Art. 6 (3) assessment was carried out for section 3 of the motorway A 20. It concluded that the construction of section 3 and the associated construction of a bridge will have a significant impact on the Natura 2000 site "Travetal", despite comprehensive mitigation measures. The direct use of land is limited to the non-priority habitat type 9160 "Sub-Atlantic and medio-European oak or oak-hornbeam forests of the *Carpinion betuli*". A surface of 1,027m² is completely covered by a bridge abutment on the Eastern slope of the valley (so-called Hangwald). Problematic however is the cutting of the forest complex by one break of

90 m width, additional air pollution and nitrogen depositions caused by the traffic as well as traffic-related disturbances, which will affect the priority habitat types

7220*, Petrifying springs with tufa formation

91E0*, Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*

9180*, *Tilio-Acerion* forests of slopes, screes and ravines

The consequences will be: disturbances of characteristic species, changes of the local micro-climate due to light and rain interception by the bridge, change of the species composition through nitrogen depositions (selective promotion of nitrophilous species). A deterioration of the conservation status of protected habitat types is therefore expected. In addition, the future development capacity of these areas will be significantly limited. The Natura 2000 site "Segeberger Kalkberghöhlen" which is situated in the vicinity will not be significantly affected. However, the motorway will cut the flight routes of bats and landscape structures that are important for these species.

Collisions with the traffic cannot be avoided. Further potential effects linked to the construction and utilization of the new highway section, such as noise, dust- and light emissions and potential impacts on the river "Trave" itself with its river bank areas and its fauna have also been assessed. No significant impacts are expected on fish species listed in Annex II to the Habitats Directive such as *Cobitis taenia*, *Lampetra fluviatilis*, *Lampetra planeri*, *Petromyzon marinus*, as well as *Lutra lutra* and *Unio crassus* since appropriate mitigation measures will be implemented. It has been concluded that none of these effects will adversely affect the biocoenosis of the river "Trave".

However, except for the river "Trave", the project will adversely affect in the sense of Art. 6 (3) of the directive the integrity of a Natura 2000 site hosting several protected habitats, including three priority habitat types. Consequently, the project may only go ahead 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

Three possible alternative routes have been assessed, which differ in the way they would cross the Natura 2000 site. The possibility of tunnelling was also considered. According to Germany none of the investigated alternative measures could adequately reach the goals of the national traffic concept plan without affecting the Natura 2000 site. The tunnelling and two variants (urban motorway and a southern by-pass of Bad Segeberg) would additionally have as well significant impacts on the site. Only one variant (a distant southern by-pass of Bad Segeberg) would have no impacts but could not reach at all the goals of the projects as transport safety, traffic clearing, linking peripheral or isolated regions to central Community regions and the east-west-connectivity without with the traffic of the north-south-line of the A21.

The competent authorities therefore consider that the currently proposed solution could best reach the objectives of the national traffic concept plan.

- Imperative reasons of overriding public interest

The German government gave top priority to the A 20 motorway project. As part of the trans-European road network the A 20 has the objective, as an important link, of contributing to establishing the internal market and strengthening the economic and social cohesion in the European Union. The construction of the section of the A 20 between Wittenborn and Weede as continuation of the "Ostseeautobahn" and the "Nord-West-Umfahrung Hamburg" is without alternatives and indispensable, in particular in view of coping with the European and national traffic flows as well as with the development of the economically underdeveloped areas in Schleswig-Holstein, Mecklenburg-Vorpommern, the harbours and the the beaches of the Baltic Sea. In this respect, an East-West link has to be created in Mecklenburg-Western Pomerania in order to connect the region with the central European countries.

In its opinion of 18 December 1995 on the crossing of the Peene Valley by the A 20 (L 006 of 09/01/1996) the Commission recognized the overriding public interest of the A 20.

- Impact mitigation

The activities linked to the construction and operation of the motorway section are not likely to significantly affect the site. Comprehensive mitigation measures will be implemented on the basis of the recommendations made after the assessment of such potential implication for the site. In particular measures are being taken to minimise disturbance such as the potential input of de-icing salt into the river Trave and to mitigate the effects of light on the fauna (no construction activities during the night). With a view to avoiding significant impacts of the project on migrating bats anti-collision barriers with a height of 4 meters will be installed. This will reduce the collision risk for low-flying bats following the slope forest which function as a guiding structure. New guiding structures composed by shrubs will be created to guide the bats under the bridge.

The fundamentals of the bridge will be set above the ground-water level, in a specific horizontal position so that the water input from the existing sources, which supplies the forest in the Eastern part, will be maintained.

- Compensatory measures

To compensate the expected impacts of the project on the coherence of the Natura 2000 network the following measures are planned (all actions have undergone a Natura 2000 impact assessment):

"Seitental der Trave" and "Tal der Süderbeste". The area "Seitental der Trave" is situated at a distance of 1,5 km from the Trave-crossing of the A 20. Additionally to the preservation of the existing habitat types, it is planned to develop the habitat types 9130, 9160 and *9180, listed in annex I of the Habitats Directive by measures related to changes in forest stand structure and other forest management. Furthermore there will be a conversion of species-poor humid grassland into the habitat type Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*91E0). The area "Tal der Süderbeste" is situated at sufficient distance from the areas affected by the planned section of the A 20. In this area the habitat type *Tilio-Acerion* slope forests, screes and ravines (*9180) will be created as compensation and further developed. The main focus lays on the long-term protection of endangered habitat types of annex I of the Habitats Directive.

The impacts will be compensated in regard to the affected areas and their ecological functions on a total area that will be three times larger than the areas that will be affected. The relation between the affected area and the created equivalent habitats will be:

1:12 for the Habitat type "Subatlantic and medio-European oak or oak-hornbeam forests of the *Carpinion betuli*" (9160) that are being crossed by the bridge.

1:2,5 for the complex "Petrifying springs and Alluvial forests" (*7220 und *91E0).

1:8 for the complex broad-leaved forest (9130, 9160 und *9180).

The planned measures will be situated close to the project area ("Seitental der Trave") and are meant to protect the coherence of the Natura 2000 network ("Tal der Süderbesten"). The German authorities confirmed that the compensation measures will be taken place before the damages occur. Both areas will then be integrated in the Natura 2000 network and will be designated as new Natura 2000 sites. These measures will completely reconstruct the coherence with immediate effect. Long-term process and habitat monitoring is part of the compensation measures.

VII. Opinion of the Commission

Based on the information submitted by the competent German authorities, the Commission concludes that the crossing of the "Travetal" in the South of Bad Segeberg in Schleswig-Holstein by the new section of the A20 highway is justified and that there are no viable alternatives to the planned project. Three alternatives have been assessed but the objectives pursued with the construction of the motorway as transport safety, traffic clearing, linking peripheral or isolated regions to central Community regions and the east-west-connectivity would not be achieved without affecting the Natura 2000 site. Therefore the chosen route of the A20 results as the only possibility to reach the objective of contributing to the establishing the internal market and to strengthening the economic and social cohesion in the European Union. The Commission holds the view that the assessment of possible alternatives to the project was carried out in a fully satisfactory way and that it can be accepted that there exist no alternatives to the project.

With regard to mitigation measures, the Commission considers (on the basis of the available information) that the actions to be implemented will limit the negative effects both of the construction and the operation of the motorway. The mitigation measures are adequate and follow the precautionary approach. The project will however have adverse effects on three priority habitat types, which need to be compensated. The damages that will be caused to the priority habitat types 7220* Petrifying springs, 91E0* Alluvial forests and 9180* *Tilio-Acerion* forests of slopes, screes and ravines will be compensated by the creation of equivalent habitats on a total area that will be three times larger than the areas that will be affected. According to the German authorities these measures will have taken place before the damages occur.

The location of the compensation areas will contribute to the coherence of Natura 2000. No significant impacts are expected on fish species present in the Trave river and listed in Annex II to the Habitats Directive (*Cobitis taenia*, *Lampetra fluviatilis*, *Lampetra planeri*, *Petromyzon marinus*) and on *Lutra lutra* and *Unio crassus* since appropriate mitigation measures will be implemented. A possible impact on the migrating bats will be minimised through the construction of collision barriers.

In the light of the above, the Commission considers that the proposed compensatory measures are acceptable and appropriate to protect the overall coherence of Natura 2000.

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 building the motorway A 20 on the Natura 2000 site DE 2127391 “Travetal” are justified by imperative reasons of overriding public interest.

The opinion is subject to the following conditions:

- The compensatory measures will be implemented and monitored as described in the documents submitted to the Commission by the German authorities.
- A detailed report on the implementation and monitoring of these measures will be submitted to the Commission.

Done at Brussels,

For the Commission
Janez Potočnik
Member of the Commission

Annex

A 20, Nord-West-Umfahrung Hamburg

Streckenabschnitte: Planungsstand

Ministerium für Wissenschaft,
Wirtschaft und Verkehr
des Landes Schleswig-Holstein

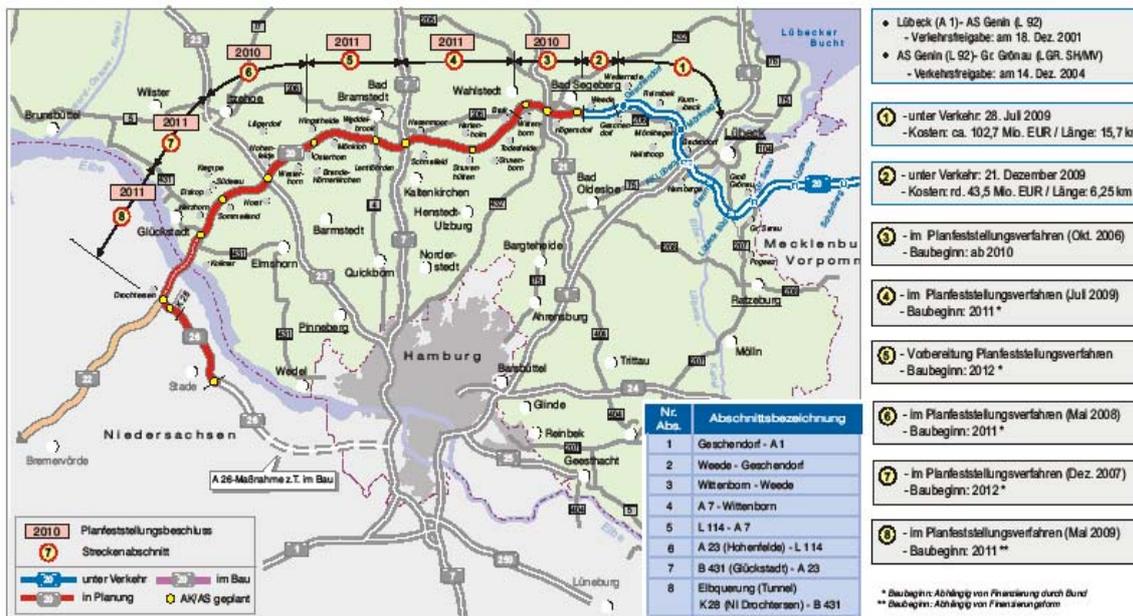


Figure 1. Overview on the North-West bypass, sections 1 to 8.

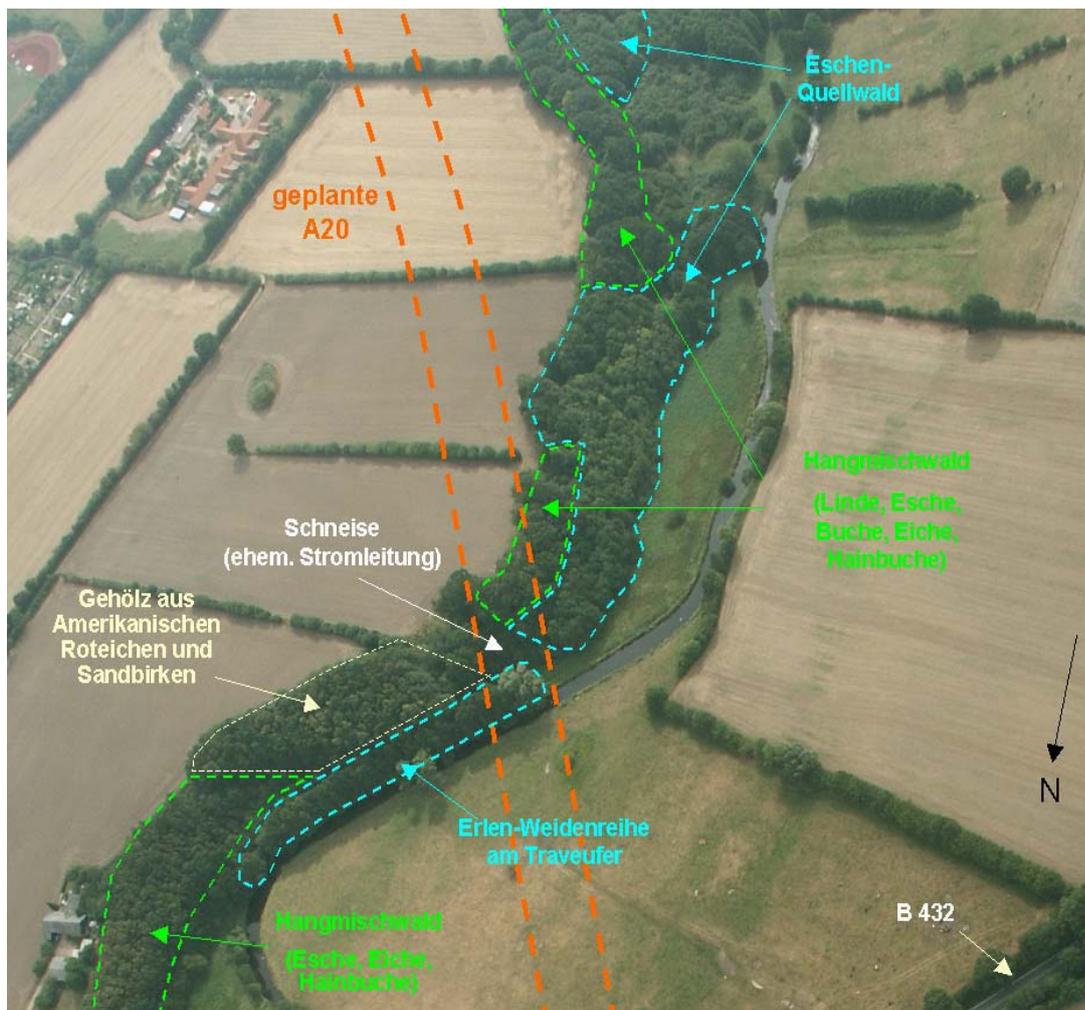


Figure 2. Aerial map of the Natura 2000 site "Travetal"