

Brussels, 30 July 2007

Commission asks the European Court of Justice to order Poland not to start road construction in Rospuda Valley

The European Commission has today asked the European Court of Justice to take interim measures to ensure Poland does not go ahead with the construction of a road that will cause irreversible damage to the Rospuda Valley, a protected area of primeval forest and natural habitats of European importance. The Commission's application for urgent action by the Court follows the Polish government's failure to give an undertaking that it will not start construction work on the Augustow bypass through the valley on 1 August. The Commission took Poland to the ECJ over the planned construction of the Augustow bypass and another road, the Wasilkow bypass, in March 2007 due to the damage they would cause to natural areas of European importance. The interim measures now requested would prevent the works from going ahead until the Court has had time to rule on the case brought in March.

EU Environment Commissioner Stavros Dimas said: "It is regrettable that Poland has now decided to go ahead with the construction of a new road through Rospuda Valley. I would hope that Poland will reconsider its decision before irreparable damage is done. In the meantime, the Commission has asked the Court of Justice to issue an injunction to maintain the integrity of the site.

The case pending before the Court of Justice

In February 2007 the Polish authorities gave contractors the green light to start construction work on bypasses in important nature sites in the Rospuda river valley and Puszcza Knyszynska in north-eastern Poland. As a result the Commission accelerated an existing infringement procedure against Poland over these two roads, known respectively as the Augustow and Wasilkow bypasses.

As Poland failed to respond satisfactorily to the Commission's final warning, the Commission decided in March to refer the case to the European Court of Justice. The Commission also decided that it would ask the Court to issue an order suspending work on the projects if necessary.

The request for the interim measures

The Polish authorities decided to stop the construction works in Rospuda Valley during the 2007 breeding season which is now finishing. They also agreed, following a Court hearing, to suspend the execution of an afforestation project in a neighbouring area which was initially presented as a part of the compensation for the anticipated damage to the site. Poland has also recognised before the Court that all construction works in Rospuda Valley should be suspended while the case was 'sub judice'.

The Commission has consistently urged the Polish authorities not to initiate works in Rospuda Valley. However, Poland has given no official confirmation that the works will not be initiated on 1 August. The Commission is therefore immediately submitting to the Court a request for interim measures. If this request is accepted, the Court will issue an order asking Poland not to go ahead with the construction of the bypass through Rospuda Valley while the case is pending.

The Augustow bypass and Rospuda Valley

The 17.1 kilometre Augustow bypass would involve building an expressway which would cut through the Rospuda river valley, an area that forms part of the EU's Natura 2000 network of protected nature sites. The valley contains a rare mosaic of unspoilt habitats within one of the largest and best maintained primeval forests in central Europe. The expressway would cross a unique wetland system considered to be of exceptional European value by scientists.

The valley has been designated as a Special Protection Area (SPA)^[1] under the Wild Birds Directive^[2] and should also benefit from protection under the Habitats Directive^[3] on account of its rare habitats, although Poland has not yet notified its designation to the Commission.

The final construction permit was issued on 9 February 2007. On the same day the developer announced that work would start by the end of February.

Poland argues that the project is of overriding interest on road safety grounds. It denies that European nature legislation requires it to protect the site by cancelling the bypass. The Polish authorities claim that by assessing the damage the road will cause, looking at alternatives and offering compensatory measures it has complied with all protection requirements. Proposed compensatory measures include taking some forest out of production, creating ponds, blocking small streams to bring up the water level in drainage channels, planting trees, and restoring and managing wet meadows. For its part, the Commission considers that Poland has a duty to protect this site and that the assessments and examination of alternatives are weak and unconvincing. The Commission considers that road safety could be adequately addressed by other routes that would avoid irreparable damage to this protected site. As for the compensatory measures offered, these do not offset the destruction of unique natural features.

Legal Process

Article 226 of the Treaty gives the Commission powers to take legal action against a Member State that is not respecting its obligations. Under this article, the Commission may decide to bring the case before the Court of Justice. Where the Court of Justice finds that the Treaty has been infringed, the offending Member State is required to take the measures necessary to conform.

According to Article 243, 'the Court of Justice may in any cases before it prescribe any necessary interim measures'. According to Article 84.2 of the Rules of Procedure of the ECJ, the President may grant the application even before the observations of the opposite party have been submitted.

More information about EU nature protection policies is available at:

<http://europa.eu.int/comm/environment/nature/home.htm>

[1] Puszcza Augustowska

[2] Directive 79/409/EEC.

[3] Directive 92/43/EEC.