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DIRECTORATE-GENERAL
REGIONAL AND URBAN POLICY
Closure, Major Projects and Programme Implementation III
Closure and Major Projects

Brussels,
REGIO.DDG.F.1/KK/lb

VIA SFC2014

Subject: Commission observations on Major project application ‘Construction of Bacău bypass’ (CCI Number 2019RO16CFMP005)

Dear Mr Mărișteanu,

On 22 November 2019, the Romanian authorities submitted to the European Commission via SFC2014 the project application, in accordance with Article 102(2) of Regulation (EC) No°1303/2013, on major project CCI 2019RO16CFMP005 “Construction of Bacău bypass”.

Following the analysis by the Commission services on the information provided in the Application Form and its annexes, the Commission services would like to issue observations on the environmental impact for this project, and other issues mentioned below.

Article 101 of the CPR sets out the information necessary for the approval of a major project. This includes an analysis of the environmental impact, taking into account climate change adaptation and mitigation needs and disaster resilience (Article 101(f) CPR). The information to be provided on a major project is detailed in Annex II “Format for submission of the information on a major project” of Implementing Regulation (EU) 2015/207¹. Annex II sets up a form for a major project application. In particular,

¹ Commission Implementing Regulation (EU) 2015/207 of 20 January 2015 laying down detailed rules implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council as regards the models for the progress report, submission of the information on a major project, the joint action plan, the implementation reports for the Investment for growth and jobs goal, the management declaration, the audit strategy, the audit opinion and the annual control report and the methodology for carrying out the cost-benefit analysis and pursuant to Regulation (EU) No 1299/2013 of the European

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information necessary on the environmental analysis is listed in point F of Annex II of this Implementing Regulation.

The criteria for quality review of information provided are set up in Article 23 and Annex II of Commission Delegated Regulation (EU) No 480/2014². For the environmental analysis the criteria for assessment are provided in point 6 of Annex II of this Delegated Regulation. The title of Annex II refers to the quality review carried out by the independent experts, but the Commission services when appraising a major project have to follow them as well, to ensure the use of the same criteria to assess the major project under procedure subject to Article 102(1) CPR and 102(2) CPR.

Taking into consideration the above criteria and the information submitted in the Project application, the Major project falls under the scope of Directive 92/43/EEC³ (hereafter ‘the Habitats Directive’), Directive 2009/147/EC⁴ (hereafter ‘the Birds Directive’) and Directive 2011/92/EU⁵ (hereafter ‘the EIA Directive’). Compliance with the Habitats Directive has to be ensured with regard to the major project because it is likely that it has an impact on Natura 2000 sites.

The Commission services note that the information provided with the Project application indicates that the project does not comply with Article 6(3) of the Habitats Directive. This analysis is based on point 6.8 (‘Compliance with the Habitats Directive’ of Annex II of Commission Delegated Regulation (EU) No 480/2014), information provided in the Project application under point F.4 (Annex II of Implementing Regulation (EU) 2015/207), and the documents referred to below submitted as part of the Project application. It results in the following key observations:

1. The screening decision is not based on site-specific conservation objectives of the relevant Natura 2000 sites

Romania has not yet established concrete site-specific conservation objectives for the three Natura 2000 sites⁶ concerned by the bypass and identified in the Natura 2000 declaration (hereafter “declaration”) issued by the Bacău County Environment Protection

Parliament and of the Council as regards the model for the implementation reports for the European territorial cooperation goal, OJ L 38, 13.2.2015, p. 1–122.

² Commission Delegated Regulation (EU) No 480/2014 of 3 March 2014 supplementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund, OJ L 138, 13.5.2014, p. 5–44.

³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206 of 22.7.1992, p. 7.

⁴ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20 of 26.1.2010, p. 7.

⁵ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L26 of 28.1.2012, p. 1.

⁶ ROSCI0435 Siretul Mijlociu, ROSPA0138 Piatra Șoimului-Scorțeni-Gârleni and ROSPA0063 Lacurile de Acumulare Buhuși-Bacău-Berești

Agency on 7 November 2019. The declaration concluded that the project would have no significant impact for the three Natura 2000 sites and therefore no appropriate assessment was required under Article 6(3) of the Habitats Directive.

For two sites, ROSCI0435 Siretul Mijlociu and ROSPA0138 Piatra Șoimului-Scorțeni-Gârleni, no conservation objectives have been established so far, contrary to the obligation under Article 6(1) of the Habitats Directive. For the site ROSPA0063 Lacurile de Acumulare Buhuși-Bacău-Berești, the management plan identifies “the maintenance of the favourable conservation status of bird species of Community interest and characteristic habitats” as a general objective. It also defines two conservation-related specific objectives, which refer in general to conserving habitats in order to maintain or increase the populations of bird species. However, this does not meet the requirements under Article 6(1) of the Habitats Directive. In the absence of conservation objectives or of specific conservation objectives, the requirements of Article 6(3) of the Habitats Directive cannot be met given that it requires the assessment of the project’s “*implications in view of the site’s conservation objectives*”.

Romania should therefore establish concrete site-specific conservation objectives for the Natura 2000 sites concerned by the bypass. When doing so, Romania should rely on the Commission note on setting conservation objectives for Natura 2000 sites⁷. The Romanian authorities should then revise their screening decision and the Natura 2000 declaration in light of the established site-specific conservation objectives. If the decision concludes that there may be significant impacts, the Romanian authorities must carry out a full appropriate assessment.

2. *The screening decision issued by the authorities is not based on sufficient evidence*

Apart from the lack of site-specific objectives, another problem with the screening decision and the declaration is that they contain no evidence why there would be no significant impacts on the three Natura 2000 sites. The assessment of the impacts that the bypass could have on these sites is extremely limited (half a page in total) and no underpinning reasoning is provided for the conclusion reached. For instance, the declaration confirms that the breeding, rearing, feeding or staging areas of birds, mammals, reptiles or fishes protected in the sites will not be affected. Nevertheless, only the seven species protected in ROSCI0435 Siretul Mijlociu are mentioned, the bird species in ROSPA0063 Lacurile de Acumulare Buhuși-Bacău-Berești and ROSPA0138 Piatra Șoimului-Scorțeni-Gârleni are not listed or in any way assessed. In addition, the declaration states that habitat type 92A0 *Salix alba* and *Populus alba* galleries in ROSCI0435 Siretul Mijlociu is not present in the project area. As there is no site management plan and no habitat maps are available for the site, it is unclear on what information this statement is based.

Based on the above information, it cannot be excluded that the project will not have significant impacts on the sites.

The Commission services have also assessed the presentation memoire (“memoriu de prezentare”) which appears to have supported the conclusions presented in the screening decision and the declaration, even if there is no clear reference to this memoire in the latter. Without considering conservation objectives, the memorandum presents some of

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https://ec.europa.eu/environment/nature/natura2000/management/docs/commission_note/commission_note2_EN.pdf

the impacts of the project on the sites ROSPA0063 Lacurile de Acumulare Buhuși-Bacău-Berești and ROSCI0435 Siretul Mijlociu. However, it remains unclear how impacts are assigned certain values (0 for no impact, -1 or -2 for non-significant negative impact and -3 for significant negative impact) in the evaluation checklist. Besides, the assessment of the casualties that the species present in the project area may suffer during construction and operation is not presented. Moreover, the memoire lists mitigation measures during construction and operation, but these are not reflected in the screening decision and declaration and it is not clear in which way their implementation would be ensured.

Consequently, the Commission's services estimate that the memoire does not provide sufficient information and evidence for concluding, in the declaration, that there would be no significant impacts.

3. Lack of explanation on the absence of cumulative impacts

The screening decision and the declaration states as well that the project will have no cumulative effects with other projects, without giving sufficient reasoning for this statement. The presentation memoire only mentions that there are no other projects with potential cumulative impacts (except for upriver gravel extraction sites 7 km away and downriver exploitation areas under approval 24 km away).

4. Project already started

In addition, the Commission services have noted that the construction of the bypass has apparently already started. Considering the comments highlighted above on the application of Article 6(3) of the Habitats Directive, the Commission is concerned that the implementation of this project might be leading to a deterioration of the Natura 2000 sites ROSCI0435 Siretul Mijlociu, ROSPA0063 Lacurile de Acumulare Buhuși-Bacău-Berești and ROSPA0138 Piatra Șoimului-Scorțeni-Gârleni.

5. Project and project location

5.1 The project scope includes in the Component 3 the construction of parking facilities that are not sufficiently explained in the project documentation. The parking is planned on the South-West bypass in km 6+300 (close to crossing with DN11 road). The construction of the parking is part of eligible project cost. The project documentation does not explain: a) The rationale for the location of the parking at the western end of the bypass (2x1 road), b) The construction cost and the size and capacity of the parking. This information should be provided together with justification on why the costs of parking facilities should be eligible in this particular context.

5.2 During the appraisal of this aspect of the major project, the following was observed: The current Application covers one section (about 16 km) of the planned new road connection between Bucharest and region of Moldova. So far only section adjacent to Bucharest is completed (55.5 km) and the remaining sections are optimistically estimated to be completed until 2027 (over 350 km). However, this project will be operated as the Bacau bypass regardless of the construction progress on other sections. Please provide more information on planned implementation of remaining sections, with special attention to indication of possible cost and financing sources.

6. Project timetable including procurement

6.1. No progress indicators are provided, only output indicator. Section G.1.2 (financial progress) gives an approximation of financial progress, with the main expenditure foreseen in the years 2021-2023. Please complement this information with progress indicators that reflect physical progress in construction works.

6.2. As there were certain problems in procurement process and some contracts were terminated and retendered, the Commission requests the Romanian authorities to provide additional information on how the take-over process of delivered works was organised and managed to ensure that only regular and legal expenditure is certified to the Commission.

6.3 According to the procurement table, several supervision items were launched, yet currently there seems to be no supervision in place. Please explain.

7. Future operation and maintenance (O&M) costs of the project

The estimated overall O&M unit cost is EUR 25,000 per km per year for 2x2 motorways and EUR 12,500 per km per year for national roads 2x1, excluding bridges. The winter maintenance costs per km, per year, considered in the FA, are EUR 5,000 for two-lane roads and EUR 10,000 for motorways. These assumptions are different from in other Romanian projects recently submitted to EC (e.g. Sibiu-Pitesti Stage I project assumes total routine O&M cost of 1 kilometre of 2x2 motorway at EUR 79,600 and winter maintenance cost of EUR 42,500). The O&M costs of EUR 25,000 per km of motorway seem low in terms of both, Romanian and international standards, so are underestimated.

We note that this has impact on the underestimation of the future needs for the operating subsidies for road maintenance; therefore it should be explained in order to ensure proper management of the project after its completion.

The deadline for adoption of major projects foreseen in Article 102(2) of Regulation (EU) No 1303/2013 of the above-mentioned application is hereby interrupted until additional clarifications are submitted to the Commission within two months from the receipt of this letter.

In the absence of reply or an event that your clarifications would appear to be insufficient, the Commission services may adopt a Commission decision refusing the financial contribution to this project.

Yours sincerely,

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