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- Planning a motorway -

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Preliminary remarks

The motorway upon which the questionnaire is based is described in Germany as a highest-category federal trunk road for the use high-speed motor vehicle traffic. Legislative competence and financial responsibility for such roads lies with the Federal Government. The planning, construction and maintenance of federal motorways are undertaken by Länder authorities on behalf of the Federal Government (Art. 90 (2) Grundgesetz [Basic Law]).
Which authority is responsible for road planning and construction lies within the states' organisational sovereignty and is regulated differently in the various Länder.

Question 1: Administrative consent procedure

- **Consent requirement**

Federal motorways may only be constructed and altered when the plan has been established after declaratory proceedings and the project has been approved (§ 17 Para. 1 Fernstraßengesetz, FStrG [Trunk Road Act]). The declaratory proceedings are initiated by an application for the establishment of the plan submitted to the hearing authority by the project developer. The application must be accompanied the complete documentation for a specific road section. For the most part, this comprises a planning section of a few kilometres.

- **Preliminary planning at higher level**

Extensive preliminary planning by the project developer and superior authorities precedes the application for approval. The network of federal motorways and plans for its improvement and extension are first incorporated into a comprehensive Federal Communication Route Plan **(Bundesverkehrswegeplan**) and then fixed in a Trunk Road Extension Act (**Fernstraßenausbaugesetz**) by the government. The Act is amended at intervals of several years and includes a map setting out in approximate terms where new motorways will be built and existing ones improved.

The **routing determination** for the separate sections by the Federal Minister for Transport, Building and Housing takes place at the next lower level of concretisation (§ 16 Abs. 1 Satz 1 FStrG). At this stage there is already a comparison of the alternatives routes for that particular section of the road. The routing determination represents a preliminary decision for the project development with respect to which routing is most preferable, but it has no binding effect for external parties as yet, especially not for citizens.

In addition to the determination of the routing and in order to co-ordinate road construction planning with other land-use plans on federal and Land levels, a regional planning survey (**Raumordnungsverfahren**) is carried out regularly. The result of this survey has no directly binding effect on road planning (§ 3 Nr. 4, § 4 Abs. 2 Raumordnungsgesetz - ROG), but it must be taken into account during the planning process.

- **Environmental Impact Assessment**

The plan approval procedure (Planfesstellungsverfahren) goes hand in hand with the Environmental Impact Assessment prescribed by European law (Directive 85/337/EEC amended by Directive 97/11/EC). No separate procedure is provided for the assessment; in German law, it is instead **integrated into the plan approval procedure** (§ 2 Abs. 1 Umweltverträglichkeitsprüfungsgesetz, UVPG [Environmental Impact Assessment Act]). This means that the data necessary to investigate, describe and evaluate the impact of the road construction project on the environment must have been collected by the project developer by the time the application is made and must be included in the plan approval documentation. The public consultation prescribed by the Environmental Impact Assessment Guideline takes place as part of the plan approval procedure. A summary of the environmental impact must be attached to the approval by the plan approval authority (§ 11 UVPG).

Since the middle of 2005, German law has also required that the Federal Minister for Transport, Building and Housing carry out a **strategic environmental assessment** at the stage when the forward planning (Bedarfplan) for the Trunk Road Extension Act is being compiled and an environmental assessment carried out at the routing determination stage. Under certain circumstances, it may even be necessary at the

regional planning survey stage (§§ 15, 16 und 19 b UVPG). The introduction of the strategic environmental assessment was to implement Directive 2001/42/EC.

- **Experts**

Where the project developer does not possess the necessary expertise in house, external experts are consulted at the detail planning stage before the plan approval procedure is initiated. As a result, the planning documentation submitted to the hearing authority is regularly supplemented by expert assessments of noise abatement and emissions as well as expert papers on the impact of the plan on nature and the landscape; there are frequently also hydrologic assessments and evaluations of vibration protection, if applicable. Where the hearing authority considers that certain questions have not been sufficiently answered, it may either charge the project developer with providing further expert assessments or it may itself seek supplementary expert opinion.

- **Steps in the plan approval procedure**

(1) Within one month of the date that the project developer submitted the plan, the hearing authority, in many cases identical with the plan approval authority, arranges for the submission of the **opinions** of those **authorities** whose areas of responsibilities are affected by the project (in particular the authorities for water conservation, air pollution protection and nature preservation, and the municipalities affected) to be solicited (§ 17 Abs. 3 a FStrG). The authorities concerned must submit their opinion within a deadline set by the hearing authority which may not exceed three months (§ 17 Abs. 3 b Satz 1 FStrG).

(2) Also within a period of one month after the submission of the planning documentation, the hearing authority initiates the public consultation process by causing the municipalities which are predicted to be affected by the project to **exhibit the plan** to the public (§ 17 Abs. 3 a FStrG). Within three weeks of their receipt of the plan, the municipalities must make it accessible to all for a period of one month (§ 73 Abs. 3 Satz 1 Verwaltungsverfahrensgesetz, VwVfG [Administrative Procedures Act]). Anyone whose interests are affected by the project may raise **objections** against the plan for a period of up to two weeks after the end of the exhibition. Objections may be raised in writing or by officially recording them with the hearing authority or the

municipality (§ 73 Abs. 4 Satz 1 VwVfG). Affected parties' objections in so far as they could have been raised against the exhibited plans are no longer legitimate after the expiry of the deadline for objections. This also holds true for later court proceedings.

The municipalities which are to exhibit the plan must make the exhibition known publicly in the usual local ways. The **public notice** must indicate where and when the plan is available for examination, until when objections can be raised and that affected parties' objections are excluded after that date.

(3) **Conservation organisations** must also be given the opportunity to submit opinions and to examine relevant expert reports where the project will have consequences for nature and landscape and where the organisation's area of activity is affected (§ 58, 60 Bundesnaturschutzgesetz, BNatSchG [Federal Conservation Act])

(4) The hearing authority must hold a **public hearing** within three months after the expiry of the deadline for objections from authorities and citizens (§ 17 Abs. 3 c Satz 1 FStrG). During this hearing, the hearing authority discusses in detail the objections raised against the plan in due time and the authorities' opinions with the project developer, the authorities, the affected parties and the people who raised objections. The public hearing is designed to clarify open questions, to elucidate objections raised and to give the opportunity for individual issues to be settled amicably. Binding decisions regarding objections cannot be made at this stage. On account of the considerable costs in both time and money caused by the public hearing, there is currently some discussion about whether to eliminate this step entirely or perhaps condense it significantly.

(5) If the hearing and discussion lead to alterations in the plan as exhibited, the procedural steps until that point must be repeated. Within three months of the conclusion of the public hearing, the hearing authority must deliver a **summary** of the results of the hearing to the plan approval authority (§ 17 Abs. 3 c Satz 2 FStrG).

(6) The plan approval authority **establishes** the plan for the road construction plan, deciding for and against the objections and reservations raised in the process. The authority must balance all of the interests affected by the plan against each other

justly and carries the full responsibility for the lawfulness of the planning. In order to allow the project to be permitted at all, the authority can impose **conditions and provisions**. This happens regularly on a significant scale (it is not uncommon for a Plan Approval to have over 100 incidental provisions dealing with water and nature conservation, air pollution, noise abatement or the interests of individual affected parties). The plan approval authority cannot, however, make significant or fundamental alterations to the plan as submitted. If it considers the plan not capable of being approved without such an alteration, it must dismiss the application.

The Plan Approval must encompass the clarification of all the problems created by the project (**principle of problem solving**). The Plan Approval establishes the legitimacy of the project including all the necessary subsequent measures (such as the construction of new junctions with lower categories of roads and the creation of replacements for obstructed byways) in the face of the public interests affected by it (§ 75 Abs. 1 Satz 1 VwVfG). This means that apart from the Plan Approval, no further permissions or clearances from authorities are needed (**concentration effect**).

The Plan Approval is **delivered** to the plan developer, known affected parties and those whose objections were decided upon. A copy of the Approval is also **publicly exhibited** in the municipalities (§ 74 Abs. 4 VwVfG, § 17 Abs. 6 FStrG).

Question 2: Public involvement

a) Is there any public involvement and/or hearing of individually affected parties during the administrative consent procedure?

Differentiated forms of public involvement take place at various stages of the procedure:

- The documentation is **publicly exhibited in the municipalities** affected by the project two months at the latest after they have been submitted to the hearing authority. Public notice is given of this exhibition in the usual local ways. In addition, non-resident affected parties who can be identified and whose addresses are known or can be ascertained within reasonable time

are also notified of the exhibition (§ 73 Abs. 5 Satz 3 VwVfG). The exhibition of the plans lasts one month.

- Any party whose interests are infringed by the project (affected party, includes municipalities) can raise **objections** to the plans in writing or by officially recording them with the hearing authority or the municipality within a period of two weeks after the conclusion of the public exhibition.

- During the **public hearing**, affected parties who have raised objections can discuss their concern with the project developer and the hearing authority/plan approval authority. Binding decisions regarding affected parties' claims are not made at this stage.

- The Plan Approval is **delivered** to all parties who raised objections and also **exhibited** in the municipalities for two weeks along with the relevant documentation. The time and place of the exhibition are to be made known in the usual local ways (§ 74 Abs. 4 VwVfG).

- Recognised **conservation organisations** are involved in the procedure in a different way to that described above; the plan documentation relevant to their concerns is sent to them directly and they then have a reasonable period set by the authority to give their opinion (§§ 58, 60 BNatSchG).

- When a project may have environmental impacts in another state, **cross-border public involvement** must take place according to the regulations of the Environmental Impact Assessment (§ 9a UVPG).

In addition to the above steps during the plan approval procedure, there is also public involvement in the **preliminary procedure stages** (establishment of need according to the Federal Trunk Road Extension Act and determination of the routing by the Federal Minister for Transport, Building and Housing) via public exhibition and the opportunity for objection according to the regulations applying to the strategic environmental assessment (§ 14 i UVPG) or the Environmental Impact Assessment (§ 15 Abs. 2 UVPG).

b) If yes, at which stage(s) of the procedure and in which form?

Please refer to details under a)

c) Do affected parties lose their right to challenge the planning decision before the courts if they do not make use of this form of public involvement?

Citizens affected by the project may raise objections before the deadline for objections (2 weeks after the end of the public exhibition). The late submission of an **objection excludes** the affected party from both the plan approval procedure and also from later court proceedings (§ 17 Abs. 4 Satz 1 FStrG). This also applies for municipalities who claim infringement of their planning sovereignty or other infringements.

The deadline for objections is applied differentially. For example, a party objecting on account of impairment of his land may not later raise further objections on account of possible noise pollution.

Special exclusion regulations apply for recognized conservation organisations. They are excluded from court proceedings with all objections that they did not during the administrative procedure but which the documentation they were sent or which they had examined should have allowed them to make (§ 61 Abs. 3 BNatSchG).

3. Judicial process

There is **no** internal **appeal procedure** against Plan Approvals giving permission for a road construction project (§ 74 Abs. 1 Satz 2, § 70 VwVfG).

Actions against major road construction projects, such as the federal motorway here, must be brought before the relevant court of second instance, the Higher Administrative Courts (**Oberverwaltungsgerichte)** of the Länder (§ 48 Abs. 1 Nr. 8 VwGO [Administrative Court Act]). The unsuccessful party may lodge an appeal with the Federal Administrative Court (**Bundesverwaltungsgericht**) against the decision by the Higher Administrative Court on point of law and for procedural verification. A spe-

cial temporally-limited regulation has applied for the construction and modification of federal trunk roads on the territory of the old GDR (the “new Länder”) since 1991 with the aim of facilitating the creation of urgently needed infrastructure measures. It stipulates that actions against the Approval for such projects must be brought directly before the Federal Administrative Court (§§ 1, 5 Verkehrswegeplanungsbeschleunigungsgesetz [Act on the Facilitation of Traffic Route Planning]) There is no right of appeal against the decision.

The action must be brought within **four weeks** of the delivery of the Plan Approval. It must be founded within **six weeks** of being filed.

Actions against a Plan Approval permitting the construction or modification of a federal trunk road generally do not effect a temporary suspension (“**aufschiebende Wirkung**”), meaning that the roas may be built despite the action. Affected parties may, however, to apply to the court for a temporary injunction. The court rules on the application for an injunction in a summary decision, whereby the plaintiff’s chances of success decisively influence the court’s decision to order a temporary suspension or to allow the immediate enforceability of the Plan Approval.

4. Standing

a) Do all the above-listed plaintiffs have standing before your national courts?
b) If not, which are the reasons for their exclusion?

In German administrative law, only those parties have standing who can demonstrate that **their inherent rights** may be infringed by the planned road construction (§ 42 Abs. 2 VwGO)

These include the residents affected by noise and emissions, the municipalities whose planning sovereignty is infringed and the farmer whose land will be expropriated. The national environmental authority has no standing, however, as it has no inherent subjective rights to defend against the plan approval authority. This is generally the case with state organisations, and means that the environmental authority

can have its area of competence as an authority violated, but its inherent rights cannot be infringed.

Special regulations apply for recognised conservation organisations. They may bring an action against the Plan Approval for the federal motorway independently of whether their inherent rights are violated or not. When the interests of nature and the landscape are affected, when the area of responsibility set out in the organisation's statutes is affected, and when the organisation has taken part in the administrative procedure, it has standing (§ 61 BNatSchG).

The foreign conservation organisation which fears transboundary environmental pollution has no standing before a German administrative court. German law does indeed allow residents of foreign states to bring actions before German courts against projects whose cross-border environmental impact they believe infringes their rights (see BVerwGE 75, 285 [Decisions by Federal Administrative Court]), but as the conservation organisation has no inherent substantive rights that could be violated by the environmental impact of the project, it has no standing. The law allows only domestic organisations standing in such cases, and not foreign ones. No further possibilities arise from the intra-state regulations on transboundary public involvement as part of the Environmental Impact Assessment and the strategic environmental assessment (§§ 9 a, 14 j UVPG).

Question 5: Scope of claims

A plaintiff may in principle only bring an action against those deficiencies in the Plan Approval that violate his **inherent rights**. The **resident** affected by noise and emissions can thus in principle only complain that the Plan Approval permits detriment to his health or authorizes the infringement of the threshold limits on noise and emissions set in law to protect his health. Within these limitations, he can complain against any deficiency in the Plan Approval that led to this result, for instance an incorrect prediction of traffic growth, erroneous assumptions regarding the proportion of heavy goods vehicles in the traffic or a calculation of the noise and emission levels that violate the legal limits. The resident affected by the road construction project is not permitted, however, to cite violations of the rights of other affected parties or matters of public interest, such as conservation.

The **municipalities** may also claim the infringement of their inherent rights, especially their **planning sovereignty** or the impairment of land belonging to them and public institutions. However, they may not cite the violation of the rights of their citizens during the action; in other words, they may not make themselves the citizens' attorney in court.

For officially recognised **conservation organisations**, § 61 Abs. 2 BNatSchG limits their standing to the infringement of legal regulations which are designed to serve the interests of conservation and landscape preservation, and also to matters concerning the organisation's area of interest as defined in its statutes.

Property owners whose land is required, partially or wholly, by the road construction project, enjoy the special position that they may complain against any unlawful element in the Plan Approval, including the violation of regulations designed for the public interest. This is founded in German constitutional law: the Plan Approval is the basis for possible later expropriation, and this is permitted only in the interests of the public good (Art. 14 Abs. 3 Grundgesetz, GG [Basic Law]). For this reason, majority legal opinion holds that expropriation may only take place on the basis of an administrative act that is lawful in every respect.

Frage 6: Scope of judicial review

In so far as the plaintiff has standing (see under 5 above), the court will review the procedural and substantive lawfulness of the challenged Plan Approval in its entirety. However, this holds only for **peremptory law**, in other words where the authority is allowed no room for discretion or weighing up (for example in procedural regulations, with regards to the observation of noise and emissions limits, but also in relation to the observation of environmental conditions, in particular European environmental law).

In so far as the plan approval authority is granted **room for discretion** which is valid for the core of the planning decision, especially the choice of routing, the range of the

court's control is limited. In such a case, the administrative court merely checks that weighing up has taken place, that all the interests were included in the weighing up that should under the circumstances have been included, whether the importance of the affected interests has been respected and whether the affected interests have been balanced in the weighing up process in proportion to the objective importance of the individual interests (BVerwGE 48, 56 <63 ff.>). In addition, the law has declared that in court proceedings, only those deficiencies in the evaluation process will be considered significant when they are manifest and when the possibility exist that, if they had been avoided, the plan approval authority would have come to a different conclusion in its evaluation (§ 17 Abs. 6 c Satz 1 FStrG).

In order to be able to ascertain whether an infringement of peremptory law or a significant deficiency in evaluation has occurred, the **administrative court** can and must **establish** the necessary **facts** for itself, for example by obtaining expert opinion.

Question 7: EU environmental law

a) Environmental Impact Assessment

There is no regulation that prescribes absolutely the annulment of the Plan Approval permitting the project if the Environmental Impact Assessment is not carried out. In practice, it is almost impossible that the required Environmental Impact Assessment should be omitted completely since the Environmental Impact Assessment has been integrated by law into the relevant approval procedure – here the plan approval procedure for the approval of a federal motorway – and every project affecting the environment is assessed in terms of its impact on the environment.

Where the Environmental Impact Assessment as part of the plan approval procedure was procedurally or substantively defectively executed, the consequences of the defects in the Environmental Impact Assessment depend on whether they led to **significant evaluation deficiencies**. This is the case when there is the concrete possibility that without these deficiencies another planning decision would have been reached (BVerwGE 122, 207 <212 f.>).

b) Adverse efffect on a potential Fauna-Flora-Habitat site (FFH site)

The Federal Administrative Court's **interpretation of the law** until now has been founded on the assumption that a site not yet registered with the Commission must be treated as a "potential FFH site" when expert opinion categorically identifies it as fulfilling the conditions of Appendix III (Phase 1) for registration according to the FFH Directive (BVerwGE 112, 140 und BVerwG DVBl 2002, 990). Accordingly, the standard of protection to be afforded to such a potential FFH site is to be determined depending on whether the site must be included on the Community list or not. Inclusion in the Commission's list obtrudes if the site provides priority habitats or is home to priority species according to Appendix I and II of the FFH Directive. In this case, a project could only be permitted under the conditions for exceptional permission listed in Art. 6 FFH Directive. If inclusion in the Community list does not obtrude, court proceedings are to examine only whether the approval of the project would lead to the destruction of the potential FFH site or to such sustained negative impact that registration would no longer come into consideration (BVerwGE 112, 140; 116, 254). Whether this differentiated interpretation is tenable in view of the European Court of Justice ruling from 13 January 2005 (NVwZ 2005, 311 - **Dragaggi**) is as yet unclear.

c) Already registered FFH site

According to the interpretation of the law by the Federal Administrative Court, projects may be approved even if they have significant negative impact on registered but not yet listed sites of Community importance, also taking the ECJ Dragaggi ruling into account, when the conditions set by Art. 6 (3), (4) FFH Directive are fulfilled (BVerwG, judgement of 7 September 2005 - BVerwG 4 B 49.05)

d) Adverse effect on a bird sanctuary

According to the European Court of Justice, if the road construction project causes significant adverse effects on a bird sanctuary, the **stricter protection regime** in Art. 4 (4) of the Birds Directive (79/409/EEC) applies even if the site has not been formally designated as a bird sanctuary in national law (**de facto bird sanctuary**). The German Federal Administrative Court has also adopted this position. The project may then only be permitted if matters of extreme concern to public welfare such as the protection of human life and limb, or the maintenance of public safety require it (BVerwGE 120, 276 <289>). A **switch** to the less strict **protection regime** of the Fauna-Flora-Habitat Directive, which would allow the project to be approved according to Art. 6 (2), (3) and (4) FFH Directive, can only take place when the bird sanctuary has been formally and lawfully placed under protection (BVerwGE 120, 276 <284 ff.>). The German Federal Administrative Court also adopts this position of the European Court of Justice in its entirety.

e) Danger of violation of the threshold values set by the Ambient Air Directive

The Air Quality Framework Directive (96/62/EC) and the Directive 1999/30/EC of 22 April 1999 among others set values for sulphur dioxide, nitrogen dioxide and nitrogen oxide, particulate matter and lead in the ambient air and these were enacted in German law by the 22nd Federal Emissions Prevention Ordinance (22. BimSchV). According to the Federal Administrative Court, the requirements of 22. BimSchV, also where they are concerned with future limits, must be observed during the approval phase of the planning of a new motorway.

There is, however, **no obligation** on the plan approval authority to ensure in the **plan approval procedure** relating to this project that the values set in the ordinance are **observed**. This is because, when realising a project governed by Community law, the German air quality planning system utilizes a gradated regulation mechanism which aims to combat violation of threshold values independently of the source of the emissions. If the set tolerances for air pollutants are exceeded, the authority responsible for emissions prevention must draw up an air pollution control plan which establishes the measures necessary to achieve a sustained reduction in air pollution. This

means that the plan approval authority has no obligation to guarantee the observation of the limits in the area of the road construction project. However, it must take the effect of the project on air quality into account in its weighing up as part of its **duty to solve problems**. Accordingly, the plan approval authority may not approve the road construction project if it is foreseeable that, when the project is realised, there will be no possibility that the air pollution values will not be infringed if air quality planning measures are used that do not interfere with the functioning of the project. This is particularly the case when the road approved in the plan results in emissions that by themselves exceed the prevailing limits. In all other cases, the plan approval authority may generally leave the solution of the air pollution problems to the authority responsible for the execution of the air quality plan (BVerwG, judgement of 23 February 2005 - BVerwG 4 A 5.04 - NVwZ 2005, 808; BVerwGE 121, 57).

Question 8: Consequences of planning deficiencies

a) Procedural and substantive deficiencies that bring down the project

Procedural and formal errors only lead to the annulment of the Plan Approval when the possibility exists that the approval would not have been given if the error had been avoided. For this reason, it is extremely rare in practice that a project collapses because of a formal or procedural error. Absolute deficiencies of this kind hardly exist. Two possible examples would be if a decision on the project was made by an authority not factually competent ((§ 44 Abs. 2 Nr. 3 VwGO), or if an Environmental Impact Assessment of any sort was omitted completely in the case of a large road construction project.

In case of **substantive deficiencies**, it must be decided whether they arise from an infringement against **peremptory law** or whether they are “simply” errors in weighing up. The first – for instance, a violation against peremptory European environmental law – will cause the project to collapse as a matter of principle, in so far as no possibilities for remedy exist (see c and 9 below). Errors in weighing up, however – the failure, complete or partial, to give due weight to affected interests, or the incorrect weighting of individual interests – only lead to the annulment of the Plan Approval when they were **manifest** and influenced the result of the weighing up. An error in

weighing up is manifest when it is ex facie and obtrudes, such as deficiencies in the compilation and evaluation of the weighing up material which arises from the documentation. As with procedural and formal deficiencies, errors in weighing up are deemed to have been of influence on the result of the weighing up where the **concrete possibility** exists that **another decision** regarding the approval of the project would have been reached if the error in weighing up had been avoided. This kind of deficiency can be of such significance that they call the result of the weighing up as a whole into question.

b) What would the court ruling be in this case?

Where a procedural or substantive deficiency causes the project as a whole to collapse, the court annuls the Plan Approval (**cassation**).

c) Other possible rulings where the conditions for complete annulment are not given

If an error in weighing up or an infringement against peremptory law can be remedied by the addition of a supplementary condition to the Plan Approval, the Administrative Court can only pronounce the plan approval authority's obligation to add a **supplement to the Plan Approval** as necessary. The affected party has in this case no claim to the annulment of the Plan Approval. Supplementary conditions can be additional noise abatement requirements (noise barriers), or additional or extended environmental compensation measures. If the court rules that the Plan Approval must be supplemented in this way, the project developer may execute the Plan Approval but the affected party and the conservation organization have the right to insist on the execution of the supplementary conditions.

If the substantive and/or procedural deficiencies cannot be remedied by a simple supplement to the plan, instead of annulling the Plan Approval the court has the option of declaring it unlawful and not executable, thus giving the project developer and the plan approval authority the opportunity to remedy the deficiencies in **supplementary proceedings**. This path is only open to the court, however, where the deficiency is not grave enough to call the whole project into question.

Both possible rulings (supplement to the plan and supplementary proceedings) arise from the **principle of plan retention** that governs German planning regulations. It aims to preserve planning work that has already been done and is not legally challenged, and to limit annulment and remedy to the defective parts of the planning process and planning decision.

d) Ruling in the case study

The court's decision in the case study depends on the degree to which the plaintiff's claims are rightful and on how grave the infringements are.

The **residents** affected by noise and emissions in general have a right only to the supplementation of the Plan Approval with preventative conditions in so far as the adverse effects on them can thus be reduced to a reasonable level.

Municipalities have in principle a not very strong position in the face of specialised planning. Their suit would only be successful if the project impinged on their concrete plans to such a degree that these plans could no longer be realised, or if the project were to make planning in general effectively impossible in the municipality's area and if this level of infringement were also to be adjudged as unreasonable.

The complaint by the **national environmental authority** is inadmissible because of lack of standing.

If the Plan Approval is lawful, the **farmer** will be constrained to accept the use of his farmland for the construction of the motorway. His complaint will thus be rejected. He will, however, be successful if the project is not permissible on the grounds of infringements against the Birds or Fauna-Flora-Habitat Directives.

The same applies for the **German conservation organisation**, as it can claim infringements against European Environmental law. The complaint by the **foreign conservation organisation**, however, is inadmissible as the organisation has no standing.

Question 9: Remedy of planning deficiencies

Certain **procedural and formal deficiencies** can be **remedied up until the conclusion of proceedings** in the final administrative court of fact. In particular, these are the supplementation of the required grounding of Plan Approval, the delayed hearing of parties involved in the procedure and the delayed involvement of other authorities (§ 45 Abs. 1, 2 VwVfG). **Grounding** for the weighing up decision by the plan approval authority can to a limited degree also be added later during administrative court proceedings (§ 114 Satz 2 VwGO in appropriate application). Finally, practice in administrative court proceedings also permits explanations by the plan developer and the plan approval authority which **explain** or **supplement** to a small degree the **Plan Approval** and without which the administrative court would have ruled that a supplement be added to the plan. This kind of measure can result in the settlement of litigation.