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NOTE POUR LES MEMBRES DE LA COMMISSION

E/1795/2004

NORMALE

Délai:

JEUDI 16 SEPTEMBRE 2004 - 11 H

Observations éventuelles : service des procédures écrites SG-A-2
Fax : 64316 - Tél.: 52362 / 52363

Objet : Directive "Habitats"
- avis de la Commission (France)

Proposition de Mme WALLSTRÖM


Décision proposée :

- approuver le projet d'avis de la Commission, émis conformément à l'article 6, paragraphe 4, deuxième alinéa, de la directive 92/43/CEE du Conseil, du 21 mai 1992, concernant la conservation des habitats naturels ainsi que de la faune et de la flore sauvages (directive "Habitats"), en ce qui concerne la demande d'avis et d'échange d'informations adressée par la France à la Commission européenne dans le cadre de la directive "Habitats", en relation avec le projet de construction d'une Ligne Grande Vitesse (TGV Est) ;

- le texte en langue française est le seul faisant foi.

Commentaire :

Selon le service responsable, ce projet ne comporte pas d'incidences financières sur le budget communautaire.


Patricia BUGNOT
Directeur du Greffe

Destinataires : Mme DAY, MM. LAMOUREUX, MEADOWS, PETITE

NOTE DU SECRETARIAT GENERAL

PREPARATION DU DOCUMENT

Direction générale responsable

ENV Environnement

Services Associés

pour accord

SG	Secrétariat général	: Accord
TREN	Energie et Transports	: Accord
REGIO	Politique régionale	: Accord

pour avis

SJ	Service juridique	: Avis favorable
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Langue originale : FR

En cas de demande de corrigendum/suspension de cette procédure, les cabinets et/ou le Service juridique sont invités à envoyer leurs observations à la boîte fonctionnelle "SG A-2 ACCORDS CABINETS".

Dossier traité par Ulrike TRAUTENBERGER - BREY 13/17 - 67372

Info-point PROCEDURE : SG/A/2 (52362- 52363)
Info-point NOTIFICATION : Valérie GALLOO (tél. 69522)
Info-point PUBLICATION : Colette Jansen (tél. 60432)

MEMORANDUM TO THE COMMISSION

1. **SUBJECT: OPINION ACCORDING TO ART. 6 (4) OF COUNCIL DIRECTIVE 92/43/EEC OF 21 MAY 1992 ON THE CONSERVATION OF THE NATURAL HABITATS AS WELL AS THE WILD ANIMALS AND PLANTS^[1], DELIVERED UPON REQUEST OF THE REPUBLIC OF FRANCE**

Natura 2000 is a Community-wide network of nature protection areas established under the 1992 Directive 92/43/EEC on the conservation of the natural habitats as well as the wild animals and plants (the 'Habitats directive'). It aims to promote the maintenance of biodiversity by assuring the long-term survival of Europe's most valuable and threatened species and habitats. The network is composed by sites that have been classified by Member States as Special Protection Areas (SPAs) according to the Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds^[2] (the 'Birds directive') or proposed as Sites of Community Importance according to the Habitats Directive.

Natura 2000 sites are subject to the protection regime laid down in article 6 (3) and (4) of the Habitats directive: Any plan or a project having a significant negative effect on a site may only be authorised, if there is no alternative solution and 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. If the site 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 must be justified by other imperative reasons of overriding public interest, further to an opinion from the Commission.**

The subject of this decision is to adopt an opinion relating to a French project, according to article 6 of the Habitats directive. Corresponding request was submitted to the Commission by the Republic of France. In the following, a short summary of the opinion is given.

The Commission is hereby invited to adopt the above mentioned opinion and approve the notification to the Republic of France.

COMMISSION OPINION

delivered pursuant to the second subparagraph of Article 6(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (Habitats Directive), concerning the request from France for advice and exchange of information with the European Commission within the framework of the Habitats Directive in relation to the project to build a high-speed line (TGV East)

1. Legal background

Article 6(3) of Directive 92/43/EEC¹ stipulates 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, must be subject to 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.

Article 6(4) of Directive 92/43/EEC stipulates that 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, Member States must take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected and must 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.

2. France's request

On 12 March 2004 the Permanent Representation of France to the European Union sent DG Environment an official notification, in accordance with Article 6(4) of the Habitats Directive, concerning the project to build a high-speed line (Section F – TGV East), together with a request for advice addressed by France to the European Commission in the framework of the Habitats Directive (hereinafter “the notification”).

Accompanying the notification, the French Government sent the documentation required by DG Environment, namely the impact document relating to Section F of the TGV East.

An account of the exchanges with the French administration and other stakeholders that led to the drafting of the present text is given in **Annex 1**.

¹ JO N° L 206 dated 22.07.1992, p.7

The documentation received from the French Government is listed and numbered in **Annex 2**. Reference will be made to these numbers in the remainder of this document.

3. The project

The TGV East project was declared to be of public utility on 14 May 1996. It involved the construction of a new 406 km railway line between Vaires-sur-Marne (Paris region) and Vendenheim (near Strasbourg) to enable high-speed trains to connect Paris with the cities of eastern France and with neighbouring countries and to connect the eastern regions of France with the country's western, south-western and northern regions without having to go via Paris.

In January 1999 France decided to implement the project in phases, starting with the construction of the new 300 km line between Vaires-sur-Marne and Baudrecourt.

This phased approach requires the construction of an additional 4.6 km of track to link the high-speed line to the existing Metz–Réding line so that the TGV can run to Strasbourg. The new link branches off from the original Herny link (allowing trains to run to Saarbrücken) and crosses the municipalities of Baudrecourt, St Epvre and Vatimont in the Moselle department. This is where the TGV East line cuts across the Natura 2000 site at two points: the link to the Metz–Strasbourg line cuts through the salt meadows of Baudrecourt, while the original link to Saarbrücken (contained in the 1996 declaration of public utility) cuts through the mesophilic and hygrophilous meadows at St Epvre and Vatimont.

The Baudrecourt link was declared to be of public utility on 29 April 2002.

4. The Natura 2000 sites directly involved

There is no doubt that the project will significantly affect, within the meaning of Article 6(3) of Directive 92/43/EEC, the integrity of several sites of Community interest proposed for the Natura 2000 network and the habitats and species occurring in them, as well as areas of major ornithological interest which should have been proposed as Special Protection Areas under Directive 79/409/EEC. In these circumstances, the project may be carried out only if it complies with the requirements of Article 6(4) of Directive 92/43/EEC and the provisions of Directive 79/409/EEC.

Judging by the notification, the project to build the high-speed line (Section F) will significantly affect a priority habitat listed in Annex I to Directive 92/43/EEC – Habitat 1340 “Inland salt meadows” as it crosses a site of Community interest – FR 4100231 “Secteurs halophiles et prairies humides de la vallée de la Nied” – proposed by France under Directive 92/43/EEC.

5. Assessment of the project's effects on Natura 2000 sites

5.1. The direct effects forecast for the project

With the construction of the additional link under the phased approach, the European TGV East line will, in crossing the Natura 2000 area, destroy 3.75 hectares of salt meadow and subhalophytic meadow. This represents 0.55% of France's mainland halophytic areas and 18.6% of the halophytic areas included in the French Nied Valley area proposed for the Natura 2000 network. In terms of mesophilic meadow, the project will affect 0.02% of the mesophilic meadow area included in the Nied Valley Natura 2000 area.

The Commission believes these assessments can be considered appropriate within the meaning of Article 6(3) of Directive 92/43/EEC.

The Commission believes that the expected implications for these habitats may affect the overall coherence of Natura 2000 and that, subject to compliance with other requirements of Article 6(4) of the Habitats Directive, adequate compensatory measures therefore need to be taken. Such measures must be seen as a precondition for the project to go ahead.

6. Alternatives – other options for the project

The advantage of France's decision to phase construction of the high-speed line in Baudrecourt was the proximity to lines already in operation and the fact that work on the Saarbrücken link planned in the initial project was already under way in this area. Having the additional link branch off from the Saarbrücken link, which crosses the Metz-Réding line, would greatly reduce the length of new infrastructure required (4.6 km) and thus have the least impact on the natural environment. Alternative routes for the new link further south would not have avoided the Natura 2000 area.

7. Imperative reasons of overriding public interest

In its notification, the French Government refers in particular to the abovementioned lack of options for linking the existing lines in support of its declaration that the project has to be implemented for an imperative reason of overriding public interest other than those related to human health, public safety or beneficial consequences of primary importance for the environment.

In addition, the European TGV East project was viewed favourably in the Council of Ministers of the European Community on 14 and 15 December 1990 and was chosen as a priority project by the European Council in 1994, having benefited from Union decisions regarding the priority of infrastructure projects to be implemented.

8. Proposed mitigation and compensatory measures

To offset the project's likely effects on Natura 2000 as described in the notification, the French authorities propose a series of mitigation and compensatory measures planned as follows:

Mitigation measures:

- Adaptation of the longitudinal section: to minimise the project's impact on the area concerned, the route has been optimised so as to reduce the longitudinal section and thus limit the surface area occupied by the embankments; the construction of a 300 m viaduct where the existing railway track is crossed also serves to reduce the surface area needed for the project.
- In the work phase, precautionary steps are to be taken to protect the site from any additional harm: for example, ground marking to prevent site machinery moving off the site proper.

Compensatory measures and timetable:

In addition to the effort to reduce the project's impact through the project design, compensatory measures have been planned by the contracting authority and validated by

DIREN Lorraine (decentralised department of the Ministry of the Environment). Designed to perpetuate the salt environment, they operate on three fronts:

- preservation of the remaining salt meadows near the line over a surface area of around 31 hectares by means of a management agreement between the contracting authority and a nature protection body. The latter will draw up individual agreements with each of the farmers concerned. Moves are already under way with the farmers, who have given their agreement in principle. The agreements should be finalised during 2004.
- restoration of the site and re-establishment of salt meadows. A restoration trial was carried out in 2003 on 20 ares of land (preparation of site, sowing of local seeds and implementation of scientific monitoring over 5 years focusing on salinity and vegetation (still under way)). Drainage ditches will be filled in as part of the work associated with the land consolidation in 2005 so as better to preserve the special character of these areas.
- preservation of the Nied Valley salt meadows not adjacent to the TGV line but included in the Natura site. Mapping of the natural habitats in the area proposed for the Natura 2000 network in the Nied Valley, carried out by the University of Metz and financed by the contracting authority (RFF), identified 6 halophytic sites in the valley. The Aubécourt site, which is the most remarkable, has been selected for RFF to purchase 3.5 hectares of land for heritage management via an agreement concluded with the specialised body already approached to manage and preserve the 31 hectares. Purchase of these areas of land should be completed during 2004.

All the compensatory measures and the grounds justifying them are described in detail in the impact document for Section F of the TGV East.

The Commission considers that the proposed compensatory measures, as described in the notification and the documents mentioned in Annex 2, are sufficient to make up for the project's effects on Natura 2000 provided that they are executed in a timely manner corresponding to the phasing of the project and that the proposed management plans assure their long term effectiveness.

9. Opinion of the Commission

Taking into account the arguments set out above, the Commission takes the view that the TGV East high-speed line project, as described in the notification and in the documentation mentioned in Annex 2 to this text, especially the impact document for Section F of the TGV East line, can be executed for reasons of overriding public interest on condition that all necessary compensatory measures to ensure the overall coherence of Natura 2000 are taken in good time.

With regard to the opinion expressed in this document the Commission notes the following:

- this opinion is valid for this particular project, as described in the abovementioned additional documents submitted to the Commission by the French authorities, and cannot be considered applicable to possible effects of the TGV construction project on other Natura 2000 sites;

- this opinion presumes that the compensatory measures will be implemented and monitored as described in the abovementioned documents submitted to the Commission by the French authorities;
- this opinion presumes that the results of the accompanying monitoring programmes regarding Natura 2000 will be taken into account in the sense that they may, if need be, lead to appropriate rectifications in project design or to additional compensatory and mitigation measures.

ANNEX

Annex 1: Sequence of exchanges between the Environment DG of the Commission and the French authorities

At the beginning of November 2003, DG Environment was consulted by DG Transport in relation to an application for Community funding for the TGV East project. DG Environment requested additional information and concluded that the project might have implications for several sites of Community interest and for important bird areas, and decided to open an own-initiative case in order to address the French authorities regarding this matter.

The Commission has analysed the impact studies of the sites in question. The proposed mitigation measures reduce the impact for most of the sites of Community interest. However, in the case of the Nied Valley site, which was proposed by France for the Natura 2000 network, the project will lead to the destruction of a priority habitat and, where it crosses the Meuse Valley, may have an impact on bird species in an area which, although not yet proposed by France as a Special Protection Area, deserves to be listed as such.

On 13 January 2004, at a technical meeting of representatives of the Commission and the Ministries of Infrastructure and Ecology, the French authorities were advised to notify the Commission of the project in accordance with Article 6 of the Habitats Directive. To avoid presenting the Commission with a *fait accompli*, the authorities were also advised to request its opinion as a pre-condition for the decision to go ahead with the project.

The Commission also reminded the authorities that, although the Meuse Valley has not been designated as an SPA, Article 4 of Directive 79/409/EEC nevertheless applies. The area must therefore be strictly protected and the construction of infrastructures that may have an impact on protected species is not permitted.

On 12 March 2004, an official notification was sent in accordance with Article 6(4) of the Habitats Directive, together with an impact study for section F of the TGV East. France requested the Commission's opinion on the compensatory measures for the priority habitat affected and informed it of the measures to mitigate the effects on non-priority species and habitats.

Annex 2: documents sent by the French authorities to DG Environment:

- Impact study for section F of the TGV East (sent on 12 March 2004)
- Request for opinion in accordance with Article 6 of Directive 92/43/EEC (sent on 12 March 2004)
- The Commission has also received all the impact studies carried out in the framework of the TGV East project (a copy was sent by the project owner but has not yet been officially forwarded by the French Ministry of Infrastructure).

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In the different language versions of Article 6(4) of Habitats Directive, the following terms are used for the English “opinion”: “advies” in Dutch, “avis” in French, “Stellungnahme” in German, “consulta” in Spanish and “parere” in Italian. The term “opinion” will be used throughout this document.

