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<Commission>{PETI}Committee on Petitions</Commission>

<Date>{14/11/2023}14.11.2023</Date>

<TitreType>NOTICE TO MEMBERS</TitreType>

Subject: <TITRE>Petition No 0628/2023 by Stéphanie Mariette (French), on behalf of STOP LGV Bordeaux Métropole, Pour les Trains du Quotidien, signed by eight other persons, on the environmental impacts of a high-speed railway project in France</TITRE>

1. Summary of petition

<TEXTE>The petitioners warn against a project to build two new high-speed rail lines that would involve the construction of some 327 km of track and three open-air stations in the areas of Agen, Montauban and Mont-de-Marsan (France). According to the petitioners, this project would contravene EU commitments and legislation to protect biodiversity, reduce climate risks and protect water quality. The petitioners explain that this project would cross and severely damage habitats of Union concern breaching EU environmental law provisions as well as resulting at odds with EU commitments to protect primary and ancient forests in the EU and endangered wildlife. The petitioners stress that no impact study on the change in the microclimate of the area where these new lines should be operational has been carried out. The petitioners claim that this project would also undermine good quality drinking water resources of the concerned area as well as the protection of surface and underground aquifers in violation of the relevant EU law's provisions and would be incompatible with the EU commitments to reduce greenhouse gas emissions, to pursue energy sobriety and promote natural carbon sequestration. The petitioners explain that the project has been under discussion for many years and that the results of a public consultation showed that only 363 out of 14,011 (2.59%) contributions were in favour of the project. The petitioners inform that, despite the unfavourable opinion of the public inquiry committee in 2015, a declaration of public utility was signed and that, after being frozen by the State in 2017, the project was finally relaunched by the French Government in 2021. The petitioners point out that the project, estimated at around €14 billion, was the subject of a request for co-financing from the EU, which was rejected in 2022. The petitioners call on the European Commission to intervene on the basis of the principles of precaution and preventive action, which are among the fundamental pillars of EU environmental policy under the provisions of Article 191 TFEU. They also call for the project not to be funded given that a genuine cross-border link could be achieved at a lower cost by upgrading and modernising the existing line.</TEXTE>

2. Admissibility

Declared admissible on 25 July 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 14 November 2023

The Commission’s observations

In the context of the European Green Deal, the Zero Pollution Action Plan, the Biodiversity Strategies and Adaptation to Climate Change, the Commission is determined to use its full weight to ensure better enforcement of EU environmental law provisions in the EU.

It should be remembered that problems of conformity of national legislation with EU law or failure to comply with EU law must be addressed in the first instance by the appropriate mechanisms at national level. This is most relevant for the concerns in the petition, as the detailed environmental impacts, including the measures to reduce the mentioned impacts to a minimum and compensate what cannot be avoided are not yet clarified.

In this context, the Commission has the following remarks:

1. **Habitats Directive**[[1]](#footnote-1) **92/43/EC and Birds Directive[[2]](#footnote-2) 2009/147/EC**

The Commission is aware of the likely significant effect of the Grand Projet ferroviaire du Sud-Ouest (GPSO) on Natura 2000, as it would cross 8 sites.

In order to comply with the Habitats directive, the project shall be subject to an appropriate assessment[[3]](#footnote-3) of its implications for each of the 8 Natura 2000 sites in view of the sites' conservation objectives. In the light of the conclusions of the assessment of the implications for the sites, the French authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the sites concerned and, if appropriate, after having obtained the opinion of the public.

If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, the train line must nevertheless be carried out for imperative reasons of overriding public interest, the French authorities shall take all compensatory measures[[4]](#footnote-4) necessary to ensure that the overall coherence of Natura 2000 is protected. They shall inform the Commission of the compensatory measures adopted.

The petitioner does not indicate any compliance failure in relation to the quality of the appropriate assessments.

The Commission has already received a complaint on this project in 2019 and has subsequently discussed this project with the French authorities. The Commission questioned the respect of the above provisions and the need to better justify the conclusions of absence of significant impact, as well as the potential need of compensation measures.

2. **Water Framework Directive[[5]](#footnote-5) 2000/60/EC (WFD) and Groundwater Directive[[6]](#footnote-6) 2006/118/EC:**

The petitioner claims the project is incompatible with the European requirements protecting the surface and ground water bodies as set out by Directive 2000/60/CE, Directive n°2006/118/CE or Directive 2020/2184.

The needed trajectory and the construction of many non-routine structures (105 special structures, mainly bridges crossing many water courses) is allegedly disrupting the natural flows and drainage of the crossed area. The natural flows are needed for the balanced functioning of the many humid zones and associated ecosystems. During the construction diffuse pollutions through leakage of the materials used will pollute the surface and ground waters. After the construction the new rail tracks will create diffuse pollution and be a threat for the strategic drinking water resources.

The petitioner claims that the project, through its trajectory and the high number of unique engineering structures, mainly needed to cross the watercourses and humid zones plus the necessary works in humid and flooding zones will have a negative impact on the natural hydrology and could affect the ecosystems that are associated. It is further stated that the construction work and the maintenance with herbicides may cause pollution and that some areas protected for the production of drinking water can be negatively affected. This impact may be especially relevant for the phreatic aquifer of Plio-Quaternaire and its associated ecosystems, watercourses and lagunes, of which many are classified N2000 sites because of their high quality. Moreover, the drinking water sources of Bellefond, Commune De Castres sur Gironde may be at risk. Finally, the foundations of one viaduct across the water course of Gat Mort is inside the protection zone of these drinking water sources and may contribute to more pollution risks.

The Commission has only seen an Environmental Impact Assessment (EIA) performed by the French authorities, which was done for a public consultation in 2014. This EIA enumerates possible negative environmental impacts. Only one trajectory is considered in this assessment and the evaluation indicates the need and options for optimizing the design this project in a way that would minimize the impact on the water flows. It also indicates that structured drainage would be sealed to prevent diffuse pollution and would include basins to ensure that incidents from transports would be sufficiently controlled. It is stated that construction work would be done respecting the necessary environmental precautions conform the requirements of the River Basin Management Plans (RBMP’s) and the more detailed local plans for a precise part of this River Basin. Track maintenance would refrain from using pesticides in the drinking water protection zones and in sensitive N2000 areas. It further indicates that compensation measures would be taken in a combined program both for water and biodiversity. This compensation program still has to be elaborated in more detail and be approved before finalizing the environmental procedures.

One aquifer is mentioned in the petition explicitly, but no other waterbody is specified to be at risk, nor is their present status mentioned. The reasons and/ or the gravity of the risks for a deterioration of the status for the Water Framework Directive 2000/60/EC (WFD) is not well specified. For the Water Framework Directive 2000/60/EC (WFD) and Groundwater Directive 2006/118/EC these are relevant specifications to give a pertinent reaction.

The Commission does not have enough official information to conclude on the possible impact of the quantitative, chemical and ecological status of the water bodies that could be affected.

It is worth recalling that in the context of the implementation of the Water Framework Directive 2000/60/EC (WFD) and Groundwater Directive 2006/118/EC, the Commission’s recommendations to France must be taken into account in the 3rd RBMP 2022-2027. These related to:

*- “Tackling water shortages and excessive abstraction in districts hydrographics where they result in significant pressures and poor quantitative status.*

*- Continued improvement is needed concerning groundwater monitoring (especially operational) and grouping methodologies need to be clarified. France should also ensure appropriate assessment and classification, taking into account the links to aquatic and terrestrial dependent ecosystems.*

*- For the purposes of applying Article 4 (7), France must ensure that proposed new projects are subject to an in-depth assessment, in accordance with the requirements of the WFD and as clarified by the Court’s judgment in Case C-461/13.*

*- Apply cost recovery for water use activities with significant impacts on water bodies or justify any derogation on the basis of Article 9 (4). France should transparently present how financial, environmental and resource costs have been calculated and how the adequate contribution of the different users is ensured. It should transparently present the water-pricing policy and provide a transparent overview of estimated investments and investment needs. ’*

The French 3rd River Basin Management Plans (SDAGEs in French) have been notified to the Commission and are currently being assessed.

The 3rd River Basin Management Plans notified by France do not contain any mention to the Grand Projet ferroviaire du Sud-Ouest (GPSO). It is important to stress that if this project risks to deteriorate the state of water bodies or can have a negative impact on the achievement of the environmental objectives of the Water Framework Directive, it must be included in the River Basin Management Plans and it must comply with all the provisions of Article 4(7) of that Directive including the establishment of the necessary mitigating measures. Article 4 (7) WFD allows exemptions from the obligation not to deteriorate or to achieve good status or potential, in the case of new modifications or new sustainable development activities, subject to strict criteria. These requirements go beyond an ordinary impact assessment. In Case 461/13, the Court of Justice of the European Union (CJEU) interpreted the concept of deterioration of the status or potential of the body of water.

If Grand Projet ferroviare du Sud-Ouest (GPSO) risks to prevent the water bodies concerned from achieving good status, this would constitute a breach of the WFD, unless the derogation in Article 4 (7) is applied, duly justified, accompanied by mitigation measures and included in the RBMP.

**3. EU commitments to reduce greenhouse gas emissions**

The high-speed trains in France use electricity as their source of energy. The electricity is generated from various sources, including nuclear power, renewable energy, and fossil fuels. In 2021, almost 70% of the electricity in France came from nuclear power plants[[7]](#footnote-7). The French government has plans to reduce the share of nuclear power and increase the use of renewable energy sources such as wind and solar. Moreover, the production of electricity from fossil fuels is covered by the cap on the overall emissions in EU Emission Trading System.

The Regulation (EU) 2018/1999 (Governance Regulation) does not oblige or prevent Member States to adopt specific measures. However, the Governance Regulation obliges Member States to submit to the Commission national energy and climate plans outlining the policies and measures to achieve the sectoral targets. Member States may make changes and adaptations to their national policies at any time.

The carbon footprint of the high-speed passenger rail transport in France is generally much lower than other modes of passenger traffic such as planes or cars using fossil fuels[[8]](#footnote-8), among other because of the high occupancy rate. Therefore, overall, the operation of the high-speed trains in France is likely to be compatible with EU commitments to reduce greenhouse gas emissions, including the French national energy and climate plan. Finally, the construction of high-speed rail infrastructure does contribute to greenhouse gas emissions. However, new rail infrastructure can quickly result in net GHG emission reductions if the GHG intensity in the construction of the line is low[[9]](#footnote-9). There are several ways to reduce these emissions and make high-speed rail more climate and environmentally friendly. One approach is to increase the energy efficiency of high-speed rail systems.

The “principle of energy efficiency first” emphasises the importance of prioritising energy-efficient measures when shaping energy policy and making investment decisions[[10]](#footnote-10). By adopting this principle, high-speed rail systems can be designed and operated in a way that minimizes energy consumption and reduces GHG emissions. Another strategy is to adopt the circular economy principles in the construction and operation of high-speed rail infrastructure. The circular economy aims to minimize waste and maximize resource efficiency by keeping products and materials in use for as long as possible[[11]](#footnote-11). Moreover, adequate climate resilience is a prerequisite for achieving the climate mitigation objectives, and reference can be made to guidance on climate proofing[[12]](#footnote-12).

**4. EU cofinancing of the project**

The petitioner claims that EU cofinancing was refused in 2022 but does not provide more specific information about the type of funding applied. The Commission is only aware of one application *22-FR-TG-AFSB-works-step1 Rail enhancements in the South of the urban node of Bordeaux on the French part of the Atlantic corridor.* The application was adopted by the Connecting Europe Facility Committee on 21/06/2023. The Grant agreement preparation will however monitor the completeness of the environmental compliance, as not all the needed information has been provided.

Conclusion

It is primarily the responsibility of the Member States to ensure compliance with and application of EU legislation. Indeed[[13]](#footnote-13), the Commission underlined that “the national court is the ordinary court of the EU and as such can enforce EU law, effectively contributing to its effective implementation in individual cases [...] with a view to obtaining protection against national measures incompatible with EU law or financial compensation for the harm caused by such measures”.

However, the Commission will continue to take all appropriate measures for the correct implementation of EU environmental legislation, including in the framework of the investigations and infringement procedures under the directives referred to, in accordance with the powers conferred on it by the Treaties.

1. Council Directive 92/43/EEC of 21 May 1992, OJ L 206, 22.7.1992. [↑](#footnote-ref-1)
2. Directive 2009/147/EC, OJ L 20 of 26.01.2010. [↑](#footnote-ref-2)
3. Article 6(3) of Council Directive 92/43/EEC [↑](#footnote-ref-3)
4. Article 6(4) of Council Directive 92/43/EEC [↑](#footnote-ref-4)
5. Council Directive 2000/60/EC of 23 October 2000, OJ L 327, 22.12.2000. [↑](#footnote-ref-5)
6. Directive 2006/118/EC of 12 December 2006, OJ L 372, 27.12.2006 [↑](#footnote-ref-6)
7. <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20221221-4> [↑](#footnote-ref-7)
8. EEA Report No 19/2020, Figure ES.1: <https://www.eea.europa.eu/publications/transport-and-environment-report-2020> and EEA Data Visualisation: <https://www.eea.europa.eu/data-and-maps/daviz/specific-co2-emissions-per-tonne-2#eea-comments> [↑](#footnote-ref-8)
9. EEA Report No 19/2020, Transport and environment report 2020, “Train or plane?”, https://www.eea.europa.eu/publications/transport-and-environment-report-2020 [↑](#footnote-ref-9)
10. <https://energy.ec.europa.eu/topics/energy-efficiency/energy-efficiency-targets-directive-and-rules/energy-efficiency-first-principle_en> [↑](#footnote-ref-10)
11. <https://circulareconomy.europa.eu/platform/en/european-commission> [↑](#footnote-ref-11)
12. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2021.373.01.0001.01.ENG> [↑](#footnote-ref-12)
13. Communication from the Commission — EU law: Better results through better application, C/2016/8600, OJ C 18, 19.1.2017, p. 10-20. [↑](#footnote-ref-13)