

Grand Contournement Ouest de Strasbourg

Complaint SG/E/2016/10

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

Conclusions Report

20 March 2020

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Complaints Mechanism

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Inspector General

Relevant EIB departments

The EIB Complaints Mechanism

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants who are not satisfied with the outcome of the procedure before the EIB-CM have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was “created” by the Maastricht Treaty of 1992 as an EU institution to which a citizen or an entity may appeal to investigate an EU institution or a body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the EO, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group’s activities and to project cycle-related policies and other applicable policies of the EIB Group.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism please visit our website: <http://www.eib.org/about/accountability/complaints/index.htm>

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EXECUTIVE SUMMARY

This report concerns construction of the A355 motorway project in France, bypassing the city of Strasbourg to the west (*Grand Contournement Ouest de Strasbourg* (GCOS)). The GCOS is located on the TEN-T network and aims to ensure the continuity of the motorway connection on the corridor and provide an alternative to the congested section of the A35 running through the centre of Strasbourg.

Alsace Nature, a French non-governmental organisation, lodged a complaint with the European Investment Bank Complaints Mechanism (EIB-CM) concerning the GCOS. The complainant alleges that:

- GCOS will have a negative impact (e.g. biodiversity, agricultural land).
- GCOS will not have a positive impact (limited impact on traffic on A35, therefore, not leading to the necessary improvements of the air quality in Strasbourg).
- EIB had imperfect knowledge of the GCOS during appraisal, according to the information presented in the Environmental and Social Data Sheet (ESDS).

The EIB-CM notes that the case on merits of the Single Authorisation authorising the works on the GCOS is still pending before a competent court in France. Therefore, at this stage, the EIB-CM cannot conclude whether the GCOS complies with the applicable standards. However, while the evidence reviewed suggests a negative impact, the evidence also suggests that mitigation/compensation measures in place are sufficient to offset the impact. Furthermore, the evidence reviewed suggests that GCOS will have only a limited impact on traffic on the A35. Consequently, the GCOS is not expected to enable attainment of air quality standards in Strasbourg/improve public health.

The EIB-CM notes that the EIB carried out two-stage appraisal for the GCOS. As required under the EIB's policies and procedures, during Stage 1, the EIB: (i) verified that GCOS is a TEN-T project; (ii) carried out an environmental appraisal; and (iii) published the results of the latter in an ESDS. In line with EIB's policies and procedures for this type of TEN-T project, the EIB did not assess the GCOS' impact on air quality. During Stage 2, the EIB: (i) appraised some environmental aspects; and (ii) adjusted the loan conditions.

However, the EIB did not: (i) document whether the changes between Stages 1 and 2 constitute fundamental change requiring re-approval of the project by the EIB Board of Directors; (ii) appraise the 2018 Environmental Impact Assessment (EIA) report or document the related reasoning; or (iii) prepare and publish an addendum to the ESDS. The EIB-CM concludes that the current EIB procedures lack clarity on: (i) what constitutes a fundamental change; and (ii) what environmental elements should be appraised during the Stage 2 appraisal. The EIB-CM concludes that, in line with its communication to the European Ombudsman, the EIB should have prepared and published an addendum to the ESDS.

Therefore, the EIB-CM recommends that the EIB prepare and publish an addendum to the ESDS, which will include:

- Environmental information and conditions included in the term of financing as loan conditions, and the related developments.
 - Summarised environmental information encompassed by the Stage 2 appraisal (e.g. concession contract).
- Publication will be made in accordance with the EIB's policies and procedures and subject to any limitations by which the EIB is bound (including but not limited to any confidentiality undertakings).

The EIB-CM suggests that the EIB revise its procedures in order to:

- Ensure that in a multiphase approval project, the EIB documents its reasoning at the different decision points.
- Clarify what constitutes a fundamental change requiring re-approval of the project by the EIB Board of Directors.
- Clarify whether the EIB needs to appraise an EIA (report) update when the EIB's decision-making process is still ongoing.

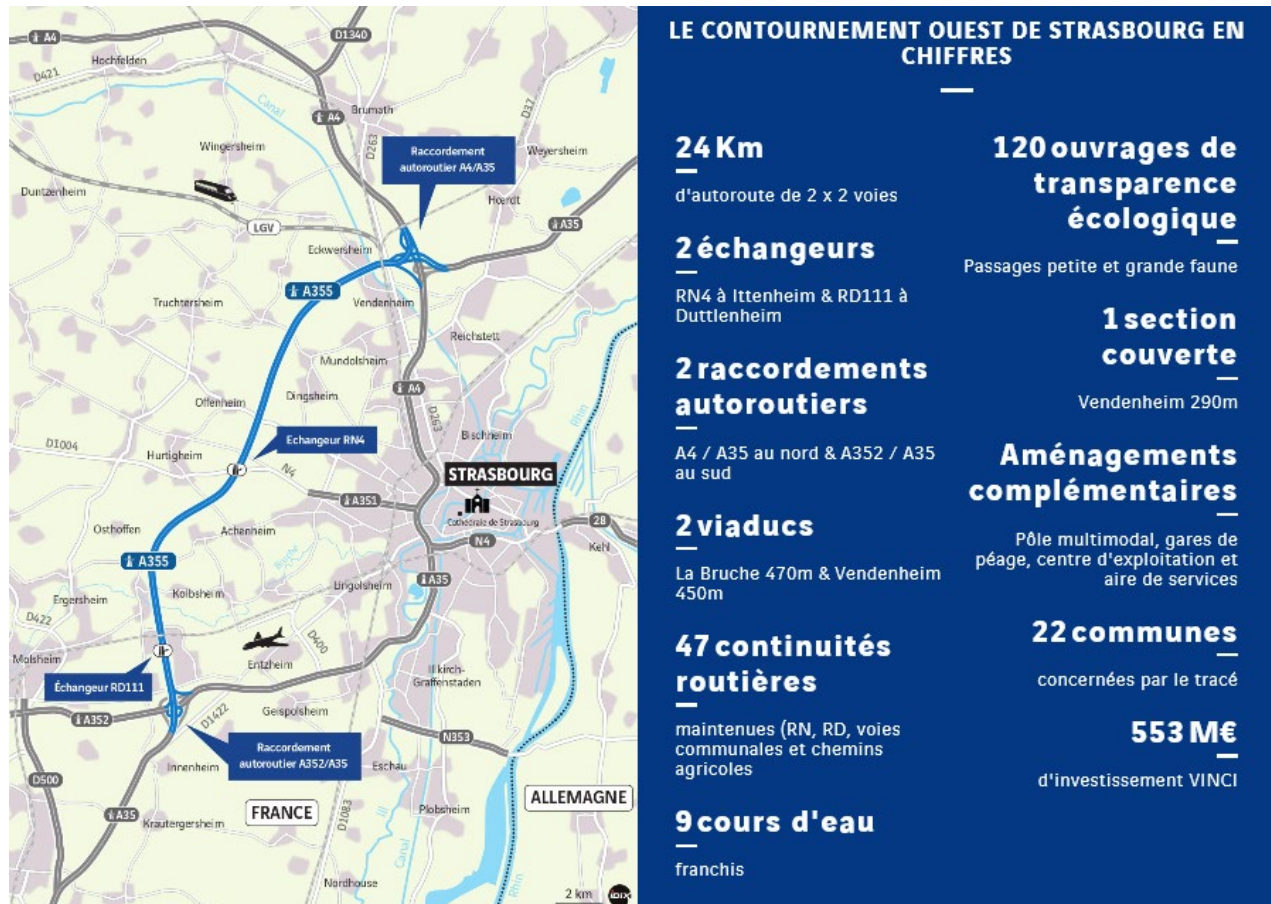
- Further clarify the reasoning for preparing and publishing an addendum to the ESDS and its content (e.g. environmental information and conditions included in the finance contract and encompassed by the appraisal).

The EIB-CM recommends the EIB to implement the above-mentioned recommendation and suggestions within 30 working days and 18 months, respectively, from the date of the finalisation of this report. The EIB-CM will monitor whether the EIB has implemented the recommendation and suggestions within the set deadlines.

1. BACKGROUND INFORMATION

- 1.1 This report concerns construction of the A355 motorway project in France, bypassing the city of Strasbourg to the west. The A355, i.e. the *Grand Contournement Ouest de Strasbourg* (GCOS), stretches between the A4/A35 and A35/A352 motorway interchanges located to the north and south of Strasbourg, respectively (see Picture 1). The GCOS aims to ensure the continuity of the motorway connection on the corridor and provide an alternative to the congested section of the A35 running through the centre of Strasbourg¹. Section of A35 running through the centre of Strasbourg is highly congested (annual average daily traffic (AADT) of up to 160 000 in 2015)².

PICTURE 1 – GCOS and A35³



The GCOS is a result of a long process presented in Annex I of this report. This process includes:

- Declaration of GCOS as a public interest project.
- Conclusion of concession contract.
- Conclusion of terms of financing.
- Permitting.

- 1.2 In January 2008, the French ministry competent for environmental protection issued the 10-year Public Utility Declaration⁴ (DUP), which it extended for another eight years in January 2018. The DUP constitutes a declaration of a public interest project allowing for the expropriation of the land for the implementation of the GCOS⁵. Interested parties challenged both the 2008 and 2018 decisions

¹ Environmental and Social Data Sheet (ESDS), dated 17 November 2015, available at: <https://www.eib.org/attachments/registers/90583617.pdf>, accessed on 14 October 2019.

² ESDS.

³ <https://www.contournement-ouest-strasbourg.fr/le-projet-a355/>, accessed on 30 October 2019.

⁴ Article 1 of the Decree.

⁵ Article 545 of the Civil Code.

on the DUP, calling for their annulment. In March 2010, and March 2019⁶, the Council of State issued final rulings dismissing the claims.

- 1.3 In January 2016, the French ministry competent for environmental protection concluded a 54 year concession contract with ARCOS, a company set up by VINCI concessions (hereinafter the promoter)⁷. The interested parties challenged the contract and the related administrative decision. In June 2018, Nancy Administrative Appeal Court issued a final ruling dismissing the claims.
- 1.4 In April 2018, the promoter and the EIB concluded the finance contract for the financing of the GCOS. The EIB is part of syndicate of lenders financing the GCOS. Therefore, in addition to separate finance contracts, the lenders concluded a common terms agreement with the promoter in April 2018 (the EIB finance contract and the common terms agreement are hereinafter referred to as terms of financing).
- 1.5 In August 2018, the prefect of Bas-Rhin issued the Single Authorisation for the GCOS. The Single Authorisation is the development permit for the GCOS. It combines water and environmental permits into a single file and allows for execution of the works. Alsace Nature has challenged the Single Authorisation in court requesting its annulment. As of 30 October 2019, the case on merits (*au fond*) is still pending before the Administrative Court in Strasbourg. The court may:
 - Dismiss the legal challenge.
 - Annul the entire Single Authorisation.
 - Annul only a part of the Single Authorisation.
 - Modify the Single Authorisation.
 - Grant a provisional Single Authorisation pending the issuance of the new Single Authorisation.
- 1.6 Over the years, the GCOS has faced continued strong local opposition⁸. This includes challenges of the relevant GCOS permits and protests against it.

2. THE COMPLAINT (ALLEGATIONS AND CLAIMS)

- 2.1 On 19 July 2016, Alsace Nature, a French non-governmental organisation (hereinafter the complainant), lodged a complaint with the European Investment Bank Complaints Mechanism (EIB-CM) concerning the GCOS.

The complainant alleges the following:

- GCOS will have a negative impact. According to the complainant, the Environmental Impact Assessment (EIA) is not in line with the applicable standards. The complainant alleges that:
 - GCOS will have a negative impact on biodiversity⁹.
 - GCOS will have a negative impact on agricultural land¹⁰.
 - Compensation/mitigation measures are not sufficient to offset the negative impact¹¹.
- GCOS will not have a positive impact. According to the complainant, the GCOS will have a limited impact on traffic on the A35¹² and will not lead to the necessary improvements of the air quality in Strasbourg¹³.
- EIB had imperfect knowledge of the GCOS during appraisal, according to the information presented in the ESDS. According to the complainant, the information made public by the EIB

⁶ 13 March 2019 Council of State ruling n°418994.

⁷ From January 2016, signing of the concession agreement, the concessionaire (ARCOS) replaced the French state as the project promoter - Section 5-1-1 of the Public Enquiry Commission report, N° E18000040 / 67. Please note that in general reference to the report also includes reference to: *Deuxième partie: Avis motivé et conclusion*.

⁸ E.g. <https://gcononmerci.org/>, accessed on 15 October 2019.

⁹ Section 3.2 of the EIB-CM Initial Assessment Report, available at: <https://www.eib.org/attachments/complaints/sg-e-2016-10-iar-fr.pdf>.

¹⁰ Section 3.2 of the EIB-CM Initial Assessment Report.

¹¹ Section 3.2 of the EIB-CM Initial Assessment Report.

¹² Section 3.2 of the EIB-CM Initial Assessment Report.

¹³ Section 3.2 of the EIB-CM Initial Assessment Report.

shows an imperfect knowledge of the file¹⁴. For example, the EIB did not take into account the Agriculture and Forest Land Management¹⁵ (AFAF).

- 2.2 The complainant asks the EIB to re-examine its decision to finance the GCOS in light of the allegations made.

3. REGULATORY FRAMEWORK

Complaints Mechanism¹⁶

- 3.1 The EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (CMPTR) task the EIB-CM with addressing complaints concerning alleged maladministration by the EIB¹⁷. Maladministration means poor or failed administration. This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures¹⁸. Maladministration may also relate to the environmental or social impacts of EIB's activities¹⁹.

The CMPTR specifies the role of the EIB-CM. The EIB-CM, inter alia, gathers and reviews existing information on the subject under complaint, conducts appropriate inquiries with a view to assessing whether the EIB Group's policies and procedures have been followed, and fosters adherence to the EIB Group's policies²⁰.

Project applicable standards

- 3.2 Project applicable standards include:
- Relevant EU legislation (e.g. 1985 EIA Directive²¹, 2011 EIA Directive²², Habitats Directive²³)²⁴.
 - National legislation (e.g. Environmental Code, Civil Code).
 - Relevant EIB standards (e.g. EIB Statement of Environmental and Social Principles and Standards (ESPS) and the Environmental and Social practices Handbook²⁵, further implementing the ESPS²⁶).
- 3.3 EU legislation²⁷, national legislation²⁸ and EIB standards²⁹ require:
- An EIA for the GCOS.
 - An update of the EIA if a long period has passed between the EIA and the development permit, in this case the Single Authorisation.
 - EIA to assess the cumulative impact.

¹⁴ Section 3.1 of the EIB-CM Initial Assessment Report.

¹⁵ *Aménagement foncier agricole et forestier*.

¹⁶ In this case, the EIB-CM applied the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (CMPTR), which were applicable when the complaint was lodged and registered.

¹⁷ Section II, § 3 and 4 and Section III, § 1.4 of the CMPTR.

¹⁸ Section II, § 1.2 of the CMPTR.

¹⁹ Section II, § 1.2 of the CMPTR.

²⁰ Section III, § 4.2 of the CMPTR.

²¹ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment.

²² 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.

²³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

²⁴ Paragraph 36 of the Background section of the ESPS.

²⁵ In this case, the EIB's 2013 v. Environmental and Social practices Handbook (2013 v. of the Handbook) is applicable.

²⁶ Paragraph 12 of the Background section of the ESPS.

²⁷ Article 4(1) and Annex I, item 7, sub-item b) of the 1985 EIA Directive; Articles 4(1), 5(1) and 8a, item 6 and Annex I, item 7, sub-item b) and Annex IV, item 5(e) of the 2011 EIA Directive.

²⁸ Article L.122-1 onwards and R.122-1 onwards of the Environmental Code; Articles L.122-1 onwards and R.122-1 onwards of the Environmental Code; Article R. 122-5 of the Environmental Code.

²⁹ ESPS; Volume I, Standard 1, para. 32, item 6, para. 35 and para. 68 of 2013 v. of the Handbook.

The EIA process consists of three phases, namely:

- Preparation of an EIA report.
- Public consultation.
- Integration of the competent authorities' conclusions on the significant effects of the project on the environment into the development permit or other relevant decisions³⁰.

EU legislation³¹, national legislation³² and the EIB standards³³ require the GCOS' EIA report to encompass biodiversity (e.g. fauna and flora species). EU nature protection legislation³⁴ protects species of community interest. For these species, national authorities are required to take measures to establish a system of strict protection prohibiting the deterioration or destruction of their breeding sites or resting places³⁵. Derogations from this requirement are possible provided that, inter alia, there is an overriding public interest³⁶.

EU legislation³⁷, national legislation³⁸ and EIB standards³⁹ require the EIA report for the GCOS to encompass the impact on soil. The national legislation also requires the EIA report to include the GCOS impact on land consumption (notably agricultural lands)⁴⁰.

If a project has negative impacts, the promoter must put in place mitigation/compensation measures. For example, EU legislation⁴¹, national legislation⁴² and EIB standards⁴³ require mitigation/compensation for the GCOS' impact on biodiversity. The aim is to work towards a no net loss of biodiversity⁴⁴.

3.4 The EIA is a precondition for issuance of the development permit for the GCOS, in this case the Single Authorisation (see § 1.5). The Single Authorisation takes into account opinions and recommendations of the following advisory bodies⁴⁵:

- National Committee for the Protection of Nature (CNP).
- Environmental Authority (EA).
- Public Enquiry Commission.

The Single Authorisation, as well as the concession contract, contain specific requirements for the GCOS.

Role of the EIB

3.5 In line with the ESPS, the responsibility for compliance with the project applicable standards lies with the promoter and the national authorities⁴⁶. However, the EIB will not finance projects that do not meet

³⁰ Article 1(g) of the EIA Directive.

³¹ Article 3 and Annex IV, item 3 of the 1985 EIA Directive; Article 3(1)(b) and Annex IV, item 4 of the 2011 EIA Directive.

³² Article R. 122-3 of the Environmental Code (applicable for the 2006 EIA) and Article R. 122-5 of the Environmental Code (applicable for the 2018 EIA).

³³ Volume I, Standard 3, para. 11 and 12 of 2013 v. of the Handbook.

³⁴ Article 3(1)(b) of the 2011 EIA Directive.

³⁵ Articles 12(1)(d) – animal species and 13(1)(a) – plant species of the Habitats Directive.

³⁶ Article 16(1)(d) of the Habitats Directive.

³⁷ Article 3, indent 2 of the 1985 EIA Directive; Article 3, item b) of the 2011 EIA Directive.

³⁸ Article L.122-1 of the Environmental Code.

³⁹ Volume I, Standard 1, para. 31 of the 2013 v. of the Handbook.

⁴⁰ Article R.122-5 III of the Environmental Code.

⁴¹ Annex III, item 4 of the 1985 EIA Directive; Annex V of the 2011 EIA Directive.

⁴² Article L.110-1 2° and L.163-1 onwards as well as R. 163-1 onwards of the Environmental Code (these last provisions were not in effect at the time of the appraisal but they were for the delivery of the Single Authorisation).

⁴³ Volume I, Standard 3, para. 77 of the 2013 v. of the Handbook.

⁴⁴ Article L.110-1 of the Environmental Code.

⁴⁵ Article L. 122-1 of the Environmental Code; Article L. 123-1-A onward of the Environmental Code; Article L. 181-1 onward and R. 181-1 onward of the Environmental Code.

⁴⁶ Paragraphs 1 and 2 of the Statement section of the ESPS and Paragraph 12 of the Background section of the ESPS.

EIB, EU and national environmental and social standards⁴⁷. Whether the project meets the standards is established, inter alia, during EIB project appraisal⁴⁸.

- 3.6 The EIB Transport Lending Policy states that any EIB decision to finance a project will remain subject to a detailed and satisfactory appraisal and documentation by the EIB as well as formal approval by the EIB's decision-making bodies in compliance with EIB procedures⁴⁹. The appraisal includes a number of issues including:
- TEN-T - The EIB finances projects that are part of TEN-T⁵⁰. TEN-T projects are of common interest to several Member States and fully in line with the objectives of the EIB set down in the Lisbon Treaty⁵¹.
 - Environmental appraisal - The EIB checks a project for compliance with the ESPS and the Handbook⁵². The ESPS⁵³ and the Handbook⁵⁴ require the EIB to appraise the GCOS, including its area of influence and any cumulative impacts, confirming that the EIA is in line with the EIA Directive. The EIB assesses the environmental impact of financing the project, including its added value⁵⁵. This includes the amount of carbon dioxide emissions (CO₂) generated or saved by the project, but does not require a quantitative assessment of changes in air quality.
- 3.7 For Public Private Partnership (PPP) projects, EIB procedures set out a two-stage appraisal:
- The Stage 1 appraisal takes place before the concession details are known. It encompasses a number of points including TEN-T and environmental appraisal.
 - The Stage 2 appraisal takes place after the concession details are known. It identifies residual risks for the EIB, including reputation risk.

For a two-stage appraisal, the EIB Board of Directors approves the results of the Stage 1 appraisal and the EIB Management Committee approves the results of the Stage 2 appraisal. If there is a fundamental change in the nature, scope or technical content of the project, the EIB Board of Directors needs to re-approve it. However, there is no definition of a "fundamental change".

- 3.8 The Environmental and Social Data Sheet (ESDS) collates all environmental and social information that is submitted to the EIB as part of the information required in its decision-making process concerning each project⁵⁶. More specifically, the ESDS includes:
- Environmental information and conditions to be included in the term of financing as loan conditions.
 - Summarised environmental information included in the appraisal report⁵⁷.

The ESDS is available on the EIB's Public Register⁵⁸. In its communication to the European Ombudsman (EO), the EIB considered that in the very few cases where the environmental information contained in the terms of financing may differ from that included in the ESDS, the EIB will update such information by means of an addendum to the relevant ESDS, which is then subsequently published in the Public Register⁵⁹. This is in line with Article 4(2) of the Aarhus Regulation, which states that the

⁴⁷ Paragraph 6 of the Statement section of the ESPS.

⁴⁸ See 2013 v. of the Handbook.

⁴⁹ Section 28 of the EIB 2011 Transport Lending Policy.

⁵⁰ Section 66 of the EIB 2011 Transport Lending Policy.

⁵¹ Section 66 of the EIB 2011 Transport Lending Policy.

⁵² Section 30 of the 2011 EIB Transport Lending Policy.

⁵³ Paragraphs 17 and 19 of the Statement section of the ESPS.

⁵⁴ Volume II, para. 42, item 6, para 90, item 7, and para. 120, item 1 of the 2013 v. of the Handbook.

⁵⁵ Section 10 of the EIB 2011 Transport Lending Policy.

⁵⁶ e.g. Volume II, para. 90, para. 349, para. 358 and Annex 1 of the 2013 v. of the Handbook; Para. 23 of the Decision of the European Ombudsman closing her own-initiative inquiry OI/3/2013 concerning the European Investment Bank, available at: <https://www.ombudsman.europa.eu/en/decision/en/54587>, accessed on 15 October 2019.

⁵⁷ e.g. Volume II, para. 169, para. 349, para. 358 and Annex 1 of the 2013 v. of the Handbook; Para. 23 of the Decision of the European Ombudsman closing her own-initiative inquiry OI/3/2013 concerning the European Investment Bank.

⁵⁸ <https://www.eib.org/en/registers/index.htm>, accessed on 16 October 2019.

⁵⁹ Para. 25 of the Decision of the European Ombudsman closing her own-initiative inquiry OI/3/2013 concerning the European Investment Bank.

environmental information should be made available and disseminated will be updated as appropriate⁶⁰.

When publishing information regarding contractual clauses on environmental matters, the EIB needs to take into account the EIB template contractual clauses on these matters⁶¹. These include:

- To obtain, maintain and comply with environmental permits.
- That no environmental claim has been commenced or is threatened against it (unless it has been previously disclosed and accepted by the EIB).
- To provide the EIB with information on any environmental claim; non-compliance with environmental law; and suspension, revocation or modification of any environmental permits; and to set out the action to be taken with respect to such matters.

Environmental claim is taken to mean a claim preceding formal notice or investigation by any person in respect of any environmental law⁶².

4. WORK PERFORMED BY THE EIB-CM

- 4.1 Pursuant to its rules and procedures, the EIB-CM conducted an initial assessment resulting in the Initial Assessment Report (IAR) dated 6 September 2017⁶³. Based on its IAR, the EIB-CM decided to proceed with the compliance review of the GCOS.
- 4.2 The EIB-CM has reviewed all the relevant project documentation and the applicable regulatory framework. The EIB-CM engaged an independent consultant to assist it in its work. The EIB-CM team carried out a mission to Strasbourg in July 2018. EIB-CM also had phone calls with ARCOS and the European Commission concerning the GCOS.
- 4.3 The EIB-CM assessed the complaint in the context of potential EIB maladministration, including potential non-compliance of the EIB with the applicable regulatory framework and/or failure to exercise adequate appraisal. In particular, the EIB-CM assessed the appraisal carried out by the EIB in the areas related to the complainant's concerns.

5. FINDINGS

5.1 NEGATIVE IMPACTS OF THE GCOS

- 5.1.1 The EIA contains an assessment of possible negative impacts of a project and, if applicable, measures to mitigate/compensate for those impacts. In December 2006, the Ministry of Transport prepared the original EIA report for the GCOS (hereinafter the 2006 EIA report). This report was subject to public consultation the same year⁶⁴. In 2018, due to a long period having passed between the 2006 EIA report and the development permit, in this case the Single Authorisation, the promoter updated the 2006 EIA report with the new information (hereinafter the 2018 EIA report). This report was subject to public consultation between 4 April and 11 May 2018⁶⁵.

⁶⁰ Article 4(2) of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

⁶¹ See: https://www.eib.org/attachments/documents/eib_standard_contractual_clauses_on_environmental_information_en.pdf, accessed on 16 October 2019.

⁶² See: https://www.eib.org/attachments/documents/eib_standard_contractual_clauses_on_environmental_information_en.pdf, accessed on 15 October 2019.

⁶³ The EIB-CM Initial Assessment Report is available under the following link: <https://www.eib.org/attachments/complaints/sg-e-2016-10-iar-fr.pdf>, accessed on 30 October 2019.

⁶⁴ ESDS

⁶⁵ Public Enquiry Commission report.

The 2006 EIA and 2018 EIA reports overlap in many aspects. Both contain information concerning:

- Biodiversity.
- Impact on agriculture land.
- Mitigation/compensation measures.

5.1.2 Concerning biodiversity, both the 2006 EIA report⁶⁶ and the 2018 EIA report⁶⁷ encompass a number of fauna and flora species around the GCOS. For example, the 2006 EIA report and the 2018 EIA report include a number of species of community interest, such as the Great Hamster of Alsace (GHA).

TEXT BOX 1 – “THE GREAT HAMSTER OF ALSACE” (GHA)

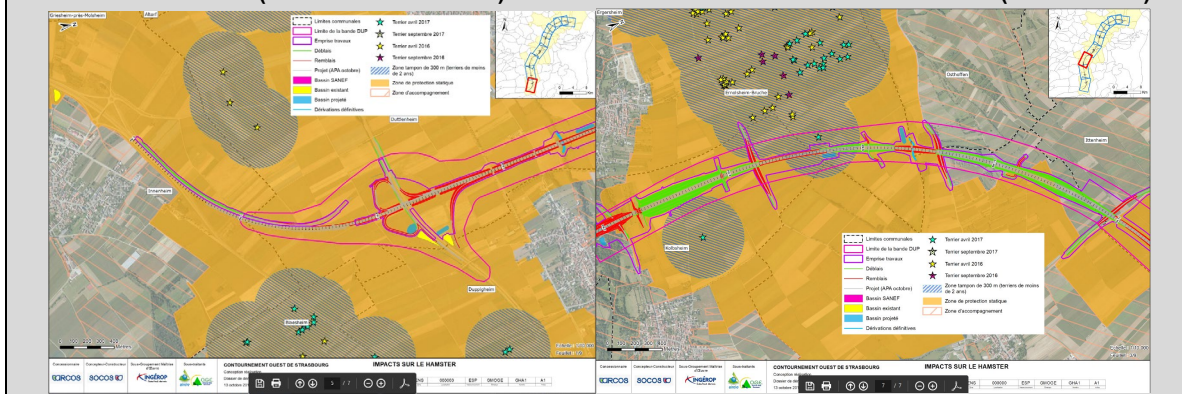
In 2009, the European Commission brought a case before the European Court of Justice (ECJ) because France failed to ensure strict protection of the GHA under the Habitats Directive.

In 2011, the ECJ ruled that France did not take adequate measures to establish a system of strict protection of the GHA⁶⁸. For example, the ECJ criticised urban development and agricultural practices in the area⁶⁹. The ECJ concluded that there was a significant decrease in the number of GHAs in the area between 2001 and 2007. According to the available information, the decrease in the GHA population also continued between 2010 and 2015⁷⁰.

As a consequence of the ECJ ruling, France put in place measures aimed at increasing the population of GHAs⁷¹. France created a protection zone within which it implemented a number of measures to protect the GHA. These included measures aiming at increasing the number of crops whose farming does not have a negative impact on the GHA⁷². The information available shows that the measures put in place are effective, and recent years have seen an increase in the number of GHAs in the area, with the population more than tripling between 2015 and 2018⁷³.

Both the 2006 EIA report⁷⁴ and the 2018 EIA report⁷⁵ analyse the GCOS' effect on the GHA. According to the 2018 EIA report, the GCOS crosses the GHA protection zone^{76,77} (see Picture 2). In addition, according to the 2018 EIA report, the GCOS may lead to a destruction of crops favourable to the GHA⁷⁸.

PICTURE 2 – GCOS (IN RED AND GREEN) CROSSING THE GHA PROTECTION ZONE (IN ORANGE)⁷⁹



⁶⁶ Sections E4.3.3 and E4.3.4 of the 2006 EIA report.

⁶⁷ Section 2.2.2 of the 2018 EIA report.

⁶⁸ Case C-383/09.

⁶⁹ ESDS.

⁷⁰ P. 26 of the *Plan National d'Actions – En faveur du Hamster Commun (Cricetus cricetus) et de la biodiversité de la plaine d'Alsace, 2019 – 2028*, version submitted for public consultation available at: http://www.grand-est.developpement-durable.gouv.fr/IMG/pdf/projet_pna_hamster_2019_2028.pdf, accessed on 30 October 2019.

⁷¹ ESDS.

⁷² ESDS.

⁷³ P. 26 of the *Plan National d'Actions – En faveur du Hamster Commun (Cricetus cricetus) et de la biodiversité de la plaine d'Alsace, 2019 – 2028*, version submitted for public consultation.

⁷⁴ Section E6 of the 2006 EIA report.

⁷⁵ Sections 2.2.4 and 2.2.4.2 of the 2018 EIA report.

⁷⁶ Static protection zone.

⁷⁷ Sections 2.2.4 and 2.2.4.1 of the 2018 EIA report.

⁷⁸ Sections 2.2.4 and 2.2.4.2 of the 2018 EIA report.

⁷⁹ Maps extracted from the cartographic atlas of the Single Authorisation file, available at: http://www.bas-rhin.gouv.fr/content/download/27245/188463/file/DAU-SOCOS-Volet2-2B_66.pdf accessed on 30 October 2019.

In terms of the protected areas, the GCOS does not encroach any Natura 2000 sites. In addition to the GHA protection zone (see Picture 2), GCOS crosses several Natural Zones of Interest for Ecology, Flora and Fauna (ZNIEFF). The ZNIEFFs are intended to identify areas that have ecological potential concerning certain species⁸⁰. They do not have a normative value⁸¹.

- 5.1.3 Concerning agriculture, both the 2006 EIA report and the 2018 EIA report include GCOS' impact on the agricultural land. For example, both the 2006 EIA report⁸² and the 2018 EIA report list soil sealing as one of the GCOS' impacts on agricultural land⁸³.
- 5.1.4 To mitigate the negative impacts of the GCOS, the 2006 EIA report and the 2018 EIA report contain mitigation/compensation measures. For example, both the 2006 EIA report and the 2018 EIA report state that the construction works have to be adapted to the biological cycle of the species on site⁸⁴.
- 5.1.5 However, the 2018 EIA report differs from 2006 EIA report in some aspects. In addition to capturing the project-related developments (e.g. concerning GHA (see Text Box 1)), the 2018 EIA report, for example:
 - Encompasses AFAF and assesses the cumulative impact of GCOS and AFAF⁸⁵ (see Text Box 2).
 - Contains additional compensation measures (e.g. refers to 13 compensatory zones for wetlands) or modifies previous compensation measures (e.g. the GHA protection zone was modified by a Ministerial Decree on 9 December 2016 which enabled relocation of a service area to the area south of La Bruche business park⁸⁶).

TEXT BOX 2 – GCOS AND AFAF

AFAF is a planning exercise for rural areas, and is subject to a separate EIA procedure. In principle, AFAF is a compensatory measure for the GCOS' negative impact on agricultural land and the environment. Without GCOS, there would be no AFAF.

AFAF encompasses 10 550 ha (105.5 km²), spread over 29 municipalities, impacting 450 farms, 7 700 owners and 30 000 cadastral parcels⁸⁷. AFAF encompasses a long list of measures that aim to offset the damage cause by GCOS, such as farming practices and additional measures for protection of the environment⁸⁸. AFAF will be implemented in three phases:

- 2015 – 2017 - preliminary studies for AFAF (e.g. setting the overall scope of the land redevelopment).
- 2018 – 2020 – land redevelopment (e.g. setting individual cadastral parcels).
- 2021 – 2022 – implementation of works⁸⁹.

AFAF has an impact on the environment. For example, AFAF may impact the agricultural land in the following ways:

- Increase of water use due to the irrigation requirements on the new plots compared to the current plots, which naturally benefit from sufficient access to water⁹⁰.
- The compensation measures related to wetlands (ratio of 3.5) will imply 90 ha of compensation areas – highly restrictive for the farmers concerned⁹¹.

⁸⁰ Article L.411A of the Environmental Code.

⁸¹ Council of State 30/04/1997 n° 158945 *Syndicat intercommunal du port d'Albret* // Council of State 22/05/2012 n°333654 *Association de défense des propriétaires privés fonciers*.

⁸² Section E.6.2.1 of the 2006 EIA report.

⁸³ Part II, Section 2.7.3.3 of the Public Enquiry Commission report.

⁸⁴ Section E8 of the 2006 EIA report; Sections 3.2.1 and 3.2.1.2.3 of the 2018 EIA report.

⁸⁵ Section 4.2 of the 2018 EIA report.

⁸⁶ Section 1.6.7.1 of 2018 EIA report.

⁸⁷ Section 4.2.1.2 of the 2018 EIA report.

⁸⁸ Section 4.2.1.5 of the 2018 EIA report.

⁸⁹ Section 4.2.1.1 of the 2018 EIA report.

⁹⁰ Public Enquiry Commission report answer to the question n°49.

⁹¹ Part II, Section 2.7.3.3 of the Public Enquiry Commission report.

- The reforestation will encroach on the cultivated plots (the 2 for 1 ratio concerning the deforestation will translate into one compensation unit inside the forest and one outside, on cultivated land)⁹².
- Loss of habitats⁹³.

5.1.6 Furthermore, in 2017/2018 a number of France's advisory bodies noted shortcomings concerning (the draft 2018 EIA report for) the GCOS. For example:

- In December 2017, CNPN:
 - Considered protected species other than the GHA had not been sufficiently taken into account⁹⁴.
 - Considered that previous compensation by AFAF show that the outcome of this method is highly uncertain⁹⁵.
- In February 2018, the EA⁹⁶ e.g.:
 - Recommended an update of the draft 2018 EIA report to better present a synthesis of the GCOS impact on protected species and the related derogations⁹⁷.
 - Was sceptical about the effectiveness of the measures to compensate for the destroyed wetlands zones⁹⁸.
 - Was concerned about the land management agreements, which are valid for 25 years, whereas the concession is valid for 54 years⁹⁹.
- In April/May 2018, the Public Enquiry Commission¹⁰⁰ e.g.:
 - Criticised the draft 2018 EIA report concerning the GCOS' impact on biodiversity due to the potential challenges in managing all adverse effects on protected species¹⁰¹.
 - Expressed doubts concerning the GCOS' mitigation/compensatory measures¹⁰².
 - Noted that polluted water may impact agricultural land¹⁰³.

In principle, the shortcomings identified by the CNPN and the EA should have been taken into account in the 2018 EIA report¹⁰⁴.

5.1.7 The EIA report and the related public consultation process were preconditions for the issuance of the Single Authorisation. In principle, the Single Authorisation should also take into account the identified shortcomings¹⁰⁵. For example, the Single Authorisation requires 20-year storm-water-retention basins¹⁰⁶. This is twice as long as recommended by the Public Enquiry Commission¹⁰⁷. The Single Authorisation contains mitigation/compensatory measures¹⁰⁸ and requires the compensatory land to be available before any works that impact protected species can start¹⁰⁹.

5.1.8 In addition to the Single Authorisation, additional environmental conditions are set in the concession contract. For example, the concession contract:

⁹² Part II, Section 2.7.3.3 of the Public Enquiry Commission report.

⁹³ Section 4.2.2.2 of the 2018 EIA report.

⁹⁴ CNPN Opinion dated 15 December 2017 n°2017-00793-011-001. The Opinion remained unfavourable on 24 January 2019.

⁹⁵ CNPN Opinion dated 15 December 2017 n°2017-00793-011-001. The Opinion remained unfavourable on 24 January 2019.

⁹⁶ Opinion n° 2017-91 of the Environmental Authority from 21 February 2018, available at: http://www.cgedd.developpement-durable.gouv.fr/IMG/pdf/180221_-_contournement_ouest_de_strasbourg_67_-_delibere_cle1a1d91.pdf, accessed on 30 October 2019.

⁹⁷ Section 2.4.8.4 of the Opinion n° 2017-91 of the Environmental Authority dated 21 February 2018.

⁹⁸ Section 2.4.8.2 of the Opinion n° 2017-91 of the Environmental Authority dated 21 February 2018.

⁹⁹ Section 2.4.8.3 of the Opinion n° 2017-91 of the Environmental Authority, dated 21 February 2018.

¹⁰⁰ Part II, Section 5.5 of the Public Enquiry Commission report.

¹⁰¹ Part II, Sections 5.2.9.1 and 5.2.9.2 of the Public Enquiry Commission report.

¹⁰² Public Enquiry Commission report.

¹⁰³ Part II, Sections 5.2.7.3 and 5.2.7.4 of the Public Enquiry Commission report.

¹⁰⁴ See *Dossier complémentaire préalable à l'enquête publique*, available at: http://www.bas-rhin.gouv.fr/content/download/31138/211340/file/DAU-SOCOS-DossierComplementaireEP_tourne.pdf, accessed on 30 October 2019.

¹⁰⁵ E.g. see p. 7 and 8 of the Single Authorisation.

¹⁰⁶ Section 5.2 of the Single Authorisation.

¹⁰⁷ Part II, Section 5.2.3 of the Public Enquiry Commission report.

¹⁰⁸ E.g. Section 6 of the Single Authorisation.

¹⁰⁹ Article 6.10.1 and 6.10.2 of the Single Authorisation.

- Puts in place arrangements to offset damage to the agricultural land from mounds formed from the excavated land^{110,111}.
- Puts in place water management arrangements¹¹².
- Sets compensation ratios per type of affected land:
 - The ratio for forestry land is 1:2 (every ha of land destroyed will be compensated with two new ha).
 - The ratio for the wetlands is 1:3.5.
 - The ratio for GHA protection zone is 1:3¹¹³.
- Requires the promoter to:
 - Acquire ownership of at least 30% of the compensatory land.
 - Conclude land management agreements with the landowners for the remaining land (max. 70%) (e.g. a local farmers association will put in place agricultural measures to preserve the GHA in line with the GHA requirements¹¹⁴).

5.2 POSITIVE IMPACTS OF THE GCOS

5.2.1 Positive impacts of the GCOS include reduction of traffic on the A35 and improvements to air quality in the city of Strasbourg.

The 2006 and 2018 EIA reports state that GCOS will result in traffic improvements by capturing part of the existing traffic on the A35¹¹⁵. The competent authorities issued the DUP, declaring the GCOS as a public interest project (see § 1.2). The competent authorities also issued the Single Authorisation for the GCOS stating traffic improvements as one of the reasons for the GCOS' overriding public interest.

Furthermore, the EIA reports state that the GCOS will lead to improvements to air quality in Strasbourg. For example, the 2018 EIA report states that GCOS will lead to a decrease in nitrogen dioxide (NO₂) within the densely populated areas, which will lead to an increase of NO₂ alongside the GCOS route, albeit without exceeding the limit values^{116,117}. NO₂ is one of the most serious pollutants in the EU in terms of human health¹¹⁸.

5.2.2 The GCOS is a result of numerous traffic studies over time. The competent national authority undertook the first traffic study for the project in February 2003 and has updated it since (e.g. April 2013 update)¹¹⁹. In 2010, the Council of State estimated that GCOS will capture AADT 30 000 from the A35¹²⁰ (capture rate: approx. 19% (for the AADT on the A35 see § 1.1)). Similarly, the 2013 Study by the French General Council for the Environment and Sustainable Development on reducing the

¹¹⁰ Annexe 12 B – 5.2 of the French Ministry of Ecology, Sustainable Development and Energy - Version initialled on 29 January 2016 between the French State as grantor and the Société Concessionnaire de l'Autoroute du Contournement Ouest de Strasbourg as concessionaire (hereinafter: the Concession Contract).

¹¹¹ Opinion n°178 ARCOS (answer to the question n°59 of the Public Enquiry Commission) or opinion n°182 (answer to the question n°63 of the Public Enquiry Commission).

¹¹² Annex 12 5.1.2 A.B1 of the Concession Contract.

¹¹³ Part IV.3 of Annex 12 of the Concession Contract.

¹¹⁴ Technical specification of the Concession Contract - annex 12 5.3 - A.A2.7.2.

¹¹⁵ Sections E1.2.8 and E6.2.4 of the 2006 EIA report; Section 3.5.2 of the 2018 EIA report; Also see Section 4-2-9-1 of the Public Enquiry Commission report.

¹¹⁶ Section 3.5.4.1.1 of the 2018 EIA report. Also see 2016 *Evaluation de l'impact de la mise en oeuvre de l'autoroute A355 et du Plan de Déplacements Urbains de l'Eurométropole de Strasbourg conformément à la disposition 5 du Plan de Protection de l'Atmosphère de Strasbourg*, available at: http://www.atmo-grandest.eu/sites/prod/files/2017-03/16091901-%C3%A9tude%20GCO-PDU_v4.pdf, accessed on 30 October 2019.

¹¹⁷ Please note that other aspects are also taken into account. For example, the 2006 EIA report states that the new pollution on the route of the GCOS (e.g. Kochersberg) level remains low and acceptable on the health of humans and that it should not cause increase in the soil pollution which through food chain (plants, animals) could impact humans - E1.2.11 of the 2006 EIA report.

¹¹⁸ P. 8 of the European Environment Agency 2018 report on Air quality in Europe.

¹¹⁹ Prepared by the *Ministère de L'Ecologie, du Développement durable et de L'Energie*.

¹²⁰ ESDS.

traffic within Strasbourg urban area¹²¹ concluded that implementation of the GCOS and reclassification of the A35¹²² would contribute to a capture rate of 14-19% of traffic on the A35¹²³. However, one of the latest relevant studies, the 2018 EIA report, placed the figure of captured AADT at 13 100¹²⁴ (capture rate approx. 8%).

TEXT BOX 3 – RECLASSIFICATION OF A35

Reclassification of the A35 may contribute to a reduction of traffic on this road¹²⁵. The reclassification may include any of the following:

- Heavy vehicle (HV) ban.
- Speed limit reduction.
- Withdrawal for the A35 of its motorway status in its section within Strasbourg and appropriate signage to direct traffic in transit towards the GCOS.
- Reduction of the capacity of the A35, with local authorities considering devoting one lane per direction to public transit.

The competent authorities support the A35 reclassification¹²⁶. This is substantiated with:

- Financial reasons:
 - The HV ban will reduce road maintenance costs (a HV causes 100 times more degradation than a light vehicle).
 - If the Prefect does not put in place HV ban within one month from the commissioning of the GCOS, the authorities have to pay the concessionaire EUR 10m¹²⁷.
- Plans in place:
 - The Strasbourg transport plan states that the speed limit on the section of the A35 running through the city of Strasbourg will be reduced. In March 2018, the Prefect announced that the speed limit on the A35 would be cut from 90 km/h to 70 km/h when the GCOS works were complete¹²⁸.
 - The Strasbourg transport plan states that the A35 will be reorganised and adapted to urban use, including the introduction of bus lanes. In March 2018, the Prefect announced a reorganisation of the A35 to include one reserved lane in both directions to be used by car-sharing and clean vehicles¹²⁹.
 - The relevant local planning documents call for additional measures such as carpooling lanes on the A35¹³⁰.

¹²¹ Report Nr 008695-01 *Expertise sur les déplacements dans la périphérie de l'agglomération strasbourgeoise*, September 2013. Please note that the Report does not reflect certain developments that have taken place since its issuance such as abandonment of the proposal for an eco-tax for trucks in France - Section 4-2-9-1-3 of the Public Enquiry Commission report.

¹²² As set in the Urban Traffic Plan (PDU), adopted by the Community Council in January 2012.

¹²³ Section 5.3 of the Strasbourg traffic reduction study.

¹²⁴ Section 2.1.1.2.2, Figure 6 (page 8/47) *Pièce 1F Eléments d'actualisation de l'étude d'impact* dated 31 July 2017. The information presented therein is not contradicted in the "*Synthèse actualisée de l'étude d'impact*" that provides only some additional updates to *Pièce 1F*. Thus it remains a relevant information to be taken into account as part of the final 2018 EIA report.

¹²⁵ Sections E6.2.4 and E8.2.4 of the 2006 EIA report; Sections 1.5 and 3.5.2 of the 2018 EIA report.

¹²⁶ This can be seen from the following: Article 1 in the "*Règlement de la Consultation*" of 12 February 2015; CG67 – Commission permanente of the *Conseil Général*) 5 May 2014; Press release May 2014 : The *Conseil Général du Bas-Rhin*; CUS – Deliberation of 21 November 2014; Press release - December 2014: A joint letter by the city of Strasbourg, the CUS, the Département and the Région; Deliberation of the Municipal Council of Strasbourg – 15 December 2014; 2015-2020 *Etat-Région* plan contract (Alsace); The "*Conseil Général de l'Environnement et du Développement durable*" report from September 2013; Sections 4-2-9-1-2 and 5-2-10-1-1 of the of the Public Enquiry Commission report.

¹²⁷ Article 24.1 of the Concession Contract. Please note that cancellation of the ban within 60 months from opening of the project also leads to a compensation amount calculated to reduce each month, while cancellation after 60 months does not result in compensation - Article 24.1 of the Concession Contract.

¹²⁸ See section 1.5.1 of the 2018 EIA report.

¹²⁹ See section 1.5.1 of the 2018 EIA report.

¹³⁰ Sections 1.1 and 3.1 of the 3. *Programme d'Orientation et d'Action*, which is not legally binding but should be taken into account by the competent authorities, available at: <https://www.strasbourg.eu/documents/976405/1570260/0/ea37e62d-caa1-7c08-c65f-4c0bbb796662>, accessed on 30 October 2019.

5.2.3 Road traffic was identified by the 2014 atmosphere protection plan for the Strasbourg agglomeration as one of the causes of excess NO₂¹³¹. In May 2018, the European Commission referred France to the ECJ for failure to respect standards for NO₂ in 19 areas in the country, including the Strasbourg agglomeration¹³². The ECJ has not yet ruled on this case.

However, the French authorities did not present the GCOS or reclassification of the A35 to the European Commission as being among the measures that should lead to compliance with standards for NO₂ in the Strasbourg agglomeration¹³³. According to the Strasbourg Urban Development Plan, a decrease in traffic of at least AADT 40 000 (approx. 25% of the traffic on A35 (see § 1.1)) on the A35 is necessary to improve public health by improving air quality¹³⁴.

The Public Enquiry Commission took the view that the GCOS alone without additional measures will not lead to the necessary reduction in air pollution¹³⁵. Some of these measures have already led to improvements in the air quality. The results of the regional air pollution monitoring agency¹³⁶ show an improvement of the air quality of the agglomeration in recent years¹³⁷. The 2018 EIA report credits these improvements to, inter alia, improvements in public transport¹³⁸ and renewal of the car fleet¹³⁹. The 2018 EIA report lists additional measures, such as an increase of cyclists and pedestrians and improvements in spatial planning that should lead to improvements in air quality¹⁴⁰.

5.3 EIB'S KNOWLEDGE OF THE GCOS

5.3.1 Considering that the GCOS is a PPP, the EIB carried out a two-stage appraisal.

5.3.2 In October 2015, the EIB carried out the Stage 1 appraisal. During the Stage 1 appraisal, the EIB checked:

- Whether the GCOS is part of TEN-T.
- GCOS compliance with the ESPS and the Handbook and the environmental added value of the GCOS.

The EIB verified that the GCOS forms part of the TEN-T comprehensive network¹⁴¹.

The EIB checked compliance of the GCOS with the ESPS and the Handbook, and reviewed the 2006 EIA report¹⁴². It considered the risk concerning the GHA to be particularly high, and identified soil pollution by contaminated surface water as one of the main impacts of the GCOS. The EIB reviewed the GCOS' impact on land take and concluded that the design of the project was likely to minimise it. It noted that mitigation/compensation measures include fauna and flora species protection measures

¹³¹ Section 8.1 of the 2014 *Plan de Protection de l'Atmosphère de l'agglomération strasbourgeoise*, available at: http://www.grand-est.developpement-durable.gouv.fr/IMG/pdf/ppa_strasbourg_201404_vf.pdf, accessed on 30 October 2019. Also see Section 5-2-10-2 of the Public Enquiry Commission report.

¹³² Section 2.2 of the *Avis délibéré de l'Autorité environnementale sur le contournement ouest de Strasbourg* (67), n°Ae : 2017-91, available at <http://www.bas-rhin.gouv.fr/content/download/27052/187500/file/AAE-ARCOS.pdf>, accessed on 8 May 2019 and http://europa.eu/rapid/press-release_IP-18-3450_en.htm, accessed on 30 October 2019.

¹³³ Section 5-2-10-2-2 of the Public Enquiry Commission report.

¹³⁴ Also see: Section 2.3 of the *Avis délibéré de l'Autorité environnementale sur le contournement ouest de Strasbourg* (67), n°Ae : 2017-91; Section 4 of the 2016 *Evaluation de l'impact de la mise en oeuvre de l'autoroute A355 et du Plan de Déplacements Urbains de l'Eurométropole de Strasbourg conformément à la disposition 5 du Plan de Protection de l'Atmosphère de Strasbourg*.

¹³⁵ See Section 5-2-10-2-2 of the Public Enquiry Commission report.

¹³⁶ Former ASPA which in January 2017 changed the name to ATMO Grand Est.

¹³⁷ Section 6 of the 2016 *Evaluation de l'impact de la mise en oeuvre de l'autoroute A355 et du Plan de Déplacements Urbains de l'Eurométropole de Strasbourg conformément à la disposition 5 du Plan de Protection de l'Atmosphère de Strasbourg*.

¹³⁸ Section 2.3.4 of the 2018 EIA report.

¹³⁹ Section 3.5.4.1.3 of the 2018 EIA report. Also see: Section 6 of the 2016 *Evaluation de l'impact de la mise en oeuvre de l'autoroute A355 et du Plan de Déplacements Urbains de l'Eurométropole de Strasbourg conformément à la disposition 5 du Plan de Protection de l'Atmosphère de Strasbourg*.

¹⁴⁰ Section 2.3.4 of the 2018 EIA report.

¹⁴¹ See TENtec Interactive Map Viewer, available at: <http://ec.europa.eu/transport/infrastructure/tentec/tentec-portal/map/maps.html>, accessed on 30 October 2019.

¹⁴² ESDS.

and reforestation¹⁴³. The EIB noted that five points identified during 2006 EIA public consultation were taken into account by the competent authorities in 2008¹⁴⁴.

As its environmental added value, the EIB noted that the GCOS will have a slightly positive environmental impact on existing traffic, as it will (i) relieve congestion on the A35 and (ii) offer a slightly lower distance travelled with a higher travel speed. As part of Stage 1, the EIB estimated a lower capture rate of traffic on the A35 than the French authorities and the promoter (see § 5.2.2). The EIB identified traffic as one of the causes of air pollution in Strasbourg, but did not analyse whether the GCOS will lead to improvements to air quality in Strasbourg. The EIB concluded that the GCOS will lead to a decrease of 6 000 tonnes of CO₂ emissions per average operating year¹⁴⁵. This is equivalent to the CO₂ emissions avoided by 1.3 wind turbines running for a year¹⁴⁶.

The EIB provided the results of its Stage 1 environmental and social appraisal in the ESDS¹⁴⁷. In the ESDS, the EIB noted that the GCOS' positive impacts are expected to include reduced pollution in Strasbourg¹⁴⁸. The EIB also noted that the GCOS is acceptable to the EIB if the following conditions are met:

- Satisfactory involvement of the local stakeholders in the identification of a protection zone for the GHA, compensating the loss of land caused by the GCOS.
- Adequate ecological corridor between the north and the centre zones of the GCOS.
- Appropriate ecological compensation measures outside the area of influence of the GCOS¹⁴⁹.

The EIB Board of Directors approved the results of the Stage 1 appraisal.

5.3.3 In April 2018, the EIB carried out the Stage 2 appraisal. During the Stage 2 appraisal, the EIB:

- Appraised environmental elements of the GCOS.
- Re-estimated the GCOS' traffic capture rate.

The EIB appraised the concession contract. Annex 12 of the concession contract contains a number of environmental mitigation/compensation measures to offset potentially negative impacts of the GCOS on the environment¹⁵⁰. This also includes specific measures for the biodiversity (e.g. GHA) and agriculture land. The EIB required the promoter to comply with the environmental requirements set in the concession contract. The EIB also noted that the European Commission closed the GHA infringement. As a consequence, and considering Annex 12 of the concession contract, the EIB noted that the conditions included in the ESDS are no longer required (see § 5.3.2).

The EIB re-estimated the capture rate of traffic on the A35. The results were even more conservative than the estimates of the Stage 1 appraisal (see § 5.3.2).

There is no documented evidence that the EIB appraised the 2018 EIA report (including AFAF – area of influence, cumulative impacts (see § 3.6)) as part of the Stage 2 appraisal or the related reasoning. There is no documented evidence that the EIB considered whether the following constitutes a reputational risk for the EIB:

- Significant changes to the EIA report (e.g. AFAF) (see § 5.1.5)¹⁵¹.
- Shortcomings identified by the France's advisory bodies concerning (the draft 2018 EIA report for) the GCOS (see § 5.1.6)¹⁵².

¹⁴³ ESDS.

¹⁴⁴ ESDS.

¹⁴⁵ ESDS.

¹⁴⁶ See: <https://www.epa.gov/energy/greenhouse-gas-equivalencies-calculator>, accessed on 15 October 2019.

¹⁴⁷ <https://www.eib.org/en/registers/all/90583617>, accessed on 30 October 2019.

¹⁴⁸ ESDS.

¹⁴⁹ ESDS.

¹⁵⁰ Annex 12 of the Concession Contract.

¹⁵¹ During the Stage 2 appraisal, the EIB was aware of the existence of the AFAF.

¹⁵² During the Stage 2 appraisal, the EIB was aware that France's advisory bodies had identified these shortcomings.

- Continued strong local opposition to the GCOS and the risk that it could delay the GCOS (see § 1.6).

There is no documented evidence that the EIB considered whether the changes that took place between Stage 1 and Stage 2 of the appraisal (e.g. 2018 EIA report, lower capture rate of traffic on the A35) constitute fundamental changes requiring the approval of the EIB Board of Directors.

The EIB did not communicate the results of the environmental aspects of the Stage 2 appraisal to the public.

The EIB Management Committee approved the results of the Stage 2 appraisal.

6. CONCLUSIONS

- 6.1 The EIB-CM notes that the case on merits (*au fond*) of the Single Authorisation, authorising the works on the GCOS, is still pending before the Administrative Court in Strasbourg. Therefore, at this stage, the EIB-CM cannot conclude whether the GCOS complies with the applicable standards.

However, while the evidence reviewed suggests a negative impact, the evidence also suggests that mitigation/compensation measures in place are sufficient to offset the impact. Furthermore, the evidence reviewed suggests that the GCOS will have only a limited impact on traffic on the A35. Consequently, the GCOS is not expected to enable attainment of air quality standards in Strasbourg/improve public health.

- 6.2 In terms of the work of the EIB, the EIB carried out a two-stage appraisal. As required under the EIB's policies and procedures, during Stage 1, the EIB: (i) verified that the GCOS is a TEN-T project; (ii) carried out an environmental appraisal; and (iii) published the results of the latter in an ESDS. In line with EIB's policies and procedures for this type of TEN-T project, the EIB did not assess the GCOS' impact on air quality. During Stage 2, the EIB: (i) appraised some environmental aspects; and (ii) adjusted the loan conditions.

However, the EIB did not: (i) document whether the changes between Stages 1 and 2 constitute fundamental changes requiring re-approval of the project by the EIB Board of Directors; (ii) appraise 2018 EIA report or document the related reasoning; or (iii) prepare and publish an addendum to the ESDS. The EIB-CM concludes that the current EIB procedures lack clarity on: (i) what constitutes a fundamental change; and (ii) what environmental elements should be appraised during the Stage 2 appraisal. For example, it is uncertain whether the EIB is required to appraise an updated EIA report when the EIB's decision-making process is still ongoing. The EIB-CM concludes that, in line with its communication to the EO, the EIB should have prepared and published an addendum to the ESDS.

7. RECOMMENDATIONS/SUGGESTIONS FOR IMPROVEMENT

- 7.1. The EIB-CM therefore recommends that the EIB prepare and publish an addendum to the ESDS and include therein:
- Environmental information and conditions included in the term of financing as loan conditions, and the related developments.
 - Summarised environmental information encompassed by the Stage 2 appraisal (e.g. concession contract).

Publication will be made in accordance with the EIB's policies and procedures and subject to any limitations by which the EIB is bound (including but not limited to any confidentiality undertakings).

The EIB-CM recommends that the EIB implement the above-mentioned recommendation within 30 working days of the finalisation date of this report.

- 7.2 The EIB-CM suggests that the EIB revise its procedures in order to:
- Ensure that in a multiphase approval project, the EIB documents its reasoning at the different decision points.
 - Clarify what constitutes a fundamental change requiring re-approval of the project by the EIB Board of Directors.
 - Clarify whether the EIB needs to appraise an EIA (report) update when the EIB's decision-making process is still ongoing.
 - Further clarify the reasoning for preparing and publishing an addendum to the ESDS and its content (e.g. environmental information and conditions included in the finance contract and encompassed by the appraisal).

The EIB-CM recommends that the EIB implement the above-mentioned suggestions within 18 months of the finalisation date of this report.

- 7.3 The EIB-CM will monitor whether the EIB has implemented the recommendations and suggestions within the set deadlines.

LIST OF ABBREVIATIONS

AADT	Annual average daily traffic
AFAF	Agricultural and forest land restructuring (<i>Aménagement foncier agricole et forestier</i>)
CMPTR	EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure
CNPN	National Committee for the Protection of Nature (<i>Comité National pour la Protection de la Nature</i>)
DUP	Public Utility Declaration (<i>Déclaration d'utilité publique</i>)
EA	Environmental Authority (<i>Autorité environnementale</i>)
ECJ	European Court of Justice
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EIB-CM	European Investment Bank Complaints Mechanism
EO	European Ombudsman
ESDS	Environmental and Social Data Sheet
ESPS	EIB Statement of Environmental and Social Principles and Standards
GCOS	Strasbourg Western By-pass (<i>Grand Contournement Ouest de Strasbourg</i>) project
GHA	Great Hamster of Alsace
HV	Heavy vehicles
IAR	Initial Assessment Report
TEN-T	Trans-European transport network

ANNEX I - KEY MILESTONES OF THE GCOS (INCLUDING RELEVANT EIB MILESTONES)

2006	Preparation of the EIA (2006 EIA report)
1 June – 28 July 2006	Public consultation concerning the 2006 EIA report
23 January 2008	Issuance of the DUP 2008
17 March 2010	Rejection of requests to annul the DUP 2008
October 2015	<u>Finalisation of EIB's Stage 1 appraisal of the project</u>
14 October 2015	<u>Approval of the project by the EIB Management Committee</u>
17 November 2015	<u>Approval of the project by the EIB Board of Directors</u>
29 January 2016	Conclusion of the concession contract
22 January 2018	Extension of the DUP 2008 (DUP 2018)
14 March 2018	Update of the EIA (2018 EIA report)
4 April – 11 May 2018	Public consultation concerning the 2018 EIA report
April 2018	<u>Finalisation of EIB's Stage 2 appraisal of the project</u>
24 April 2018	<u>Approval of the project by the EIB Management Committee</u>
25 April 2018	<u>Conclusion of the terms of financing</u>
19 June 2018	Dismissal of the claims against the concession contract
30 August 2018	Issuance of the Single Authorisation
13 March 2019	Rejection of requests to annul the DUP 2018