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PRESS RELEASE

The Conseil d'État sets out the rules for construction work and protecting endangered species

Organisations may need to obtain a “protected species” exemption to carry out certain building works and other projects. Today, the Conseil d'État set out the enforcement conditions.

An environmental protection group, which contested the building of a wind farm in the Pas-de-Calais area, took its case to the Administrative Appeal Court of Douai. Before reaching its decision, the Court applied to the Conseil d'État, asking it to define the application conditions of the system for the protection of species and habitats.

The directive of 21 May 1992 on the conservation of natural habitats and wild flora and fauna, also known as the Habitats Directive, and the directive of 30 November 2009 on the conservation of wild birds, require member States to implement a general system for the strict protection of animals, habitats and birds. This system is set out in Articles L. 411-1 et seq. of the French Environment Code.

If construction work causes harm to protected species or their habitat, the head of the construction project must obtain a special exemption. This exemption may be granted when three conditions are fulfilled: firstly, no satisfactory alternative can be found; secondly, the populations of the species in question are maintained at a favourable conservation status in their natural range, and thirdly – of particular relevance to disputes concerning wind turbines, as in this case – that there are overriding reasons relating to the public interest for the project, given its nature and the relevant social and economic interests at stake.

First of all, the Conseil d'État specified that the project lead must investigate whether it is necessary to obtain an exemption. This investigation is required when one of the species concerned is present in the area of the project. At this stage, neither quantity nor conservation status are to be taken into account.

The Conseil d'État indicated that the project lead must then obtain a “protected species” exemption if the impact on any protected species is “sufficiently established”. To show that the harm is not “sufficiently established” and that, therefore, an exemption is not required, risk avoidance and risk reduction measures may be taken into account.

Finally, with regards to granting the exemption itself, the authorities will take into account any planned measures to avoid, reduce or compensate for harm, as well as the conservation status of the species in question. As with all decisions made by the authorities, the administrative judge may be called upon to verify that the final decision complies with the law.

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pour la protection de l'environnement, of 9 December 2022*

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