

# SCHOUPS

Newsflash 07.07.2017

---

## **Council of State suspends Regional Spatial Implementation Plan “Essers”**

In a decision of 4 July 2017 (no. 238.763) the Council of State, Administrative Jurisdiction department, suspended the enforcement of the hotly-contested Regional Spatial Implementation Plan that was supposed to make possible a second expansion of the transport company H. Essers.

The Council of State agreed with the Plaintiffs' assertion that, in the assessment of the environmental impacts, account had to be taken of the combined effects of the challenged GRUP [*Gewestelijk ruimtelijk uitvoeringsplan* = Regional Spatial Implementation Plan] and the execution of the GRUP of 2009 that related to the first expansion of this transport company. This expansion took place in a nature zone that is protected as a Habitats Directive area and it was linked to the condition that the company would engage in nature development activities in a nearby "restoration zone" of about 10 hectares in the same Habitats Directive area. By the recent second extension the above-mentioned "restoration zone" is being converted into company grounds, and it was made conditional on creating a new natural habitat elsewhere for the protected nature.

The Council of State has ruled that the spatial framework for this new expansion conflicts with the nature conservation duty deriving from article 6 of the Habitats Directive. According to the Council of State, it runs contrary to the case-law of the Court of Justice to already take into consideration the newly to be created natural habitat, whose development will be completed after the assessment of the significance of the possible harmful effect on the natural characteristics of the Habitats Directive area involved, in the environmental impact assessment. One thus could not, on the basis of this reasoning, conclude that there will be no significant negative effects as a result of the GRUP for the Habitats Directive area in question within the framework of the so-called "habitat test".

For more information on this subject, you can contact Rami Nasser (author) or Kristof Hectors (unit head).

---

De Burburestraat, 6-8 bus 5 2000 Antwerpen  
Regentschapsstraat 58, bus 8 B-1000 Brussel  
t. +32 3 260 98 60 f. +32 3 260 98 61 [info@schoups.be](mailto:info@schoups.be) [www.schoups.be](http://www.schoups.be)