

Project Approval Procedure

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ABSTRACT: The Federal Railway Authority (EBA) is the supervisory, authorization and project approval authority for the magnetic levitation train (MAGLEV). The EBA responsibilities are constituted in the General Magnetic Levitation Train Law (AMbG) and in the Magnetic Levitation Train Planning Law (MBPIG). The project approval procedure comprehends both administrative procedure on the one hand and public law approval on the other hand. The initiation of a project approval procedure is a formal request of the project investor to the EBA. The project approval procedure is a focussed and consistent administrative act, in terms of one authority, one procedure, one single authorization and thus an all-embracing approval.

1 BASIS

Magnetic levitation (maglev) railway systems, including all necessary handling equipment, may not be built or modified, before official planning approval is granted.

The public and private interests touched by the plan are to be taken into consideration including the environmental compatibility within the respective limits of consideration.

The project approval procedure comprehends both - administrative procedure on the one hand and public law approval on the other hand.

2 THE PURPOSE OF THE PROJECT APPROVAL

With the project approval, maglev transportation equipment is to be inserted into an existing environment or an existing situation is to be modified.

Such construction projects typically interact with existing infrastructure and touch existing legal relationships.

In the project approval, all public law relations touched by the plan are to be regulated between the project investor, the authorities representing the public interests as well as the affected persons - with the exception of expropriation.

In the project approval, decisions are made,

- on which use, position, figure and state the arrangements have,
- on which properties - temporarily or permanently - are needed for the plan,
- how the interests of a third party are taken into consideration and how to form the public law relations in connection with the plan,
- whether and if so subsequent measures become necessary in other arrangements,
- whether and which air pollution control measures are necessary,
- whether and which nature conservation-juridical avoidance measures, reduction measures, balance measures and substitute measures are necessary, including the conversion period,
- whether protective conditions to meet the interests of the general public or to avoid disadvantageous effects on the rights of a third party are necessary,
- whether instead of a protective condition, a monetary compensation is to be arranged, if such precautions or arrangements are unfeasible or incompatible with the building project.

3 OBJECT AND EXTENT OF THE PROJECT APPROVAL

The project approval includes in particular:

- the equipment to be changed or to be built,
- precautions or the establishment of protective arrangements,

- areas whose permanent or temporary claim are necessary for the realization of the plan,
- nature conservation-juridical balance measures and alternative measures,
- necessary subsequent measures in arrangements of a third party.

As subsequent measures, arrangements of a third party can be established or be changed. Examples of such subsequent measures are:

- construction of streets,
- transfer of streets, ways and bodies of water,
- transfer of pipelines,
- conversion or transformation of historic architectural monuments.

The object of the project approval is also the appointment of the areas for security measures and the emergency services such as rescue sites, entrances, emergency exits, accesses to the rail and the fire-fighting water supply.

The project approval can be carried out for route segments. This will be necessary as a rule if it concerns longer distances or plans with especially difficult relations.

4 PRINCIPLES FOR THE INSTALLATION OF THE PLAN

The project investor is relatively free in his development of the plan. Nevertheless, this creative freedom is not guaranteed without restrictions. Restrictions follow from: the requirement of a level justification of the plan, the legal rules of compelling right, the approved rules of the technology as well as the requirements of the consideration order.

Taking into account the concrete relations the following aspects must be considered:

- consequences of the plan on the neighbourhood, in particular on existing property rights or rights of use (also rent),
- the public interests, in particular those of safety, emergency services and economic efficiency,
- the interests of the environment, in particular those of water pollution control, air pollution control, nature conservation and landscape conservation, soil conservation and conservation of monuments and historic buildings as well as,
- the interests represented by other public planning agencies.

The essential reasons which have led to this plan are to be shown in the explanatory report. The variations which have been taken into consideration by the planning are to be examined and presented as it is necessary for the planning decision.

5 ENVIRONMENTAL REVIEW

The purpose of the environmental review is to investigate, to describe and to evaluate the consequences of the plan on the environment. The results are to be taken into consideration in the licensing decisions. The environmental review is an integral part of the project approval procedure. There always must be an environmental review for the new construction of a maglev system.

Objectives of the environmental review are the immediate and indirect effects on human beings and the environment:

- humans (e.g., noise, vibrations and electromagnetic fields),
- animals and plants (e.g., loss of habitat),
- ground (e.g., sealing),
- water (e.g., sealing, ground water sinkage and pollution),
- air (e.g., pollution issues),
- climate (e.g., change of the local climate),
- scenery (e.g., interference of the scenic view and landscape),
- cultural goods and other material goods (e.g., loss and visual disturbance of historic architectural monuments and ground monuments).

6 LEVEL DOCUMENTS

The level documents must be topically, completely, generally understandable and be logical in themselves. All of the information necessary for the decision and the detailed technical data necessary for the consideration decision must be included.

According to the plan the following level documents are to be presented:

- an explanatory report as well as ground plans,
- a land purchase list and suitable land purchase plans,
- a building site plan,
- documents for the regulation of water supply and distribution circumstances,
- a landscape conservation support plan, an environmental review as well as, if necessary, a compatibility study of Flora-Fauna-Habitat Directive,
- certificates of the noise, vibrations and electromagnetic fields impacts,
- certificate to the fire prevention and emergency services,
- other documents and certificates.

7 INTRODUCTION OF THE PROJECT APPROVAL PROCEDURE

The initiation of a project approval procedure is a formal request of the project investor to the EBA.

The EBA supplies the entire plan to the competent authority for the realization of the hearing procedure.

The competent authority arranges the publication of the plan documents in the communities which are affected by the plan typically within one month after receipt of the entire plan.

8 STATEMENTS

The competent authority invites participation by the proper authorities and associations under inlet of the suitable plan documents.

The approved nature conservation associations are likewise granted the opportunity to provide statements.

9 PUBLICATION OF THE PLAN DOCUMENTS

The level documents are laid out at the request of the competent authority in the communities which are affected by the plan for one month to allow public examination and comment. The communities announce the publication according to local standards.

10 PROCEDURE: OBJECTIONS RAISED IN TIME

The competent authority sends objections and statements to the project investor with the request for written reply. Afterwards the competent authority sets a date for discussion.

The discussion is not public. Its purpose is to discuss objections and statements with the involved parties, to closer inform them about the intended measures and to achieve an arrangement if possible. The EBA receives a protocol of the verbal negotiations.

11 ENDING OF THE HEARING PROCEDURE

The competent authority passes the entire level documents, the statements and objections, any other documents, the protocol of the discussion and its final statement on to the EBA. The competent authority can make recommendations in its statement on

precautions or protective arrangements among other things.

12 OFFICIAL APPROVAL – GENERAL REGULATIONS AND DECISIONS

The EBA has to weigh the interests promoting the plan on the one hand and the public and private interests impacted by the plan, including the interests of the environment, on the other hand.

The EBA decides on the statements and the objections raised in time about which, in the hearing procedure, no agreement could be achieved.

The EBA has to decide in particular on the admissibility of the claim of properties. Compensation demands because of the claim of properties as well as demands on entire takeover of rest properties are an object of the compensation procedure according to the expropriation laws of the states. The EBA decides further on precautions and protective arrangements and compensations.

13 PROTECTIVE CONDITIONS, COMPENSATION

Protective conditions (precautions and protective arrangements) can be necessary for the general public or to the avoidance of disadvantageous effects on rights of a third party.

An arrangement of protective conditions is necessary if considerable and, therefore, unreasonably legal interferences result from the plan.

The EBA checks by its decision on protective conditions whether these are technically practicable and in itself necessary precautions or protective arrangements are not necessary (because, e.g., costs stand in no relation to the protective purpose).

If the check proves that the demanded protective conditions are out of proportion or incompatible with the plan, this is to be demonstrated in the project approval. In these cases, the affected person may claim the adequate compensation in money, which is to be decided in the project approval decision.

If the property of a third party is impaired by the plan not immediately by extraction, but indirectly, in particular by injurious environmental influences, compensation is to be settled in the project approval if necessary.

14 PROJECT APPROVAL AND EXECUTION PLANNING, LEGAL EFFECTS OF THE PROJECT APPROVAL

Beside the project approval, no other decisions of other authorities are necessary (concentration effect), in particular not the following:

- project approval for subsequent measures in other traffic routes and arrangements,
- project approval for tramways by Public Transport Act,
- approvals based on the conservation of monuments and historic buildings laws,
- exception from the bans and orders of the Federal Nature Conservation Act,
- water-juridical approvals for the removal of arrangements in and in bodies of water,
- water-juridical permissions and approvals.

The project approval decision does not entitle the project investor to take up properties or rights of a third party. However, it forms the basis for the expropriation.

15 THE PROJECT APPROVAL DECISION - DELIVERY, PUBLICATION AND ANNOUNCEMENT

The project approval is to be sent to the project investor and the affected persons. An issue of the decision is to be laid out for publication in the communities affected by the plan for two weeks. At the end of the two weeks, the decision is published for the remaining affected persons as well.

16 LEGAL RECOURSE

The allowed legal recourse against the level statement decision is the administrative-judicial complaint. The complaint is to be raised within one month after delivery of the project approval.

17 LEGAL EFFECT OF THE PROJECT APPROVAL

The legal effect is valid if the project approval was not rescinded within the complaint term or if all complaint procedures were concluded without reversing the decision.

With the commencement of the legal validity, the project approval claims of a third party for an omission of the plan, a removal or change of the ascertained arrangement or on omission of its use are no longer possible.