



31.1.2018

## NOTICE TO MEMBERS

**Subject: Petition No 0277/2016 by Guadalupe Gómez (Spanish) on plans to build a jetty at a beach in Sanxenxo, Galicia**

### 1. Summary of petition

The petitioner explains that a jetty is being built for recreational boating purposes at one of Sanxenxo's beaches. The petitioner considers that the construction of the jetty, which would be a permanent structure, is an encroachment on public land. The petitioner calls for an environmental assessment to be carried out, but the authorities have deemed this unnecessary.

### 2. Admissibility

Declared admissible on 15 July 2016. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 28 February 2017

The petitioners claim that the construction of a pier by the Sanxenxo Sailing Club entails the privatization of two public beaches, as well as severe damage to the environment.

From the available information, the Commission has checked that the project at issue is not included in the Annexes to the Environmental Impact Assessment (EIA) Directive<sup>1</sup>. Point 10 (k) of Annex II refers to "*Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works*", which do not include projects like the one described by the petitioner (a platform supported on pillars to be used as a landing stage for boats). In addition, the petitioners have failed to provide any information pointing to any possible significant effect

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<sup>1</sup> 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 Text with EEA relevance, OJ L 26, 28.1.2012, p. 1–21.

of this project on any site included in the Natura 2000 Network. Consequently, the Habitats Directive<sup>1</sup> is not applicable in this case either.

The questions pertaining to the alleged privatization of the beaches are not covered by EU environmental law and fall therefore under the remit of the exclusive competence of the Member State.

However, as confirmed by the Court of Justice in Joined Cases C-458/14 and C-67/15 in its ruling of 14 July 2016, "authorisations" allowing the use of public beaches by private undertakings shall comply with the right of establishment – one of the single market freedoms – under Article 49 of the Treaty on the Functioning of the European Union (TFEU) and with Article 12 of Directive 2006/123/ EC on the internal market (the Services Directive). According to Article 12 of the Services Directive, authorisations granted when there are limited resources must be carried out in a transparent, impartial and competitive manner.

From the available information, the Commission is not in a position to assess whether the construction of a pier by the Sanxenxo Sailing Club entails the privatization of two public beaches, and whether public authorities have granted an authorisation or a concession limited in time in a transparent, impartial and competitive manner.

#### Conclusion

Under these circumstances, the Commission cannot give further follow-up to this petition.

#### **4. Commission reply (REV I), received on 31 January 2018**

Having assessed the documents provided by the petitioners, the Commission notes that the allegations of severe damage to the environment are not supported with any evidence of infringement to EU environmental law, in particular with regard to the Environmental Impact Assessment (EIA) Directive<sup>2</sup> or the Habitats Directive<sup>3</sup>. As regards the concession procedure for the construction and exploitation of nautical infrastructures on the publicly owned coastline (beaches), the Commission notes that the petitioner has not provided sufficient elements to consider that there is a violation of the Services Directive<sup>4</sup> or Directive 2014/55/EU<sup>5</sup>.

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<sup>1</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7–50.

<sup>2</sup> 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 Text with EEA relevance - OJ L 26, 28.1.2012, p. 1–21

<sup>3</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora - OJ L 206, 22.7.1992, p. 7–50

<sup>4</sup> Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market – OJ L 376, 27.12.2006, p. 36-68.

<sup>5</sup> Directive 2014/55/EU of the European Parliament and of the Council of 16 April 2014 on electronic invoicing in public procurement - OJ L 133, 6.5.2014, p. 1–11