



22.4.2010

NOTICE TO MEMBERS

Subject: Petition 1395/2009 by Dionisia Avgerinopoulou (Greek), on a hotel project in Zacharo (prefecture of Ilia) and related infringement of EU environmental legislation

1. Summary of petition

The petitioner, who is a lawyer representing a group of residents in Zacharo (prefecture of Ilia), an area which was among those most seriously affected by the disastrous fires in the Peloponnese in August 2007, complains that the responsible Greek authorities have authorised the construction of a hotel at Kakovatos in Zacharo municipality, which is a Natura 2000 listed area in Greece (GR 2330005). The petitioner points out that this constitutes not only an infringement of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora but also of Council Directive 97/11/EC amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment. She therefore calls on the European Parliament to intercede with the Greek authorities to ensure that the EU's environmental legislation is enforced and the project halted.

2. Admissibility

Declared admissible on 8 January 2010. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 22 April 2010.

The petition refers to the planned construction of a hotel in the area of Kakovatos (municipality of Zacharo, prefecture of Ilia, SW Greece), within a Natura 2000 site. The petitioner argues that the project, along with other building pressure in the area, will seriously damage the site, already seriously affected by forest fires in 2007. She considers that the

project has been illegally authorised since no prior Specific Environmental Study according to Greek national legislation has been carried out for the Natura 2000 area, nor has an impact assessment for the project been carried out in accordance with the Habitats or the EIA Directives. The petitioner further refers to a number of alleged breaches of national rules concerning physical and urban planning and related administrative procedures for granting building permits. Consequently, it is requested that the project be halted and the legality of procedures followed be investigated.

The Commission's comments on the petition

ISSUES FALLING OUTSIDE THE EU COMPETENCE

It should be stressed that the majority of the grievances raised by the petitioner are related to alleged breaches of national legislation (e.g. violation of the Greek Constitution, breach of national acts related to urban planning, procedural issues concerning lack of competence) and, consequently, fall outside the competence of the Community (sections 3, 4, 5, 7 and 8 of the petition). Hence, the Commission has no grounds on which to intervene in regard to these issues.

POTENTIAL BREACHES OF EU ENVIRONMENTAL LEGISLATION

The Kakovatos area is included in the Site of Community Importance GR2330005 "Thines kai paraliako dasos Zacharos, Limni Kaiafa, Strofylia, Kakovatos" designated by Greece for the Natura 2000 network pursuant to the Habitats Directive 92/43/EEC¹. The site benefits, therefore, from the protection regime established under Article 6 of the directive. In particular, according to Article 6(3) of the directive, any plan or project that is likely to have a significant effect on that Natura 2000 site, either alone or in combination with other plans or projects, has to be subject to an appropriate assessment with regard to the site's conservation objectives and it can be authorised only if it is ascertained that it does not affect the integrity of the site. This requirement applies also in the case of the hotel development in question, if the latter is considered likely to significantly affect the site. In that regard, other building pressure on the area, as well as the deterioration due to forest fires, has to be taken into account.

The petition does not provide any concrete evidence about the alleged damage to the Natura 2000 site but raises concerns about the overall cumulative impact of building pressure on the area, which is now more vulnerable as a result of forest fires.

The Commission would point out that the Habitats Directive does not prohibit the authorisation of a project on a Natura 2000 site if a management plan (a "Specific Environmental Study" under Greek legislation) for the site has not been adopted and implemented. However, it can be expected that the draft Specific Environmental Study that has been carried out for the area, but has not been adopted yet, will be taken into account for the assessment and authorisation of subsequent specific projects such as the tourism development in question.

¹ 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.

Directive 85/337/EEC¹ (as amended by Directives 97/11/EC², 2003/35/EC³ and 2009/31/EC⁴), also known as the Environmental Impact Assessment (EIA) Directive, applies to holiday villages and hotel complexes outside urban areas and associated developments (Annex II.12.c) and to urban development projects (Annex II.10.b). For projects listed in Annex II, the Member States shall determine through a case-by-case examination or thresholds or criteria set by the Member State whether an EIA is required (Article 4(2) of the directive). The threshold for hotel projects, like the one in question, which are to be constructed within an urban area below 20.000 inhabitants, is 100 beds. Consequently, there is no breach of the EIA Directive.

It should be recalled that, according to Court case law (e.g. C-508/03), the Commission has the burden of proof and must demonstrate the failure of a Member State. In order to demonstrate that the national authorities exceeded the limits of their discretion, the Commission cannot limit itself to general assertions and presumptions by, for example, merely pointing out that a project is located in a highly sensitive area, without presenting specific evidence to demonstrate that the national authorities concerned made a manifest error of assessment when they gave consent to a project. The Commission must furnish at least some evidence of the effects that the project is likely to have on the environment.

Conclusions

The petition does not provide any concrete evidence as to a potential breach of applicable Community legislation in the case of the planned hotel in question. However, the Commission will contact the Greek authorities in order to gather information as regards measures taken to avoid the deterioration of the Natura 2000 area through intensive building activity, including hotel developments, taking also into account its need for restoration after the major forest fires.

¹ Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985.

² Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, OJ L 73, 14.3.1997.

³ Directive 2003/35/EC of Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, OJ L 156, 25.6.2003, p.17.

⁴ OJ L 140, 5.6.09, p.114.