



11.5.2010

## NOTICE TO MEMBERS

Subject: **Petition 0367/2009 by Helena Isabel Coelho (Portuguese), on the ‘Douro Litoral’ motorway project**

### 1. Summary of petition

The petitioner refers to the Douro Litoral motorway project and points out that the related compulsory purchase at Aguiar de Sousa (Porto) constitutes a number of breaches of current environment rules, including pollution of drinking water and the destruction of habitats. As the petitioner has already unsuccessfully appealed to the Portuguese Environment Ministry, he asks the European Parliament to intervene.

### 2. Admissibility

Declared admissible on 18 June 2009. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 11 May 2010.

The petition

The petitioner raises concerns regarding a section of the Douro Litoral motorway project, in the Norte Region, Portugal.

The petitioner fears that this road project will affect her property. It appears that the compulsory purchase of her land in favour of the concessionaire is foreseen for the motorway project 2 – A32/A41 at Aguiar de Sousa, in the municipality of Paredes. The petitioner points out the negative impact of the projected motorway on the environment, in particular on fauna,

flora, cultivated land and housing. She highlights the existence of other possible alternatives with less environmental and social damage.

The Commission's comments on the petition

The services of the Commission have examined the information provided by the petitioner in light of the EU law that might be applicable to this case.

Directive 85/337/EEC<sup>1</sup> as amended (known as the Environmental Impact Assessment or EIA Directive) makes provisions for the carrying out of an EIA for certain public and private projects. The EIA Directive distinguishes between so-called Annex I projects, which must always be made subject to an EIA procedure and Annex II projects where the Member States shall determine through a case-by-case examination, and/or thresholds or criteria set in the national transposing legislation whether the project shall be made subject to an EIA.

It should be noted that motorway projects are included in point 7 b) of Annex I of the directive and hence an EIA is mandatory.

The EIA procedure ensures that environmental consequences of projects are identified and assessed before development consent is given by the competent authority. The public can give its opinion and all the consultations must be taken into consideration. The public should also be informed of the content of the development consent.

According to the available information, the “Douro Litoral” project is a new toll motorway project in the Porto metropolitan area near the River Douro. It involves the construction of 129 km of road under a design, build, finance, and operate agreement of which 76.5 km will be tolled.

The promoter of this project is the public Institute for Road Infrastructures (*Instituto de Infra-estruturas Rodoviárias*), belonging to the Ministry of Public Works, Transport and Communications. The winning consortium of this concession is called “Auto-Estradas do Douro Litoral, S.A. (AEDL)”.

It is important to note that this motorway project has been subject to an EIA procedure, carried out from November 2002 to July 2003, including a public consultation phase, the analysis of alternatives, the adoption of correction and mitigation measures, etc. The EIA Statement (DIA) of the section of the route referred in this Petition was adopted in July 2003. According to the Portuguese legislation transposing the EIA Directive, the conclusions of the monitoring and follow-up of the different measures foreseen as result of the EIA are included in the report called RECAPE.

The RECAPE report of this project, dated 2008, can be consulted by Internet on the Web page of the Portuguese Agency for the Environment (*Agência Portuguesa do Ambiente*) concerning EIA procedures.

---

<sup>1</sup> Directive 85/337/EEC (OJ L 175, 05.07.1985) as amended by Directive 97/11/EC (OJ L 073, 14.03.1997), Directive 2003/35/EC (OJ L 156, 25.06.2003) and Directive 2009/31/EC (OJ L 140, 05.06.2009).

It should be stressed that the layout of a project and the choice of a specific alternative remains the responsibility of the Member State concerned which has to ensure the compliance with relevant EU legislation.

It should be also underlined that the responsibility for implementing EU law correctly lies primarily with Member States. The Commission has no powers under the Treaty to substitute Member States authorities in their planning activities and in their decisions, for example, on authorising this motorway project.

In light of the above, the examination of the available information does not allow a breach to the EIA Directive to be identified in this case.

Finally, regarding the expropriation of a private property and establishing adequate, economic compensation, it should be noted that these are matters which do not fall within the scope of EU law, so the Commission has no powers to intervene. The issues pointed out by the petitioner in this regard are covered by the legislation of the Member State concerned. If the petitioner wants to contest them, she might make use of the means of redress provided for under Portuguese law.

#### Conclusions

On the basis of the information available, the Commission cannot identify a breach of any EU environmental legislation in this case.