



12.7.2010

NOTICE TO MEMBERS

Subject: Petition 1848/2009 by Rosa Álvarez Álvarez (Spanish), on behalf of the Xivares 'el Tranqueru' Residents Association, concerning quarrying activities in Sato-Aboño, Gijón

1. Summary of petition

The petitioners express concern at non-compliance by the company exploiting the Sato-Aboño quarry in Gijón with the provisions of the environmental impact directive concerning the planting of grasses, shrubs and trees to restore land affected by quarrying and offset the damage caused.

2. Admissibility

Declared admissible on 23 March 2010. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 12 July 2010.

The petitioner, on behalf of the 'El Tranqueru' Residents Association of Xivares, alleges that the exploitation of the "Sato-Aboño" quarry, in the municipality of Carreño, and the "Tudela de Veguín, S.A. cement factory, in the municipality of Gijón, both industrial activities located in the Autonomous Community of Asturias, Spain, would have negative environmental implications.

Regarding the "Sato-Aboño" quarry, the petitioner indicates that the environmental recovery plan mentioned in the environmental impact statement has not been carried out.

With respect to the "Tudela de Veguín, S.A. cement factory, the petitioner affirms that to date, the factory has not taken any measures to contribute to minimising the dispersal of emissions

around the factory or the visual impact, according to the integrated environmental authorisation granted.

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

Council Directive 85/337/EEC¹ 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.

The EIA procedure ensures that the 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.

Regarding the EU Nature Directives (the Birds Directive 79/409/EEC² and the Habitats Directive 92/43/EEC³), it should be noted that they would be applicable if the project in question could have a significant effect on any Natura 2000 site. In such a case, an EIA procedure may be a useful tool to apply the requirements and safeguards of Article 6 of the Habitats Directive.

Directive 2008/1/EC concerning integrated pollution prevention and control⁴ (codified version of Directive 96/61/EC, hereinafter: IPPC Directive) aims to achieve integrated prevention and control of pollution arising from activities listed in its Annex I. Installations for the production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or lime in rotary kilns with a production capacity exceeding 50 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day fall within the scope of the IPPC Directive (see point 3.1 of Annex I).

The IPPC Directive requires installations falling under its scope to operate in accordance with permits including emission limit values based on best available techniques (BAT), designed to prevent and, where that is not practicable, generally to reduce emissions and the impact to the environment as a whole. The prevention or reduction of emissions to air, water and soil should, therefore, be dealt with in the environmental permits issued in accordance with the IPPC Directive.

The Commission has adopted a number of BAT reference documents (BREFs) covering the activities that fall within the scope of the IPPC Directive, that are to be taken into account by

¹ 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).

² OJ L 103, 25.04.1979. Codified by Directive 2009/147/CE (OJ L 20, 26.01.2010)

³ OJ L 206, 22.07.1992

⁴ OJ L 24, 29.1.2008, p. 8

the competent authorities when establishing BAT-based emission limit values, equivalent parameters or technical measures for such installations. A BREF on cement, lime and magnesium-oxide manufacturing industries was adopted in December 2001 and its revision is currently in the final stage¹.

According to the available information, the "Sato-Aboño" quarry project has been subjected to public consultation and an EIA procedure was finalised with the EIA Statement, adopted on 18 May 2006 by Decision of "Consejería de Medio Ambiente, Ordenación del Territorio e Infraestructuras", published in the Official Journal of Government of Asturias of 17 June 2006. With respect to the "Tudela de Veguín, S.A." cement factory, an IPPC authorisation was granted by Decision of "Consejería de Medio Ambiente y Desarrollo Rural" on 29 April 2008, published in the Official Journal of Government of Asturias of 12 June 2008.

On the basis of the information available, the Commission has been unable to identify any Natura 2000 sites that could be impacted because of their proximity to the location of the industrial activities described.

The Commission would like to underline that the responsibility for correctly implementing EU law lies primarily with Member States. The Commission has no powers under the Treaty to substitute Member State authorities in the control and enforcement of their own decisions. If the petitioner wishes to contest these issues, he should consider making use of the means of redress provided for under Spanish law.

In this particular case, the Commission cannot identify any breach of EU environment law.

¹ The formal adoption concluded on 18 May 2010 and it is pending publication in the OJ.