3.3.2011

NOTICE TO MEMBERS

Subject: Petition 1017/2006 by Mr Adolfo Barrena Salces (Spanish), on absence of a proper assessment of the environmental impact of urbanization projects to be developed in the region of Aragon

1. Summary of petition

The petitioner criticizes several urbanization projects ongoing or planned in the region of Aragon (Spain) maintaining that they have been approved without due consideration to the environment or the risks on water supply. The petitioner maintains that the general departments of urban planning created on the basis of the law 11/1992 have proved to be unable to address the problems raised by urban abuses leading to unjustified development. The petitioner specifically refers to the project El Pirineo Aragonés, consisting in a new ski resort and three new golf camps to be constructed in the valley of Castanesa as well as to the urbanization of the surroundings of Zaragoza. The petitioner mentions the Fortou Report on the alleged abuse of the Valencian Land Law known as the LRAU and considers that similar problems exist in the Aragon region. He asks the European Parliament to have this situation investigated.

2. Admissibility


The petition

The petitioner, General Coordinator in Aragón of the political party "Izquierda Unida"

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(United Left), sent a petition to the European Parliament to complain about the urban policy developed by the Regional Government of Aragón (Spain). He considers that the "Fourtou Report" on the alleged abuse of the Valencian land law known as the LRAU (Law 6/1994 Regulating Urbanisation Activities – Ley Reguladora de la Actividad Urbanística) and its effect on European citizens, could also be applicable to the urban policy of the Region of Aragón.

The petitioner explains that there are many urban developments planned which are going to affect mountain areas destroying the landscape and creating water resource problems. He gives as an example, the planned project in the Catanesa Valley which includes 2 300 dwellings, hotels, parking, ski-lifts and ski-runs, golf courses, etc.

The petitioner also explains that there are some other projects close to the city of Zaragoza (Acampo Moncasi and Alto de la Muela) that are against the principle of sustainable development. He asserts that these projects are going to affect land dedicated to agriculture and that they will change the identity of the local towns.

Some other areas close to Zaragoza (the Pla-Za industrial zone, the aerial base, Valdespartera, Montes de Morterro, etc) could also be affected by future urban development.

The Commission's comments on the petition

The petitioner draws attention to the urban development policy in the Region of Aragón which he considers not to be in harmony with "balanced land development and the environment". The Commission points out that, according to the principle of subsidiarity, Members States are responsible to determine their own rules for land management whilst respecting EC environmental law.

Despite the facts presented by the petitioner, it is not possible to determine if there is any infringement of EC environmental law. The directives that could be applicable to these plans or projects are:

- Directive 2001/42/EC\(^1\), Directive SEA (Strategic Environmental Assessment), is applied to those plans and programmes which are likely to have significant effects on the environment. Town and country planning and land use management plans will normally require an SEA if they meet the conditions of Articles 2 and 3 and if their first formal preparatory act was subsequent to 21st July 2004;

- Directive 85/337/EEC\(^2\) as amended by Directives 97/11/EC\(^3\) and 2003/35/EC\(^4\) (EIA

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Directive) makes provision for the Environmental Impact Assessment (EIA) of certain projects. Projects included in Annex I always require an EIA. Urban development projects are, however, included in Annex II. In this case, an EIA is required if they are likely to have significant effects on the environment. The primary responsibility for determining whether this is the case rests with the competent authority of the Member State concerned;

- Member States have also to consider the potential effects of plans and projects on sites designated by Member States pursuant to Directives 79/409/EEC and 92/43/EEC. According to Article 6 of Directive 92/43/EEC, any plan or project likely to have a significant effect on a Natura 2000 site must be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of this assessment, the competent authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site. In case of a negative assessment, the plan or project can only be carried out in the absence of alternative solutions, for imperative reasons of overriding public interest, and taking all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected.

As the petitioner made reference to a possible scarcity of water resources, it should also be explained that the Water Framework Directive (WFD) 2000/60/EC offers ample room for tackling both water scarcity and droughts, notably through the setting-up of appropriate market-based instruments. The WFD establishes the need for detailed planning of the use of water resources to avoid non-sustainable solutions and irreversible damage to the environment, through the development of River Basin Management Plans (RBMP). According to the WFD, the first RBMP shall be published by December 2009. From 2009 on, any plan or programme that has an impact on water resources or water quality will have to be co-ordinated with the RBMP provisions, so that the WFD environmental objectives can be achieved.

It should be also noted that, before giving the authorisation to a project, or before the adoption of a plan, it is the responsibility of the national authorities to ensure the correct application of European environmental law. They must ensure that all adverse effects linked to any additional water supply infrastructure are fully taken into account.

It is also clear that land-use planning is one of the main drivers of water use. According to the communication on water scarcity and droughts adopted on 18 July 2007, additional water supply infrastructure should be considered as an option only when other options have been exhausted, including an effective water pricing policy and cost-effective alternatives of water saving and improved water efficiency.

Conclusion

The Commission would like to reiterate that land management is the competence of Member

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States. The Commission cannot identify any breach of Environmental Community law at this stage. Should the petitioner communicate additional information on any of the above-mentioned aspects to the Committee on Petitions, the Commission would then be able to re-examine the case.

4. Commission reply, received on 3 March 2011

The Commission's observations

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

Regarding the EU Nature Directives (the Birds Directive 2009/147/CE and the Habitats Directive 92/43/EEC), it should be noted that they would be applicable if the projects or plans in question could have a significant effect on any Natura 2000 site.

The Commission would like to stress that the Habitats Directive does not prohibit economic development within areas that belong to the Natura 2000 network. However, before authorising any development plan or project, the competent authorities will need to ensure that the requirements of Article 6 (and in particular paragraphs 6.3 and 6.4) of the Habitats Directive are fulfilled. On the basis of the required assessment, the competent authorities shall agree to this plan only after having ascertained that it will not adversely affect the integrity of the site.

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (known as the Strategic Environmental Assessment or SEA Directive) applies to plans and programmes including in the fields of town and country planning and land use and which set the framework for the future development consent of projects listed in the Annexes of Council Directive 85/337/EEC (known as the Environmental Impact Assessment or the EIA Directive).

The issues pointed out by the petitioner are covered only by the legislation of the Member State. The Commission has no powers under the Treaty to substitute Member States' authorities in relation to possible changes of land use or urbanisation. If the petitioner wants to contest them, he might make use of the means of redress provided for under Spanish law.

Conclusions

The Commission would like to emphasise that, according to the principle of subsidiarity, Member States are responsible for determining their own rules for land management whilst respecting EU environmental law. Therefore, the Commission has no elements to change its initial conclusions.

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1 OJ L 20, 26.01.2010, p. 7
2 OJ L 206, 22.07.1992, p. 7
3 OJ L 197, 21.07.01, p.30