



6.9.2011

NOTICE TO MEMBERS

Subject: Petition 1327/2010 by Maurice Wintz (French), on behalf of the 'Alsace Nature' and 'GCO non merci' associations, bearing 3 signatures, on the French Government Decree of 23 January 2008 declaring work on the A355 Strasbourg great western bypass to be of public utility and urgently necessary.

1. Summary of petition

By Decree of 23 January 2008, the French Government authorised the construction of the A335, a 24-km dual carriageway section between junctions A4/A35 and A35/A352, better known as the Strasbourg great western bypass (GCO), the purpose of this projected toll road being to relieve the A35 of transit traffic. The petitioners argue that the project is outdated and will adversely affect the environment, agriculture and protected species, including the European hamster, the common spadefoot toad and the green toad. Furthermore, they take the view that the Decree of 23 January 2008 flagrantly infringes the provisions of Directives 92/43/EEC (Habitats Directive), 85/337/EEC and 2001/47/EC.

2. Admissibility

Declared admissible on 9 February 2011. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 6 September 2011.

The petition

The petitioners believe that the project is outdated, that there are alternative solutions and that it will harm the human and natural environment, agriculture and species protected under the

Habitats Directive (92/43/EEC¹), in particular the European hamster (*Cricetus cricetus*), the common spadefoot toad (*Pelobates fuscus*) and the green toad (*Bufo viridis*).

The petitioners also believe that the Decree of 23 January 2008 flagrantly infringes the provisions of the Directive on the assessment of the effects of certain public and private projects on the environment (85/337/EEC² - EIA Directive) and the Directive on the assessment of the effects of certain plans and programmes on the environment (2001/42/EC³ - SEA Directive).

The Commission's observations

The European hamster (*Cricetus cricetus*), the common spadefoot toad (*Pelobates fuscus*) and the green toad (*Bufo viridis*) are listed in Annex IV of the Habitats Directive. This means that they are strictly protected and that the deterioration and destruction of their breeding sites or resting places are banned.

This hamster is a highly endangered species in France. Its only populations are located in Alsace. Its area of distribution and its populations have decreased significantly over the past few decades because of changes in farming practices and the fragmentation of its habitat. Because France was not taking adequate measures to ensure that viable hamster populations were maintained, the Commission decided to initiate proceedings against it. In its judgment of 9 June 2011, the European Court of Justice criticised France for failing to establish a programme of measures to ensure strict protection of the European hamster.

The common spadefoot toad and the green toad are two species whose populations on mainland France are in decline and almost exclusively confined to Alsace. Both species suffer from the fragmentation and deterioration of their habitat.

The Commission has written to France to ask it about the measures that it intends to put in place to restore viable European hamster populations in Alsace following the judgment and how it plans to deal with the presence of the common spadefoot toad and the green toad in the dual carriageway project concerned.

As regards the allegation that the Decree infringes Article 7 of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (SEA Directive), the Commission does not believe that the information provided indicates that the SEA Directive has been infringed as the planned bypass does not constitute a *plan or programme* under the terms of that Directive.

The Strasbourg western bypass is, however, a *project* that is subject to the provisions of the EIA Directive, which deals with the effects of certain public and private projects on the environment, and it must fulfil the requirements of Article 7 of that Directive on cross-border consultation.

Like the French Council of State in its Decision No 314114 of 17 March 2010, the Commission does not believe that the project has a notable effect on the environment in German territory and, consequently, it has not identified any infringement of Article 7 of the EIA Directive.

¹Council 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).

²Council 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, 05.7.1985, pp. 40-48).

³Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197, 21.7.2001, pp. 30-37).

As regards the infringement of Article 6 of the EIA Directive, which gives the environmental authorities the opportunity to express their opinion on the information provided by the developer and on the request for development consent, the Commission has written to the French authorities to ask them to provide it with further clarification on this matter.

Conclusion

The Commission will continue to examine these matters and will keep Parliament informed of future developments.