



6.9.2011

## NOTICE TO MEMBERS

**Subject: Petition 0856/2010 by Teresa Laska (Polish), on behalf of the "Stowarzyszenie Pracownia na Rzecz Wszystkich Istot" environmental organisation, on the plans to construct a wind farm at Ustka on Poland's Baltic coast**

### 1. Summary of petition

The petitioner, who is the chair of the abovementioned environmental organisation, objects to the plans to construct a wind farm at Ustka on Poland's Baltic coast. She points out that the Polish authorities are guilty in the case in question of failing to comply with the provisions of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, referring in particular to Article 6(3) of the Directive, which states *inter alia* that projects not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of their implications for the site in view of the site's conservation objectives, and that the competent national authorities shall agree to the project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public. The petitioner also indicates that the site in question is included in the Natura 2000 list (PLH 220024 - Przymorskie Błota) and that the wind farm will have a devastating impact on the wild bird population of the area. Since the local authorities in Ustka consider the wind farm to be more important than protecting the environment, she calls on Parliament to intervene.

### 2. Admissibility

Declared admissible on 15 November 2010. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 11 February 2011.

The project referred to by the petitioner falls under :

a) the provisions of Article 6(3) of the Habitats Directive<sup>1</sup> which says that:

"Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public."

As provided in the Article 6(3) of the Habitats Directive and reiterated in the European Commission guidance documents on the application of Article 6,<sup>2</sup> any project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon has to be subject to appropriate assessment of its implications for the site. This assessment has to take into account the cumulative effects of the project in combination with other existing or planned projects. The competent national authorities can authorise such a project only after having ascertained that it will not adversely affect the integrity of the site. Otherwise, the provisions of Article 6(4) have to be applied.

From the attached documentation (opinions of the NGOs) it seems that the project poses serious risks for birds and bats, which were not properly analysed. In particular, according to the analysis carried out by the NGOs, the assessment of the impact on the Natura 2000 site lacks proper information on the nature values of the project area, monitoring (during works and post-investment) and the impact on bats.

On the basis of the information provided by the petitioner, it cannot be ruled out that Polish authorities failed to assess properly the impact of the three wind farms on the Natura 2000 sites as required by Article 6(3). The Commission will, therefore, ask the Polish authorities to provide more information about the project and about the impact assessment.

b) Annex II point 3(i) of the EIA Directive<sup>3</sup>:

"installations for the harnessing of wind power for energy production (wind farms)". The directive requires that for the Annex II projects, Member States have to determine, either through a case by case examination or according to thresholds or criteria, whether the project is to be made subject to an assessment because of its likely significant effects on the environment taking into account the relevant selection criteria set out in Annex III of the directive. In the case where the Member State decides that the project will have significant effects on the environment, an Environmental Impact Assessment (EIA) procedure has to be carried out. If the national competent authority takes the view that a project's characteristics do not require it to be subjected to an EIA, its decision must contain or be accompanied by all the information that makes it possible to check that it is based on adequate screening and must be available to the public.

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<sup>1</sup> OJ L 206, 22.7.1992

<sup>2</sup> Guidance document on the Assessment of Plans and Projects significantly affecting Natura 2000 sites (November 2001); EU Guidance on wind energy development in accordance with the EU nature legislation.

<sup>3</sup> Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (EIA Directive), (OJ L 175, 5.7. 1985, p. 40) as amended by Directives 97/11/EC (OJ L 73, 14.3.1997, p. 5) and 2003/35/EC (OJ L 156, 25.6.2003, p.17).

According to the information provided, the wind farms in Duninowo-Peplino (U1) and Możdżanowo-Starkowo (U2) were subject to the Environmental Impact Assessment procedures before the decisions on environmental conditions were made for these projects. The environmental reports have been prepared for the projects and the procedures involving consultations with the environmental authorities and the public have been carried out. The petitioners appealed against the decisions on environmental conditions for both projects: the appeal for the U1 wind farm was submitted to the Voivodeship Administration Court on 30th March 2010 and the request for the reconsideration of the appeal for the U2 wind farm to the Local Appeals Court on 11th June 2010. The results of the procedures are not known to the Commission. On the basis of the information provided by the petitioner, the Commission has identified no breach of the EIA Directive for the projects U1 and U2.

Regarding the project in Zaleskie PW, the petitioner has not presented any information concerning the Environmental Impact Assessment procedure.

### Conclusions

The Commission will send a letter to the Polish authorities requesting clarifications as regards the planned construction and the related authorisation procedures.

#### **4. (REV) Commission reply**, received on 6 September 2011.

As stated in its first Communication, the Commission requested clarifications from the Polish authorities about the planned construction of two wind farms in the Ustka community in Poland. The authorities replied to the Commission on 18 March 2011.

According to the Polish authorities, the wind farms in Duninowo-Peplino (U1) and Możdżanowo-Starkowo (U2) were subject to impact assessment pursuant to Article 6(3) of the Habitats Directive 92/43/EEC<sup>1</sup>. To support this statement, the authorities provided the Commission with the copies of the EIA reports, which included the impact assessments on the Natura 2000 sites concerned and copies of the authorisation decisions.

As clarified by the authorities, during the assessment procedures, it was concluded that the wind farms were located outside Natura 2000 areas. The nearest Natura 2000 Site of Community Importance PLH220024 Przymorskie Błota is located 1.9 km away from the Duninowo-Peplino (U1) farm and the nearest Special Protection Area PLB9900002 Przybrzeżne Wody Bałtyku is located 4.9 km away. As regards Możdżanowo-Starkowo (U2) the nearest Natura 2000 Sites of Community Importance PLH220024 Przymorskie Błota and PLH220038 Dolina Wieprzy i Studnicy are located more than 5 km away and the nearest Special Protection Area PLB9900002 Przybrzeżne Wody Bałtyku is located 6.4 km from the farm.

The authorities clarified also that the nearest SCI PLH220024 was designated as a Natura 2000 site to protect nine habitat types of Community interest, mostly wetlands, semi-natural grasslands and woodlands. Bearing in mind the distance and the character of the nearest Natura 2000 sites, the authorities concluded that the projects would not have significant

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<sup>1</sup> OJ L 206, 22.7.1992, p. 7-50.

impact on the integrity of these sites. According to the authorities, the authors of the EIA reports also analysed the impact of the projects on the fauna and flora, particularly on birds and bats, as well as the cumulative impact with other nearby wind farms. On the basis of these analyses, the authorities concluded that the projects would have no significant negative effects on the environment. Additionally, the authorities drew the Commission's attention to the fact that the authorisation decisions for the projects imposed on the project promoter a three year obligation to monitor the impact on bats and birds and to implement additional mitigation measures if need be. Therefore, the authorities claim that the projects have complied with the obligations imposed by Article 6(3) of the Habitats Directive.

### Conclusion

Having analysed the documents provided by the Polish authorities and by the petitioner, the Commission does not consider that the provisions of the Habitats Directive were breached in the authorisation procedure for the Duninowo-Peplino (U1) and Mozdzanowo-Starkowo (U2) wind farms in the Ustka community.