



24.10.2012

## NOTICE TO MEMBERS

**Subject: Petition 1465/2008 by Ms. Dymphna Neary (Irish), on the alleged detrimental environmental impact of a gas turbine power station to be built in Toomes (Co Louth, Ireland)**

### 1. Summary of petition

The petitioner complains about the decision of An Bord Pleanála to grant permission for the construction of a 450MW gas turbine power station in Toomes, Co Louth. The petitioner maintains that the projected power station would have a detrimental environmental impact as it will be located inside the largest intact wildlife habitat on the east coast of Ireland. The petitioner alleges that there was no proper environmental impact study prior to the approval of the project and that she has encountered several difficulties when trying to obtain access to the environmental information available. The petitioner notes that she has notified the European Commission about potential breaches of the European environmental legislation and asks the European Parliament to look into the matter.

### 2. Admissibility

Declared admissible on 12 March 2009. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 2 September 2010.

The EIA Directive<sup>1</sup> requires an assessment of the effects of certain public and private projects

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<sup>1</sup> Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment as amended by Directives 97/11/EC, 2003/35/EC and 2009/31/EC.

on the environment. Under the EIA Directive, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location, must be made subject to an assessment of their environmental effects prior to development consent. Projects for which an EIA is mandatory are listed under Annex I. Included under Annex I are thermal power stations and other combustion installations with a heat output of 300 megawatts or more.

The IPPC Directive<sup>1</sup> requires that operators of new industrial installations listed under Annex I of the directive to obtain an environmental permit from the relevant national authorities. . The IPPC permit must take into account the whole environmental performance of the plant, covering e.g. emissions to air, water and land, generation of waste, use of raw materials, energy efficiency, noise, prevention of accidents, and restoration of the site upon closure. The purpose of the directive is to ensure a high level of protection of the environment taken as a whole.

The Habitats Directive<sup>2</sup> establishes a network of protected sites and the strict system of species protection. Where a plan or project is likely to have a significant effect on a site it should be subject to an assessment to establish the extent of any such effect and, if significant, whether alternative sites are available or compensation measures necessary.

From the information provided by the petitioner, the Commissioner notes that an environmental impact assessment (EIA) has been undertaken for the power station project. The Commission also understands that the Irish Environmental Protection Agency (EPA) subsequently issuing an IPPC licence for the power station in 2009.

The Commission has a number of general concerns about the national decision-making procedure for industrial installations in terms of the requirements of the EIA Directive as transposed in Irish law. In particular, the Commission considers that there are defects in the national legislation in so far as it covers the transposition of Articles 2 to 4 of the EIA Directive. The Commission has referred these matters to the European Court of Justice and a decision is currently pending (case C-50/09). Subject to this observation, the documentation provided by the petitioner does not indicate any irregularities in the EIA procedure undertaken for the development.

The petitioner expresses particular concerns regarding the loss of the wetland at Toomes, however, the Commission would note that this land is not protected for the purposes of the Habitats Directive nor does the Commission understand that it is protected under national law.

## Conclusions

On the basis of the information provided by the petitioner, the Commission is unable to identify a breach of EU legislation.

## 4. Commission reply REV, received on 17 February 2012.

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<sup>1</sup> Directive 96/61/EC as codified under Directive 2008/1/EC concerning integrated pollution prevention and control.

<sup>2</sup> Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

It in its initial reply to the communication, the Commission indicated that certain questions concerning the transposition of the Environmental Impact Assessment Directive by Ireland were pending before the European Court of Justice (Case C-50/09).

The European Court of Justice handed down its judgment in Case C-50/09 in March 2011. The Court ruled that Ireland had not properly transposed Articles 2 to 4 of the EIA Directive. In particular, where Irish planning authorities and the Environmental Protection Agency both have decision-making powers concerning a project, the Court held that there must be complete fulfilment of the requirements of Articles 2 to 4 of the Directive (so-called "split decision-making").

The Irish authorities have already adopted legislation in order to implement certain aspects of the judgement. However, legislation in relation to compliance with Article 3 and the "split decision-making" aspect of the judgement has yet to be adopted. The Commission is in close contact with the Irish authorities with a view to ensuring that this new legislation is adopted as soon as possible.

**5. Commission reply (REV II), received on 24 October 2012.**

In its previous communication to the Petitions Committee, the Commission reported that the Irish authorities had informed the Commission about their intention to adopt new legislation to comply with the European Court of Justice's judgment in Case C-50/09.

However, in view of Ireland's continued failure to comply with the Court's judgment, the Commission decided, on 21 June 2012, to refer the case back to the Court of Justice. Since then, new legislation aimed at implementing the Court's judgment has been adopted by Ireland. The Commission is currently analysing this legislation and is in close contact with the Irish authorities on this matter.