



27.2.2013

## NOTICE TO MEMBERS

Subject: **Petition 1378/2009 by Jamie Andrew Ewing (British), on behalf of the ‘Finca Moyano’, on a projected high-voltage power line in the Gaucín valley in the province of Malaga**

### 1. Summary of petition

The petitioner is opposed to a projected high-voltage power line in the Gaucín valley in the province of Malaga. The line is due to be built by the Sevillana-Endesa company and has been officially declared to be in the public interest. The petitioner argues that, at no additional cost, the power company could have chosen an alternative route (that would be less damaging to the environment) or could have decided to route the cable underground. He criticises the fact that the line will cross a number of SCI conservation areas and that birds could be electrocuted. Electromagnetic radiation caused by the power line could also be harmful to public health.

### 2. Admissibility

Declared admissible on 8 January 2010. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 13 January 2011.

The petitioner expresses his opposition to the building of a high-voltage power line in the Gaucín valley, in the municipalities of Gaucín and Cortes de la Frontera, in the Málaga province of the Autonomous Community of Andalucía, Spain. He is concerned that the project will have a negative impact on the environment. He claims that the project will cause unnecessary environmental damage, on the grounds that there are alternative ways to provide for the area’s energy needs. The petitioner argues that the power company could have chosen an alternative route (that would be less damaging to the environment) or could have decided to route the cable underground. He stresses that the power line will cross a number of

conservation areas of high ecological value.

The Commission has considered the information provided by the petitioner in the light of the provisions of EU environmental law which might apply in this case.

Directive 85/337/EEC<sup>1</sup> as amended (known as the Environmental Impact Assessment or EIA Directive) provides for EIAs to be carried out on certain public and private projects. The EIA Directive distinguishes between Annex I projects, which must always undergo an EIA, and Annex II projects. Where the latter are concerned, Member States determine on a case-by-case basis, and/or with reference to criteria or thresholds laid down in the national transposing law, whether the project should undergo an EIA. When a case-by-case assessment is carried out, or thresholds or criteria are set, the selection criteria set out in Annex III to the directive are taken into account. These include the characteristics of the project, its location and how it could affect the environment.

EIAs are therefore mandatory for Annex I projects. In the case of Annex II projects, Member States have to determine, before authorisation is granted, whether the project in question is likely to have a significant impact on the environment. The outcome of this assessment must be made public.

Projects involving the ‘construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km’ are included in point 20 of Annex I to the EIA Directive. Other projects concerning the ‘transmission of electrical energy by overhead cables’ are covered in point 3 (b) of Annex II to the directive.

According to the information provided by the petitioner, the power line in question will be approximately 8 km long and have a voltage of 66 kV.

The purpose of the EIA procedure is to ensure that the environmental consequences of projects are identified and assessed before the competent authority gives the go-ahead. All the views expressed by members of the public during consultation procedures must be taken into account. The public must also be informed of the substance of the authorisation.

The Nature Directives (the Birds Directive 2009/147/EC<sup>2</sup> and the Habitats Directive 92/43/ECC<sup>3</sup>), would apply if the project in question was likely to have a significant impact on a Natura 2000 site. According to the petitioner, the project poses a risk to several Sites of Community Importance (SCI) and Special Protection Areas for Birds (SPA).

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<sup>1</sup> 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).

<sup>2</sup> Directive 2009/147/EC (OJ L 20, 26.01.2010) that codifies Directive 79/409/EEC on the conservation of wild birds (OJ L 103, 25.04.1979).

<sup>3</sup> Directive 92/43/EEC on the protection of natural habitats and wild fauna and flora (OJ L 206, 22.07.1992).

## Conclusions

In order to gain a better insight into this matter, the Commission has requested information from the competent Spanish authorities concerning compliance with the requirements under EU environmental law which are relevant to this case. In particular, the Commission has asked the Spanish authorities to specify how they have applied the provisions of the EIA and Nature Directives.

### **4. Commission reply (REV), received on 20 April 2012.**

The Commission considered the additional information provided by the petitioner at the end of January 2012, including the report drafted by the Regional Ombudsman on the case.

The Commission subsequently contacted the Spanish authorities once again in order to seek their comments and up-to-date information on the project and the environmental measures taken.

### **5. Commission reply (REV.II), received on 27 February 2013.**

In its previous replies, the Commission indicated which provisions of EU environmental law could apply in this case, and the action it had taken thus far.

The petition has been the subject of various exchanges of information between the Commission and the competent Spanish authorities.

In response to the Commission's most recent request, the Spanish authorities forwarded a new report drawn up by the Autonomous Community of Andalucía.

Following a final analysis of the issue, the following points should be made:

The petition concerns plans to build an overhead high-voltage (66 kV) electrical power line, 7 660 metres long, in the municipalities of Gaucín and Cortes de la Frontera, in Málaga province.

In accordance with Law No 7/1994 on environmental protection of the Autonomous Community of Andalucía, the project underwent an environmental impact assessment before it was given the green light. At the time Law No 7/1994 was the regional law transposing Directive 85/337/EEC (environmental impact assessment), what is now Directive 2011/92/EU. The project in question is covered under Annex II of the directive. At the end of the impact procedure, an environmental impact statement (EIS) was adopted by Decision of 20 July 2006 of the Málaga Provincial Delegation of the Regional Department for the Environment, which was published in Official Journal No 206 of the Province of Málaga on 27 October 2006.

The project was given the final go-ahead by Decision of 25 May 2009 of the Málaga Provincial Delegation of the Regional Department for Innovation, Science and Enterprise. On that basis the project was declared to be 'in the public interest', justifying the expropriation of the land needed to build the power line. The aforementioned decision was published in Official Journal No 94 of the Autonomous Community of Andalucía on 23 November 2009.

In their replies the regional authorities argue that the environmental impact assessment procedure provided sufficient opportunity to properly identify and assess the environmental impact of the project and to take any measures to prevent or minimise that impact. A number of environmental conditions and an environmental monitoring plan were laid down in the EIS. Both the general public and the petitioner had an opportunity to express their concerns during the public consultation period.

With reference to EU directives on nature protection, namely the Birds Directive (2009/147/EC) and the Habitats Directive (92/43/EEC), the regional authorities claim that the project will not have a negative impact on the Natura 2000 network. The power line will be built almost entirely on land that is not part of the network (7 190 m out of a total of 7 660 m). In any event, its impact on the extensive Natura 2000 sites in the vicinity would be minimal.

The Spanish authorities also stress (as reflected in the EIS) that the potential impact of the project on birdlife, including migrating birds, has been studied. Specific corrective measures have been taken in order to minimise the risks of collision and electrocution. Various alternatives to the project have also been studied with a view to minimising its impact on the environment.

The Commission notes from the documents submitted that the competent Spanish authorities have taken measures in order to comply with their obligations under Directives 2011/92/EU, 2009/147/EC and 92/43/EEC.

The Commission would point out that the issue of land expropriation raised by the petitioner relates to property law, which is not a Union matter and which must be resolved under national law in Spain.

The Commission also understands that, following a complaint, the Regional Ombudsman (*Defensor del Pueblo Andaluz*) began investigating the project and recommended that the authorities also consider technically viable alternatives. By letter of 20 August 2010 the regional authorities stated that the Regional Ombudsman had decided to halt investigations on the grounds that the project was the subject of administrative proceedings.

According to the Spanish authorities, a number of appeals against the authorisation of the project and the land expropriation procedures are still pending before Andalucía's High Court.

The regional environmental authorities have also said that, in accordance with Law No 7/2007 on integrated environmental quality management (the regional law concerning environmental impact assessments currently in force), environmental impact statements remain valid for five years after their publication. The statement for this project was published on 27 October 2006, and the developer has not asked for it to be renewed. The statement is therefore no longer valid.

Construction work on the power line has not yet begun. According to regional representatives of the Department for Industry, the project is currently under review, given the amount of time that has passed since the project was authorised and the fact that new technical rules are now in force.

## Conclusions

The Commission has considered the arguments and information supplied by the petitioner

concerning the project in the light of EU environmental law and the replies from the Spanish authorities.

On the basis of the information provided the Commission cannot determine whether EU environmental law has been breached. However, the power line project is the subject of various administrative proceedings brought before the competent Spanish court, which may also rule on whether the project complies with national and EU law. It is thus not yet clear whether or not the project will go ahead. There is therefore no reason for the Commission to take further action in this case.