



31.3.2014

## NOTICE TO MEMBERS

**Subject: Petition 0509/2013 by Sylwia Maćkowiak (Polish), on behalf of the ‘Nasz Dom’ Association, on plans to build a lignite mine in the area around Poniec, Krobia and Oczkowice (southern Wielkopolska)**

### 1. Summary of petition

The ‘Nasz Dom’ (Our Home) Association is opposing plans to build an open-cast lignite mine and, in the future, a power plant that will burn the lignite mined at the site, in the area around the towns of Poniec, Krobia and Oczkowice. The association is made up of residents of the area who are concerned that the project will cause irreparable damage to the region’s countryside, as well as polluting the environment.

A mining company, PAK Górnictwo Sp. z o.o., was granted a licence in May 2011, and has now begun preliminary drilling in the area.

### 2. Admissibility

Declared admissible on 19 November 2013. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 31 March 2014

The petitioner, Nasz Dom Association opposes plans to construct an open-cast lignite mine. The residents are against the exploration works launched. The works are based on a decision (dated 11 May 2011) of the Minister of Environment allowing the exploration and identification of lignite reserves in the area of Poniec Krobia Oczkowice. The petitioner points out that the region has economic and historical connection with modern agriculture (giving also the examples of a number of food processing plants located in the region).

Consequently, the local communities consider the plans for construction of an open-cast lignite mine to be threatening their social and economic interests. As viewed by the petitioner, the behaviour of the municipal authorities and of the Minister of Environment, agreeing to exploration works is in breach of Article 41 of the Charter of Fundamental Rights of the European Union. Furthermore, the petitioner raises the issue of the Polish provisions on expulsion and the compliance of such provisions with the Polish Constitution. Moreover, the petitioner refers to decisions granting to the investor the right to carry out exploration works, and containing the immediate applicability clause that, in view of the petitioner, constitutes a breach of property rights. In conclusion, according to the petitioner the current state of affairs indicates a breach of Article 6 and Article 37 of the Charter of Fundamental Rights. In addition, the petitioner points out to the plausibility of breach of provisions of Article 6 of the Habitats Directive should the open-cast mine be approved.

### The Commission observations

#### *On the alleged breach of the Charter of Fundamental Rights*

The Charter of Fundamental Rights applies primarily to EU institutions. It also binds the national authorities but only where they implement the EU law. In the concrete complaint against actions by the national authorities, namely the Polish Ministry of Environment, they can only be considered to have implemented the EU law once they took a decision within the scope of the relevant EU law; for example, when implementing the EIA Directive – 2011/92/EU, or the Habitats Directive (92/43/EEC). At this point of the procedure, the competent authorities have so far not taken any authorisation decisions according to the national law, implementing any of the EU directives. The reason for this principally seems to be that the relevant stage in the procedure, e.g. consultations with individuals who may be concerned by a decision (such as, for instance, authorisation of mining activities at a particular site), has not been reached yet.

However, should the procedure, reach this stage, then the relevant national authority would be bound to respect the Charter of Fundamental Rights, including the right to respect for private and family life (Article 7), the right to property (Article 17), and the obligation to integrate into its policies a high level of environmental protection (Article 37). In so far as a breach of Article 41 of the Charter of Fundamental Rights of the European Union (the Charter) is alleged, it needs to be pointed out that this provision only binds European institutions, offices and their agencies. It is, therefore, not directly applicable to Member States. This being said, the right to good administration is one of the general principles of the European Union Law that the Member States have undertaken to respect, especially during administrative procedures that implement the EU law, as in the cases above.

#### *On the alleged breach of Directive 92/43/EEC<sup>1</sup>*

The concerns of the petitioner are linked to the fact that if the open-cast lignite mine were approved, the depression cone would also negatively affect the Natura 2000 site Dolina Baryczy, located outside of the planned open-cast. Such negative effect would be in breach of Article 6 of the Habitats Directive.

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

From the information provided, it is clear, however, that the authorisation process for the project in question has not started yet. Only exploration works, located outside the Natura 2000 site are on-going. Thus, based on the information provided, the Commission cannot conclude that the provisions of the Habitats Directive have been breached. If the investor decides to implement the project, it will be obliged to obtain authorising decisions required by the Polish law (an environmental decision), during which the necessary assessment of possible effects on Natura 2000 site will have to be carried out.

#### *On the issue of public consultations*

The petitioner also alleges that the municipal authorities, as well as the public concerned, have not been consulted on the plans to have an open-cast lignite mine in the location.

From the assessment of the information provided by the petitioner, it is clear that the process of issuing of development consent has not started yet. If the process of authorisation of an open-cast mine starts, the Polish law provides for public consultation, which is carried out during the environmental permit procedure. This requirement transposes the obligations of the Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the EIA Directive)<sup>1</sup>.

#### *On the issue of non-compliance of the measures undertaken with the Polish Constitution*

The Commission does not have competences to investigate whether the measures undertaken are compliant with the Polish Constitution.

#### Conclusions

Based on the information available, the Commission can currently not establish any infringement of the EU environmental legislation.

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<sup>1</sup> OJ L 26/1, 28.01.2012 .

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