



30.1.2015

NOTICE TO MEMBERS

Subject: Petition 1341/2010 by Samuel Martin-Sosa (Spanish), on behalf of the environmental movement ‘Ecologistas en Acción’, on a new list of endangered species on the Canary Islands and its direct link to construction work near Puerto de Granadilla

Petition 1484/2010 by José Luis Fernández Fuarros (Spanish), on behalf of the citizens’ action group against the industrial port of Granadilla, concerning the list of protected species on the Canary Islands

1. Summary of petition 1341/2010

The petitioner refers to the adoption by the Canary Islands local government of a law drawing up a new list of endangered species on the Canary Islands. This law has aroused widespread repugnance among local people and has been rejected by the scientific community, because the new list omits 89 species. Furthermore, species included in groups 2 and 3 of the list may be declared unprotected for the purposes of individual priority public projects. The petitioner considers that there is a direct link between this new list and construction work near Puerto de Granadilla, since this locality is home to the sea grass species *Cymodocea nodosa*. This species is now included in group 3 and is thus no longer an obstacle to the port construction work; the new list will also allow a number of other infrastructure projects to go ahead. The petitioner therefore asks the European Parliament to investigate whether the new list complies with EU environmental legislation, and to reconsider the authorisation for the construction work at Puerto de Granadilla.

Summary of petition 1484/2010

The petitioners object to the law establishing a new list of protected species on the Canary Islands, arguing that failure to inform the public concerning the relevant bill is an

infringement of Directive 2003/04/EC on public access to environmental information, as well as the Aarhus Convention. The petitioner also contests the appropriateness of using the Structural and Cohesion Funds for works being carried out in the port of Granadilla.

2. Admissibility

Petition 1341/2011: Declared admissible on 9 February 2011.

Petition 1484/2011: Declared admissible on 14 Mars 2011.

Information requested from Commission under Rule 216(6).

3. Commission reply, received on 18 July 2011

As communicated in the Committee on Petitions of 2 December 2010, the Commission requested information from the Spanish authorities concerning the compliance of the new catalogue of endangered species of the Canary Islands with the EU legislation on the protection of habitats and species. The Commission received a first reply from the Spanish authorities that still raised some concerns as regards the conformity of the provisions of the new catalogue with the provisions of the Habitats Directive¹. Therefore, further clarifications were requested from the Spanish authorities concerning the protection regime provided to the species listed in Annex III of the new catalogue with the protection regime provided by the Habitats Directive for the species included in its Annex IV. The Commission is now assessing the latest Spanish reply.

Concerning the issues related to public access to environmental information, as envisaged in Directive 2003/4/EC², the Commission would like to clarify that this directive was approved to adapt EU law to the Aarhus Convention³. According to the directive, public authorities are required to make available environmental information held by or for them to any applicant at their request and without their having to state an interest. This implies that, for the relevant provisions of the directive to be applicable, an application for access to environmental information has to be submitted. It is not evident from the information provided by the petitioners if such a request for access was submitted. It should also be recalled that under Article 4(1)d) of the directive, a Member State has the possibility to refuse access if the request concerns material in the course of completion or unfinished documents or data.

In addition, Article 7 of the directive also sets out that public authorities shall ensure an active and systematic dissemination of environmental information relevant to their functions and which is held by or for them. Nevertheless, this obligation is restricted to certain categories of documents and a draft-law is not required to be publicised under these provisions of the directive.

The Major Project application submitted on 11 May 2009, with a revised application received on 27 December 2010, states that the total eligible costs amount to €113 299 864, of which

¹ Council Directive 92/43/EEC, of 21 May 1992, on the protection of natural habitats and wild fauna and flora. O.J. L 206 of 22.07.1992.

² Directive 2003/4/EC of the Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003.

³ Convention on access to information, public participation in decision-making and access to justice in environmental matters done at Aarhus, Denmark, on 25 June 1998, OJ L 124, 17.5.2005.

€83 750 000 would be included in the Grant Decision. With a co-financing rate of 80%, the EU fund contribution would rise to €67 000 000 if approved. Indeed, despite the fact that the Major Project has been declared admissible, the Commission services are still analysing the dossier and carrying out the necessary internal consultations. A decision on its approval has, therefore, not yet been taken.

Conclusion

The Commission considers that the approval of the draft-law laying down a new Canary Islands catalogue of endangered species does not constitute a breach of Directive 2003/4/EC.

The Commission is analysing the latest reply from the Spanish authorities to verify the conformity of the provisions of the new catalogue with the provisions of the Habitats Directive.

The Commission will continue to monitor the full and adequate implementation of the provisions of the Opinion of the Commission pursuant to Article 6(4) of the Habitats Directive concerning the project of the new port of Granadilla to ensure full compliance with the provisions of this directive.

4. Commission reply (REV.), received on 30 October 2013

The Commission has assessed the information submitted by the Spanish authorities in the context of an EU Pilot investigation. The Commission concluded that, by virtue of Regional Law 4/2010 of the Canary Islands, certain animal and plant species listed in Annex IV of Habitats Directive¹ might be excluded from any kind of protection whenever they occur outside of the limits of the protected areas in the territory of the Autonomous Community. The Commission considered that this would be an excessively stringent interpretation of Articles 12 and 13 of the Directive, which require a system of strict protection for those species regardless of the fact that they occur within or outside of the limits of protected areas.

Concerning the petitioner's concerns regarding the port of Granadilla, the Commission notes that the species *Cymodocea nodosa* is not listed in the Annexes to the Habitats Directive as one of the species of Community Interest or one requiring a system of strict protection.

Conclusion

On 26 April 2013, the Commission launched administrative infringement proceedings and sent Spain a letter of formal notice in which it requested the observations of the Spanish authorities on Regional Law 4/2010 of the Canary Islands. The Commission is currently analysing the information submitted by Spain to ensure that the relevant provisions of the Habitats Directive are being correctly applied in this case.

5. Commission reply (II), received on 19 December 2013

¹ Council Directive 92/43/EEC, of 21 May 1992, on the protection of natural habitats and wild fauna and flora. O.J. L 206 of 22.07.1992.

Articles 12 and 13 of the Habitats Directive¹ require that Member States establish a system of strict protection for all the animal and plant species listed in Annex IV to the Directive. Following assessment of the observations submitted by the Spanish authorities in reply to the letter of formal notice sent on 26 April 2013, the Commission has concluded that, by adopting Regional Law 4/2010, establishing the new Catalogue of Protected Species in the Autonomous Community of the Canary Islands, Spain has failed to establish a system of strict protection in the territory of the Autonomous Community of the Canary Islands for 65 animal and plant species listed in Annex IV to the Habitats Directive.

Conclusion

In the view of the above, the Commission decided to issue a reasoned opinion on 20 November 2013. The Commission has invited the Kingdom of Spain to take the necessary measures to comply with this Reasoned Opinion and reply to the Commission within two months.

6. Commission reply (III), received on 30 January 2015

Petitions 1341/2010 and 1484/2010

On 20 November 2013, the Commission issued a reasoned opinion in view of the fact that the provisions of Regional Law 4/2010, establishing the new Catalogue of Protected Species in the Autonomous Community of the Canary Islands, did not ensure a system of strict protection in the territory of the Autonomous Community of the Canary Islands for 65 animal and plant species listed in Annex IV to the Habitats Directive². The Spanish authorities were invited to take the necessary measures to comply with this Reasoned Opinion within two months.

The Spanish authorities replied that Regional Law 4/2010 has been amended by Decree 20/2014 of 20 March in view of providing an adequate protection for the concerned animal and plant species regardless of where they occur, in accordance with the Habitats Directive.

On 24 July 2013, the Commission adopted the Decision C(2013) 4885 approving a financial contribution from the Cohesion Fund to the major project “Obras de abrigo del Puerto de Granadilla, contradique del Puerto de Granadilla y Restauracion de la Reserva Natural de Montana Roja (Fase I). Currently, the Commission does not dispose of any new relevant information that might give place to reconsider its decision.

Conclusion

After adoption of Decree 20/2014, the situation of infringement of the Habitats Directive has been remedied. Therefore, the Commission decided to close this case in July 2014.

¹ Council Directive 92/43/EEC, of 21 May 1992, on the protection of natural habitats and wild fauna and flora. O.J. L 206 of 22.07.1992.

² Council Directive 92/43/EEC, of 21 May 1992, on the protection of natural habitats and wild fauna and flora. O.J. L 206 of 22.07.1992.