



31.1.2018

## NOTICE TO MEMBERS

**Subject: Petition No 0745/2016 by Juan Antonio Martínez Dapena (Spanish) on wind turbine licensing systems**

### 1. Summary of petition

The petitioner denounces the concession system for granting wind turbine licenses. The petitioner had raised a complaint with the European Commission (EU Pilot 2326/11/ENER) which was considered to be resolved and was closed. The petitioner had taken the matter to the ordinary courts and the claim was dismissed.

### 2. Admissibility

Declared admissible on 7 December 2016. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 28 February 2017

In September 2012, the Commission received a complaint from the petitioner in which he argued, inter alia, that the refusal of the Galician authorities to grant him a license for a wind farm was in breach of EU law, in particular Articles 7 and 8 of Directive 2009/72/EC on the internal electricity market.

After analysing the complaint and the additional information provided by the complainant, the Commission services concluded that there was no indication that the above-mentioned provisions of Directive 2009/72/EC had been breached. It was considered, in particular, that the tendering procedures referred to in this case were used as a means of reconciling the high number of potential new generators on the one hand with the limited capacity of the network, environmental protection and land-use requirements. These types of tenders are not covered by Article 8 of the Directive, which imposes conditions for tenders organised by Member States where, on the basis of the normal authorisation procedure, the potential new generators

are expected to be insufficient to meet demand. The Commission services informed the complainant on 17 December 2014 of their intention to close the complaint and the closure was confirmed by letter of 23 November 2015.

The petitioner filed a new complaint on the same issue in June 2016 that the Commission is currently examining. The Commission will inform the petitioner and the Committee on Petitions of the result of its investigation as soon as its assessment is finalised.

### Conclusion

The Commission carefully analysed the complainant's arguments submitted in 2012 related to the breach of Directive 2009/72/EC. Based on the aforementioned arguments, the Commission does not see any indication of a breach of procedural rules or an error in its substantial assessment.

The Commission services are currently examining the new complaint lodged by the petitioner, which has the same content as this petition. In this context, it will examine the issue and inform the Committee on Petitions of its findings in due course.

#### **4. REV I Commission reply, received on 31 January 2018**

The Commission has examined the new complaint that the petitioner lodged in May 2016<sup>1</sup>, including the new (identical) documents supplied both in that complaint and in this petition. The Commission has not found in these documents any basis for changing the assessment made regarding the petitioner's first complaint from September 2012. The new documents provided by the petitioner show that the Galician administration, the Supreme Court of Galicia and the Spanish Supreme Court have ruled against the petitioner's arguments. The Spanish Supreme Court does not find any breach of Directive 2009/72/EC.

The Commission would like to clarify that, contrary to the petitioner's statement, the first complaint presented by the petitioner in 2012 was not closed by means of the letter of 17 December 2014 that he attaches to this petition, but instead by means of a letter sent to him on 23 November 2015. In that letter the Commission acknowledged that the regional legislation, which was the subject of the complaint, was in force. Furthermore, it was explained as to why the Commission's services could not identify any breach of Directive 2009/72/EC in this case. A summary of these arguments can be found in the Commission's previous reply to this petition.

The Commission has sent the petitioner a letter to inform him that the new documents he provided do not bring any new arguments pointing to a breach of Directive 2009/72/EC.

### Conclusion

The Commission has analysed the new complaint lodged by the petitioner. The information provided in this complaint has not modified the assessment the Commission made when closing the former complaint. The Commission has not found indications of a breach of Directive 2009/72/EC.

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1 Not in June, as stated in the Commission's previous communication on this petition.