



30.6.2021

NOTICE TO MEMBERS

Subject: Petition No 0600/2017 by Felice Saronni (Italian), on behalf of the Associazione Arese 5 stelle, accompanied by 18 signatures, against the modification of a commercial-leisure urban expansion plan of an ex-industrial area

Petition No 0919/2018 by Mr Massimiliano Mantovani (Italian), bearing 22 signatures, on a motion to dismiss the construction project of a new shopping centre in Bollate, in the province of Milan (Italy)

Petition No 0960/2018 by Maurizio Zinesi (Italian), on behalf of Movimento 5 Stelle, bearing 2 signatures, against the project for the extension of a shopping mall in Cinisello Balsamo (Milan)

1. Summary of petition 0600/2017

The petitioner denounces the renovation of an urban plan which involves the transformation of an industrial area (formerly the FIAT-Alfa Romeo plant in the municipality of Arese) for commercial purposes. Although already used as a mall (the largest in Europe), the current extension would be duplicated by the modification (from the current 77 000 square metres to a future 157 000 square metres) to include an indoor ski slope based on the Dubai model, having a disastrous impact on air pollution caused by traffic in one of the most polluted areas of the Lombardy Region. The petitioner believes that the plan, which has already been approved (by Commissioner Prefecture after the resignation of the Mayor promoting it), once implemented, will come into conflict with the PM10 emission thresholds provided for by Community legislation and without any preliminary documents (such as an updated EIA report) which are still being kept from citizens, in flagrant violation of the information procedure for the public and institution representatives. The petitioner, therefore, asks for the cancellation of the decision to approve the urban planning in question.

Summary of petition 0919/2018

The petitioner requests that the construction project of a new shopping centre in Bollate, in the province of Milan, be dismissed. According to the petitioner, the construction of this shopping centre would lead to an increase in road traffic in the area. The petitioner bemoans

the risk of high levels of pollution causing serious damage to the health of Lombardy's inhabitants, which is a region where air quality is among the worst in Europe. The petitioner refers to the infringement procedures against Italy for violating Directive 2008/50/CE on ambient air quality. The petitioner emphasises that the area concerned is greenfield land - free of buildings and used for agricultural purposes - which would be irreparably damaged by a new shopping centre.

Summary of petition 0960/2018

The petitioners denounce the disastrous impact of the planned extension of a shopping mall (centro commerciale Auchan) in Cinisello Balsamo, further to the adoption of a zoning plan modification without preliminary environmental impact assessment. They warn against the fallout from the building of "Nuova porta Nord" on the air quality and the traffic congestion in the Province of Milan. They point out that such a big project (including planetarium, multiplexes, walkway galleries, etc.) will surely contribute to the worsening of the poor air quality standards in the Province of Milan, where the level of air pollutants remains well above the limit values set by EU air quality legislation. In this respect, Lombardy is one of the worst-ranked regions in Western Europe. In their view, if the works are not stopped, they will definitely compromise the living conditions in the area in terms of traffic congestion, landscape transformation and environmental and public health protection

2. Admissibility

Petition 0600/2017 declared admissible on 18 October 2017.

Petition 0919/2018 declared admissible on 18 December 2018.

Petition 0960/2018 declared admissible on 4 February 2019.

Information requested from Commission under Rule 216(6), (new Rule 227(6)).

3. Commission reply to petition 0600/2017, received on 13 February 2018

The petition regards a local program (and its recent proposed modification) for the requalification of a former industrial site, located in Lombardia Region, into a commercial-recreational area. The petitioner argues that the program will have negative impacts on the area in terms of air pollution and traffic congestion. In addition, in his view the environmental assessments were carried out without appropriate public participation.

The petitioner refers also to a modification of the above-mentioned program, entailing the extension of the commercial area. Again, it is claimed that the environmental assessment procedure was launched without ensuring adequate public participation.

Therefore, the petitioner pledges for the annulment of the entire approval process, and the adjustment of the program by means of adequate public participation, with a view to exclude further territorial expansions with a commercial destination.

The Commission's observations

Member States are primarily responsible for ensuring the implementation of EU environmental law. It is, therefore, for the competent national authorities to ensure that the potential impacts of the programme at stake and its proposed modification on the environment, in all its components, including air and land, are duly taken into account in the

framework of the Strategic Environmental Assessment (SEA)¹ procedure.

From the information available², it appears that the SEA procedure for the programme at stake was already carried out and concluded in October 2012, and the environmental report was taken into account when assessing the programme. Within this procedure, public participation was also ensured (60 days to present observations).

As regards the modification of the above-mentioned programme, the SEA procedure appears to be still ongoing³. The first conference with the stakeholders took place in September 2016. The petitioner argues that, in the SEA procedure, the competent authorities did not use an updated Environmental Impact Assessment (EIA) report, but the one used in a previous program which reflected a different situation on site. It should be pointed out that the SEA procedure is distinct from the Environmental Impact Assessment⁴ procedure to be carried out for projects deriving from a plan or programme. Where the obligation to carry out assessments of the effects on the environment arises simultaneously from the SEA Directive and other EU legislation, integrated assessments are possible meeting the requirements of several items of EU legislation at the same time, in order to avoid duplication of assessment procedures. Nevertheless, there is no obligation for Member States to authorise plans and programmes only if the EIA for specific projects deriving from that programme has been carried out.

In addition, with regard to the appropriate public participation, the EIA and SEA Directives lay down basic principles, with the remaining details to be decided at national level.

Furthermore, the petitioner argues that the monitoring actions of the programme are to be carried out by the developer, thus allegedly causing a conflict of interests. The Commission recalls that, in the SEA procedure, Member States shall monitor the significant environmental effects of the implementation of plans and programmes.

Finally, the petitioner argues that the program as such would be in breach of Directive 2008/50/EC⁵. The Commission is aware that exceedances of the PM₁₀ limit values are persistent in the entire Lombardia Region. The Commission already launched an infringement procedure (2014/2147) to address this breach.

Conclusions

The national courts are the ordinary courts responsible for applying EU law, and as such they have the authority to ensure that EU law is upheld, thereby making an efficient contribution to enforcement in individual cases. The national courts deal with actions brought by individuals with a view to obtaining protection against national measures that are incompatible with EU

¹ Directive 2001/42/EC on the assessment of the effects of certain plan and programmes on the environment, OJ L197, 21.07.2001

²<https://www.cartografia.regione.lombardia.it/sivas/jsp/procedimenti/schedaProcedimento.jsf?idPiano=36300&idTipoProcedimento=1>

³<https://www.cartografia.regione.lombardia.it/sivas/jsp/procedimenti/schedaProcedimento.jsf?idPiano=86480&idTipoProcedimento=1#>

⁴ Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, p. 1–21, as amended by Directive 2014/52/EU, OJ L 124, 25.4.2014, p. 1–18.

⁵ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ L 152, 11.6.2008, p. 1–44.

law, or financial compensation for harm caused by such measures.

In the light of all the above considerations, and taking into account that most of the issues raised by the petitioner fall under the competence of the national authorities, the Commission cannot conclude on a systemic failure to comply with EU law and, therefore, intends to take no further action in this specific case. Therefore, the Commission calls on the petitioner to resort to the available legal remedies at national level.

4. Commission reply, received on 6 May 2019

Petitions 0600/2017, 0919/2018 and 960/2018

As regards the air pollution problem experienced in the areas concerned, the Commission has already brought the case to the Court of Justice of the European Union for the exceedance of coarse particulate matter (PM₁₀) limit values (Court case C-644/2018) and, earlier in 2018, has decided to do the same for the concentrations of nitrogen dioxide (NO₂).

The information submitted by the petitioners on 4 March 2019 under Petition 0600/2017 indicates that the sampling point in the Municipality of Arese, which was showing exceedance of the PM₁₀ limit values for ambient air quality in the previous years, is no longer operational.

Conclusion

As Directive 2008/50/EC Annex V⁶ stipulates that “*sampling points with exceedances of the limit value for PM₁₀ within the last three years shall be maintained, unless a relocation is necessary owing to special circumstances, in particular spatial development*”, the Commission will seek further information from the Italian authorities.

5. Commission reply, received on 30 June 2021

As indicated in the earlier communications with regard to the Environmental Impact Assessment (EIA) aspects, the project as such does not appear to infringe any specific provisions of EU law but should be seen in the broader context of an area where the quality of ambient air does not meet the standards required by Directive 2008/50/EC (the Air Quality Directive)⁷.

In particular, the daily limit value for particulate matter (PM₁₀) has not been complied with for a number of years, and this issue is being addressed since 2014, when the Commission

⁶ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ L 152, 11.6.2008, p. 1–44.

⁷ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ L 152, 11.6.2008, p. 1–44.

launched an infringement procedure against Italy for having systematically and persistently exceeded in a certain number of zones, including this one, the limit values for PM10.

This infringement procedure has led the Court of Justice of the European Union, in a judgement delivered on 10 November 2020 (case C-644/18⁸), under Article 258 of the Treaty on the Functioning of the European Union, to rule that Italy has systematically and persistently exceeded, in a certain number of zones in Italy, the limit values for PM10 particulate matter as laid down by the Air Quality Directive.

Firstly, as regards the systematic and persistent infringement of the provisions of Article 13(1) of, and Annex XI to, the Air Quality Directive, the Court of Justice of the European Union holds that complaint to be well founded, in the light of the evidence adduced by the Commission for the periods and zones covered by the proceedings.

Secondly, the Court of Justice of the European Union holds that the complaint alleging failure to adopt the appropriate measures to ensure compliance with the limit values for PM10 particulate matter, in accordance with the requirements of Article 23(1), read alone and in conjunction with Part A of Annex XV to the Air Quality Directive, is also well founded.

Italy shall now take all the necessary measures to comply with the Article 258 judgement, and the Commission will continue to closely follow the situation as foreseen in Article 260 of the Treaty on the Functioning of the European Union.

Moreover, the Commission has been made aware that a sampling point (IT0770A) in the municipality of Arese in air quality zone IT0306 ‘Agglomerato di Milano’ (previously IT0301 ‘Agglomerati urbani’ (A1)) is no longer operative. This sampling point had, in the years prior to this, reported PM10 limit values for air quality that exceeded the EU limit values. Annex V of the Air Quality Directive stipulates that “sampling points with exceedances of the limit value for PM10 within the last three years shall be maintained, unless a relocation is necessary owing to special circumstances, in particular spatial development”.

Conclusion

The general issue of air quality is being monitored to make sure that the Court ruling is complied with. The specific issue of the sampling point will be taken into account by the Commission in its follow-up.

⁸ <http://curia.europa.eu/juris/documents.jsf?num=C-644/18>