



28.4.2020

## NOTICE TO MEMBERS

**Subject: Petition No 0659/2018 by Samuel Martín-Sosa (Spanish), on behalf of Ecologists in Action, on the construction of a high-speed line between Marchena and Osuna in the province of Seville (Spain)**

### 1. Summary of petition

The petitioner claims that on 15 June 2018, the Government of the Autonomous Community of Andalusia adopted an ex-post Environmental Impact Assessment (EIA) on the construction of a high-speed line on the section between Marchena and Osun. With the EIA it is trying to bypass a judgment by the Court of Justice of the European Union on 24 November 2016 (C-461/14) through a modification to the original Environmental Impact Declaration of 24 November 2006. The petitioner indicates that the ruling of the CJEU stated that, since Spain had not adopted the necessary measures to protect wild birds, there had been a risk of deterioration to the natural habitats and habitats of species in the special protected area 'Campiñas de Sevilla'. The petitioner claims the Environmental Impact Assessment was adopted once a large part of the work was already underway and the impact had already occurred. The petitioner considers this a fraudulent act and urges the European Parliament to invite the Commission to distance itself from this dubious strategy and demand that Spain desists from its intention to carry out a project which the CJEU has declared illegal.

### 2. Admissibility

Declared admissible on 19 November 2018. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 15 April 2019

Having ascertained that Spain had infringed EU laws on nature conservation in the case referred to by the petitioners, the Commission decided to bring the matter before the Court of Justice of the European Union on 10 July 2014. On 24 November 2016, the Court rendered its judgment in case C-461/14, ruling that Spain had failed subsequently to fulfil its obligations

under Article 4(4) of the Birds Directive<sup>1</sup> and under Article 6(2) of the Habitats Directive<sup>2</sup> on account of the failure to take appropriate steps to avoid, in Special Protection Area (SPA) ‘Campiñas de Sevilla’, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which that area was established. However, it must be noted that the Court of Justice of the European Union dismissed the Commission’s claims on the breach of the provisions of the Environmental Impact Assessment (EIA) Directive<sup>3</sup> in connection with the project.

On 21 December 2016, the Commission asked to be informed of the measures taken by the Spanish authorities to comply with the terms of the above judgment. For measures yet to be taken or completed, a detailed enforcement action plan together with timetable, key milestones and related budgetary costs were also requested. In their reply, the Spanish authorities expressed their commitment to fully implement the Court ruling, and indicated their intention to carry out an ex-post EIA that should help to identify the most appropriate mitigation measures to offset the deterioration of the habitats that had resulted from the partial execution of the rail link project. Since then, the Spanish authorities keep the Commission updated on the progress of the implementation of the proposed measures. They have informed, in particular, of the conclusion of the ex-post EIA process, and the subsequent amendment of the Environmental Impact Statement for the project by decision of 4 July 2018. The Spanish authorities are currently working on the design and implementation of the relevant correction measures necessary to comply with the conclusions of the ex-post EIA. They have also indicated that, at this stage, they have no intention to complete the project in question.

### Conclusions

It is for the competent authorities in the Member State to decide on the most appropriate measures to ensure the full implementation of the judgment of the Court. The Commission considers that an updated and good quality impact assessment was a good starting point to identify the damages caused and propose the necessary measures to ensure a correct and swift implementation of the court ruling.

The Commission will keep the implementation of the proposed measures under scrutiny and will not hesitate to take the necessary action in case Spain does not fully implement the judgment.

### **4. Commission reply (REV.), received on 28 April 2020**

#### The Commission’s observations

The Commission continues to follow up closely on the implementation of the measures selected by the Spanish authorities towards the full enforcement of the judgment of the Court of Justice of the European Union of 24 November 2016 in case C-461/14. Particular regard has been given to the fact that the Spanish authorities do not intend, at this stage, to complete

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<sup>1</sup> Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20, 26.1.2010, p. 7–25.

<sup>2</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7–50.

<sup>3</sup> Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ L 175, 5.7.1985, p. 40–48.

the proposed high-speed rail link in question.

### Conclusion

The Commission will take the necessary action – including the institution of infringement proceedings under Article 260 of the Treaty on the Functioning of the European Union (TFEU) –to ensure the swift and correct implementation of the Court ruling at any time.