



6.5.2019

NOTICE TO MEMBERS

Subject: **Petition 0169/2007 by Marc de Schower (Belgian) and eight other signatories against overflight of a residential area (with 40 000 inhabitants) north of the Madrid-Barajas Airport**

1. Summary of petition

The petitioner complains that the noise pollution and dangerous situation created by the rerouting of flight paths over a residential area north of the Barajas Airport in Madrid which is home to some 40 000 people. The resulting degradation of the local environment is, he claims, the result of a decision taken unilaterally by the national air traffic control authority without consulting local authorities in advance. Moreover, the environmental damage allegedly extends to certain protected areas, sites of Community interest and wild bird breeding areas, and there have been a series of collisions with birds in flight. He calls, therefore, for the Union to intervene on the basis of Directives 2001/42/EEC and 79/409 on the protection of the environment and birds.

2. Admissibility

Declared admissible on 5 June 2007. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 19 October 2007.

The petitioner explains that the situation results from a decision taken unilaterally by the national air traffic control authority without consulting local authorities in advance. He also maintains that environmental damage is extending to certain protected areas, sites of Community interest and wild bird breeding areas. He reports that a series of collisions with birds in flights have occurred.

The petitioner finally requests the European Parliament to intervene in order to ensure that the EU obligations in the field of environmental protection and the fundamental rights of citizens are

met. He particularly requests that specific measures be implemented with a view to reducing or avoiding the environmental impact.

The Community legislation applicable to the management of environmental noise (Directive 2002/49/EC)¹ leaves the choice of transport infrastructure noise management measures entirely up to the Member State authorities.

This legislation lays down neither limit nor target environmental noise levels; the Member States alone are responsible for establishing these criteria. They must, however, ensure that strategic noise maps and action plans are drawn up for the purpose of noise management around major airports such as Madrid-Barajas, before 30 June 2007 and 18 July 2008 respectively. The public must be consulted on proposed plans of action. The noise maps and action plans must be circulated and made accessible to the public.

The Commission looked into the effects on the Natura 2000 network of the expansion of the airport of Barajas and the increase in noise pollution in the context of complaint n° 2001/2156. The Commission concluded that the project could be implemented for reasons of overriding public interest on the condition that a set of compensatory measures to ensure the overall protection of the coherence of Natura 2000 be taken in good time. The Commission closed the case on 30 May 2005. The Commission contacted the Spanish authorities to follow the implementation programme of the above-referred to compensatory measures. The Commission is currently analysing the response of the Spanish authorities, received in June 2007.

The petition provides no evidence that a Member State has failed to meet any of its obligations under the legislation regarding environmental noise levels, noise management being the responsibility of the Spanish authorities.

The Commission has also initiated action regarding protection of areas situated in the Natura 2000 network. It is currently examining the latest information from the Spanish authorities concerning compensatory measures and will keep the Committee on Petitions informed of any action it intends to take on this matter.

4. Further Commission reply, received on 1 September 2009

Further to the initial communication to the Committee on Petitions, the Commission reviewed the new information provided by the Spanish authorities in 2007 and by the petitioner in 2008.

In relation to the flight path "radial 322" over the SPA "Soto de Viñuelas", the elements provided do not allow the Commission to consider the reported aircraft incidents involving birds as significant in relation to the conservation objectives set out under Directives 92/43/EEC² and 79/409/EEC³.

In conclusion, on the basis of the available information, the Commission does not consider that

¹ OJ L 189, 18.7.2002, p. 12-26.

² 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

³ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds. OJ L 103, 25.4.1979, p. 1-18

the incidents reported in relation to these flights could be considered as providing evidence enabling the Commission to further pursue these issues with the Spanish authorities as a likely breach to applicable Community environmental legislation.

5. Further Commission reply, received on 8 October 2010.

Further to the its previous communication, the Commission requested additional information from the Spanish authorities on the process followed prior to the approval by the Spanish authorities of the aerial path "radial 332" as well as information concerning the possible disturbances caused by the air traffic of this aerial path to the protected bird species existing in the area.

The airport management authority (AENA) reported that, following the issuing of the Environmental Impact Declaration (DIA) for the enlargement of the airport of Madrid, a commission (CSAM: Comisión de seguimiento ambiental de las actuaciones de Ampliación del Sistema Aeroportuario de Madrid) was set up to monitor and control the works, the mitigation measures and the compensatory measures of the project. The CSAM is composed of representatives of the ministries involved (Environment and Transports), AENA, the regional government of Madrid and representatives of the municipalities affected by the airport. According to the provisions of the national legislation, AENA submitted to the CSAM the different air path alternatives along with their environmental assessment. In 2004, the CSAM approved the noise contour plots (*isofonas*) of several in- and outward aerial paths for the airport, among which was the aerial path ("radial 332"). The SPA "Soto de Viñuelas" was not affected by any of the contour plots approved.

The airport management authority (AENA) said that, in the last two years, there have been over 130 000 flights that have taken off from the 36L strip and followed the flight path "radial 332" and 23 incidents of collisions with birds. Only 10 out of the 23 incidents lack enough information about location and height to determine where they occurred. Therefore, they might have occurred in the SPA airspace. However, according to the regional authority (Comunidad de Madrid) responsible for the management of the SPA "Soto de Viñuelas" there are no records of accidents (collisions) in the airspace over the SPA "Soto de Viñuelas". The Comunidad de Madrid has also stated that no aerial traffic disturbances have been observed to the bird species existing in the area.

The new information made available to the Commission in relation to the flight path "radial 332" over the SPA "Soto de Viñuelas", does not allow the reported aircraft incidents involving birds to be considered as significant in relation to the conservation objectives set out under Directives 92/43/EEC¹ and 2009/147/EC². In conclusion, on the basis of the available information, the Commission does not possess clear evidence to pursue further this issue as a likely breach of applicable Community environmental legislation.

6. Further Commission reply (REV.III), received on 29 November 2013.

¹ 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

² Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 20/7, 26.1.2010) that codifies the Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L 103, 25.4.1979).

With regard to noise, the Spanish authorities have indicated that the action plan for the airport of Madrid-Barajas has been approved in 2011. However, it seems that at the time of this communication, the action plan summary had not yet been reported.

The Commission will continue to follow the issue.

7. Further Commission reply (REV.IV), received on 28 November 2014.

As previously notified, the Commission contacted the Spanish authorities in August 2012 within the framework of an EU-Pilot investigation with regard to the missing action plan for the management of noise issues and effects, as required under Directive 2002/49/EC, for the airport of Madrid-Barajas. The Spanish authorities responded in October 2012, indicating that an action plan for the airport of Madrid-Barajas had been approved in 2011. However, the summary of the action plan has not been submitted to the Commission to date. In the intervening period, the Spanish authorities have provided the Commission with regular updates on their progress with the development of action plans, with letters in January 2013, October 2013, January 2014 and July 2014. In their communications, the Spanish authorities recognised that not all required action plans required under Directive 2002/49/EC have been completed, due to delays caused by the current economic situation.

Conclusion

The Commission will continue to follow the situation in order to ascertain that Spain complies fully with the requirements.

8. Further Commission reply (REV V), received on 30 May 2016

The Commission contacted the Spanish authorities in August 2012 within the framework of an EU Pilot investigation with regard to the missing action plan for the management of noise issues and effects, as required under Directive 2002/49/EC, for the airport of Madrid-Barajas.

In the intervening period, the Spanish authorities have provided the Commission with regular updates on their progress with the development of action plans. On 9 March 2016, the Spanish authorities provided the Commission with the summary of the action plan for the airport of Madrid-Barajas. According to the Spanish authorities, this action plan was adopted in 2011, revised in 2015 and is now in the implementation stage. The Commission is currently assessing whether the action plan fulfils the requirements of Directive 2002/49/EC.

Conclusion

The Commission will assess the action plan in order to ascertain whether it complies fully with the requirements of Directive 2002/49/EC.

9. Further Commission reply (REV VI), received on 30 November 2016

The Commission's observations

The Commission has launched an infringement procedure against Spain for not complying

with the requirement to submit a noise action plan to public consultation for the airport of Madrid-Barajas.

10. Further Commission reply (REV VII), received on 28 March 2018

Since the launch of an infringement procedure against Spain for not complying with the requirement to submit a noise action plan to public consultation for the airport of Madrid-Barajas, the Commission received five replies from the Spanish authorities and is assessing them. Should the conclusion be that the airport in question still misses a valid action plan, the Commission will consider the necessary legal steps.

11. Further Commission reply (REV VIII), received on 21 September 2018

The Commission analysed the information received by the Spanish authorities up to the end of June 2018 and concluded that a valid action plan according to the Directive 2002/49/EC for the airport of Madrid Barajas was not adopted. Therefore, in July 2018, the Commission launched a Reasoned Opinion against the Spanish authorities concerning - inter alia - the absence of such a noise action plan.

12. Further Commission reply (REV IX), received on 6 Mai 2019

The Spanish authorities replied in the context of an ongoing infringement procedure targeting the compliance by Spain with the Noise Directive¹ and submitted updated information concerning the action plans.

While an action plan for the Madrid Barajas airport was adopted in 2011, Article 8 of the Noise Directive requires to review, and if necessary to revise, the action plan at least every 5 years (meaning, by 2016).

In the latest summary of the action plan submitted, the authorities committed to adopt a new plan by the end of 2018².

The Commission has not been informed of any review or revision of the action plan for the airport of Madrid Barajas.

Conclusion

The Commission will continue to follow up on the case.

¹ Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise - Declaration by the Commission in the Conciliation Committee on the Directive relating to the assessment and management of environmental noise, OJ L 189, 18.7.2002, p. 12–25.

² http://cdr.eionet.europa.eu/es/eu/noise/df10/2014/envw4kd1g/ES_a_AP_MAir_MADRID.pdf