European Parliament
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Committee on Petitions

15.4.2019

NOTICE TO MEMBERS

Subject: Petition No 1144/2017 by A.Z. (Italian), on behalf of nine environmental associations, bearing nine signatures, against quarries to extract building materials and a waste dump

1. Summary of petition

The petitioners are complaining about the exportation of inert matter, sand and gravel and importation of building waste (including asbestos and asphalt, which are illegal materials in Italy) in the Province of Como and to and from Switzerland (canton of Ticino). This trade is the result of a cross-border agreement between the Lombardy Region and the Swiss Confederation, negotiated without the knowledge of the population concerned and concluded without a prior strategic environmental assessment. In particular, the petitioners are raising the alarm due to the severe impact on the groundwater of both the extraction activities, which are depleting the aquifers of their natural defences, and the backfilling with toxic waste, which is poisoning them. It would appear, in fact, that the excavations currently under way were authorised solely through renewals of permission by the provincial authorities, in the absence of any planning instrument or prior assessment of their adverse effects, including in terms of air pollution, traffic and destruction of the landscape and green areas. Against such a background, involving poor planning and entirely lacking in transparency, the backfilling operations in the active or disused quarries – despite involving a disproportionate dumping of illegal waste – have apparently been authorised by the municipality in breach of the public information obligations concerning environmental matters under the Aarhus Convention. Last but not least, the agreement in question stipulates that the vehicles used for the loading and unloading operations should pass through minor border crossings, which are poorly controlled. The petitioners are therefore calling for the Commission to take action to prevent the above-mentioned cross-border agreement, which is totally one-sided and in favour of a third country, from causing further damage to the environment and to public health and is, moreover, in breach of the SEA Directive (2001/42/EC), the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, and the Aarhus Convention

2. Admissibility

Declared admissible on 23 February 2018. Information requested from Commission under Rule 216(6).

3. **Commission reply**, received on 31 October 2018

The SEA Directive 2001/42/EC[1] regards the environmental assessment of plans and programmes falling within the scope of this Directive. The objective of the SEA Directive is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes. It follows that the environmental report, to be prepared in the context of the full SEA procedure, has to cover the likely significant effects of the respective plan/programme on the environment. Pursuant to Article 3(2) of the Directive, the plans and programmes prepared for country planning or land use are subject to environmental impact assessment.

The SEA Directive requires Member States to ensure that the draft plans and programmes are made available to the public for possible observations before their adoption. Member States must also identify the public to target for this purpose, including the public affected or likely to be affected by the plan/programme, or having an interest in it, but the detailed arrangements for the public participation remain under the competence of the Member States. It follows that the SEA Directive does not specify in which way public participation (information and consultation) must be ensured, nor does it require the placement of advertising information on the territory or the direct invitation of the public to the procedures.

However, the information provided by the petitioners is not sufficient to assess whether the activities which are the subject of the present petition constitute a plan or programme in the meaning of the Directive or rather a project within the meaning of the EIA Directive[2].

The activities described in the petition could possibly be included as extractive activities in Annex I, n. 19, or Annex II, n. 2(a) of the EIA Directive[3] and as landfilling activities in Annex I, n. 9, or Annex II, n. 11 (b) of the same Directive[4].

According to Art. 4(2) of the EIA Directive, projects listed in Annex I must be subjected to an environmental impact assessment (EIA) procedure, whereas projects listed in Annex II must undergo a so-called EIA "screening" procedure, which is aimed to determine whether the projects are likely to have significant impacts on the environment, thus to require a full EIA procedure. When carrying out such screening procedures, the competent national authorities must take into account the relevant criteria set out in Annex III of the Directive, including the characteristics of the projects, having regard, in particular, to the size of the projects, the cumulation with other projects, the pollution and nuisances potentially caused and the risk of

[1] on the assessment of the effects of certain plans and programmes on the environment OJ L 197, 21.7.2001, p. 30–37.

[2] Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L 124, 25.4.2014, p. 1–18

[3] "Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction, where the surface of the site exceeds 150 hectares" (Annex I, n. 19) or "Quarries and open-cast mining and peat extraction (project not included in Annex I)".

[4] "(…) or landfill of hazardous waste, as defined in point 2 of Article 3 of that Directive" (Annex I, n. 9) or "installation for the disposal of waste (projects not included in Annex I)" (Annex II, n. 11(b).

incidents.

Conclusions

Once it is ascertained which Directive is applicable to the situation at stake and whether there is circumvention of the provisions of the relevant Directive, it is for the competent national authorities to ensure the correct application of the EU environmental legislation. In fact, the implementation of the EU environmental legislation lies primarily with the national administrative and judicial authorities, which have the appropriate tools to remedy situations of possible interference between projects - adopted at national, regional or local level - and the protection of the environment and of human health.

Consequently, the Commission does not intend to give any further follow up to this petition.

4. Commission reply (REV), received on 15 April 2019

The Commission, in its previous communication, had underlined the fact that the information provided by the petitioner was not sufficient to assess whether the activities described in the present petition (mainly extraction activities) constitute plans and programmes in the meaning of the Strategic Environmental Assessment (SEA) Directive[1] or rather a project within the meaning of the Environmental Impact Assessment (EIA) Directive2.

In light of the latest documents, it should be recalled that, pursuant to Article 3(2) of the SEA Directive, the plans and programmes prepared for country planning or land use are subject to environmental assessment to ensure that environmental considerations are taken into account in their preparation and adoption.

The additional documents submitted by the petitioner indicate that the quarries development plan actually applied was approved by the Regional Council in October 2014, with a validity of five years. This plan has probably been submitted to a screening of SEA.

It also appears that 18 quarries out of 21 in operation in the Province of Como are not included in this latest plan. The reason given by the Italian authorities for excluding them is that they were already included in the previous quarries development plan from 2003 and are covered by extractive permits not yet expired.

The petitioner mentions the EU Pilot 2706/11/ENVI, now closed, in which the issue was the lack of an SEA on the quarries development plan for another province in Lombardy, the Province of Varese. This case appears to be different, as the quarries development plan for the Province of Varese had been approved in 2008, well after the coming into force of the SEA Directive (2004). In the case under examination, on the contrary, firstly the question concerns quarries operating under old permits granted in application of a plan approved before the entrance into force of the SEA Directive. This is not forbidden under EU law. Second, the national authorities have large margins of appreciation as to what to include in such a

[1] Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment OJ L 197, 21.7.2001, p. 30–37.
[2] Directive 2014/52/EU amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L 124, 25.4.2014, p. 1–18

development plan.

Conclusions

The 18 quarries not included in the plan of 2014 are operating according to permits granted by the Province of Como under another 2003 plan, when the SEA Directive was not yet in force, and therefore has not been submitted to a strategic environmental assessment. These quarries have not been included in a more recent quarry development plan. Nevertheless, this does not qualify as a breach of EU law.