



2.9.2010

NOTICE TO MEMBERS

Subject: **Petition 1345/2009 by Michal Racki (Polish), on an open-cast brown-coal mine in Lower Silesia in Poland**

Petition 0046/2010 by Irena Rogowska (Polish), on behalf of the association 'Stop Odkrywce' (Stop open-cast mining), on an open-cast lignite mine in Lower Silesia (Poland)

1. Summary of petition 1345/2009

The petitioner refers to a project for an open-cast brown-coal mine in Lower Silesia in Poland. The petitioner regards the project as being contrary to EU principles on reductions of CO₂ emissions and promotion of innovative technologies with a view to less pollutant forms of energy production and the conservation of the natural environment. He also stresses that the responsible authorities have not held a public hearing or submitted transparent and objective scientific, socio-economic data. As the petitioner believes that implementation of the project would entail serious breaches of applicable Community legislation, he calls on the European Parliament to take the matter up.

Summary of petition 0046/2010

The petitioner refers to an open-cast lignite mining project in Lower Silesia (Poland) in areas which are partly protected by the Natura 2000 programme. She considers that this project conflicts with the EU's principles of reducing CO₂ emissions and promoting innovative technologies with a view to developing less polluting types of energy production and protecting the natural environment. She also stresses that the competent authorities have neither held a public hearing nor provided any transparent and objective scientific or socio-economic data. Since the petitioner considers that the implementation of this project will involve serious violations of the relevant EU legislation, she calls on the European Parliament

to take the matter up.

2. Admissibility

Petition 1345/2009: Declared admissible on 22 December 2009.

Petition 0046/2010: Declared admissible on 23 April 2010.

Information requested from Commission under Rule 202(6).

3. Commission reply, received on 2 September 2010.

Both petitions concern a planned open-pit lignite mine project in the Lower Silesia region of Poland. The petitioners claim that the project will have significant consequences for the local environment and will result in the destruction of key eco-systems. Furthermore, attention is drawn to the issue of a potential increase of CO₂ emissions due to the project, which is seen by the petitioners as unacceptable in Europe, where focus is put on renewable resources. The petitioners also claim that the realisation of the project will result in mass displacement, tearing up the social fabric of the local community.

One of the petitioners stresses that the area where the open-pit lignite mine is planned to be implemented partly covers Natura 2000 sites (SPA and SCI "Łęgi Odrzańskie", SCI "Irysowy Zagon" and "Pałnów Legnicki"). The petitioner states that if the project is implemented Natura 2000 sites will be affected and infrastructure built from EU funds destroyed.

The petitioner goes on to claim that, in line with the strategic document "Energy Policy for Poland 2030", the area foreseen for the project is subject to restrictions concerning infrastructure development. In the opinion of the petitioner, these restrictions are not legitimate since local people have clearly expressed their views on the project in a legally binding referendum (95% of the population of the six *gminas* concerned voted against the project with the level of participation at 70%). The petitioner stresses that the results of the referendum are being ignored by the central authorities. The petitioner also states that for the strategic document in question inserting the restriction on infrastructure development no public consultations were carried out.

The petitioners' other concerns refer to potential breaches of the EU Fundamental Rights Charter referring, in particular, to the right of the local communities from the *gminas* affected to live on unpolluted land and not to be threatened by the implementation of a project which will result in mass displacement.

The Commission notes that similar issues to those raised in these petitions have also been subject to preliminary investigation as a registered complaint, with regard to which the Commission requested clarifications from the Polish authorities. The analysis provided below takes account both of the information provided by these petitions as well as the explanations received from the Polish authorities in the context of the above mentioned complaint.

With regard to EU law, two directives seem to be applicable to the issues raised by the

petitions, Directive 2001/42/EC of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment¹ (hereafter the SEA Directive) and Council Directive 1992/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora as amended² (hereafter the Habitats Directive).

SEA Directive – assessment of the effects of certain plans and programmes on the environment and public consultation

The provisions of the SEA Directive refer, *inter alia*, to the need for environmental impact assessments to be carried out for energy plans and programmes (that, according to the recent case-law), set the framework for future development consent of projects within the meaning of Art. 3 (2) a) of Directive 2001/42/EC.

With regard to the issue of public consultations, Article 6(2) of the SEA Directive stipulates that: "the authorities referred to in paragraph 3 and the public referred to in paragraph 4 shall be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative process".

From the information provided by the Polish authorities, it can be concluded that the adoption of the strategic document "Energy Policy for Poland 2030", referred to above, was preceded by a strategic impact assessment in accordance with the relevant requirements of the national law. Furthermore, based on the explanation given by the Polish authorities, it can be concluded that during the consultation process all parties concerned were granted the opportunity to submit comments and observations. According to the Polish authorities, the comments submitted during the consultation process were further taken into account when preparing the final version of the strategic document.

It must be noted, however, that the petitioner's allegations concern the lack of public consultation for the restrictions referring to infrastructure development in the regions, which in fact were placed in Annex II to the programme in question. Consequently, the fact whether the annexes to the strategic document were made subject to public consultations would need to be clarified with the Polish authorities.

Habitats Directive – assessment of impact of the plan on protected Natura 2000 sites

According to Article 6(3) of the Habitats Directive 'any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of this implications for the site in view of the site's conservation objectives.'

From the information provided by the Polish authorities with regard to the assessment of the

¹ OJ L 197, 21.7.2001, p. 30

² OJ L 206, 22.7.1992, p. 7

strategic document in view of its impact on Natura 2000 sites, the following can be established. First of all, the environmental report prepared for the strategic document stipulates that due to the nature protection sensitivities of this area, the Legnica mine deposit will not be exploited during the period of the strategic document's validity (e.g. by 2030) (see p. 227 of the report).

Furthermore, the Polish authorities indicated that the strategic document is a framework document which sets priorities for the Polish energy sector until 2030 and in accordance with Article 5(2) of the SEA Directive, the environmental report prepared includes the level of information which it is reasonable to expect at this stage of the decision-making process. In accordance with the Polish law, the exploitation of the lignite mine from the "Legnica" deposit would require its earlier inclusion in the relevant planning documents (under the Polish law - study of conditions and land-use plans of various levels), for which the carrying out of a strategic impact assessment is required (including public consultations) by Polish law, and to which Article 33 and 34 of the *Nature Conservation Act* are applicable. The latter quoted articles transpose the duties flowing from Article 6(3)-(4) of the directive, which allow for the realisation of plans or projects only where there are no alternative solutions and there are reasons of overriding public interest.

In light of the response of the Polish authorities, it must be concluded that the Commission is not in possession of evidence which would allow it to establish a breach of the Habitats Directive with regard to the issues raised by the petitions.

Other issues

Since from the response of the Polish authorities it is clear that the Legnica mine deposit will not be exploited during the period of the strategic document's validity (i.e. by 2030), the issue of possible exceedances of CO₂ emissions caused by mining activities seems to be hypothetical and, therefore, does not require assessment.

With regard to the possible need to displace local communities as well as the fact that the Polish authorities seem to have ignored the results of the local referendum, it must be noted that these issues fall within the exclusive competence of the Polish authorities and the Commission is not in position to examine them.

EU Fundamental Rights Charter

With regard to claimed breach of the EU Fundamental Rights Charter, the Commission recalls that according to Article 51 of the latter, its provisions are addressed to EU institutions and to Member States only when they are implementing Union Law. It was not possible to establish, on the basis of the information provided, any link between the facts mentioned and EU law.

Conclusions

The Commission will ask the Polish authorities for clarifications as to whether annexes to the strategic document "Energy Policy for Poland 2030" were made subject to public consultation as required by the SEA Directive.