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<Commission>{PETI}Committee on Petitions</Commission>

<Date>{06/11/2023}6.11.2023</Date>

<TitreType>NOTICE TO MEMBERS</TitreType>

Subject: <TITRE>Petition No 0343/2023 by Eva Tudela Rojas (Spanish), on behalf of ‘Acció Ecologista-Agró’, on the works to modernise the Acequia Real del Júcar</TITRE>

1. Summary of petition

The petitioner complains that the works to modernise the Acequia Real del Júcar put forward by the Júcar Hydrographic Confederation have not been subject to environmental assessment. This is a violation of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora and of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment. The works under the project are part of the process of modernising the Acequia Real de Júcar, with this being split into four phases: a) high-water conveyance; b) transportation network, c) distribution systems and d) installation on parcels. The works consist of the implementation of 2 948 metres of underground pipeline of a diameter of between 400 mm and 710 mm, along with accessories and ancillary elements, to supply Sector 7, which is situated in the municipality of Massalavés (province of València) with an area of 319 hectares. He complains that ‘the modernisation of the irrigation systems of Acequia Real del Júcar will lead to a reduction in inflow both to the River Júcar and l’Albufera de València’ and that ‘the modernisation of the traditional irrigation systems of the River Júcar, especially those of Ribera Alta, will lead to a reduction in the volume of irrigation returns reaching the river’. He therefore complains that the performance of the work in Sector 7 as described in the project will result in a significant reduction in irrigation returns, which will directly affect both the surface and underground water inflow to the three protected Natura 2000 sites (Albufera de València Natural Park, Riu Xúquer SCI and Ullals riu Verd SCI) and also the Plana Sur de Valéncia aquifer. He requests that a check be conducted on the environmental assessment procedure for the works being performed in the above-mentioned sectors and that everything necessary be done to protect the Albufera de València and River Júcar sites, which are protected areas.

2. Admissibility

Declared admissible on 29 June 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 6 November 2023

This petition refers to the authorisation of the works to build a water transport network, which is part of the “Irrigation modernisation process of the Acequia Real del Júcar”. The irrigation modernisation process aims at changing the current surface irrigation system in Acequia Real del Júcar to a drip irrigation system. The Petitioners claim that the authorisation of the works to build the water transport network are in breach of the Habitats[[1]](#footnote-1) and the Environmental Impact Assessment[[2]](#footnote-2) Directives because the works have been authorised without being subject to an appropriate assessment under the Habitats Directive and to an environmental impact assessment (EIA) under the EIA Directive. The petitioners claim that the works will have an impact on the Natura 2000 sites the Site of Community Importance (SCI) and Special Protection Area (SPA) “L’Albufera”[[3]](#footnote-3), the SCI “Riu Xúquer”[[4]](#footnote-4) and the SCI “Ullals del riu Verd”[[5]](#footnote-5). In addition, the petitioners refer to the document “Important themes of the provisional scheme of the third cycle of hydrological planning of the Jucar basin”, in which it is stated that the water pipe system of the “Irrigation modernisation process of Acequia Real del Júcar”[[6]](#footnote-6) will reduce the flow of contributions to the Júcar river and to “L’Albufera” site and shall be subject to a procedure of environmental impact assessment to ensure there is no impact on the Natura 2000 network, in particular on “L’Albufera” and on the groundwater bodies. . The petitioners also claim that the project to build the water transport network is a fraction of the “Irrigation modernisation process of Acequia Real del Júcar”. which includes several projects started 20 years ago whose synergetic effects have not been taken into account.

**The Commission’s observations**

According to Article 6(3) of the Habitats Directive, any plan or project, inside or outside Natura 2000 sites 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 its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned[[7]](#footnote-7).

Under Article 6(2) of the same Directive, Member States authorities shall take appropriate steps to avoid, in Natura 2000 sites, the deterioration of natural habitats and the habitats of species as well as significant disturbance of the species for which the areas have been designated.

Member states shall also ensure that the species protection regime under Article 5 of the Birds Directive[[8]](#footnote-8) and Article 12 and 13 of the Habitats Directive is respected, inside and outside Natura 2000.

The Commission has issued guidance on the implementation of Article 6[[9]](#footnote-9),[[10]](#footnote-10) of the Habitats Directive and on the species protection regime under the Habitats Directive[[11]](#footnote-11).

Water management projects for agriculture, including irrigation and land drainage projects are referred to in Point 1 c) of Annex II to the EIA Directive among the project categories that need to be made subject to an EIA prior to receiving development consent when the competent authorities so determine through a case-by-case examination or through thresholds or criteria previously set by the Member State. This determination must be made available to the public.

According to the Water Framework Directive (WFD)[[12]](#footnote-12) (Art. 5.1), MS have to ensure for each river basin district a review of the impact of human activity on the status of surface waters and groundwater. Such review must be undertaken according to the technical specifications set out in Annex II.

The Commission observes that the competent authorities have issued a Resolution[[13]](#footnote-13) concluding that the project does not have significant effect on Natura 2000 and that the project does not need to be subject to EIA. Based on the information available in the Resolution, and in the absence of site-specific conservation objectives in the Natura 2000 sites concerned, the Commission considers that significant effects of the project on the Natura 2000 sites, either alone or in combination of other projects linked to the “Irrigation modernisation process of Acequia Real del Júcar” cannot be ruled out.

Without prejudice to the Commission’s powers as Guardian of the Treaties, the Spanish authorities have the primary responsibility for the correct implementation of EU law. The Commission prioritises its enforcement efforts on cases pointing to a systemic breach of EU law[[14]](#footnote-14). Regarding systemic breaches, the Commission is following up the progress made by Spain under an infringement procedure opened against Spain for the failure to designate SCIs as Special Areas of Conservation (SAC) and the failure to set adequate site-specific conservation objectives and measures for its SACs, including the SCIs “L’Albufera”, “Riu Xúquer” and “Ullals del riu Verd”[[15]](#footnote-15). Conservation objectives are key elements for the conservation of Natura 2000 sites and for conducting appropriate assessments under Article 6(3) of the Habitats Directive.

Pursuant to the principle of effective judicial protection set out in the Treaty of the Union, Member States must grant the public access to rapid and effective redress mechanisms in the fields covered by EU law. In particular, the EIA Directive[[16]](#footnote-16) provides for specific review procedures before a court of law or another independent and impartial body to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of the Directive.

**Conclusion**

In view of the foregoing, the Commission considers that the means of redress available at national level constitute the most appropriate mechanism to deal with the issues raised by the Petitioners.

The Commission will continue to follow up the designation of SCIs as SACs and the set-up of conservation objectives and measures in Spanish SACs through the infringement procedure opened against Spain[[17]](#footnote-17).

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, p. 7–50. [↑](#footnote-ref-1)
2. Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification) Text with EEA relevance (OJ L 26, 28.1.2012, p. 1–21), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (OJ L 124, 25.4.2014, p. 1–18). [↑](#footnote-ref-2)
3. Site code ES0000023. [↑](#footnote-ref-3)
4. Site code ES5232007. [↑](#footnote-ref-4)
5. Site code ES5233047. [↑](#footnote-ref-5)
6. <https://www.chj.es/es-es/medioambiente/planificacionhidrologica/Documents/Plan-Hidrologico-cuenca-2021-2027/EPTI/PHJ2127_EPTI_CP_Memoria.pdf>. [↑](#footnote-ref-6)
7. Without prejudice of Article 6(4) of the Habitats Directive. [↑](#footnote-ref-7)
8. 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. [↑](#footnote-ref-8)
9. <https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/EN_art_6_guide_jun_2019.pdf>. [↑](#footnote-ref-9)
10. <https://ec.europa.eu/environment/nature/natura2000/management/pdf/methodological-guidance_2021-10/EN.pdf>. [↑](#footnote-ref-10)
11. See the Commission’s guidance document on the strict protection of animal species of Community interest under the Habitats Directive, <https://op.europa.eu/en/publication-detail/-/publication/a17dbc76-2b51-11ec-bd8e-01aa75ed71a1>. [↑](#footnote-ref-11)
12. Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p. 1–73, as amended by Commission Directive 2014/101/EU of 30 October 2014, OJ L 311, 31.10.2014, p. 32–35. [↑](#footnote-ref-12)
13. <https://www.boe.es/diario_boe/txt.php?id=BOE-A-2007-10650>. [↑](#footnote-ref-13)
14. Communication of 19 January 2017 (EU law: Better results through better application - C/2016/8600, OJ C 18, 19.1.2017, p. 10–20) and in the Communication of 13 October 2022 COM(2022) 518 final - Enforcing EU law for a Europe that delivers. [↑](#footnote-ref-14)
15. 15 Reference 2015/2003. Latest developments available at: <https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1212>. [↑](#footnote-ref-15)
16. Directive 2011/92/EU. [↑](#footnote-ref-16)
17. Latest developments: <https://ec.europa.eu/commission/presscorner/detail/en/inf_22_3768>. [↑](#footnote-ref-17)