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

<Date>{18/01/2023}18.1.2023</Date>

<TitreType>NOTICE TO MEMBERS</TitreType>

Subject: <TITRE>Petition No 0029/2022 by Giuseppe Amendolea (Italian), on behalf of the Monti Sabatini ecological association, opposing the reclassification of Magliano Romano special landfill in Italy</TITRE>

1. Summary of petition

The petitioner expresses doubts regarding the requested reclassification of the Magliano Romano landfill site, reiterating the principle of the primacy of European legislation over national legislation, in line with the principles of environmental protection, prevention of damage and sustainability and suggesting that there may be grounds for infringement proceedings. The Magliano Romano landfill, located at Monte della Grandine, was granted a municipal permit in April 2007for the disposal of inert waste. Over the years, the company managing it has submitted applications for reclassification of the site as a landfill for non-hazardous refuse resulting from the treatment of mixed municipal waste. However, the Regional Administrative Court has always upheld the motions to stay submitted by civic committees. The petitioner is concerned that the Lazio authorities now appear ready to give the green light to a landfill site in Rome, situated in the Valle del Tevere near a regional conservation area (Parco di Veio) and close to a school. It is also just upstream of the ‘Fosso Cerreto’, Natura 2000 catchment area (SCI/SPA - IT6010032). The petitioner also contests the environmental impact assessment procedure, which would pose problems regarding mandatory transparency and publicity requirements to be met by the regional bodies responsible, possibly infringing the relevant directives and the EU regulatory framework provisions. He is seeking an investigation into whether the Lazio regional authorities, on approving the regional waste management plan, introduced a paragraph running counter to European and national legislation and allowing a landfill for special non-hazardous waste to be incorporated in any existing landfill site. He also calls for action to be taken in response to the failure of the Lazio and Rome authorities to step up separation at source (still only 43% in the capital) and at recycling plants.

2. Admissibility

Declared admissible on 19 April 2022. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 18 January 2023

The petition

The petition relates to a project for the conversion of a landfill for inert waste into a landfill for non-hazardous waste in Magliano Romano (Lazio). The petitioner contests the choice of location, considering that it is too close to a residential zone, a school, and several nature-protected areas. The petitioner also claims that the project’s authorisation procedure breaches several EU laws, in particular the Council Decision 2003/33/EC[[1]](#footnote-1) of 19 December 2002 on the acceptance of waste at landfills, the Environmental Impact Assessment (EIA) Directive 2011/92/EU[[2]](#footnote-2), the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[[3]](#footnote-3), the Habitats Directive 92/43/EEC[[4]](#footnote-4) and the Birds Directive 2009/147/EC[[5]](#footnote-5).

The Commission's observations

1) Firstly, the petitioner claims that there is an obligation to respect certain minimum distance rules when choosing a site for a landfill. According to the petitioner, these rules are circumvented by the application of derogatory rules in the Lazio Regional Waste Management Plan (WMP), which are alleged to be contrary to EU Law.

In this regard, it is recalled that the choice regarding the location of waste treatment plants, including landfills, is the sole responsibility of the national authorities as long as EU law is respected. Directive 1999/31/EC on landfills[[6]](#footnote-6) provides that a landfill can only be authorised if the distance between the boundaries of the site and residential areas or protected natural areas are taken into account[[7]](#footnote-7). In addition, the Directive specifies that the authorisation of a landfill is conditional on the site characteristics indicating that the landfill does not present a serious environmental risk[[8]](#footnote-8). However, the Directive does not set precise limits and leaves it to the national authorities to choose the most appropriate location for this type of facility, considering the alternatives available.

2) Secondly, the petitioner claims that the environmental compatibility opinion for the non-hazardous waste landfill breaches the Council Decision 2003/33/EC since it states that the landfill for inert waste was already authorised to receive non-hazardous waste. The petitioner also criticises the Lazio Region for defining the new landfill as a ‘substantial change’ of the existing landfill instead of defining it as a ‘new landfill’. By doing so, the Lazio Region would seek to avoid the WMP’s distance rules that apply to new landfills.

Article 3 of the Council Decision 2003/33/EC specifies that waste is only accepted at a landfill if it fulfils the acceptance criteria of the landfill class concerned. According to point 2.1.1. of its Annex, non-hazardous waste is not part of the waste accepted in an inert waste landfill. Furthermore, Annex B makes it clear that waste that is neither hazardous nor inert must go to a landfill for non-hazardous waste. Therefore, a landfill for inert waste is not allowed to receive non-hazardous waste. However, according to the petitioner, a new authorisation for non-hazardous waste should be issued for the future landfill, which would therefore be able to receive this type of waste. Consequently, at this stage, the Commission has no ground to establish a breach of the Council Decision 2003/33/EC.

In EU law, the distinction between a ‘substantive change’ and a ‘new installation’ is made by Directive 2010/75/EU[[9]](#footnote-9) on Industrial emissions (IED). Under this Directive, installations undertaking the industrial activities listed in Annex I are required to operate in accordance with a permit granted by Member States’ competent authorities. This permit should contain conditions set in accordance with the principles and provisions of the IED. Installations undergoing ‘substantial changes’ shall be subject to the same permit procedure as ‘new installations’. The following activities are included in the scope of the IED, as set in Annex I of the Directive, point 5.4: ‘*Landfills, as defined in Article 2(g) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (2), receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste*’. Landfills of inert waste are thus excluded from the scope of the IED. Should the new activity of the landfill at stake correspond to Activity 5.4 of the IED and meet the required threshold, an authorisation complying with the IED requirements will be necessary for the landfill to operate. The procedures to grant a new permit or to revise one in case of substantial change have to give the public concerned the opportunity to express its views.

In the present case, the petitioner does not contest that an IED permit procedure is ongoing. He argues that the project should be qualified as a ‘new installation’ or, at least, that the specific rules of the Lazio WMP that apply to ‘new installations’ should apply to ‘substantial change’. The determination of the national procedure applicable to the case at stake is therefore a matter of national law. The Commission notes that the matter has been referred to the regional administrative tribunal which, with two decisions of 5 October and 19 October 2022, considered that the project is a ‘substantial change’.

3) The petitioner claims that the environmental impact assessment procedure conducted under the EIA Directive is insufficient and contrary to the Habitats and Birds Directives as it does not consider the need for a special environmental assessment under the Habitats Directive.

Firstly, under the EIA Directive, certain projects which are listed in Annex I of the Directive must undergo an assessment of their environmental impacts prior to development consent. Waste disposal installations of non-hazardous waste are part of this list when their capacity exceeds 100 tonnes per day. Article 5 of the EIA Directive provides a list of minimum information to be included in the EIA report.

Secondly, Article 6(3) of the Habitats Directive provides that any project not directly connected with the management of a Natura 2000 site but likely to have a significant effect thereon shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives.

In accordance with the principle of effective judicial protection, Member States are primarily responsible for the application and correct implementation of EU law, and it is for the national courts to ensure the compatibility of national measures with EU law. Accordingly, the Commission notes that the matter has been referred to the regional administrative tribunal which, with two decisions of 5 October and 19 October 2022, annulled the decision on environmental impact assessment.

4) The petitioner considers that, by modifying the authorisation of the landfill for inert waste to introduce the authorisation to operate a physico-chemical leachate treatment plant without carrying out an EIA, the Lazio Region has breached the SEA Directive.

The SEA Directive concerns plans and programmes but not individual projects. The relevant Directive is therefore the EIA Directive. The project referred to by the petitioner could fall under Annex II, point 13(a): ‘*any change (…) of projects listed in (…) this Annex[[10]](#footnote-10), already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment’*. For such projects, there is no automatic obligation for an EIA. Member States shall determine whether they should be subject to an environmental assessment either on the basis of a case-by-case examination or on the basis of thresholds or criteria set by the Member State. The discretion of Member States in determining whether a project should be subject to an assessment is limited by the selection criteria set out in Annex III of the EIA Directive. Amongst the selection criteria to be used by the competent authorities to determine if an Annex II project should be subject to an EIA are the characteristics of the project (such as the size and design of the whole project and cumulation with other existing and/or approved projects), the location of the project (such as proximity to densely populated areas, areas classified or protected under national legislation, Natura 2000 areas designated by Member States pursuant to the Habitats and Birds Directives) and the type/characteristics of the potential impact. If the Member State finds that the project will have significant effects on the environment, an EIA must be carried out. For projects for which it is determined that an assessment is not required, the authorities have to make the determination available to the public and should state the main reasons for not requiring such assessment with due reference to the Annex III criteria. The EIA Directive also includes specific provisions on access to justice, allowing citizens and non-governmental organisations to challenge decisions breaching the Directive before national courts.

The information available to the Commission is not sufficient to determine whether there is a breach of the EIA Directive. In any event, an EIA was conducted for the landfill conversion project. The exclusion of the assessment procedure for the authorisation to operate a physico-chemical leachate treatment plant could be challenged before the national judge, which is the first judge for the application of EU law.

5) Finally, the petitioner argues that by inserting new provisions into the WMP at the time of its adoption when they should have been submitted to public consultation, the Lazio Region has violated the SEA Directive.

The SEA Directive provides that a draft plan (or programme) must be subject to the public consultation procedure before its adoption. Article 6 of the SEA Directive provides that the public ‘*shall be given an early and effective opportunity (…) to express their opinion on the draft plan (…) and the accompanying environmental report before the adoption of the plan’*. Moreover, at the decision-making stage, the public opinion shall be ‘*taken into account during the preparation of the plan ‘…) and before its adoption (…)’*. A consequent modification of a plan that is likely to have significant effects on the environment may justify a new SEA procedure. However, minor modifications to plans are subject to a determination by the competent authorities as to whether they should be subject to a SEA.

In this case, it is for the competent national authorities to decide if a new SEA procedure would be required for the modifications of the Lazio’s WMP. Based on the information provided in the petition, it is not possible to say whether for these modifications an assessment should have been carried out. The Commission invites the petitioner to refer to the national court, which is the competent court to answer this question.

Conclusion

On the basis of the information available to the Commission, no clear breach of EU law could be identified. However, the Commission recalls that Member States have the primary responsibility for applying and implementing EU law correctly, and that national redress mechanisms are in place to ensure the compatibility of national measures with EU law.

The situation of the Magliano Romano landfill is being assessed by the Commission in the framework of the EUPilot (2019)9541 that concerns more generally the management of waste in the Lazio Region in the light of the Regional WMP. The Commission will provide follow-up on this issue in the context of the present petition.

1. Council Decision 2003/33/EC of 19 December 2002 establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC (OJ L 11, 16.1.2003, p. 27–49). [↑](#footnote-ref-1)
2. Directives 2011/92/EU, as modified by Directive 2014/52/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 26 of 28.1.2012, p.1). [↑](#footnote-ref-2)
3. Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ L 197 of 21.7.2001, p.30). [↑](#footnote-ref-3)
4. Directive 92/43/EEC of the Council of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206 of 22.7.2001, p. 7). [↑](#footnote-ref-4)
5. Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ L 020 26.1.2010, p. 7 OJ L 020 26.1.2010, p. 7). [↑](#footnote-ref-5)
6. Directive 1999/31/EC of 26 April 1999 of the Council on the landfill of waste, as amended, lastly, by Directive (EU) 2018/850. [↑](#footnote-ref-6)
7. Landfill Directive, Annex I, point 1.1. Under Article 8 of the landfill directive, the competent authority shall not issue a landfill permit unless it is satisfied that the landfill project complies with all the requirements of the directive including its annexes. [↑](#footnote-ref-7)
8. Landfill Directive, Annex I, point 1.2. [↑](#footnote-ref-8)
9. Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast) (Text with EEA relevance), OJ L 334, 17.12.2010, p. 17–119. [↑](#footnote-ref-9)
10. Such as Annex II (11) b) *Waste disposal installations* (non-Annex I projects). [↑](#footnote-ref-10)