



18.12.2023

NOTICE TO MEMBERS

Subject: Petition No 0341/2022 by A.L. (Spanish) on the water bottling plant in La Gomera, Canary Islands

1. Summary of petition

The petitioner complains about the EU-funded construction of a water bottling plant in La Gomera, one of the Canary Islands. She says that no environmental impact study has been carried out, and that it would affect the protected Taguluche palm groves and Lomo de Carretón. It would also affect the Tederas, Mena and Choquete springs, depriving farmers of irrigation water.

2. Admissibility

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

3. Commission reply, received on 18 December 2023

Under Article 6(3) of the Habitats Directive¹, any plan or project not directly connected with or necessary to the management of a Natura 2000 site but likely to have a significant effect thereon shall be subject to an appropriate assessment of its implications for the site in view of its conservation objectives. This provision applies regardless of whether the project is located within or outside Natura 2000 sites, provided that it is likely to have significant effects thereon. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of Article 6(4), 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 and, if appropriate, after having obtained the opinion of the general public.

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.

From the information provided by the petitioner, it is not possible to determine whether the mineral water bottling plant under construction on La Gomera Island is likely to have a significant effect on any Natura 2000 site and, therefore, whether Articles 6(3) and 6(4) of the Habitats Directive apply in this situation.

Without prejudice to the Commission's powers as guardian of the Treaties, the primary responsibility for the correct implementation of the Habitats Directive lies with the authorities of the Member States. In order to assist the Member States in fulfilling their responsibility to implement the above provisions, the Commission has issued guidance documents on provisions of Article 6 of the Habitats Directive^{2,3}.

On the other hand, while the construction of water bottling plants is not explicitly referred to in Annex I or II to the EIA (Environmental Impact Assessment) Directive⁴, they might be considered as infrastructure projects falling under point 10 of Annex II, depending on the factual circumstances. For such projects, Member States have to determine, either through a case-by-case examination or according to previously set thresholds or criteria, whether an assessment is necessary because of the project's likely significant effects on the environment, taking into account the relevant selection criteria set out in Annex III of the Directive.

Where the Member State decides that the project is likely to have significant effects on the environment, an EIA has to 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.

Based on the information submitted by the petitioner, it is not possible to conclude that the EIA Directive has not been correctly applied in this case either. Nonetheless, the Commission underlines that the EIA Directive 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 has been unable to identify any indication of a possible infringement of the EU environmental legislation in this case.

Moreover, in line with the strategic approach to its enforcement actions⁵, the Commission suggests that the petitioner uses the redress mechanisms provided for under Spanish law before the relevant national bodies, should she still consider that the Spanish authorities have incorrectly applied any provision of EU law. In fact, as the issues raised in this petition do not refer to any systematic failure to comply with EU law in the Member State, this would be the

²https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/EN_art_6_guide_jun_2019.pdf

³ https://ec.europa.eu/environment/nature/natura2000/management/pdf/methodological-guidance_2021-10/EN.pdf

⁴ 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 Text with EEA relevance - OJ L 26, 28.1.2012, p. 1–21, as amended by Directive 2014/52/EU of 16 April 2014 - OJ L 124, 25.4.2014, p. 1–18.

⁵ As set out in the Communication of the European Commission of 19 January 2017 (EU law: Better results through better application - C/2016/8600, OJ C 18, 19.1.2017, p. 10–20).

most appropriate means to assert her claims in a satisfactory manner.
Consequently, the Commission cannot give any further follow-up to this petition.