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

<Date>{31/10/2022}31.10.2022</Date>

<TitreType>NOTICE TO MEMBERS</TitreType>

Subject: <TITRE>Petition No 0168/2022 by Josep Maria Majó Codina (Spanish), on behalf of the San Isidro Catalan Agricultural Institute, on the Llobregat Delta in Catalonia</TITRE>

1. Summary of petition

The petitioner draws attention to nature conservation infringements in the Llobregat Delta and requests information on infringement procedure INFR (2020) 4133. He requests full and official access to the text sent by the Commission to Spain, and to all documentation forming part of the file, as he states that he represents people affected by the possible extension of the protected area. He calls for transparency in the procedure and asks for the relevant dossier documents. He says that the part of the Llobregat Delta that is currently protected is not being managed properly by the competent public body and that the planned extension of its surface area would, rather than rectifying the infringement, actually compound the damage caused by the management failures.

2. Admissibility

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

3. Commission reply, received on 31 October 2022

The Petition

The petitioner is concerned about the alleged lack of transparency by the European Commission and the Spanish authorities as regards the handling of infringement procedure INFR(2020)4133, concerning the inadequate protection of the Natura 2000 site ‘Delta del Llobregat’. The petitioner adds that the competent authorities are not managing the concerned site, and considers that the planned enlargement of the site with a view to solving the infringement procedure would actually worsen the situation.

The Commission’s observations

*a) The refusal of the disclosure of documents pertaining to the file of the infringement procedure*

The organisation represented by the petitioner has submitted several requests for access to the documents pertaining to the file of the ongoing infringement procedure against Spain registered under the reference INFR(2020)4133. The Commission has dealt with such requests in accordance with the rules laid down in Regulation (EC) No 1049/2001[[1]](#footnote-1).

After careful examination of those requests, the Commission refused the access to the requested documents by written reply, stating the reasons for the refusal, and informed the applicant of their right to make a confirmatory application in accordance with the Regulation.

The refusals were justified by the application of the exception to the right to access to documents laid down in the third indent of Article 4(2) of Regulation (EC) No 1049/2001, which provides that: *‘the institutions shall refuse access to a document where disclosure would undermine the protection of: […] - the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure’*.

As stated above, the requested documents form part of the administrative file of an ongoing infringement procedure, where a strict requirement of confidentiality applies[[2]](#footnote-2). Public disclosure of the concerned documents would not only negatively influence the dialogue between the Commission and the Spanish authorities, for which a climate of trust is essential, and hinder the Commission in defining the line to take for this file free from outside interference; but would also alter the strictly bilateral nature of the infringement procedure.

Furthermore, it should be mentioned that Regulation (EC) No 1049/2001 must be applied in conjunction with the provisions of Regulation (EC) No 1367/2006[[3]](#footnote-3). Therefore, even in the event that the petitioner had provided evidence that there existed an overriding public interest in the disclosure of information requested related to emissions into the environment, the overriding public interest in protecting investigations would be deemed superior, in accordance with Article 6(1) of Regulation (EC) No 1367/2006.

*b) The alleged breach of the provisions on public participation and access to environmental information*

The petitioner considers that the alleged lack of transparency by Spain and the Commission as regards the handling of the infringement procedure and the possible extension of the protected site ‘Delta del Llobregat’ might contravene the provisions on public participation in environmental matters of the Aarhus Convention and of Directives 2003/4/EC[[4]](#footnote-4) and 2003/35/EC[[5]](#footnote-5).

Firstly, the Commission underlines that the principle of openness governs the decision-making processes by the institutions of the EU, as enshrined in the second subparagraph of Article 1 of the Treaty on European Union. In this light, the Commission ensures that the public is informed about the progress of specific infringement cases through the regular publication of press releases[[6]](#footnote-6). In the case at hand, the public was informed about the letter of formal notice in infringement case INFR(2020)4133 by press release (ref. INF/21/441) dated 18 February 2021[[7]](#footnote-7). Details of infringement procedures can also be consulted on the dedicated webpage of the Commission[[8]](#footnote-8).

Secondly, the Aarhus Convention and Regulation (EC) No 1367/2006 establish the right to receive environmental information that is held by public authorities and the right to participate in environmental decision-making. The provisions of EU law have been aligned with the Convention through both Directives 2003/4/EC and 2003/35/EC, which also grant access of the public to review procedures before administrative or judicial bodies to challenge public decisions that have been made without respecting the two aforementioned rights, in accordance with the provisions of the legal system of the Member States.

*c) The lack of management of the site Delta del Llobregat*

The Natura 2000 site ‘Delta del Llobregat’ has been designated as Special Area of Conservation (SAC) under the Habitats Directive[[9]](#footnote-9) and has been classified as Special Protection Area (SPA) under the Birds Directive[[10]](#footnote-10). Member States must establish conservation objectives and measures for Natura 2000 sites to ensure their effective protection.

As regards the SAC, under Article 4 and 6 of the Habitats Directive, Member States shall establish the necessary conservation measures and objectives involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, including appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites. In addition, Member States shall take appropriate steps to avoid, in the SACs, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive. The Commission notes that the regional authorities of Catalonia adopted a management instrument[[11]](#footnote-11) for the SACs in their territory, including ‘Delta del Llobregat’.

In order to ensure compliance with the Habitats Directive, the Commission opened an infringement procedure against Spain[[12]](#footnote-12) for its systematic failure to designate Sites of Community Interest as SACs and to establish the necessary conservation objectives and measures. This infringement procedure includes the region of Catalonia.

As regards the SPA, under Article 4 of the Birds Directive, species listed in its Annex I and regularly occurring migratory species not listed in Annex I shall be subject to special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution. In particular, Member States shall take appropriate steps to avoid pollution, deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of Article 4. The Commission is not aware of a specific management plan for the SPA ‘Delta del Llobregat’. Under the infringement procedure INFR(2020)4133, the Commission is calling on Spain to take further measures to protect and manage its Natura 2000 network, and in particular, to take the necessary steps to avoid any further deterioration of the Natura 2000 site ‘Delta del Llobregat', such us the adoption and implementation of a Special Plan for the protection of the natural areas and landscape of Llobregat Delta and an extension of the SPA to protect the most suitable territories for the conservation of birds.

Without prejudice to the Commission’s powers as guardian of the Treaties, the primary responsibility for the correct implementation of the above-mentioned provisions lies with the authorities of the Member States.

Conclusion

The Commission will adopt the necessary measures in the framework of both infringement procedures in order to ensure that Spain fully complies with its obligations under EU law. The Commission will keep the public duly informed of any significant decision taken in the context of those procedures. In the meantime, the petitioner may also resort to the review mechanisms provided by Spanish law, if the petitioner considers that their rights to access to environmental information and to public participation in environmental decision-making have not been respected by the Spanish authorities. In particular, only national courts can annul domestic measures adopted in breach of those rights or grant damages possibly caused by those measures.

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43–48. [↑](#footnote-ref-1)
2. As the Court of Justice of the EU has held, ‘[…] the Member States are entitled to expect the Commission to guarantee confidentiality during investigations which might lead to an infringement procedure’ (Judgment of the General Court of 11 December 2001, *Petrie and Others* v *European Commission*, T-191/99, EU:T:2001:284, paragraph 68). [↑](#footnote-ref-2)
3. Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264, 25.9.2006, p. 13–19. [↑](#footnote-ref-3)
4. Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 41, 14.2.2003, p. 26–32. [↑](#footnote-ref-4)
5. Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission, OJ L 156, 25.6.2003, p. 17–25. [↑](#footnote-ref-5)
6. As underlined by the General Court in its Judgment of 23 January 2017, *Association Justice & Environment* v *European Commission*, T-727/15, EU:T:2017:18, paragraph 60. [↑](#footnote-ref-6)
7. <https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441> [↑](#footnote-ref-7)
8. <https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=sk>. [↑](#footnote-ref-8)
9. 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-9)
10. Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (Codified version),OJ L 20, 26.1.2010, p. 7–25. [↑](#footnote-ref-10)
11. <https://mediambient.gencat.cat/web/.content/home/ambits_dactuacio/patrimoni_natural/senp_catalunya/espais_sistema/n707_docs_comuns/Annex-6_-Instrument-de-gestio-AcordGOV150_2014.pdf> [↑](#footnote-ref-11)
12. Procedure 2015/2003. Latest developments at:

<https://ec.europa.eu/commission/presscorner/detail/en/INF_20_1212> [↑](#footnote-ref-12)