



13.9.2024

NOTICE TO MEMBERS

Subject: Petition No 0145/2024 by Lidia Fersuoch (Italian), on behalf of Italia Nostra Aps, on protecting compliance by the Italian authorities with environmental EU Directives in the Venice area, Italy

1. Summary of petition

The petitioner raises concerns about the planned interventions in the Venice Lagoon, namely in the Special Protection Area (SPA – IT3250046) and Special Conservation Areas (ZSC – IT3250030 and IT3250031), established as part of Natura 2000 under the Habitats Directive 92/43/EEC and Directive 2009/147/EC on Birds. The petitioner focuses in particular on two projects. First, she points out that in 2023 the Harbour Authority of the Northern Adriatic Sea announced a new maintenance project along the Canal of Petroli of the Lagoon of Venice (called ‘Works of maintenance and restoration for protection and conservation in the areas of board of the Malamocco Marghera Canal curved section San Lorenzo and Fusina – Interventions of protection from marine erosion of the boxes of filled A, B, D-E, Laguna Viva side (Venice)’). According to the petitioner, this project corresponds to a previous project and modifies the project’s purpose from port to environmental work. According to the petitioner, the intention is to avoid the conduct of the Environmental Impact Assessment (EIA) required by the Ministry of the Environment Decree 68/2021. According to the petitioner, this will increase the risk of significant environmental damage and limit the consideration of sustainable alternatives. In addition, the petitioner considers that the new project is not in line with the lagoon planning tools and the Water Management Plan for the Venice Lagoon. Secondly, Ministerial Decree no. 171/2019 financed the project of the ‘New Montiron terminal’ that requires the excavation of a navigation channel in the Lagoon North of Venice for medium-large boats as well as the construction of a terminal for intermodal interchange in the mainland. The petitioner complains that the wave movement resulting from the increased traffic of motor boats will erode the Natura 2000 habitats within SPA IT 3250046. Furthermore, the petitioner notes that under Article 6 of Directive 92/43/EC and Article 5(10) of Presidential Decree 357/97 construction works in areas having a priority habitat, as in the present case (priority habitat

1510 ‘Seppe salate Mediterranean (Limonietaia)’), require a prior opinion of the European Commission. The petitioner urges the European institutions to oversee the implementation of the measures proposed to close the infringement procedure related to the MOSE Project and ensure compliance with the European directives on water, habitats and birds in Italy.

2. Admissibility

Declared admissible on 22 March 2024. Information requested from Commission under Rule 227(5) (New Rule 233(5)).

3. Commission reply, received on 13 September 2024

The Commission’s observations

This petition addresses several projects located in the Venice lagoon.

Firstly, this petition refers to the infringement procedure INFR (2003)4762, which concerned the MOSE project (construction of mobile dams in the Venice lagoon). The petitioner asks the Commission to verify the implementation of the measures provided by the Italian authorities that led to the closure of the infringement in 2009.

After the above-mentioned infringement was closed in 2009, the Commission opened an EU Pilot investigation¹ to monitor the implementation of the measures proposed by the Italian authorities. This investigation lasted 3 years and was closed in November 2012 when the Commission concluded that the ongoing implementation of the measures was satisfactory. In particular, the Commission noted the following:

- (i) The Italian authorities had provided a clear and complete description of all the compensation measures implemented and to be implemented.
- (i) The recommendations of ISPRA² to improve and target monitoring activities were incorporated by the Italian authorities into the dedicated monitoring system.
- (ii) Transparency of information on monitoring activities and compensation measures was ensured through improvements to the ISPRA’s website and the project’s dedicated website.

Since then, the Commission has not received information suggesting that these measures have not been implemented.

Secondly, the petitioner mentions a project to consolidate the edges of a canal (“Canale dei Petroli”) and create a storage area in the Venice lagoon for the sediments removed from the canal. According to the petitioner, the Ministry of the Environment considered in 2020 that an Environmental Impact Assessment (EIA) would be necessary for a first version of the project. However, the petitioner explains that a second version of the project, proposed in 2023 with a new name and a declared objective referring to environmental considerations³ but substantially identical to the first version, would be exempt from an EIA.

¹ EUP 477/09/ENVI.

² Istituto Superiore per la Protezione e la Ricerca Ambientale.

³ The stated purpose of the project has been modified from a port necessity "for the protection and conservation of the seabed of the Malamocco-Marghera Channel" in 2020 to an environmental necessity "for the protection and conservation of on-board areas" and "for the protection against marine erosion of areas reclaimed from the sea" in 2023. The planned works remain the same.

In principle, projects of this type⁴ may fall within the scope of the EIA Directive⁵. However, it is for the competent national authorities to establish, on the basis of the specific characteristics of the project, its location and potential impact, whether it falls under Annex I or Annex II of the Directive and whether it should be subject to an EIA. A simple reference to environmental considerations in the title of a project is not in itself a reason to conclude that this project is exempted from an EIA.

Thirdly, the petition mentions a project to connect the island of Burano to the continent. This project involves the excavation of a navigation channel in the Northern Lagoon of Venice and the construction of an intermodal interchange terminal on land.

This type of project⁶ may fall within the scope of the EIA Directive and, also in this case, it is for the competent national authorities to establish whether it needs to be subject to an EIA.

The petitioner mentions that this project may have serious impacts on several Natura 2000 sites. According to article 6(3) of the Habitats Directive⁷, 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, either individually or in combination with other plans or projects, shall be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives. In light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 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. Therefore, economic activities are not *per se* forbidden where carried out in, or having an effect on, Natura 2000 sites, as long as they are compatible with the conservation objectives laid down for these sites. The Commission has produced several guidance documents on this matter⁸.

According to article 6(4) of the Habitats Directive, in case of a negative assessment and in the absence of alternative solutions, a project can only be authorised for imperative reasons of overriding public interest and if the necessary compensatory measures are adopted. Where the site hosts a priority natural habitat type and/or priority species (as it may be the case here, according to the petitioner), the only considerations which may be raised to authorise the project

⁴ A priori, a project to “*consolidate the edges of a canal and create a storage area for the sediments removed from the canal*” could be subject to Annex II, points 2(c) (extraction of minerals by marine or fluvial dredging), 10(e) (construction of roads, harbours and port installations, including fishing harbours (projects not included in Annex I)), 10(f) (inland-waterway construction not included in Annex I, canalisation and flood-relief works), 10(k) (coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such work) or 13(a) (any change or extension of projects listed in Annex I or Annex II, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)).

⁵ Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (OJ L 26, 28.1.2012), as amended by Directive 2014/52/EU (OJ L 124, 25.4.2014).

⁶ A priori, a project of “*excavation of a navigation channel and construction of an intermodal interchange terminal on land*” could be subject to Annex I, point 8 (inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1 350 tonnes or trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1 350 tonnes”, Annex II, points 2(c) (extraction of minerals by marine or fluvial dredging), 10(c) (construction of railways and intermodal transshipment facilities, and of intermodal terminals (projects not included in Annex I)); or 10 (f) (inland-waterway construction not included in Annex I, canalisation and flood-relief works).

⁷ 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.

⁸ http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm.

are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.

In accordance with the principle of effective judicial protection, Member States are primarily responsible for the correct implementation of EU law, and it is for the national authorities, including national courts, to verify individual cases of potential breach of the relevant rules. In line with its strategic approach on enforcement action,⁹ the Commission focuses on cases of systemic non-compliance. The petitioner is therefore invited to refer the matter to the national competent authorities.

Finally, the Commission thanks the petitioner for the information on the current Water Management Plan related to the lack of any measure concerning the consolidation of the edges of the canal for the part concerning the Venice Lagoon. This information will be taken into consideration in the context of the EU Pilot (2020)9722¹⁰.

Conclusion

The petitioner is invited to refer the matter to the competent national authorities.

⁹ As set out in the 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.

¹⁰ EU Pilot (2020)9722 - Implementation of Water Framework Directive 2000/60/EC – shortcomings identified in the Commission’s assessment of the 2nd river basin management plans (RBMP).