



26.9.2024

NOTICE TO MEMBERS

Subject: Petition No 0453/2023 by Leonardo Rombai (Italian), on behalf of Italia Nostra ONLUS (Florence branch), on an alleged breach of EU law in connection with a project for seven wind turbines in Monte Giogo di Villore, Italy

1. Summary of petition

The petitioner considers that there are significant irregularities in the project for the construction of a new wind farm called Monte Giogo di Villore, consisting of seven wind turbines and the ancillary works necessary for connection to the national electricity grid, which will be carried out by constructing an approximately 20 km-long underground tunnel for cables with a voltage of 30 KV. He believes the project to be in breach of the Habitats Directive and that the procedure for granting the Environmental Impact Assessment and authorisation did not correctly apply the following pieces of legislation: Legislative Decree No 152 of 3 April 2006 (Environmental Act), Articles 24 and 27(a) on environmental impact assessment and the single regional authorisation procedure; Directive 2001/77/EC on the promotion of electricity produced from renewable energy in the internal electricity market, transposed by Legislative Decree 387-2003 and the related guidelines (Ministerial Decree 10-09-2010); Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; and the guidelines set out in the following documents were not followed: Communication from the Commission - Management of Natura 2000 sites - Commission Notice of 21 November 2018 on 'Managing Natura 2000 sites -The provisions of Article 6 of the 'Habitats' Directive 92/43/EEC' C(2018) 7621 and the Communication from the Commission - Assessment of plans and projects in relation to Natura 2000 sites - Methodological guidance on the interpretation of Article 6(3) and (4) of the Habitats Directive 92/43/EEC C(2021) 6913 of 28 September 2021. Finally, he maintains that the project was not assessed correctly under the procedure governed by Directive 2011/92/EU of the Parliament and of the Council of 13 December 2011 with particular reference to the alternatives to be proposed (letter e) point 5 Annex IV and letter d) point 5 Annex IV). The

petitioner therefore calls on the European institutions to intervene.

2. Admissibility

Declared admissible on 24 August 2023. Information requested from Commission under Rule 233(5), former Rule 227(5).

3. Commission reply, received on 13 September 2024

The petition

The petitioner is complaining about the new Monte Giogo di Villore wind farm (in Tuscany, Italy), claiming that it will have negative impacts on biodiversity because it will be located near protected areas (both national protected areas and Natura 2000 sites). The petitioner also complains about alleged irregularities in the authorisation procedural steps.

The Commission's observations

The Commission has no detailed information about the project referred to by the petitioner, namely in relation to its technical, environmental, and procedural aspects.

According to Article 6(3) of the Habitats Directive¹, any plan or project that is likely to have a significant impact on a Natura 2000 site, either individually or in combination with other plans or projects, must be subject to an assessment of its impacts in view of the site's conservation objectives. The Commission has published several guidance documents to help Member States' authorities implement the above-mentioned provisions², including in relation to wind energy projects³. Italy has transposed the above-mentioned provisions of the directive into its national legislation⁴ and, in 2019, adopted tailored national guidelines to facilitate and ensure their consistent implementation across its regions⁵. Region Tuscany has also adopted relevant provisions in accordance with the national guidelines⁶. In addition, Article 5 of the Birds Directive⁷ requires that Member States take the requisite measures to establish a general system of protection for all species of birds covered by the Directive.

Wind energy projects undergoing permit-granting processes, may fall under the scope of Council Regulation (EU) 2022/2577⁸ laying down a framework to accelerate the deployment of renewable energy, which is currently in force. The Regulation establishes that the planning,

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.

² <https://op.europa.eu/en/publication-detail/-/publication/11e4ee91-2a8a-11e9-8d04-01aa75ed71a1>

³ <https://op.europa.eu/en/publication-detail/-/publication/2b08de80-5ad4-11eb-b59f-01aa75ed71a1/language-en/format-PDF/source-255299596>

⁴ <https://www.mase.gov.it/pagina/la-valutazione-di-incidenza-vinca#:~:text=Si%20tratta%20del%20processo%20d,di%20significativit%C3%A0%20di%20tali%20incidenze>.

⁵ <https://www.gazzettaufficiale.it/eli/id/2019/12/28/19A07968/SG>

⁶ <https://www.regione.toscana.it/-/nulla-osta-e-valutazioni-di-incidenza-ambientale>

⁷ 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.

⁸ Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, ST/14787/2022/INIT, OJ L 335, 29.12.2022.

construction and operation of plants and installations for the production of energy from renewable sources, and their connection to the grid, the related grid itself and storage assets shall be presumed as being in the overriding public interest and serving public health and safety when balancing legal interests in the individual case, for the purposes of Article 6(4) and Article 16(1)(c) of Council Directive 92/43/EEC(Article 4(7) of Directive 2000/60/EC of the European Parliament and of the Council⁹ and Article 9(1)(a) of Directive 2009/147/EC of the European Parliament and of the Council. The Regulation does not amend the obligation to conduct an assessment under Article 6(3) of the Habitats Directive for any plan or project that is likely to have a significant impact on a Natura 2000 site, either individually or in combination with other plans or projects.

Conclusion

Without prejudice to the Commission's powers as guardian of the Treaties, Member States are primarily responsible to implement the relevant provisions in the individual cases and to ensure compliance with the EU nature legislation.

It is therefore primarily for the competent Italian authorities to assess the impacts of project in question in view of the site's conservation objectives and to ensure that the above-mentioned provisions are effectively implemented and enforced.

⁹ 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).