



13.9.2024

NOTICE TO MEMBERS

Subject: Petition No 0454/2024 by Beate Kainz (Austrian) on the environmental consequences of constructing a landfill in Austria

1. Summary of petition

According to the petitioner, the Federal Administrative Court of Austria (BVwG) confirmed the decision by the state of Lower Austria (NÖ) to establish a waste landfill in the Natura 2000 bird protection area under case number W102 2265402-1/45E on 4 April 2024. The landfill area is located in a designated gravel extraction zone. However, according to the petitioner, instead of filling an empty gravel pit, agricultural land is being used for the landfill. The petitioner questions whether the planned landfill is compliant with EU Habitats Directive (FFH Directive). The petitioner also highlights a potential contradiction if the slopes of the landfill hill are opened for public use, while the protected, highly sensitive birds are expected to nest on the higher plateau. The petitioner queries whether a landfill on agricultural land, without mineral extraction, can be approved under EU food security guidelines.

2. Admissibility

Declared admissible on 28 June 2024. Information requested from Commission under Rule 233(6).

3. Commission reply, received on 13 September 2024

The Habitats Directive provides in Article 6(3) that any project which may have a significant effect on a protected site is subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives. According to Article 7 of the Habitats Directive, this provision applies also to sites protected under the Birds Directive.

It follows from the publicly available version of the decision to which the petitioner referred¹, that the project, situated in the special bird protection area AT1213V00 Sandboden und Praterterrasse, was subject to an environmental impact assessment. In the framework of this assessment, the project's compatibility with the objectives of the special bird protection area was examined as well. Following a modification of the initial project, the administrative tribunal concluded that it could be excluded that the modified project had a significant effect on the conservation objectives of this site.

The services of the Commission do not have access to the case file and are not in a position to re-examine the findings of the competent Austrian jurisdiction. However, based on the petitioner's arguments and the (publicly available) quoted judicial decision, it does not appear that this decision is incompatible with the Habitats Directive (or the Birds Directive).

The petitioner did not specify to which EU food security guidelines she referred. The services of the Commission could not identify any such rule of EU law which could have been infringed by the approval of this project.

Conclusion

Having examined the information submitted by the petitioner, the services of the Commission could not identify any elements which would justify further investigations in this matter.

¹ BVwG: 4 April 2024 - W102 2265402-1/45E.