



15.10.2024

NOTICE TO MEMBERS

Subject: Petition No 1400/2023 by Christian Rosario Sortino (Italian) opposing the building of a regasification plant close to Savona, Italy

Petition No 0259/2024 by S.C. (Italian) on behalf of 'Il Sogno di Daisy' Association, on alleged violations in the authorisation procedure to move a regasification ship from Piombino to Vado Ligure, Italy

1. Summaries of the petitions

Petition No 1400/2023

The petitioner is concerned about the regasification plant to be installed in Vado Ligure. Since the facility would be less than 2 km from Savona, he fears that the currents could cause pollution in neighbouring protected areas and damage a densely populated seaside resort.

Petition No 0259/2024

The petitioner raises concerns over alleged breaches of EU regulations by the Italian law governing the environmental authorisation process for gasification projects. According to the petitioner, Article 5(3) and (4) of Law 91/2022, establishes a broad category of projects, which are exempted from the Environmental Impact Assessment (EIA), contrary to the case-by-case evaluation requested by Directive 2011/92/EU. Additionally, the petitioner complains about national legislation inadequately addressing the DNHS principle in gasification projects, failing to comply with Article 3 and Annex IV of Directive 2011/92/EU and Directive 2014/94/EU on public investments and environmental protection. The petitioner believes that the floating regasification plant in Vado Ligure violates the safety standards outlined in the Directive Seveso III. According to the petitioner, the technical regulations (specified in Annex C of Legislative Decree 105/2015 and UNI EN ISO 20257-1:2020 and 20257-2:2021) were not evaluated in the documentation provided by Snam (the infrastructure manager). Additionally, the identification of NaTech (Natural Hazard Triggering Technological Disasters) events and

adequate planning for natural incidents were missing. Concerning the project location, there was no assessment of the criteria for siting liquefied natural gas (LNG) infrastructure, which is required by Annex III of Legislative Decree 257/2016 and Articles 3 and 5 of Directive 2014/94/EU. Moreover, as pointed out by the petitioner, a comprehensive safety assessment considering the overall territorial context was not conducted and the new provisions of the National Directive of the Minister for Civil Protection and Maritime Policies of December 7, 2022 were not taken into account. According to the petitioner, all these deficiencies constitute violations of Directives Seveso III and 2011/92/EU. In addition, the petition asserts that Snam conducted only a screening rather than a full environmental impact assessment, as required by Article 3(6) of Directive 2014/94/EU, thereby violating the Habitat Directive. The petitioner also claims that the guidelines outlined in the recent communication from the European Commission (2021/C437/01) were not respected and that the presence of biodiversity-protected sites near the regasification plant was not taken into account. Moreover, the petitioner observes that Snam's acquisition of the regasification plant in Ravenna poses a risk of a potential project fragmentation, contrary to Directive 2011/92/EU and the CJEU case law (C-2/07). Finally, the petitioner argues that the local communities were not consulted during the implementation of the project, thus violating Article 3, (3) of Directive 2014/94/EU.

2. Admissibility

Petition No 1400/2023

Declared admissible on 27 March 2024. Information requested from Commission under Rule 227(5) (New Rule 233(5)).

Petition No 0259/2024

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

3. Commission reply, received on 15 October 2024

Petitions 1400/2023 and 0259/2024

This petition concerns the project to move a floating regasification unit from Piombino to Vado Ligure. The petitioner raises numerous points and the Commission's reply focuses on the allegations of breaches of EU law.

1. Firstly, the petitioner alleges that the Italian decree-law 50/2022 excludes the application of the provisions of the EIA (Environmental Impact Assessment) Directive¹ to regasification units. The petitioner considers that the decree-law 50/2022 contradicts the Commission's Communication 2019/C 386/05² which states that exemptions from the EIA procedure apply on a case-by-case basis and not to an entire project category. First of all, this allegation overlaps with petition 30/2023 and the Commission suggests treating both petitions jointly. The

¹ 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, (OJ L 026 28.1.2012, p. 1), as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, (OJ L 124, 25.4.2014, p. 1–18).

² Guidance document regarding application of exemptions under the Environmental Impact Assessment Directive (Directive 2011/92/EU of the European Parliament and of the Council, as amended by Directive 2014/52/EU) – Articles 1(3), 2(4) and 2(5) (2019/C 386/05).

Commission notes that regasification installations fall within the scope of the EIA Directive.³ To date, the Commission has received two notifications from Italy of EIA exemptions for regasification units, justified on a case-by-case basis. In any event, the project of moving the regasification ship from Piombino to Vado Ligure is currently subject to an EIA. Therefore, the exemption was not invoked in the context of the project in question.

2. Secondly, the petitioner explains that the port terminal will be equipped to carry out ship-to-ship bunkering operations. He considers that the current EIA has not taken these aspects into account, creating a risk that the operator will split the project to circumvent certain provisions of the EIA Directive. According to the information sent by the petitioner, the project to equip the port terminal to carry out ship-to-ship bunkering operation is still at the preliminary discussion stage. In any event, it is the task of the competent national authorities to determine whether the potential works at the port terminal would constitute a new project or a modification of the project currently subject to an EIA.

3. The petitioner then explains that the need to carry out a VINCA (Appropriate Assessment) was excluded for 8 Natura 2000 sites by the competent authorities at the screening phase. Moreover, the need to carry out a VINCA screening for the marine area of the Cetacean Sanctuary was excluded by the Italian authorities since this site has not yet been proposed to the Commission to become part of the Natura 2000 network. Under article 6(3) of the Habitats Directive⁴, Member States must ensure that any plan or project that is likely to have a significant effect on a Natura 2000 site shall be subject to an appropriate assessment of its implications for the site in view of the site's conservation objectives.⁵ Italy has transposed the above-mentioned provisions in its legislation⁶ and has adopted national guidelines⁷ to improve their implementation across its regions. It is the responsibility of the relevant national authorities to ensure that plans or projects that are likely to have significant effects on Natura 2000 sites are subject to an assessment. The Commission has no information on the non-application of these guidelines to the screening of the 8 sites mentioned by the petitioner.

4. With regard to the Cetacean Sanctuary the Commission notes that this site is not part of the Natura 2000 network and is therefore not subject to the provisions of the Habitats Directive. The petitioner alleges that national law on the authorisation of regasification units could limit the application of the Seveso III Directive⁸ to the provisions relating to fire. First of all, the Seveso III Directive does not require a permit or an authorisation prior to the operation of a Seveso establishment. The Seveso III Directive covers establishments where dangerous substances may be present⁹ in quantities exceeding a certain threshold. Depending on the amount of dangerous substances present, establishments are categorised in lower or upper tiers, the latter being subject to more stringent requirements. Certain industrial activities or hazards

³ They fall either under Annex I, point 21 (installations for storage above 200 000 tonnes) or Annex II, point 3(c) (surface storage of natural gas).

⁴ 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).

⁵ http://ec.europa.eu/environment/nature/natura2000/management/guidance_en.htm.

⁶ <https://www.mase.gov.it/pagina/la-valutazione-di-incidenza-vinca#:~:text=Si%20tratta%20del%20processo%20d,di%20significativit%C3%A0%20di%20tali%20incidenze>

⁷ <https://www.mase.gov.it/pagina/linee-guida-nazionali-la-valutazione-di-incidenza-vinca-direttiva-92-43-cee-habitat-articolo>

⁸ Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (OJ L 197, 24.7.2012, p. 1–37).

⁹ e.g. during processing or storage.

subject to other legislation providing a similar level of protection are excluded from the Directive.

For establishments handling large amounts of dangerous substances and covered by the Directive, operators are required to implement safety measures, considering the relevant risks. To demonstrate that all necessary action to prevent major accidents has been taken, the operators must provide information in the form of a safety report. That safety report must contain possible major-accident scenarios and risk analysis. The risk of a major accident can be increased by the probability of natural disasters (Natural Hazard Triggering Technological Disasters - NaTech), including, due to climate change, the increased risks of floods and droughts (flooding of the establishment due to high water events; lack of cooling water increasing the risks of failure of essential industrial processes). On the basis of the information provided by the petitioner, the project in question could meet the exclusion criteria set out in the Seveso III Directive, in particular Article 2.2(c) and (d) which specifies that the Directive does not apply to “*the transport of dangerous substances and directly related intermediate temporary storage¹⁰ by road, rail, internal waterways, sea or air, outside the establishments covered by this Directive, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards*” and shall also not apply to “*the transport of dangerous substances in pipelines, including pumping stations, outside establishments covered by this Directive*”. In any event, it is for the competent national authorities to analyse whether the project in question is covered by the Seveso III Directive.

5. The petitioner mentions the fact that national law excludes industrial ports from the application of the Seveso III Directive, excluding the need for these ports to have a port safety report and a port emergency plan. The Seveso III Directive does not clearly indicate whether it covers port areas. Even if Italian law does not provide for the systematic application of the Seveso III Directive provisions to industrial ports, this does not prevent the Italian authorities from designating port areas as Seveso establishments and applying the corresponding obligations, when the conditions for the application of the Directive are fulfilled.

6. With regards to aspects related to Directive 2014/94/EU¹¹ mentioned by the petitioner, it is important to note that this directive has been repealed as of 13 October 2023 by Regulation (EU) 2023/1804 on the deployment of alternative fuels infrastructure¹². The scope of Directive 2014/94/EU and Regulation (EU) 2023/1804 is on alternative fuels infrastructure dedicated to refuel or recharge road vehicles, trains, vessels and stationary aircraft. The scope therefore includes for example LNG refuelling points in ports to provide LNG to vessels as a propulsion fuel. Regasification ships or any other regasification installations do not fall under the scope of the legislation and therefore provisions within the legislation do not apply to regasification installations.

Conclusion

From the information provided, the Commission could not identify any breach of EU law. In any event, it is for the competent national authorities, including the national courts, to ensure

¹⁰ The exclusion of “*intermediate storage*” refers to the necessary intermediate storage in the transport chain outside establishments, not to the storage in warehouses or other places specifically designed and used for the storage of dangerous substances on a regular basis.

¹¹ Directive 2014/94/EU of the European Parliament and of the Council of 22 October 2014 on the deployment of alternative fuels infrastructure (OJ L 307, 28.10.2014, p. 1–20).

¹² Regulation (EU) 2023/1804 of the European Parliament and of the Council of 13 September 2023 on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU (OJ L 234, 22.9.2023, p. 1–47).

that this project complies with the relevant EU legislation. The petitioner is therefore invited to refer the matter to the national authorities. The Commission does not intend to give any follow up to this petition.