



10.10.2024

## NOTICE TO MEMBERS

**Subject: Petition No 0344/2024 by J. L. (Spanish), on behalf of ‘Acció Ecologista Agró’, on alleged breach of the Habitats Directive 92/43/EEC in the Valencian Autonomous Community, Spain**

### 1. Summary of petition

The petitioner states that numerous urban development projects are being carried out throughout the Valencian Community that are not taking into account the existence of European directives that must protect nature, such as Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora. An example of this is the Program of Integrated Action (PAI) of La Serreta, in La Nucia, which is being built on top of a species of flora included in the catalogue of the Natura 2000 network as vulnerable. In addition, the petitioner claims that the project is located very close to mountains included in the Natura 2000 Network, and aims to build a giant wave pool and increase the population by almost 10 000 people without taking into account the effect that this would have on the ecosystem of the region, already overcrowded by urban projects of this type. The petitioner considers that other examples are those in which urban development projects are intended to be carried out that would seriously affect or destroy areas declared as protected by the EU. The petitioner calls for a debate on the development of this type of project throughout the territory, knowing that this situation occurs in other EU countries and he is concerned about the implementation of the European legislation that should protect our nature.

### 2. Admissibility

Declared admissible on 14 June 2024. Information requested from Commission under Rule 233(5).

### 3. Commission reply, received on 10 October 2024

#### The Petition

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PE765.176v01-00

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The petitioner calls for a debate on the development of this type of project throughout the territory, knowing that this situation occurs in other EU countries and he is concerned about the implementation of the European legislation that should protect our nature.

#### The Commission's observations

The Commission does not have detailed information about the urban development project 'PAI de la Serreta', cited by the petitioner. The area known as La Serreta, in La Nucia, is not part of a designated Natura 2000 site, although there are two largely overlapping Natura 2000 sites in its proximity, namely the special area of conservation "Aitana, Serrella i Puigcampana"<sup>1</sup> protected under the Habitats Directive<sup>2</sup>, and the special protection area "Muntanyes de la Marina"<sup>3</sup>, designated under the Birds Directive<sup>4</sup>.

Under the Habitats Directive, Member States shall establish conservation objectives and the necessary measures in their special areas of conservation for the maintenance or restoration, at a favourable conservation status the protected natural habitats and species for the coherence of Natura 2000. For this purpose, Member States should also take into account important habitats outside the Natura 2000 network.

In addition, under Article 6(3) of the Habitats Directive, any plan or project located inside or outside Natura 2000 but likely to have a significant effect on the site, either alone or in combination with other plans or projects, must be subject to an appropriate assessment of its implications in view of the site's conservation objectives, and can be authorised only if it will not adversely affect the integrity of the site.

However, under Article 6(4) of the Directive, where in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected and inform the Commission of the

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<sup>1</sup> Site code: ES5213019

<sup>2</sup> 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

<sup>3</sup> Site code: ES0000453

<sup>4</sup> 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

compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only consideration which may be raised 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.

Moreover, in Natura 2000 sites, Member States must also take appropriate steps to avoid the deterioration of natural habitats, the habitats of the species as well as significant disturbance of the species for which the site is designated. Furthermore, the species protection regime under the Habitats and Birds Directive must be also respected, both inside and outside Natura 2000 sites.

The Environmental Impact Assessment (EIA) Directive<sup>5</sup> requires that, before consent is given, projects likely to have significant effects on the environment be subject to an assessment of their environmental effects. As regards urban development projects<sup>6</sup>, the authorities must determine whether an assessment is necessary through a case-by-case study or through previously set thresholds or criteria.

Where the obligation to carry out an assessment arises simultaneously from both the EIA and the Habitats Directive, Member States may provide for coordinated and/or joint procedures.

It is not possible to determine from the available information whether the above provisions have been complied with in the situation described by the Petitioner. In any event, the EIA Directive provides for specific review procedures at domestic level whose use constitutes the most effective way to address individual cases of possible non-compliance. The Commission has a strategic approach on enforcement action, focused on cases of systemic non-compliance<sup>7</sup>.

Finally, the new EU Nature Restoration Regulation<sup>8</sup> that entered into force on 18 August 2024 sets for Member States mandatory time-bound targets aimed at improving to good condition degraded areas of certain habitat types and habitats of species within and outside Natura 2000.

The Commission notes that the responsibility for applying these provisions correctly lies with the competent authorities of the Member States. In order to assist them in this task, the Commission has issued guidance documents<sup>9,10</sup>.

Without prejudice of the Commission's role as a guardian of the Treaty, and as stated in

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<sup>5</sup> 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 26, 28.1.2012, p. 1–21, as amended by Directive 2014/52/EU of 16 April 2014 - OJ L 124, 25.4.2014, p. 1–18.

<sup>6</sup> Referred to in Annex II, 10 b) of the EIA Directive.

<sup>7</sup> 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.

<sup>8</sup> Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869

<sup>9</sup> <https://op.europa.eu/en/publication-detail/-/publication/2c9f4a14-8f97-43ac-a274-4946c142b541>

<sup>10</sup> <https://op.europa.eu/en/publication-detail/-/publication/99a99e59-3789-11ec-8daf-01aa75ed71a1/language-en>

Communication C/2016/86006<sup>11</sup>, the redress mechanisms provided at national level are the most appropriate means to deal satisfactorily with individual cases of incorrect application of EU law.

### Conclusion

In view of the foregoing, the Commission does not intend to take further action on this specific matter. It is the responsibility of the national competent authorities to apply the above-mentioned provisions, and to ensure compliance with the relevant EU legislation. Concerns in relation to breaches of these obligations would best be addressed at the national level, with recourse to national courts if deemed necessary.

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<sup>11</sup> Communication from the Commission — EU law: Better results through better application C/2016/8600. OJ C 18, 19.1.2017, p. 10–20