



05.02.2024

NOTICE TO MEMBERS

Subject: Petition No 1018/2020 by Reiner Sauerwein (German), on behalf of Bürgerinitiative Lebensraum Vorpommern, on stopping the construction of the container terminal in the Natura 2000 protected area on Wollin/Świnoujście in Poland

1. Summary of petition

The petitioner brings the attention of the Parliament to the fact that the planned construction of a deep-water container terminal in the external port in Świnoujście will irreversibly damage a Natura 2000 area on the Wollin Island and in the area of Świnoujście impacting on the environment and tourism along the entire Pomeranian Bay. The petitioner explains that there are several nature reserves on the island of Usedom and Wollin. In his opinion, such a massing of industrial plants at the mouth of the Swine and the Pomeranian Bay will destroy the sensitive ecosystem of the Baltic Sea and the coastal landscape. He adds that this region is very important for nature-loving tourism. The petitioner claims that the project is based on new Polish special law on investments in the construction of external ports, adopted by Poland on August 9, 2019. He claims the project is in breach of the Birds (2009/147/EC) and Habitats (92/43/EEC) Directives as well as of the Directive 85/337/EEC on Environmental Impact Assessment. Further he underlines that Poland is already facing infringement proceedings (file number 2016/2046) for failure to implement the latter Directive.

2. Admissibility

Declared admissible on 17 December 2020. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 30 June 2021

The following directives may be applicable to the project: the Habitats Directive¹ and the Environmental Impact Assessment (EIA) Directive².

Articles 6(3)-(4) of the Habitats Directive provide that:

“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the 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 and, if appropriate, after having obtained the opinion of the general public.

If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless 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. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations 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”.

The project might also fall within the scope of point 8 (a) or (b) of Annex I of the EIA Directive. Projects listed in Annex I require a mandatory environmental impact assessment to be carried out before development consent is granted.

As regards the Espoo Convention on Environmental Impact Assessment in a Transboundary Context³, the requirements pertaining to the environmental impact assessment of transboundary projects are laid down in Article 7 of the EIA Directive. In accordance with Article 7(1) of the EIA Directive, if a Member State is aware that a project is likely to have significant effects on the environment in another Member State or if a Member State likely to be significantly affected so requests, the Member State in whose territory the project is intended to be carried out shall send to the affected Member State as soon as possible and no later than when informing its own public, *inter alia*, a description of the project, together with any available information on its possible transboundary impact and information on the nature of the decision which may be taken. Any comments received from the affected Member State shall be taken into account when a decision to grant development consent is taken.

The type of project described by the petitioner, due to its character and location, would require an assessment of its impacts on the relevant Natura 2000 sites. In Poland the appropriate assessment is integrated into the environmental impact assessment procedure. During this

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.

² 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, pp. 1–21.

³ <https://unece.org/environment-policy/environmental-assessment/introduction>.

procedure, all possible impacts on Natura 2000 have to be analysed and the authorities can approve the project only after having ascertained that it would not significantly affect the integrity of the Natura 2000 sites.

If it is concluded that the project will have a significant impact on the sites, it can only be approved pursuant to Article 6(4) of the Habitats Directive if: there are no alternatives; it is justified by ‘imperative reasons of the overriding public interest’; and appropriate compensatory measures are taken. In certain cases, an opinion of the Commission is required before approving the project⁴. The Polish authorities are responsible for ensuring the appropriate application of the procedure described above.

According to the information available to the Commission, on 21 December 2020 the Polish authorities initiated a procedure for the environmental permit of the project⁵. It is now incumbent on the authorities to carry out a comprehensive environmental impact assessment of the project, including analysis of its impact on the integrity of the Natura 2000 concerned, and consult the public likely to be concerned by the project.

As regards possible non-compliance of the project with the EIA Directive, the Commission has opened an infringement procedure (ref. 2016/2046) against Poland for failure to transpose the EIA Directive. In its reasoned opinion of 7 March 2019, which was delivered under Article 258 of the Treaty on the Functioning of the European Union (TFEU), the Commission concluded that in case of eight ‘special acts’ Poland has failed to fulfil its obligations under the EIA Directive. However, it should be noted that the special act on investments in the construction of external ports, which was adopted by Poland on 9 August 2019, is not explicitly covered by this infringement procedure. According to information available to the Commission, Poland is in the process of amending its legal framework to address these shortcomings.

As regards transboundary impacts of the project, based on the available information, the Commission understands that the preparation of the EIA report for this project (including assessment of its possible transboundary environmental impact) is still ongoing. Consequently, the assessment of the transboundary impacts of the project is also still to be carried out. Once finalised, the Polish authorities will have to decide if transboundary consultations with Germany should be launched.

Conclusion

At present the Commission does not have evidence that the project is not compliant with EU law. Since the permitting procedure is ongoing, the petitioner should contact the competent Polish authorities in view of communicating to them their concerns.

As regards the horizontal infringement cases regarding poor transposition of the EIA Directive, the Commission closely monitors the situation and, should the infringement persist,

⁴ The Commission guidelines on Article 6 of the Habitats Directive provide more detailed information on the application of these provisions:

https://ec.europa.eu/environment/nature/natura2000/management/docs/art6/DE_art_6_guide_jun_2019.pdf

⁵ Announcement of the Regional Director of Environmental Protection in Szczecin (ref. WONS-OŚ.420.29.2020.KK.3)

<https://www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwiarZ-XjabvAhULyqQKHQoiBWMQFjAAegQIARAD&url=http%3A%2F%2Fbip.um.swinoujscie.pl%2Fattachments%2Fdownload%2F70072&usg=AOvVaw0DTkm9iQhBpngWrRHM8aWZ>

the Commission may take further action.

4. Commission reply, received on 15 September 2023

On 27 April 2023 Polish authorities submitted to the European Commission a notification for an opinion pursuant to Article 6(4) of the Habitats Directive concerning construction of a container terminal in Świnoujście. The opinion of the European Commission is required because the Polish authorities consider that the project will have significant negative impact within the Natura 2000 site PLH320019 Wolin i Uznam, among others on the priority habitat type 2130 ‘grey dunes’ and is justified by imperative reasons of overriding public interest of socio-economic character.

Conclusion

The Commission assessed the request for the opinion and asked the Polish authorities for further clarifications. The authorities replied on 21 July 2023. Currently the Commission is analysing the reply of the authorities.

According to information available to the Commission pursuant to the obligations of the Espoo Convention⁶ the Polish authorities have also launched a process for the cross-border consultation of this project with the German authorities. The report on the environmental impact assessment of the project was submitted to Germany in December 2022. In July 2023 the investor provided also the replies to the additional questions of the authorities. In response to the request of Germany, the Polish authorities also agreed to hold intergovernmental consultations as provided by Article 5 of the Convention.

5. Commission reply (REV), received on 5 February 2024

Commission’s observations

On 8 September 2023 the Polish authorities submitted a revised notification requesting the Commission’s opinion pursuant to Article 6(4) of the Habitats Directive⁷ for a project concerning the construction of a new container terminal at the external port of Świnoujście. Further clarifications were also provided by the authorities on 2 October 2023. The Commission is currently analysing the documents provided by the Polish authorities.

The Commission is aware that on 10 October 2023, Polish authorities (Regional Director for Environmental Protection in Szczecin) issued an environmental decision for the project.

Conclusion

The Commission regrets that the Polish authorities decided to authorise the project without waiting for the Commission opinion. The Commission will nevertheless assess the notification together with the supporting documentation, including the appropriate assessment carried out pursuant to the Article 6(3) of the Habitats Directive, to ascertain if the project is justified by imperative reasons of overriding public interest and if other provisions of Article 6(4), i.e. on the lack of alternatives and the implementation of compensatory measures, have been complied

⁶ Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).

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.*

with. The opinion of the Commission will be publicly available.