

Dear Madam/Sir,

We have received a reply from the European Commission concerning your petition. Please find a copy below. As mentioned in the reply, the Commission needs more details and information. Please send the requested information as soon as possible and no later than 3 months. Failing this, we will be obliged to close your file.

Best regards,

Karen Lone CHIOTI

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Petition 1532/2008

The Commission's comments on the petition

The allegations made by the petitioner regarding the lack of respect for Bulgarian law do not come within the competence of the Commission.

Regarding the possible breach of EC environmental legislation, the petitioner does not give enough elements for the Commission to be able to assess the case. The Commission notes that EC legislation is applicable for Bulgaria since the date of its accession to the EU, i.e. 1st January 2007. However, the petitioner does not say when the project, subject of the petition, was initiated.

Due to the nature and location of the project, the Commission considers that the following Directives might be applicable to assess the case: Directive 2001/42/EC¹[1] (SEA Directive), Directive 85/337/EEC²[2] (EIA Directive) as amended, and Directives 79/409/EEC³[3] (Birds Directive) and 92/43/EEC⁴[4] (Habitats Directive).

SEA Directive

Pursuant to Article 3 of the SEA Directive, plans and programmes, which are prepared inter alia for transport, town and country planning or land use and which set the framework for future development consent for projects listed in Annexes I and II of the EIA Directive, as well as projects likely to have effects on sites which have been determined to require an assessment

1[1] Directive 2001/42/EC of the European Parliament and the Council on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7.2001.

2[2] Council Directive 85/337/EEC, OJ L 175, 05.0.1985, amended by Council Directive 97/11/EC, OJ L 73, 14.03.1997, amended by European Parliament and Council Directive 2003/35/EC, OJ L 156, 25.06.2003.

3[3] Council Directive of 2 April 1979 on the conservation of wild birds, Official Journal L 103, 25.4.1979.

4[4] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, Official Journal L 206, 22.07.1992.

pursuant to Article 6 or 7 of the Habitats Directive, are subject to an environmental assessment.

It should be noted that the plans and programmes covered by the SEA Directive are subject to an environmental assessment during their preparation and before their adoption. The SEA procedure includes the preparation of an environmental report, in which the likely significant effects on the environment and the reasonable alternatives are identified. Consultations with the public and with the authorities having specific environmental responsibilities are compulsory. Consequently, the environmental report and the results of the consultations should be taken into account in the decision-making procedure with regard to the respective plan or programme.

The petitioner does not provide information whether the project, which is the subject of his query, has been included in a plan or programme for which a SEA has been carried out.

EIA Directive

The project referred to by the petitioner is a bypass project. These kind of projects fall either under Annex I, point 7 (c), or under Annex II, point 10 (e) of the EIA Directive. However, the petitioner does not provide information whether the project was the subject of an EIA procedure, or whether a screening decision had been issued by the competent Bulgarian authorities. In this light, the Commission acknowledges that there are two possibilities depending on the classification of the project itself (Annex I or Annex II of the EIA Directive).

With regard to Annex I projects listed in the EIA Directive, the EIA procedure must be carried out before development consent for the project is granted. It is important to note that when an EIA is carried out, the developer of the project is required to provide the competent authorities with information about the project and its impact on the environment as laid down in Article 5(3) and Annex IV of the EIA Directive. This information, amongst others, should include an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects.

Pursuant to Article 6(2) and (3) of the EIA Directive, the public has access to the decision-making process related to projects subject of an EIA. Furthermore, when a decision to grant or refuse development consent has been taken, the competent authorities shall inform the public in accordance with the appropriate procedures. The competent authorities need to provide the public with information about the main reasons and considerations on which the decision is based, including information about the public participation.

As for the projects listed in Annex II, the necessity for an EIA is determined either through a case-by-case examination, or by thresholds or criteria set by the Member State. However, it should be mentioned that the EIA Directive does not envisage public consultation at the screening stage.

Birds Directive and Habitats Directive

According to Article 6(3) of the Habitats Directive, all plans, programmes and projects likely to have a significant effect on Sites of Community Importance (designated under the Habitats Directive) must be subject to an adequate assessment of that effect taking into account the conservation objectives of the site. This provision applies also to Special Protection Areas, as regulated by the Birds Directive.

Conclusion

Taking into account the information provided by the petitioner, the Commission is not in a position to assess whether the project subject of this petition is in conformity with the EC environmental acquis. Should the petitioner be able to provide any further information, the Commission services are ready to assess the case.

Nonetheless, it should be pointed out that EC legislation is only applicable to Bulgaria since the date of its accession to the EU, 1st January 2007, and that the Commission cannot open infringement cases for procedures which commenced before this date.
