

EUROPEAN PARLIAMENT

2009 - 2014

Committee on Petitions

22.1.2010

NOTICE TO MEMBERS

Subject: Petition 0013/2008 by Mr. John McElligott (Irish), on behalf of Kilcolgan Residents Association, on alleged breaches of the EC Directive on Strategic Environmental Assessment in connection with the approval and planning of a Liquefied Natural Gas (LNG) terminal in the proximity of Shannon Estuary (Ireland)

1. Summary of petition

The petitioner criticizes the fast-track planning procedure applied by the Irish Government in connection with the construction of a Liquefied Natural Gas (LNG) terminal in the proximity of Shannon Estuary (Ireland). He considers that the EC Directive on Strategic Environmental Assessment and the Seveso II Directive have been breached. The petitioner explains that the fast-track planning procedure has been enacted on the basis of the Planning and Development Act 2006 and it allows the approval of certain projects without any public consultation. The petitioner maintains that the project has been sliced in order to circumvent the requirements concerning the conduct of a strategic environmental assessment and asks the European Parliament to have the matter investigated.

2. Admissibility

Declared admissible on 19 June 2008. Information requested from Commission under Rule 192(4).

3. Commission reply, received on 21 October 2008.

I. The petition

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PE415.090REV

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United in diversity

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The petitioner criticizes the fast-track planning procedure applied by the Irish Government in connection with the construction of a Liquefied Natural Gas (LNG) terminal in the proximity of the Shannon Estuary (Ireland). He considers that the EC Directives on Strategic Environmental Assessment, on the Environmental Impact Assessment and the Seveso II Directive have been breached. The petitioner explains that the fast-track planning procedure has been enacted on the basis of the Planning and Development Act 2006 and it allows the approval of certain projects without any public consultation. The petitioner maintains that the project has been sliced up in order to circumvent the requirements concerning the conduct of a strategic environmental assessment and asks the European Parliament to have the matter investigated.

II. The Commission's comments on the petition

Project slicing

The petitioner presents arguments according to which the project has been sliced up (LNG storage, pipeline, road and electricity supply). Project slicing implies the breaking up of one project into different parts. In this case, it is the Commission's opinion that the impact assessment covers one project (the Liquefied Natural Gas). Cumulative (indirect) impacts with other projects will, of course, have to be identified in the course of the remaining impact assessments.

EIA

Council Directive 85/337/EEC¹ on the assessment of the effects of certain public and private projects on the environment (known as the Environmental Impact Assessment or "EIA Directive") as amended by Directives 97/11/EC² and 2003/35/EC³ covers the construction of thermal power stations with a heat output of 300 megawatts or more. For these projects, listed in Annex I, the directive requires that, before development consent is given, projects likely to have significant effects on the environment are made subject to an assessment of their environmental effects. During the EIA procedure, the public must be consulted and the final decision to grant or refuse development consent must take account of the results of the EIA and of public consultation.

According to the information provided by the petitioner, an EIA has been carried out, environmental aspects duly taken into account and the public was entitled to react and provide their opinion within 6 weeks. The time allocated for the public consultations is left to the discretion of the Member State.

SEA

¹ OJ L 175, 5.7.1985

² OJ L 73, 14.3.1997

³ OJ L 156, 25.6.2003

Directive 2001/42/EC¹ (the Strategic Environmental Assessment or SEA Directive) applies to plans and programmes. It determines in its Article 3(2) that land use plans (which sets the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC (EIA Directive)) are to be made subject to an SEA allowing for one exception: Art 3(3) stipulates that plans for small areas at local level could be exempted. In its national legislation, Ireland has defined this possible discretion as areas concerning a population of 10.000.

The petitioner claims that the community development plan was modified to allow a change of use from rural to industrial. It appears that the development plan was modified without the requirement of the SEA (a screening was carried out and concluded that no impact assessment was needed). Independently from this petition, the Commission has queried the conformity of Irish legislation with regard to the extent to which SEA is made discretionary rather than automatic for modifications of land-use plans of the kind referred to by the petition (Infringement N°2007/2166).

Seveso

The Seveso II Directive² applies to such terminals according to the quantity of gas present: only some requirements apply to terminals containing from 50 to 200 tonnes (lower tier establishments); all requirements apply to those terminals which contain more than 200 tonnes (upper tier establishments). For the purposes of this directive, establishment shall mean the whole area under the control of an operator where dangerous substances are present, including common or related infrastructure or activities. However, the transport of dangerous substances in pipelines outside the establishment is excluded. Several provisions of the directive already apply before the operator commences construction or operation. The land-use planning provisions require the control of siting of new establishments. Member States shall ensure that all competent authorities and planning authorities responsible for decisions in this area set up appropriate consultation procedures to ensure that technical advice on the risks arising from the establishment is available when decisions are taken.

III. Conclusions

Based on the information provided, the Commission cannot identify any breach of the EIA in relation to the procedure for the project in question.

As regards the SEA, the Commission has opened an exchange of views with the Irish authorities on compliance with Directive 2001/42/EC of the national laws which were used to deem an SEA unnecessary in this case.

4. Commission reply, received on 22 January 2010.

¹ OJ L 197, 21.7.2001, p.30

², OJ L 10, 14.1.1997, p.13

The additional documents provided by the petitioner have been analyzed by the Commission and give rise to the following comments.

SEA

Directive 2001/42/EC¹ (the Strategic Environmental Assessment or SEA Directive) applies to plans and programmes. It determines in its Article 3(2) that land use plans (which sets the framework for future development consent of projects listed in Annexes I and II to Directive 85/337/EEC (EIA Directive)) are to be made subject to an SEA allowing for one exception: Art 3(3) stipulates that plans for small areas at local level could be exempted from the mandatory carrying out of an SEA. Instead, a screening (an assessment as to whether an SEA is necessary) needs to be performed. In its national legislation, Ireland has defined this possible discretion as areas concerning a population of 10 000. Information provided by the petitioner demonstrates that the population affected exceeds 10 000.

A screening process was carried out at the time of the proposal to re-zone the rural lands to industrial ones. The screening process concluded that no SEA was required on the basis that *"it does not appear that there is a need for a SEA in this instance as the proposed variation is unlikely to result in development which would have significant effects on the environment"*.. The petitioner is opposing the screening decision arguing that the independent expert who carried out the screening was not aware that the zone would later be used for an activity likely to have significant impact on the environment (i.e. in this case the LNG terminal). Furthermore, 10 hectares of the zone are in SAC waters and the site is surrounded by SAC, NHA and SPA land and water. The planning authority was satisfied that "any significant environmental issue arising for any development on the lands would be resolved through an EIS"....

The Commission is also concerned by the discrepancy in the approach of the Irish authorities in dealing with the development under fast track legislation for 'strategic projects' whilst not requiring an SEA. Indeed, one issue raised by the petitioner is Ireland's use of the *Planning and Development Act 2006* (so-called "Strategic Infrastructure") in order to, according to Irish authorities, have a more efficient planning consent procedure for strategic infrastructure developments. This procedure provides for some type of infrastructure projects to be granted direct planning permission by the Planning Authority (An Bord Pleanála) and thus avoiding the step of the local authority. It also means that the public is denied of its right to participate and appeal in the planning process.

EIA

Council Directive 85/337/EEC² on the assessment of the effects of certain public and private projects on the environment (known as the Environmental Impact Assessment or "EIA

¹ OJ L 197, 21.7.2001, p.30

² OJ L 175, 5.7.1985

Directive”) as amended by Directives 97/11/EC¹ and 2003/35/EC² covers the construction of thermal power stations with a heat output of 300 megawatts or more. An EIA has been duly carried out on this project (the Liquefied Natural Gas) and public opinion sought. However, the petitioner presents arguments according to which the project has been sliced (LNG storage, pipeline, road and electricity supply). Project slicing implies the breaking up of one project into different parts. The EIA Directive requires that cumulative (indirect) impacts with other projects have to be identified in the course of the respective impact assessments to ensure that the overall impact of the projects concerned can be assessed. On the basis of the information received, it is not clear whether the cumulative effects have been taken into account in this case.

Seveso

The provisions of the Seveso II Directive relevant to this development were outlined in the previous communication to the committee. On the basis of the information received to date, no evidence indicating a breach of that directive has been found in this case.

Conclusions

On the basis of the further information provided, the Commission has decided to raise the above-mentioned issues with the Irish authorities.

¹ OJ L 73, 14.3.1997

² OJ L 156, 25.6.2003



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Commission des pétitions
Le Secrétariat

303944 04.03.2009

Brussels,
AGV/KI[02-COM.PETI(2008)D/12569]

Mr John McElligott
Kilcolgan Residents Association
Convent Street Island View
Listowel, County Kerry
Ireland

Subject: Petition Nr. 0013/2008 (reference to be quoted in all correspondence)

Dear Mr McElligott,

I would like to inform you that your petition has been included on the agenda of the meeting of the Committee on Petitions which will take place on 31 March 2009 in Brussels. It is scheduled to be dealt with around **16.00**. The meeting will take place in the **PHS** building of the European Parliament in Brussels, in room **ASP A1E2**(rue Wiertz 60 - 1047 Brussels).

In order to prepare access badges to enter the European Parliament building, please send us your date of birth as well as the names and dates of birth of all the people accompanying you **by the 25 March 2009 at the latest**. You will be awaited by one of our secretaries at the **Accreditation Centre at 15.00**. The accreditation centre is situated on the right side of the Luxembourg entrance of the Altiero Spinelli building, at the pedestrian area next to the Luxembourg train station.

When your petition is introduced, by special permission of the Committee, you may, if you wish, make a brief statement lasting no longer than five minutes. In this case, it would be helpful if you could provide copies of your statement to the Committee secretariat so that they can be distributed to the interpreters. After this the European Commission will be invited to give information on your case, and Members will then be in a position to discuss your case.

I look forward to welcoming you to the Committee meeting.

Yours sincerely,

David Lowe
Head of Unit
Committee on Petitions

Enclosure: map of the European Parliament



KOMISJA PETYCJI
PRZEWODNICZY

Brussels,
AGV/kl[02-COM.PETI(2008)D/38784]

Mr John McElligott
Kilcolgan Residents Association
Convent Street Island View
Listowel, County Kerry
Ireland

312001 16.07.2008

Subject: Petition Nr. 0013/2008 (reference to be quoted in all correspondence)

Dear Mr. McElligott,

I would like to inform you that the Committee on Petitions considered your petition and decided that the issues which you raise are admissible in accordance with the Rules of Procedure of the European Parliament, insofar as the subject matter falls within the sphere of activities of the European Union.

The committee decided to ask the European Commission to conduct a preliminary investigation of the various aspects of the problem. Moreover, it felt that the issues raised in your petition should be submitted, also, to the Committee in the European Parliament within whose terms of reference it falls and, therefore, refer it to the Committee on Environment, Public Health and Food Safety.

I would also like to draw your attention to the document here enclosed which contains the reply given by the European Commission to petition 354/2006 which raised similar questions to those you raised with us.

I will keep you informed of any further action taken on your petition in due course.

Yours sincerely,

Marcin Libicki
Chairman
Committee on Petitions

Annexe: Notice to Members on petition 354/2006 (CM 667755EN)



PARLAMENTO EUROPEO EVROPSKÝ PARLAMENT EUROPA-PARLAMENTET
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Directorate-General for the Presidency
Plenary Sitzings Directorate
Members' Activities

Luxembourg,

102561 06.02.2008

Mr John McElligott
Kilcolgan Residents Association
Convent Street Island View
Listowel County Kerry
Ireland

Dear Sir,

On behalf of the Secretary-General, I am writing to you to acknowledge receipt of your petition forwarded by e-mail on 06/01/2008.

Your petition has been entered in the general register as Petition No. 0013-08 and I should be most grateful if you would use that reference number in any future correspondence.

Your petition has been forwarded to the Committee on Petitions which will, first of all, take a decision on its admissibility, i.e. on whether the subject of your petition falls within the sphere of activities of the European Union. If the committee declares it admissible, it will then examine the substance of your petition.

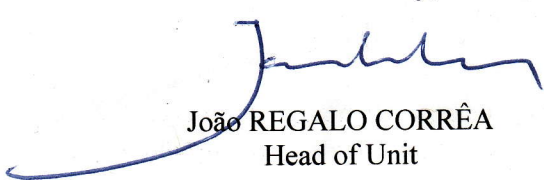
The Committee on Petitions will write to you directly to inform you of its decision on admissibility.

If your petition is declared admissible, the aforementioned committee will examine it at a meeting open to the public in accordance with the provisions of the European Parliament's internal Rules of Procedure.

May I draw your attention to the fact that the procedure for the examination of a petition may be fairly lengthy, given the large number of petitions that we receive which have to be translated into all the official languages of the European Union and then examined by the Committee on Petitions.

Please address any further correspondence on this matter to the following address: Secretariat of the Committee on Petitions, European Parliament, rue Wiertz, B-1047 Brussels. Fax.: 0032/22846844.

Yours faithfully,


João REGALO CORRÊA
Head of Unit