



Decision of the European Ombudsman closing the inquiry on complaint 454/2006/(IP)MF against the European Commission

Decision

Case 454/2006/(IP)MF - **Opened on** 19/06/2006 - **Decision on** 20/11/2008

THE BACKGROUND TO THE COMPLAINT

1. On 20 July 2002, the complainant lodged a complaint to the Commission, in accordance with Article 226 of the EC Treaty (1) , against the Italian authorities. On 22 August 2002, the Commission registered the complaint, under reference number 2002/4946.
2. In his complaint to the Commission, the complainant alleged that a construction project for a waste-water treatment plant in Stintino, Italy ('the Project'), was approved by Italian authorities in breach of the provisions of Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (2) , and Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('EC Habitats Directive') (3) . The complainant alleged that the Italian authorities approved the Project without having regard to potentially adverse environmental effects for the surrounding land. This land was proposed by Italy as a site of Community importance (SCI) (4) on the list transmitted to the Commission by the Italian authorities (5) , pursuant to Directive 92/43/EEC. The complainant therefore felt that the Project should have been subjected to a full Environmental Impact Assessment (EIA).
3. On 28 April 2003, after carrying out a preliminary assessment of the complaint, the Commission sent a letter to the Italian authorities, requesting information on how the provisions of the two aforementioned Directives had been applied in relation to the Project.
4. On the basis of the Italian authorities' replies of 10 and 14 November 2003, as well as the information gathered at its meeting of 25 June 2003 with the said authorities, the Commission concluded that no breach of Directives 85/337/EEC or 92/43/EEC had occurred.
5. By letter of 10 August 2004, the Commission informed the complainant of its above conclusion and indicated that its services intended to close the case. Between 31 August 2004 and 25 March 2005, the complainant sent to the Commission numerous letters and e-mails (22 in total) (6) , with a view to having his case reconsidered. Consequently, the Commission suspended its decision to close the case, in order to assess the complainant's



arguments.

6. On 5 and 7 May 2005, the complainant wrote to Ms Day, the then Director-General of DG Environment, requesting a complete review of the complainant's file 2002/4946. The Commission services replied by letters of 25 May and 10 June 2005, highlighting that the information provided did not contain any new elements which would allow it to identify a possible breach of Community environmental legislation. The complainant sent further correspondence to the Commission on 1, 2, 22, 24 and 25 June 2005. The Commission's services replied by letter of 1 July 2005 pointing out that, in the absence of any new elements, no possible breach of Community environmental legislation had been identified.

7. On 5 July 2005, the Commission closed case 2002/4946 and, on 11 July 2005, it informed the complainant accordingly.

8. The complainant again disagreed with the Commission's conclusion. As a result, an extensive exchange of correspondence took place between the Commission and the complainant.

9. By letter dated 14 October 2005 (7), the Commission informed the complainant that, pursuant to the Commission's Code of Good Administrative Behaviour- Relations with the public (8), its services would no longer reply to further correspondence of a repetitive, abusive and/or pointless character. The complainant wrote further letters, which the Commission replied to on 17 November 2005.

THE SUBJECT-MATTER OF THE INQUIRY

10. In his complaint to the Ombudsman, the complainant submitted the following allegations:

- The Commission's decision to close complaint 2002/4946 was unjustified and based on inconsistent reasoning;
- The Commission failed to reply to his letter of 7 May 2005;
- The Commission's decision of 14 October 2005 not to reply any longer to his correspondence by invoking Article 4 of the Commission's Code of Good Administrative Behaviour was improper and unreasoned; and
- The Commission failed to comply with Articles 8, 9, 10, 12, 14, 15 and 18 of the European Code of Good Administrative Behaviour (9).

THE INQUIRY

11. On 19 June 2006, the Ombudsman opened an inquiry into the complainant's above allegations.

12. On 28 September 2006, the Commission sent its opinion on the complainant's allegations. The opinion provided by the Commission was forwarded to the complainant with



an invitation to make observations, which he presented on 17 November 2006.

THE OMBUDSMAN'S ANALYSIS AND CONCLUSIONS

A. Allegation that the Commission's decision to close complaint No 2002/4946 was unjustified and based on inconsistent reasoning *Arguments presented to the Ombudsman*

13. The complainant alleged that the Commission's decision to close his complaint No 2002/4946 against the Italian authorities was unjustified and based on inconsistent reasoning.

14. In the complainant's view, the Commission was wrong to accept the Italian authorities' decision that the Project did not require a prior EIA. The Commission should not have trusted the incorrect information received from the Italian authorities, that is, the "*Relazione tecnico agronomica di ripristino ambientale del sedime dell'impianto di trattamento reflui di Stintino*" - the 'Relazione Report') because this report was a forgery. On the contrary, the Commission should have taken into due consideration the information the complainant had submitted (*Analisi ambientale di un complesso forestale interessato dalla realizzazione di un sistema integrato di raccolta collettamento e depurazione del abitato e degli insediamenti turistici, affinamento, regolazione idraulica e redistribuzione delle acque usate- scarico degli esuberi da parte del Comune di Stintino* - 'Dr B's expert opinion'). The Commission also failed to carry out its own on-site inspection, relying instead on the results of the inspection conducted by the Italian authorities.

15. The Commission considered that the assessment carried out by the Italian authorities conformed with the relevant Community law and explained this in detail in its numerous communications with the complainant (and most specifically in its decision of 19 April 2005 closing the complainant's case). The Commission accepted the conclusion of the Italian authorities that the Project had no negative environmental impact on the basis of (i) the results of an on-site inspection carried out on the project, and (ii) a number of documents submitted by these authorities, among them the aforementioned Relazione Report. The Commission highlighted that Dr B's expert opinion lacked formal validity because it did not contain any date or any official stamp.

The Ombudsman's assessment

16. The Ombudsman understands the positions of the parties as follows: The Commission based its decision to close the complainant's case on the grounds that the Italian authorities had properly exercised their discretion when deciding not to carry out the EIA regarding the Project. The Italian authorities submitted to the Commission documents in support of their decision.

17. The complainant did not agree with the Commission's conclusion. *First*, he felt that the Italian authorities failed to comply with Community law, since Dr B's expert opinion proved that the Project did in fact have negative environmental effects. He argued that the Italian



authorities should, therefore, have carried out a full EIA. *Second* , he took the position that the Italian authorities' explanation and documents, including the results of the on-site inspection, were incorrect. The Commission did not sufficiently exercise its duty of care when assessing the evidence provided by the Italian authorities and did not take into account the information he provided himself.

18. As regards the complainant's *first* view, the Ombudsman recalls that, according to Article 195 of the EC Treaty, he is able to receive and examine complaints about maladministration in the activities of European Community institutions and bodies. No action by any other authority may be the subject of a complaint to him. It is, therefore, not the task of the Ombudsman to examine whether the Italian authorities correctly applied national or European law. The Ombudsman assessment aims at ascertaining whether the Commission acted correctly when it concluded that the behaviour of the Italian authorities was in conformity with the applicable rules on environmental impact assessments.

19. As regards the complainant's *second* view, that is, his arguments concerning the Commission's duty of care, the Ombudsman first points out that the EIA procedure, as required by the EIA Directives, should be carried out by national authorities (10) . Moreover, as regards the projects which correspond to the classes listed in Annex II of Directive 97/11/EC amending Directive 85/337/EEC (11) , the national authorities have, on the basis of criteria established in Annex III thereof, discretion to decide whether the EIA is needed or not. Finally, Article 6(3) of Directive 92/43/EEC (12) provides 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. " (Emphasis added)

20. The complainant also argued that the Commission should not have trusted the inspections and the conclusions drawn by the national authorities and provided to it. In this respect, the Ombudsman recalls the mutual duty of sincere cooperation imposed on the Community institutions and its Member States by Article 10(2) of the EC Treaty. This principle has been invoked by the Community Courts in the context of infringement procedures under Article 226 of the EC Treaty (13) . Both Articles provide that Member States shall abstain from any measure which could jeopardise the attainment of the Treaty's objectives.

21. In light of the above principle, it is reasonable to consider that the Commission could (i) legitimately consider that the Italian authorities complied with the applicable legal provisions on the protection of the environment when making on-site inspections relating to the possible environmental impact of the Project , and (ii) legitimately expect that the Italian authorities provided it with reliable information concerning the application of the relevant Community environmental legislation to the Project.



22. On the basis of the evidence available, it appears that the Commission carefully examined the explanations and supporting documents provided by the Italian authorities. Even if the authenticity of the Relazione Report was to some extent disputable, because, in the complainant's view, it was forged, the Commission rightly pointed out that, as long as the competent Italian administrative and legal authorities do not prove otherwise, this document is still relevant for the Commission's assessment.

23. Moreover, it appears that the Commission examined not only the documents provided by the Italian authorities (including the above Relazione Report) and the information gathered during the meeting with them dated 25 June 2003, but also the specific document (Dr B's expert opinion) provided by the complainant, even though it lacked formal status because, according to the Commission, it did not contain any date and official stamp. In its letter to the complainant dated 19 April 2005, the Commission referred indeed, on a number of occasions, to the data and arguments presented in Dr B's expert opinion and took a position on them (14).

24. In addition, on the basis of the numerous exchanges of correspondence exchanges between the complainant and DG Environment, it appears that, by explicitly referring to the arguments submitted by the complainant (i.e., "*The argument you put forward of alleged pollution is not supported by any concrete evidence* ") (15), the Commission's services took due consideration of all the information submitted by him.

25. In its letter of 19 April 2005, the Commission also declared that it would still consider the possibility of opening a new infringement procedure, after it had closed the complainant's case, if he were to submit new and relevant information.

26. It is also worth noting that the Commission suspended its decision to close the case, in order to analyse the evidence submitted by the complainant. The Ombudsman's understands that the Commission did so because, if it had found sufficient elements to cast doubt on the Italian authorities' information, it would have verified that information by carrying out its own on-site inspection. However, the Commission did not find such elements and, therefore, reasonably argued that a sufficient on-site investigation had been carried out by the Italian authorities.

27. In light of the above, the Ombudsman takes the view that the complainant did not demonstrate that (i) the Commission failed to comply with its duty of care when examining the documents and explanations, on the basis of which it decided to close his case, and (ii) it wrongly trusted the documents provided by the Italian authorities instead of giving due attention to the information and documents provided by him.

28. Furthermore, the Ombudsman points out that, in its letter of 19 April 2005 to the complainant, the Commission explained in detail the reasons why it had closed his case.

29. As regards the alleged breach of Directive 85/337/EEC, the Commission pointed out that, according to the Relazione Report, which was taken into account by the Italian authorities



when deciding not to carry out the EIA in relation to the Project, it appears that the Italian authorities took into consideration the criteria established in Annex III of that Directive.

30. As regards the alleged breach of Directive 92/43/EEC, read in conjunction with Directive 79/409/EEC (16) the Commission referred to the relevant case-law (17) and recalled that construction projects on sites proposed by the Member States as eligible for identification as sites of Community importance on the list transmitted to the Commission do not necessarily require an EIA until the list is adopted by the Commission. In the meantime however, according to Directive 92/43/EEC, appropriate measures in order to safeguard the sites on the proposed list have to be adopted by the Member States. The Commission clearly explained that the Italian authorities would have been in breach of the Directive 93/43/EEC had they not adopted the appropriate measures in order to safeguard the site in question but they did so.

31. Finally, the Commission pointed out that the Italian authorities did carry out an EIA on two other sites proposed on the list (the SCI "ITB010043 *Coste e Isolette nord ovest della Sardegna*" and "ITB010002 " *Stagno di Pilo e Stagno di Casaraccio*"), although they were not obliged to do so. Subsequent to this assessment on these two protected areas, the Italian authorities concluded that the Project here at stake would *not* have a significant negative impact on the integrity of the Natura 2000 sites in question, in the meaning of the provisions of Directives 92/43/EEC and 79/409/EEC.

32. In light of the above, the Ombudsman is of the view that, in its letter of 19 April 2005 to the complainant, the Commission provided an adequate statement of reasons for its decision to close the complainant's file.

33. In addition, in its opinion on the complaint, the Commission exhaustively completed its statement of reasons by reiterating the legal grounds for its decision to close the complainant's Article 226 complaint.

34. In light of the above, the Ombudsman considers that there appears to have been no maladministration by the Commission as regards this allegation.

B. The Commission's alleged failure to reply to the complainant's letter of 7 May 2005

Arguments presented to the Ombudsman

35. The complainant alleged that the Commission failed to reply to his letter of 7 May 2005.

36. In its opinion, the Commission stated that, since the letter of 7 May 2005 was the same as the one which was addressed to DG Environment on 5 May 2005, to which a reply was sent on 25 May 2005, the Commission provided a reply to this letter. In any event, in its letter of 8 September 2005, the Commission apologised to the complainant for not replying formally to his letter of 7 May 2005.

The Ombudsman's assessment



37. The Ombudsman examined the correspondence in question, submitted to him by the complainant and the Commission.

38. In his letter to DG Environment dated 5 May 2005, the complainant repeated his view that there had been an infringement of Community environmental law by the Italian authorities.

In his letter of 7 May 2005 (18) , the complainant requested a review of the whole file 2002/4946.

In its reply of 25 May 2005, the Commission pointed out that the information provided did not contain any new elements which would allow the Commission to identify a possible breach of Community environmental law.

39 In the Ombudsman's view therefore, it does not appear unreasonable to consider that the complainant's two letters concerned in substance the same matter. The Ombudsman therefore accepts the Commission's view that its reply of 25 May 2005 could be considered as also referring to the subject matter of the complainant's letter of 5 May 2005 and of 7 May 2005.

40. Furthermore, the Commission apologised to the complainant for its failure to reply formally to his letter of 7 May 2005.

41. In light of the above, the Ombudsman considers that there appear to be no grounds for further inquiries into the complainant's allegation.

C. Allegation relating to the Commission's decision of 8 October 2005 not to reply any longer to the complainant's correspondence by invoking Article 4 of the Commission's Code of Good Administrative Behaviour *Arguments presented to the Ombudsman*

42. The complainant alleged that the Commission's decision of 14 October 2005 (that is, the Commission's letter of that date) not to reply any longer to his correspondence by invoking Article 4 of the Commission's Code of Good Administrative Behaviour was improper and unreasoned.

43 In its opinion, the Commission stated that DG Environment's decision to discontinue repetitive, abusive or pointless correspondence with the complainant was taken pursuant to the Commission's Code of Good Administrative Behaviour, because of the repetitive and pointless character of the letters continuously addressed by the complainant to DG Environment (to both its services and Director-General), to Commissioner Dimas and to President Barroso. In this respect, the Commission observed that " *it had the duty to make good use of taxpayer's money.* "

The Ombudsman's assessment

44. Article 4 of the Commission's Code of Good Administrative states that:



" A reply to a letter addressed to the Commission shall be sent within fifteen working days from the date of receipt of the letter by the responsible Commission department (...)

If a reply cannot be sent within the deadline mentioned above, and in all cases where the reply requires other work on it, such as interdepartmental consultation or translation, the member of staff responsible should send a holding reply, indicating a date by which the addressee may expect to be sent a reply in the light of this additional work, taking into account the relative urgency and complexity of the matter (...)

These rules do not apply to correspondence which can reasonably be regarded as improper, for example, because it is repetitive, abusive and/ or pointless. Then the Commission reserves the right to discontinue any such exchanges of correspondence . " (Emphasis added)

45. The Ombudsman agrees that the Commission has indeed the duty to make good use of the funds allocated to it in order to carry out its administrative tasks and to use its human resources effectively. However, this should not prevent it from dealing properly with citizens' correspondence, in accordance with the principles of good administration, set out in its own Code and in the European Code of Good Administrative Behaviour.

46. The question arises, however, as to whether the Commission's decision in this particular case not to reply anymore to the repetitive and abusive correspondence of the complainant was acceptable and right in the context of its relations with European citizens. The Ombudsman is generally of the view that this would be the case, if the Commission informed the author of correspondence it would considered to be repetitive, that further replies would not be sent unless new elements were provided . In such a way, the Commission would show that it does not automatically classify the correspondence as repetitive, based for instance on the criterion of author, but only after having looked into its content to verify whether any new elements appear.

47. On the basis of the evidence available in the present case, it is obvious that the complainant had sent to the Commission a significant number of letters and e-mails concerning the very same issue. In summary, they all argued that the Commission's decision to close the infringement procedure was incorrect. The Commission replied to the complainant's same concerns, on a number of occasions.

48. In its letter of 14 October 2005, a copy of which was provided by the Commission in its opinion on the complaint, the Commission informed the complainant that, pursuant to its Code of Good Administrative Behaviour, its services would no longer reply to further correspondence of a repetitive, abusive and/ or pointless character, and stated that it would apply this provision of its Code 'unless any new elements were put forward.' (19)

49. In light of the above considerations, the Commission's stance, as expressed in its above letter of 14 October 200, appears to be in accordance with its own rules and, therefore, based on sound reasoning.



50. The Ombudsman also notes that, after its letter of 14 October 2005, the Commission still replied on 17 November 2005 to the complainant's further correspondences of 17, 21 and 25 October 2005. In this letter, the Commission recalled that, in accordance with its Code of Good Administrative Behaviour, it would not follow up any further correspondence which could be reasonably considered as abusive, in view of its repetitive, injurious or unfounded nature. In addition, it stated that, if it received new information which would justify opening an investigation on the same subject, the case would be re-opened and investigated again.

51 In light of the above, the Ombudsman considers that there was no maladministration by the Commission as regards this allegation.

D. The Commission's alleged failure to comply with Articles 8, 9, 10, 12, 14, 15 and 18 of the European Code of Good Administrative Behaviour *Arguments presented to the Ombudsman*

52. The complainant alleged that the Commission failed to comply with Article 8 (Impartiality and independence); Article 9 (Objectivity); Article 10 (Legitimate expectations, consistency and advice); Article 12 (Courtesy); Article 14 (Acknowledgement of receipt and indication of the competent official); Article 15 (Obligation to transfer to the competent service of the institution) and Article 18 (Duty to state grounds of decisions) of the European Code of Good Administrative Behaviour.

53. In its opinion, the Commission stated that the complainant's reference to the non-respect by the Commission of several articles of the European Code of Good Administrative Behaviour was unfounded.

54. In his observations, the complainant clarified its allegation by stating that DG Environment's failure to forward to DG Internal Market the documents relating to his second complaint to the Commission, dated 4 December 2002, constituted clear evidence of the inappropriate conduct of the officials concerned, who acted in breach of the Commission's Code of Good Administrative behaviour, thereby infringing fundamental organisational rules.

The Ombudsman's assessment

55. The Ombudsman notes that the complainant did not make any specific reference as to how the Commission breached each individual Article of the Code referred to by him, except for the failure by DG Environment to forward the relevant documents to DG Internal Market (that is, he referred to Article 15 of the European Code of Good Administrative Behaviour (20).)

56. Therefore, the Ombudsman will only assess this issue.

57. On the basis of the evidence collected, it emerges that, by letters of 4 and 15 December 2002, the complainant lodged a second Article 226 complaint with the Commission concerning improper application of Community legislation on public procurement. This new



complaint was however related to his (first) complaint to the Commission to which the present decision refers.

On 21 March 2003, DG Internal Market registered the complainant's second complaint under reference 2003/4372.

On 4 April 2003, DG Internal Market requested DG Environment to forward to it copies of the documents sent by the complainant in the context of his first complaint (reference number 2002/4946), as well as any further relevant information regarding his case. These documents were subsequently forwarded by DG Environment to DG Internal Market by letter of 14 April 2003.

58. In light of the above, the Ombudsman considers that the complainant's allegation that the Commission infringed Article 15 of the European Code of Good Administrative Behaviour cannot be sustained and, therefore, finds no maladministration in relation with this allegation as well.

E. Conclusions

On the basis of the inquiries conducted into this complaint, the Ombudsman concludes that there has been no maladministration on the part of the European Commission as regards the complainant's first, third and fourth allegations. As regards the complainant's second allegation, there are no grounds for further inquiries.

The Ombudsman therefore closes the case. The complainant and the President of the European Commission will be informed of this decision.

P. Nikiforos DIAMANDOUROS

Done in Strasbourg on 20 November 2008

(1) Article 226 of the EC Treaty reads as follows:

" If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.

If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice. "

(2) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, OJ 1985 L 175, p. 40.

(3) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and



of wild fauna and flora, OJ 1992 L 206, p. 7.

(4) According to Directive 92/43/EEC, "*site of Community importance means a site which, in the biogeographical region or regions to which it belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000 referred to in Article 3, and/or contributes significantly to the maintenance of biological diversity within the biogeographic region or regions concerned.*"

For animal species ranging over wide areas, sites of Community importance shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction."

(5) Article 4 (1) of Directive 92/43/EEC reads as follows: "*On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host.(...).*"

(6) The complainant sent e-mails on 31 August, 20 September, 19 November, 3, 7, 18 and 20 December 2004, as well as on 10, 16, 17 January and 1 March 2005. He sent letters (by post, fax and e-mail) on 27 and 29 August, 1 September, 19 November, 3, 6 and 20 December 2004, as well as on 8 and 16 January and 1 and 25 March 2005.

(7) In its opinion, the Commission pointed out that its letter of 14 October 2005 was erroneously identified by the complainant, in his complaint to the Ombudsman, as "*the [Commission's] decision of 8 October 2005*". Therefore, the date 14 October 2005 will be used throughout the present decision to refer to this letter.

(8) The Commission's Code of Good Administrative Behaviour-Relations with the public is available at the following address: http://ec.europa.eu/civil_society/code/index_en.htm .

(9) The European Code of Good Administrative Behaviour is available at the following address: <http://www.ombudsman.europa.eu/code/en/default.htm> .

(10) The Ombudsman notes that, according to the fifth recital in the preamble thereto, Directive 85/337/EEC is intended to establish general principles for the assessment of environmental effects with a view to supplementing and coordinating 'development consent procedures' governing public and private projects which are likely to have an effect on the environment.

For this purpose, Article 1(2) of Directive 85/337/EEC defines 'development consent' as the decision of the competent authority or authorities which entitles the developer to proceed with a project.

Article 2(1) of the Directive states: "*Member states shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment*



by virtue inter alia of their nature, size or location are made subject to an assessment with regard to their effects. These projects are defined in Article 4. "

(11) Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment OJ 1997 L 73, p. 5. Article 4(2) and 4 (3) of this Directive provide that:

" *Article 4*

2. Subject to Article 2 (3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination, or

(b) thresholds or criteria set by the Member State

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b) .*(Emphasis added)*

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account. "(Emphasis added)

(12) See footnote 3 above.

(13) See Case C-10/00 *Commission v Italy* [2002] ECR I-2357, paragraph 88.

(14) For instance:

(a) " [Dr. B's expert opinion] *does not necessarily contradict the 'Relazione', as it refers to the surface subjected to expropriation and not the area directly involved in the project work "* .

(In original Italian the above fragment reads as follows. " *Tra le altre cose, almeno per quanto riguarda le superfici, essa non è necessariamente in contraddizione con la Relazione di ripristino in quanto si riferisce alla superficie oggetto di espropriazione e non a quella direttamente interessata da lavori "*.)

(b) " *However, even if we assume that the data in the Dr. B expertise are correct, it must be said that the impact of the project is not significant for the site and that, therefore, there is no breach of Directive 92/43/EEC and there is no need to adopt compensation measures. "*

(In original Italian, the above fragment reads as follows. " *Tuttavia, il punto essenziale da chiarire è che, anche prendendo per validi i dati presenti nella " Perizia " del dr. B., si deve concludere che l'incidenza dell'opera non è significativa per il sito e che, pertanto, non c'è violazione della direttiva 92/43/CEE e non c'è neanche necessità di adottare misure di*



compensazione ".)

(15) In original Italian: " *La Sua argomentazione tesa a dimostrare un possibile inquinamento non è supportata da nessun elemento concreto* ".

(16) Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds OJ 1979 L 103, p.1-18.

(17) See Case C-374/98 *Commission v France* [2000] ECR I-10799, paragraphs 25 and 26: " *It should also be noted that the inventory of areas which are of great importance for the conservation of wild birds, more commonly known under the acronym IBA (Inventory of Important Bird Areas in the European Community) includes the area in question. The Court of Justice has held that that inventory, although not legally binding on the Member States concerned, contains scientific evidence making it possible to assess whether a Member State has complied with its obligation to classify as SPAs (special protection areas) the most suitable territories in number and size for conservation of the protected species (Case C-3/96 Commission v Netherlands [1998] ECR I-3031, paragraphs 69 and 70).*

It follows from the general scheme of Article 4 of the birds directive that, where a given area fulfils the criteria for classification as an SPA, it must be made the subject of special conservation measures capable of ensuring, in particular, the survival and reproduction of the bird species mentioned in Annex I to that directive. "

See in particular, paragraphs 25 and 26:

" *It should also be noted that the inventory of areas which are of great importance for the conservation of wild birds, more commonly known under the acronym IBA (Inventory of Important Bird Areas in the European Community) includes the area in question. The Court of Justice has held that that inventory, although not legally binding on the Member States concerned, contains scientific evidence making it possible to assess whether a Member State has complied with its obligation to classify as SPAs the most suitable territories in number and size for conservation of the protected species (Case C-3/96 Commission v Netherlands [1998] ECR I-3031, paragraphs 69 and 70).*

It follows from the general scheme of Article 4 of the birds directive that, where a given area fulfils the criteria for classification as an SPA, it must be made the subject of special conservation measures capable of ensuring, in particular, the survival and reproduction of the bird species mentioned in Annex I to that directive. "

(18) In his letter of 7 May 2005, sent to the Director-General of DG Environment, the complainant wrote the following (English original version):

" *I wish to inform you of the anomalous "behaviour" of the Unity A2, referring to infringement 2002/4946. In my opinion, external interferences may have prevented the Unity from doing the due work. Therefore, in my quality of European citizen, I ask you [sic] a revision of the connected dossier. "*



(19) The Ombudsman's services translation from the original Italian:

" Le ricordo ancora una volta che ove la Commissione venisse in possesso di ulteriori informazioni e notizie suscettibili di giustificare l'apertura di una procedura avente il medesimo oggetto , il caso verrebbe riaperto e nuovamente istruito. Tuttavia, Le ricordo che, ai sensi del Codice di buona condotta amministrativa, la Commissione non darà seguito a ulteriore corrispondenza che possa ragionevolmente essere considerata abusiva per il suo carattere ripetitivo, ingiurioso o infondato. " (Emphasis added).

(20) Article 15 of the European Code of Good Administrative Behaviour reads as follows:

" Obligation to transfer to the competent service of the Institution:

- 1. If a letter or a complaint to the Institution is addressed or transmitted to a Directorate General, Directorate or Unit which has no competence to deal with it, its services shall ensure that the file is transferred without delay to the competent service of the Institution.*
- 2. The service which originally received the letter or complaint shall notify the author of this transfer and shall indicate the name and the telephone number of the official to whom the file has been passed.*
- 3. The official shall alert the member of the public or organisation to any errors or omissions in documents and provide an opportunity to rectify them. "*