

BOUTTEFROY Evelyne 07/2/2006/JMA

From: Michele.Wauquaire@cec.eu.int

Sent: 16 May 2006 12:18

To: Euro-Ombudsman

Subject: EO - Own initiative inquiry t by the Spanish authorities from Gandilla (Tenerife), Spain, ref. OI/2/2006/JMA: 1ST REPLY

Importance: High

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16/05/2006

Brussels,
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Dear Mr Diamandouros,

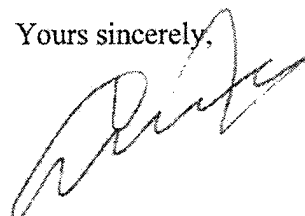
**Subject: Own initiative inquiry into the development of an industrial harbour
by the Spanish authorities in Granadilla (Tenerife),
ref. OI/2/2006/JMA – request for information**

Thank you for your letter of 27 January 2006 to President BARROSO announcing your own initiative inquiry into the above-mentioned case.

I am pleased to transmit to you the enclosed comments of the Commission.

Naturally, the Commission remains at your disposal for any further information you may require.

Yours sincerely,



Enclosure

Mr Nikiforos DIAMANDOUROS
European Ombudsman
1, avenue du Président Robert Schuman
B.P. 403
F-67001 STRASBOURG Cedex

26.04.2006

Comments by the Commission on a request for information from the European Ombudsman

– Own initiative inquiry OI/2/2006/JMA

I. Background

I.1 The Project

According to the Spanish authorities, the project to build an industrial harbour in Granadilla is an endeavour:

- to expand, in association with the existing port of Santa Cruz de Tenerife, the necessary capacity to cope with the island's supply requirements;
- to receive liquefied natural gas to be used for industrial purposes in order to diversify the energy mix in the nearby Granadilla Thermal Power Plant.

The authorities' aim is to make Tenerife an International Logistic Platform.

I.2 Complaints and petitions lodged with the European Institutions

This project is the subject of a complaint to the European Commission, registered as complaint N° 2002/5081 (under which several other cases are also handled). There are also petitions to the European Parliament's Committee on Petitions, i.e. petition N° 253/2004 and petition N° 785/2004.

The Commission has received several dozen copies of this complaint so, in order to ensure a rapid response and to keep those concerned informed while making economical use of its administrative resources, it has published an acknowledgement of receipt in the Official Journal of the European Communities and on the Internet, at the following address:

(http://europa.eu.int/comm/secretariat_general/sg1/receipt/20025081en.htm)

Both complainants and petitioners refer to alleged breaches of Community law obligations under Directive 85/337/EEC¹ on the assessment of the effects of certain public and private projects on the environment (amended by Directive 97/11/EC²) and 92/43/EEC³ on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive).

II. The Ombudsman's request

The European Ombudsman has opened an own initiative inquiry and has requested the Commission's opinion regarding the dissatisfaction expressed in a large number of complaints regarding the Commission's role as Guardian of the Treaty in relation to the development of an industrial harbour by the Spanish authorities in the city of Granadilla. It is

¹ OJ L 175, 5.7.1985, p. 40

² OJ L 73, 14.3.1997, p. 5

³ OJ L 206, 22.7.1992, p. 7

the Ombudsman's understanding that "the Commission has concluded that the development would not be contrary to existing Community law, in particular to Article 6(4) of the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora".

III The Commission's comments

The Commission informs the Ombudsman that it has not yet taken a decision with regard to infringement complaint 2002/5081 as it is still assessing the project concerned.

It can be concluded from the environmental assessment studies that the project is likely to have a significant impact on the Natura 2000 sites "Sebadales del Sur de Tenerife" (ES7020116) and "Montaña Roja" (ES7020049). These sites were designated by the Spanish authorities as sites of Community importance (SCI) and included in the Commission Decision of 28 December 2001⁴, adopting the list of sites of Community importance for the Macaronesian bio-geographical region, pursuant to Council Directive 92/43/EEC.

According to Article 6(4) of the Habitats Directive, a project of this kind could only be carried out in the absence of alternative solutions and for imperative reasons of overriding public interest, including those of a social or economic nature. Consequently, the Spanish authorities have examined and compared several alternative solutions including the options of not developing more port and/or docking capacities, or of developing more docking capacities in the existing port of Santa Cruz de Tenerife. The authorities have concluded that neither of these alternatives would fulfil the objectives of increasing the harbour capacity of the Island of Tenerife.

In view of the absence of alternatives, the authorities have stressed the need to construct the Port of Granadilla for imperative reasons of overriding public interest other than those relating to human health, public safety or beneficial consequences of primary importance for the environment, and have proposed a set of compensation measures in order to maintain or enhance the overall coherence of Natura 2000.

As the above-mentioned sites host priority habitats and species, in accordance with Article 6(4) the Spanish authorities have formally requested the opinion of the Commission on 7 November 2005.

The complainants argue that Santa Cruz's existing port facilities still have sufficient capacity for possible future growth. Moreover, should there be a need to extend port facilities on the Island of Tenerife, the complainants argue that extension of the existing port of Santa Cruz would be a feasible alternative.

Since the presence or absence of alternatives to the project is a relevant issue that will have an influence on the final opinion of the Commission pursuant to Article 6(4) of the Habitats Directive, the Commission will thoroughly consider this aspect. The Commission will deliver an Opinion that will cover the assessment of the ecological values likely to be affected by the project, the relevance of the imperative reasons invoked and the balance of

⁴ OJ L 5, 9.1.2002, p. 16-25

these two opposed interests, as well as an evaluation of the compensation measures. The assessment involves both a scientific and economic appraisal as well as an examination of the necessity and proportionality of the realisation of the plan or project with regard to the imperative reason invoked.

In view of the pending Commission Opinion pursuant to Article 6(4) of Directive 92/43/EEC, the Commission has not taken a decision with regard to complaint 2002/5081 as it is still assessing the project concerned.

Once the Opinion has been adopted, the Commission will post it on the Europa website.

IV. Conclusions

The Commission has not yet reached a decision in this case.

The Commission has held regular meetings with the public authorities and complainants' organisations to receive feedback and new evidence, and to explain the situation regarding the investigation. The Commission has paid special attention to carrying out a careful examination of the huge amounts of information submitted during the investigation by the complaints, which has inevitably led to a delay in reaching a conclusion.

Further to the Spanish authorities' request for the Commission's Opinion as referred to under paragraph 4 of Article 6 of the Habitats Directive, the Commission is taking all the necessary measures to provide a decision as soon as possible.

The Commission will inform the complainants of all relevant decisions.