European Parliament
2019-2024

Committee on Petitions

11.5.2020

NOTICE TO MEMBERS

Subject: **Petition No 0508/2018 by José María Izeta Martiartu (Spanish), on behalf of GURASOS (Parents association for protecting children from pollution), on the lack of planning and public consultation in waste treatment in the city of San Sebastian, Guipúzcoa**

1. Summary of petition

The petitioner calls upon the European Parliament to check if there has been a lack of planning and public consultation regarding the awarding of waste treatment contracts for the city of San Sebastian. The petitioner claims that regional and local authorities have infringed EU legislation in the following fields: waste planning; public participation in decision-making on environmental issues; environmental permits; public procurement; access to justice on environmental issues; and public deficit (financial sustainability and budget balance).

2. Admissibility

Declared admissible on 22 November 2018. Information requested from Commission under Rule 227(6) (Former rule 216(6)).

3. **Commission reply**, received on 11 May 2020

The petitioners draw attention to the possible environmental repercussions of a project for an energy recovery facility in San Sebastian (Gipuzkoa). They consider that not all EU obligations incumbent upon the Spanish authorities have been complied with during the permitting process, even though an Environmental Impact Statement following the procedure provided for under the EIA Directive[1] and the environmental permit required under the Industrial Emissions

[1] 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 Text with EEA relevance, OJ L 26, 28.1.2012, p. 1–21.

Directive (IED)[2] to operate the facility have already been issued[3]. Specifically, they point to a presumed infringement of the waste management obligations resulting from the Waste Framework Directive (WFD)[4] arising from the failure to assess the need for additional waste installation infrastructure in the context of the Basque Country Waste Management Plan. They also claim that, as a result, the concerned public have been deprived of their rights of participation and access to justice in environmental matters. Further to this, the petitioners consider that the Spanish authorities have awarded the contract to build the facility in disregard of EU rules on public procurement.

The petitioners have lodged a complaint with the Commission on the same grounds. They demand an intervention of the EU Institutions to ensure the correct application of EU legislation in this case.

The Commission's observations

1. On the alleged infringement of the Waste Framework Directive (WFD)

The WFD sets out the overarching legislative framework of EU policy on waste, which aims primarily at preventing or reducing the adverse impacts of waste generation and management on human health and the environment while moving towards a circular economy. Waste management plans (WMPs) are of paramount importance to fulfil that general purpose, inasmuch as they describe the existing waste management situation and define the objectives of waste management policy for the geographic entity they cover. From these premises, they also formulate the appropriate waste management strategies and identify the necessary implementation means. In addition, the WFD requires that Member States establish one or several WMPs that cover their entire territory.

The Autonomous Region of the Basque Country adopted the relevant WMP[5] in March 2015. However, the petitioners raise concerns on the possible non-compliance with the requirements of the WFD. Under Spanish law[6], the primary competence for the management of municipal solid waste in the Basque Country lies primarily with the provincial authorities[7], which are responsible for establishing WMP for municipal solid waste. It appears from the available information that the management plan in place in Gipuzkoa for municipal waste[8] was established on 17 December 2002 (with a validity for the period 2002-2016), and updated in

[2] Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) Text with EEA relevance, OJ L 334, 17.12.2010, p. 17–119.
[3] By Decision of 11 April 2016 of the competent authority.
[4] Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (Text with EEA relevance), OJ L 312, 22.11.2008, p. 3–30.
[5] Plan de prevención y gestión de residuos 2020 https://www.euskadi.eus/contenidos/documentacion/plan_residuos/es_def/adjuntos/DocuCompletoCAS_Plan_RESIDUOS_2020Anexos.pdf
[6] Article 74 a) of Ley 3/1998, de 27 de febrero, General de Protección del Medio Ambiente del País Vasco - «BOPV» núm. 59, de 27 de marzo de 1998; «BOE» núm. 308, de 23 de diciembre de 2011 Referencia: BOE-A-2011-20036.
[7] *Diputaciones Forales* are the third tier of administration in the Basque Country Autonomous Community, where the three constituent provinces have kept a system of limited self-rule issued from Medieval consuetudinary law.
[8] Plan Integral de Gestión de Residuos Urbanos de Gipuzkoa 2002 - 2016 (PIGRUG)

2008[9]. The Commission is not aware of any further revision of the plan. The Commission is therefore looking into the allegations of lack of compliance of the content of the Gipuzkoa WMP with the requirements of the WFD.

In any event, the Commission recalls that the WFD has been amended by Directive 2018/851/EC[10]. Member States are therefore required to evaluate and revise, as appropriate, all WMPs and waste prevention programmes by the end of the transposition period of Directive 2018/851 (5 July 2020), in order to adapt them to the new obligations set out in EU waste legislation.

2. On the alleged refusal of the rights of participation and access to justice

For the reasons outlined above, the Commission cannot ascertain how the Spanish authorities have ensured that stakeholders and the general public exercise the right to participate in the elaboration of the Gipuzkoa WMP, as required by the Directive. On the other hand, there are no indications of an incorrect application of the provisions on public participation and access to justice in decision-making procedures of both the Environmental Impact Assessment (EIA) Directive[11] and the IED in the context of the environmental permitting procedures for the waste-to-energy facility project.

3. On the alleged breach of EU law on public procurement

The petitioners allege breaches of Directive 2014/23/EU on the award of concession contracts[12] incurred in the procurement procedures at stake at the time when the said Directive was already in force, but not yet transposed into Spanish law[13]. They claim that the Directive has direct effect as of 18 April 2016, which was the deadline for transposition into national law, and that the procedure did not take into account several provisions of the Directive.

Based on the information available, it appears that the procurement procedures related to the public works concession for the design, construction, financing, operation and maintenance of the Gipuzkoa Environmental Complex were carried out respecting the principle of transparency, ensuring publication of the contract notices and contract award notices in the

[9] NORMA FORAL 7/2008, de 23 de diciembre, por la que se aprueba el Documento de Progreso (2008-2016) del Plan Integral de Gestión de Residuos Urbanos de Gipuzkoa 2002-2016.
[10] Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste (Text with EEA relevance) PE/11/2018/REV/2; OJ L 150 de 14.6.2018, p. 109/140.

[11] Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance, OJ L 124, 25.4.2014, p. 1–18.

[12] Directive 2014/23/EU of the European Parliament and of the Council of 26 February 2014 on the award of concession contracts, OJ L 94, 28.3.2014, p. 1–64.
[13] Law 9/2017 on Public Sector Contracts (Ley 9/2017, de 8 de noviembre, de Contratos del Sector Público, por la que se transponen al ordenamiento jurídico español las Directivas del Parlamento Europeo y del Consejo 2014/23/UE y 2014/24/UE, de 26 de febrero de 2014; BOE núm. 272, de 9 de noviembre de 2017, páginas 107714 a 108007) only entered into force on 9 March 2018. Moreover, it has not fully transposed the provisions of Directive 2014/23/EU and, therefore, the Commission opened an infringement procedure against the Kingdom of Spain for failing to adopt, by 18 April 2016, all of the laws, regulations and administrative provisions necessary to comply fully with Directive 2014/23/EU, thus failing to fulfil its obligations under that Directive. The Commission referred the case to the Court of Justice of the European Union on 28 February 2018.

Official Journal of the EU. At the same time, with participation of several economic operators submitting valid bids to the tender, the Commission estimates that competition among economic operators was ensured.

It should be noted that the contract notices and award decisions were challenged through the existing system of remedies. The Remedies Directives[14] set minimum national review standards to ensure that rapid and effective means of redress are available in all EU countries when an economic operator that has an interest in a public procurement procedure believes that the EU Public Procurement Directives were not properly applied. In the case at stake, the review body (Tribunal Administrativo Foral de recursos contractuales) examined several requests, both for a review of the contract notice, including tender documentation, and for the award decision presented by unsuccessful tenderers. In the latter case, the review body has dismissed the application, finding, among other things, that it does not appreciate that the contracting authority has incurred material error, arbitrariness or discrimination in the valuation of the award criteria submitted to a value judgment. The Commission would like to underline that, when a procurement procedure for the award of a concession contract has been challenged, Spanish review bodies for public procurement matters and competent judicial authorities are obliged to ensure correct application of EU public procurement law.

Given the above, at this stage, the Commission has been unable to establish a clear breach of EU public procurement rules.

Conclusion

It is the responsibility of the competent authorities to decide on the most suitable waste treatment options, having regard to the waste treatment situation and needs in Gipuzkoa province and to the waste hierarchy laid down in the WFD. The Commission continues to examine the issues raised by the petitioner in all its various dimensions. The Commission will decide on the most appropriate course of action for this petition in light of the outcome of its assessment.

[14] Applicable to this case, Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, OJ L 395, 30.12.1989, p. 33–35, as amended.