



21.9.2021

NOTICE TO MEMBERS

Subject: Petition No 0190/2021 by Eskil Nielsen (Danish) on the environmental impact of the planned artificial island Lynetteholmen in Copenhagen

Petition No 0511/2021 by Ole Damsgaard (Danish), on behalf of The Danish Society for Nature Conservation, on the impact assessment for project Lynetteholm in relation to Directive 2011/92/EU

1. Summary of petition 0190/2021

The petitioner says that the Lynetteholm Island project agreed on in 2018 by the Danish Government and the Municipality of Copenhagen breaches EU legislation in several ways. The aim of the project is to have an island in the port of Copenhagen that will, firstly, provide protection from climate change and a storage site but also, in the long term, an area for the city's urban development. According to the promoters, the creation of Lynetteholm would help reduce the pressure Copenhagen is under as a consequence of its rapid population growth and would have a positive effect on housing prices and furnish finance for public infrastructure, including an underground railway for the area and a new bypass that would connect Nordhavn to Refshaleøen via Lynetteholm. In the petitioner's view that breaches Directive 2011/92/EU and Directive 2014/52/EU. The environmental impact assessment (EIA) should examine and assess the overall environmental impact of a project. However, in this specific case, the project was divided into several separate parts such that an EIA is not needed for each individual part of the project. The petitioner says that the EIA only covers and includes part of the whole project (the demarcation and construction of the island's outer limits). It does not include or cover the infrastructure works (the new port tunnel, the 'Østlig Ringvej' bypass and the underground railway for Lynetteholm) or the housing.

He asks the EU institutions to take urgent action.

Summary of petition 0511/2021

The petitioner is of the opinion that the project Lynetteholm, a large-scale construction project of a new residential island in Copenhagen, submitted to the Danish Parliament on 28 April 2021 and expected to be adopted before the summer of 2021, takes into account only the environmental impact of part of the overall project and is contrary to Directive 2011/92/UE (new Directive 2014/52/UE), which requires, *inter alia*, an assessment of a project and its cumulative effects in its entirety.

He underlines that the European Court of Justice has already held on several occasions that a full assessment of a project cannot be circumvented by dividing the project into smaller projects when the report is made aware of secondary or ancillary projects.

The petitioner has indicated that the Danish Government merely refers to the project as a single project but a number of additional works are omitted from the EIA report. The complainant insists on the fact that the EIA report covers only part of the overall project, namely only the construction of the boundaries of the island and not the works relating to the Eastern Ringvej and metro infrastructure projects for Lynetteholm, urban development and a possible future link between Lynetteholm and Nordhavn.

He concludes considering the Danish government has violated EU law, namely Directive 2011/92/UE at least, and in this context asks the Committee on Petitions of the European Parliament (PETI) to assess the case.

2. Admissibility

Petition 0190/2021 declared admissible on 4 June 2021.

Petition 0511/2021 declared admissible on 19 July 2021.

Information requested from Commission under Rule 227(6).

3. Commission reply, received on 21 September 2021

The Commission's observations

Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (the Environmental Impact Assessment (EIA) Directive)¹ provides that Member States must ensure that, before development 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 of the environmental effects. These projects are defined in Article 4, which refers to Annex I and II of the Directive.

While artificial islands are not expressly listed in the above-mentioned annexes of the EIA Directive, depending on the circumstances it may be that they constitute an urban development project². For such projects, there is no automatic obligation to conduct an EIA. Member States

¹ Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, as amended by Directive 2014/52/EU, OJ L 124, 25.4.2014.

² Project category listed in Annex II 10(b) of the EIA Directive.

have to determine, either through a case-by-case examination or according to thresholds or criteria, whether the project is to be made subject to an assessment because of its likely significant effects on the environment taking into account the relevant selection criteria set out in Annex III of the EIA Directive. Amongst the selection criteria to be used by the respective competent authorities to determine if an Annex II project should be subject to an EIA are the size and design of the whole project and cumulation with other existing and/or approved projects as well as the cumulation of the impact with the impact of other existing and/or approved projects, the location of the project, pollution and nuisances, as well as risks to human health. If the Member State concludes that the project will have significant effects on the environment, an EIA has to be carried out. If an EIA is carried out, it has to include a description of the likely significant effects of the project on the environment resulting from the cumulation of effects with other existing and/or approved projects (Annex IV, point 5.e).

The EIA Directive also includes specific provisions on access to justice, allowing citizens and non-governmental organisations to challenge decisions breaching the Directive before the national courts.

Based on the information available to the Commission services, an EIA on the artificial island project of Lynetteholmen was carried out. For future construction projects, such as a bypass and a metro, that may supplement the already approved one – once defined and provided that these fall under the scope of the EIA Directive – the competent national authorities shall ensure application of the respective legal provisions. It should be noted that an overall environmental impact assessment of future non-defined projects is not a requirement under the EIA Directive, as the latter obliges Member States to consider cumulative effects with existing and/or approved projects.

Conclusion

Based on the information provided by the petitioner, the Commission cannot identify a breach of the EIA Directive. In addition, the petition relates to an individual case of possible poor application of EU law of a specific project. As indicated in the Communication “EU law: Better results through better application”³, the Commission focuses its enforcement action on issues of wider principle, general practices, and systematic failures to comply with EU law, none of which emerge in the case at stake. In this context, it should be stressed that compliance with EU law falls primarily with the national authorities, including judicial ones, who are better placed to assess individual situations such as the one referred to by the petitioner, and intervene if necessary.

Under these circumstances, the Commission cannot provide further follow-up to this petition.

³ C(2016) 8600 final.