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CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE
AND NATURAL HABITATS

Standing Committee

35th meeting
Strasbourg, 1-4 December 2015

Complaint on stand-by :

***MARSUPELLA PROFUNDA* THREATENED BY WASTE
BURN INCINERATOR
AT ROSTOWRACK FARM, ST DENNIS
(UNITED KINGDOM)**

REPORT BY THE EUROPEAN UNION

*Document prepared by
Directorate B – Nature, Biodiversity and Land Use, ENV.B.2 – Biodiversity
European Commission*



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate B - Nature, Biodiversity & Land Use
ENV B2 - Biodiversity

Brussels, 12/02/2015
ENV B2/ATS/fc ares(2014)

Ms Ivana D'Alessandro
Head of the Biodiversity Unit
Directorate of Democratic Governance,
Culture and Diversity
Directorate General II
Council of Europe

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Subject: Complaint No. 2012/11 - Marsupella profunda threatened by a waste burn incinerator at Rostowrack Farm St Dennis, UK

Dear Mrs D'Alessandro,

Following your request of 7 January 2014, and in view of the Bureau meeting of 31 March 2015, I am happy to provide you the following update on the case file mentioned in the subject.

On 8 July 2014, the Commission informed the complainant of the intention to close the file as there was insufficient evidence for the Commission to intervene. More particularly, the Commission wrote:

"However, the Habitats Directive does not make public consultation mandatory before a decision is taken by the authorities on whether an appropriate assessment is required or not.

With regard to the concern that the incinerator may have a negative impact on the nearby St Austell Clay Pits Special Area of Conservation (SAC) and in particular the Western Rustwort (Marsupella profunda) which is the main interest for which this site is designated, this is a difficult question to answer. From the information we have available, the key threat to the species appears to be from a lack of management of the site i.e. keeping other species at bay and allowing this species clear clay face on which to grow. The Natura 2000 data form on which this site was communicated to the Commission identifies the risks to the site under the heading "vulnerability" that: The continued survival of this species depends on the management of existing sites, which in the St Austell area, are in close proximity to active working pits, and on the inclusion of new sites. New sites are continually being created by china clay extraction in the St Austell area and are being artificially created in former clay-mining areas in west Cornwall. Management of existing sites includes manual control of scrub (willow and gorse), heathers and grasses, trials with herbicide control of heathers, etc., and smallscale translocation experiments.

From our understanding it would appear that this species might also be sensitive to air pollution, but that the most immediate threat to its survival is natural succession if left uncontrolled or managed.

Obviously, the case that was argued before the High Court and then on appeal before the Court of Appeal did not focus on looking at the overall management of the site and this species, but was aimed at challenging the permission for a new incinerator. In this process, there appears to have been some dispute as to the use of a so called "1% rule" below which it was assumed that any additional air pollution would not have an impact on the site so as to require an appropriate assessment. I must confess that this is a matter which is very difficult to second guess from

Brussels and it appears that the actual likely impact of increased air pollution on the species was not debated in the High Court or Court of Appeal. This is probably not surprising as the focus of the case was on the unfairness of the procedure followed at the public enquiry and the fate of your legitimate expectations that the information fed into the enquiry would be taken into account by the Secretary of State in his final decision on the planning merits.

On balance, whilst I would agree with Mr Justice Collins that it is unfortunate that the public enquiry did not lead to a clear decision on this matter, I am not of the opinion that there is sufficient evidence available that the decision will result in damage to the SAC so that the Commission must intervene."

The complainant replied to this letter and objected to the conclusion. By letter of 10 December 2014, the Commission maintained:

"In your letter you ask me to effectively adjudicate between experts on the species. However we do not have a decision making role in national planning decisions such as this. We intervene where EU legislation has not been implemented either correctly or at all or where there is a clear failure or refusal by national authorities to apply the law. Here the question boils down to one of appreciation of impact and a dispute between experts. It is not the role of the Commission to intervene in such issues, and we are ill placed to second guess from Brussels."

The Commission subsequently closed the file.

We will be interested to hear the outcome of the discussions in the Bureau of the Standing Committee.

Yours sincerely,

(signed)

François

Head of Unit

Wakenhut

Cc: Stefan Leiner, Fotios Papoulias, Angelika Rubin, Sibylle Grohs