



29.8.2014

NOTICE TO MEMBERS

Subject: Petition No 1601/2013 by Tanya Ivanova (Bulgarian), on alleged pollution caused by a timber processing plant in Gorno Sahrane, Bulgaria

1. Summary of petition

The petitioner expresses concern at pollution being caused by the Gorno Sahrane industrial plant situated in the municipality of Pavel Banea in the Stara Zagora province of Bulgaria. For 13 years, this conservation area, which encompasses the Central Balkan National Park (forming part of the Natura 2000 network), the Valley of the Thracian Kings (a listed UNESCO site) and the Valley of the Roses, has been suffering as the result of the operation of a timber processing plant, leading to the disappearance of local fish species from the rivers, the virtual elimination of agriculture and illnesses caused by air pollution. The authorities have several times imposed penalties on the company and ordered it to reduce pollution. However, it is failing to show sufficient commitment to 'green industrial investment' or to address problems arising from the use of chemicals. The petitioner asks the committee to carry out its own investigations on the spot so as to ascertain at first hand the gravity of the situation.

2. Admissibility

Declared admissible on 4 June 2014. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 29 August 2014

The Commission's observations

** Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (IPPCD), repealed as from 7 January*

2014 by Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (IED)

Directive 2008/1/EC (as replaced by Directive 2010/75/EU) establishes a permit procedure and lays down requirements to be met by the activities listed in its Annex I in view of avoiding or minimising polluting emissions to the air, water and soil, as well as preventing the generation of waste.

It seems to follow from the information submitted by the petitioner that the installation 'Kastamonu-Bulgaria' JSC (ex 'Gabrovnitsa'), subject of the petition, would be covered by the IPPCD/IED and therefore subject to a permitting obligation, which should demonstrate compliance with the so-called "best available techniques" (BAT), as included in the relevant BAT Reference document¹. In case of changes or extensions of an installation which may have consequences on the environment, the operator is to inform the competent authority who shall update the permit as appropriate. Substantial changes cannot be made without a permit.

It needs to be underlined that the implementation and enforcement of EU law, including the supervision of the operation of industrial installations, falls primarily in the Member States' responsibility and in cases of doubt this would first need to be brought to the attention of the national judicial authorities. Article 23 of the IED includes an obligation for Member States to set up a system of environmental inspections. Paragraph 23(5) provides that non-routine inspections shall be carried out to investigate serious environmental complaints as soon as possible and, where appropriate, before the granting, reconsideration or update of the permit. Article 24 of the IED provides that the public concerned should be given early and effective opportunities to participate in the procedure for the granting of a permit for any substantial change to an installation. Article 25 of the IED furthermore provides that Member States shall ensure that members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to Article 24. Considering these express provisions on access to justice, the Commission would focus its activity on assessing their correct transposition and implementation, refraining from substituting its own action for their use to avoid undermining their role².

Although the petition includes contextual information regarding on-the-spot checks carried out in the past and subsequent penalties and prescriptions, the issues at the core of the petition seem to concern the proposed investment in new equipment, in particular whether this investment would be sufficient to put an end to the environmental pollution. It is however not clear from the information submitted whether any action has been undertaken in this regard, for example whether the public concerned has exercised its right to be consulted in the framework of the procedure for granting a new permit taking into account the investment.

**Directive 2011/92/EU³ of the European Parliament and of the Council (the Environmental Impact Assessment or EIA Directive)*

The information provided by the petitioner is not detailed enough as to enable the

¹ BREF document at: <http://eippcb.jrc.ec.europa.eu/reference/pp.html>; currently under revision

² 27th Annual Report on monitoring the application of EU law (COM(2010)538 final)

³ OJ L 26, 28.1.2012, p.1

Commission to verify if the project for the abatement equipment should have been subject to an EIA. Such type of project could, possibly, be considered as falling under Annex II of the Directive – e.g. point 13 (a) "any change or extension of projects [...] already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment [...]". For projects listed in Annex II, Member States shall determine whether a project shall be made subject to an assessment in accordance with Articles 5 to 10 through screening using relevant selection criteria listed in Annex III. The petition, in its Annex 11, refers to a screening decision. It seems therefore that the project has been subject to a screening procedure.

Conclusion

In light of the above, the Commission suggests to inform the Petitioner of his/her rights regarding action under national law under Articles 23(5), 24 and 25 IED, as well as under Article 11 EIAD, and to ask for information on the results of this action, in case (s)he has already exercised this right.

Should the exercise of this right of action have been unsuccessful, the Commission may, depending on the reasons and subject to receiving more detailed information regarding a possible infringement of EU legislation, investigate the case further and raise questions with the Bulgarian authorities.

Furthermore, it has to be recalled that the Court of Justice of the EU has systematically held that all national authorities including the courts have to interpret and apply national legislation in the light of EU law¹.

¹ *"It follows that, in applying national law, the national court called on to interpret it is required to do so, as far as possible, in the light of the wording and the purpose of the directive in question, in order to achieve the result pursued by the directive and thereby comply with the third paragraph of Article 288 TFEU (see, to that effect, paragraph 26 of the judgment in the case C-14/83 Von Colson and Kamann; paragraph 8 of the judgment in the case C-106/89 Marleasing; paragraph 26 of the judgment in the case C-91/92 Faccini Dori,; and paragraph 113 of the judgment in the cases C-397-403/01 Pfeiffer and Others). When the conditions under which individuals may rely on the provisions of a directive before the national courts are met, all organs of the administration, including decentralized authorities such as municipalities, are obliged to apply those provisions. (paragraph 31 of the judgment in the case C-103/88 Fratelli Costanzo SpA). The requirement for national law to be interpreted in conformity with European Union law is inherent in the system of the Treaty, since it permits the national court, within the limits of its jurisdiction, to ensure the full effectiveness of European Union law when it determines the dispute before it (see, to that effect, paragraph 114 of the judgment in the case C- 397-403/01 Pfeiffer and Other)" and paragraph 48 of the judgment in the case C-555/07 Seda Küçükdeveci v Swedex GmbH & Co).*