NOTICE TO MEMBERS

Subject: Petition 0301/2008 by Rosa Maria Fernandez Jiménez (Spanish), on behalf of Plataforma para la defensa del agua del valle de Lecrin en Sierra Nevada de Durcal (Granada), with 4 signatures, on alleged breaches of EC Water Framework Directive in connection with the building and functioning of the water bottling plant "Aguas Minerales de Sierra Nevada S.L."

1. Summary of petition

The petitioner maintains that local, regional and national authorities would have breached the EC Water Framework Directive as they approved the construction and functioning of the water bottling plant "Aguas Minerales de Sierra Nevada S.L." in Durcal (Granada). The petitioner argues that the activity of this plant risks having a serious detrimental impact on the aquifer which supplies Lagunas del Padul, situated inside the Sierra Nevada Natural Park, which is a community protected area under the EC Habitats Directive 92/43. The petitioner asks the European Parliament to have the situation investigated.

2. Admissibility


The petitioner refers to a project approved by the Spanish authorities to construct a mineral bottling plan in Dúrcal (Granada).

The petitioner argues that the activity of this plant risks having a serious detrimental impact on the aquifer which supplies Lagunas del Padul, situated inside the Sierra Nevada Natural Park.
Park, which is a community protected area under the EC Habitats Directive 92/43. The petitioner claims that the following legislation has been breached:

- Directive 92/43/EEC\(^1\) on the conservation of natural habitats and of wild fauna and flora;
- Directive 2000/60/EC\(^2\) establishing a framework for Community action in the field of water policy (Water Framework Directive)

The Commission's comments on the petition

With regard to Directive 92/43/EEC, the Commission would like to point out that the municipality of Dúrcal is partially located inside the site of Community importance (SCI) ES6140004 Sierra Nevada. Council Directive 92/43/EEC does not prohibit development on Natura 2000 sites, but establishes, in its Article 6, the safeguards governing projects likely to have a significant effect on a Natura 2000 site. The petitioner has not provided any evidence of the likely effects that the project could have on the integrity of the site. In addition, according to the information provided by the petitioner, the responsible environmental authority has not found significant impacts of the project on the site of Community importance.

As regards the application of the European legislation on environmental impact assessment (EIA), this project could fall within Annex II point 10(l) of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment\(^3\) as amended by Council Directive 97/11/EC\(^4\) and Directive 2003/35/EC\(^5\) (EIA Directive). For projects included in Annex II, Member States shall determine through a case-by-case examination, or thresholds or criteria set by the Member State, whether the project shall be made subject to an EIA.

In this case, the Law of the Region of Andalusia transposing the EIA Directive\(^6\) establishes thresholds to determine the impact on the environment. In point 39, Annex II of this Law, it is stated that an environmental study is needed only when water extraction exceeds 1.5 cubic hectometres per year. In Dúrcal, the extraction is limited by the Resolución of 21 August 2007 to 10 litres/second (315 360 cubic metres/year). As this quantity falls below the threshold established by the Spanish transposing legislation, an EIA would not be required in this case.

The Water Framework Directive (2000/60/EC\(^7\), WFD) requires detailed planning on the use of water resources to avoid non-sustainable solutions and irreversible damage to the environment, through the development of River Basin Management Plans (RBMP). In accordance with the WFD, the first RBMP must be published by December 2009. Article 4 of the WFD sets out two main environmental objectives: to prevent deterioration of the status of

---

\(^1\) OJ L 206, 22.7.1992
\(^2\) OJ L 327, 22.12.2000
\(^3\) OJ L 175, 5.7.1985
\(^4\) OJ L 73, 14.3.1997
\(^5\) OJ L 156, 25.6.2003
\(^6\) Ley 7/1994 de protección ambiental, 18 of May. BOJA 79 of 31.5.1994
\(^7\) OJ L 327, 22.12.2000
water bodies and to achieve good status in all waters by 2015. For groundwater, the objective for 2015 should also include to achieve a long term balance between abstraction and recharge. From 2009, any plan or programme that has an impact on water resources or water quality will have to be co-ordinated with the RBMP provisions, so that the WFD's environmental objectives can be met.

The petitioners claim that the amount of water authorised for extraction will put at risk the achievement of the environmental objectives of the Directive. In particular, they state that the principle of no deterioration of water status will be breached as the abstraction will exceed the aquifer recharge and potentially affect the wetland Laguna del Padul which is directly connected to the aquifer. The petitioners provide a large amount of information contesting the figures given by Spanish authorities on available resources and future demands. They perform their own projections to conclude that the available resources in the aquifer will not be sufficient to satisfy future demands.

However, the authorised extraction flows that are challenged by the petitioners are the ones recommended by the river basin authority and are very small compared to the existing demands in the area e.g. for irrigation (which are more than 100 times higher). The permit states that the flow authorised is less than 0.2% of the available resources. The conditions of the authorisation include the installation of piezometers around the abstraction point to monitor the level of the aquifer to ensure the level is not affected.

The assessment of the available information has led the Commission to conclude that there is no evidence of any breach of Directive 2000/60/EC.

Conclusions

In the light of the information available, there is insufficient evidence to believe that the requirements laid down in Directive 85/337/EEC as amended, Directive 92/43/EEC and Directive 2000/60/EC are not being respected.

4. Further Commission reply, received on 12 July 2010.

The Commission has examined again the information available for this petition and has nothing to add in relation to its communication of October 2008. That is to say, in the light of the information available, there is insufficient evidence to believe that the requirements laid down in Directive 85/337/EEC as amended, Directive 92/43/EEC and Directive 2000/60/EC are not being respected.

5. Commission reply, received on 3 March 2011. (REV.II)

The Petitioner refers to a project approved by the Spanish authorities to construct a mineral water bottling plant in Dúrcal (Granada).

Point 6 of the Petition argues that the company building the plant contravenes laws on food security. The petitioner also argues that the company sells bottled water without the required
permits and without health registration.


Authorisation procedure for the exploitation and marketing of natural mineral water:

The Commission observes that, pursuant to Directive 2009/54/EC, natural mineral waters are subject to an authorisation procedure carried out by the competent authorities of a Member State of the European Union (EU) or the European Economic Area (EEA). Thus, pursuant to Article 3 read in conjunction with Annex I, point 1 of Directive 2009/54/EC, the exploitation of a natural mineral water spring shall be subject to the permission from the responsible authority of the country where the water has been extracted after it has been established that the water in question complies with the provisions laid down in Annex I, Section I of Directive 2009/54/EC concerning the definition and characteristics of natural mineral waters.

The Commission publishes on its website the list of natural mineral waters recognised by the Member States as natural mineral waters satisfying the provisions concerning the definition and characteristics of natural mineral waters.

In this specific case, the Commission observes that the inclusion of the source "Sierra Dúrcal" on the list of natural mineral waters recognised by Member States indicates that the exploitation of the source has been authorized by the competent authorities of Spain on the basis that the water in question was in compliance with the above mentioned requirements.

Compliance with the conditions for exploitation and marketing of natural mineral waters specified in Annex II of Directive 2009/54/EC:

Annex II, points 2 and 3 of Directive 2009/54/EC lays down the conditions for exploitation and marketing of natural mineral waters concerning the protection of the spring against any possibility of contamination.

The Commission has carefully examined the information available for this Petition, notably the general exploitation plan. The Commission could not find any evidence that the conditions for exploitation and marketing of this source do not comply with these requirements.

Responsibility of the competent authority in the country of origin to carry out checks on the conditions for exploitation and marketing of natural mineral waters:

Annex II, point 4 of Directive 2009/54/EC specifies that the responsible authority in the country of origin shall carry out periodic checks to ensure that the natural mineral water in

---

1 OJ L 229, 30.08.1980
respect of which exploitation of the spring has been authorised complies with the provisions concerning the definition and characteristics of natural mineral waters. In addition, pursuant to Annex II, point 4 of Directive 2009/54/EC, the responsible authority of the country of origin shall also check that the provisions concerning the protection of the spring against any possibility of contamination are respected by the person exploiting the spring.

The Commission has carefully examined the information available for this Petition. The Commission could not find any evidence that the competent authority does not carry out checks pursuant to and in line with those provisions.

Conclusion

The Commission concludes that, in view of the absence of information on a current practice of the authorities of Spain which would infringe EU law, there is insufficient evidence to believe that the requirements of Directive 2009/54/EC are not being respected.