



16.12.2011

NOTICE TO MEMBERS

Subject: Petition 1282/2009 by Iipo Koppinen (Finnish), on alleged breach of the Water Framework Directive (2000/60/EC) by the local environmental authorities in Pori

1. Summary of petition

The petitioner relates how - during the first half of the 20th century - a river was regularly dredged under a 1902 law, which gave dredging companies exclusive and unlimited rights. The dredging eliminated numerous rapids and destroyed all aquatic biotopes. Over the last decades of the 20th century dredging activities ceased. In 2008 a plan for the regeneration of the river was put forward. This prompted the dredging companies to reassert their right to continue their regular dredging operations. The Finnish Environmental Institute in the local town invokes the 1902 law to justify the dredging activities going ahead.

Based on the EU Water Framework Directive objectives the petitioner has appealed to the national environmental authorities and the Ombudsman to stop the dredging work. Neither authority has intervened. Meanwhile, the Finnish government has voted the creation of the Bothnian National Sea Park, into which the river in question runs. The petitioner seeks clarification whether the application of the 1902 law on dredging can be upheld against the EU Water Framework Directive and more general environmental considerations.

2. Admissibility

Declared admissible on 16 December 2009. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 19 February 2010.

The petition appeals to the EU to prevent the start of cleaning operations of the Uksjoki River until it has been shown to be necessary. He also requests that the Uksjoki catchment area be inspected as a whole, in accordance with the Water Framework Directive, and calls for the proper assessment of the effects of the cleaning works on the Baltic Sea.

According to the petitioner, the Uksjoki Creek in Finland is being dredged (cleaned) without the requirement of the Water Framework Directive (2000/60/EC)¹ being taken into account. Initiatives to restore the stream were opposed by drainage companies in 2008, which are alleged to have drawn up a cleaning plan to prevent any regeneration of fish in the Uksjoki Creek. The petitioner claims that dredging rights from the beginning of the 20th century wrongly prevail over the Water Framework Directive. The petitioner has appealed to the national environmental authorities and the Ombudsman in Finland to stop the dredging work.

The petition was first updated on 20 January 2010, with information on an appeal by the petitioner to the Board for Appeal for Agriculture in Finland. It was then updated on 10 February 2010, following a meeting the petitioner had with the District Environment Center in Pori.

The main aim of the Water Framework Directive is to achieve good status in water bodies as a rule by 2015.

In case of past modifications to water bodies, Member States may designate a certain water body as heavily modified (WFD Article 4(3)). This can only be done when the modification is such that it prevents the achievement of good status. In addition, it has to be clear that there is no better environmental option for the activity and that a change to the activities in such a way that they do not affect good status would have significant effects on sustainable development activities. In such a heavily modified water body, good ecological potential must be achieved instead of good ecological status.

In cases where new modifications to the physical characteristics of a water body lead to a deterioration of status or prevent achieving good status, certain conditions have to be fulfilled according to the Water Framework Directive (WFD Article 4(7))². It has, for example, to be assessed whether there are no better environmental options and the reasons for the modifications must override the benefits to the environment.

From the information presented in the petition, the scale and the reason of the cleaning works are not clear and there is no precise information on the impact on the aquatic environment of the cleaning works. It is, therefore, uncertain whether the works would lead to deterioration of status or whether they would prevent the achievement of good status. There is no indication of which obligations of the directive would have been breached. The information provided does

¹ OJ L 327, 22.12.2000, p. 1-73.

² Guidance on the application of WFD Article 4(7) is agreed by the European Water Directors and is available on:

http://circa.europa.eu/Public/irc/env/wfd/library?l=/framework_directive/guidance_documents/documentn20_mars09pdf/EN_1.0_&a=d.

not provide evidence that the provisions of the Water Framework Directive have been violated in this situation.

On the basis of the information provided, the Commission cannot identify a breach of Directive 2000/60/EC.

4. Further Commission reply (REV), received on 6 May 2011

The petition was updated last on 15 November 2010 with information on the status of the digging of the river. In the additional information the petitioners reiterate that their photographic evidence shows an absence of 3-metre wide protection zone alongside the newly-dredged channel. It is implied that such protection zones are obligatory by waterways. The petitioner further indicates that Rural Development Financing has been used for re-digging of the river.

The Commission would like to clarify that cross-compliance measures under EU law require 0.6 m wide waterside protection zones from the beneficiaries of direct support. Additionally, the Finnish Rural Development Programme provides for an agri-environmental scheme, where the protection zone requirement varies from 1-10 metres depending on the nature of the protected waterway and the profile of the land. The programme further defines how such protection zones will have to be maintained. The Finnish Rural Development Programme does not provide financing for the digging of waterways.

The Commission would like to remind the Committee on Petitions that the controls necessary to check the respect of the requirements on the protection zones is a Member State competence. In the Finnish case the competent authority for both direct payments and compensations in the frame of the Rural development programme is MAVI (Agency for Rural Affairs, P.O. Box 405, FI-60101 SEINÄJOKI, Finland). The Commission has requested MAVI to provide detailed information on the specific case described in the petition with regard to possible infringements to cross-compliance and agri-environmental commitments and will closely examine this information in view of determining the appropriate follow-up.

The Finnish authorities have adopted, published and reported their River Basin Management Plans to the Commission in due time. The Commission is currently in the process of assessing the plans received and will make its assessment public, at the end of 2012, in the 3rd Water Framework Directive implementation report.

Prior to this horizontal assessment of the available plans, the Commission is not in a position to provide an assessment of the content and compliance of any specific plan. However, it will keep the Parliament informed once the ongoing assessment of the relevant RBMP is finalised in 2012.

The Commission has also examined whether this channel and the Haminaholman lahti into which it flows are included within or adjacent to an area designated by Natura 2000 for extra protection but concluded that this is not the case.

5. REV II Commission reply, received on 16 December 2011.

The petition was originally received in the autumn 2009, but has since been updated several times with further claims. The latest claims were related to non-respect of agriculture legislation and its enforcement when it comes to headlands and filter strips by the riverside parcels. The re-digging project itself is not financed with EU funds, but the farmers whose parcels are by the riverside, receive direct payment and payments from the Finnish agri-environmental scheme.

The Commission has requested information from the responsible authority (MAVI) on the controls performed on the farm parcels by the riverside in relation to the protection of headlands and filter strips, and the outcome of these controls.

According to the information received from the responsible authority, the financing decision of the re-digging project includes a requirement to re-establish any damaged headlands and buffer zones by the end of the project implementation period (30.09.2012). The responsible authority has made the "end-of works" audit in autumn 2011. This audit showed that buffer zones and headlands had been re-established on all parcels, except one. For this particular parcel the farmer has been allowed to re-establish the green cover next Spring, which would still enable the farmer to respect the re-establishment requirement by the end of September 2012.

Concerning the overall enforcement of the legislation related to the controls of the agricultural support paid to the farmers, the responsible authority has shown evidence that the support received by the farmers has been audited according to the Commission regulation No 1975/2006 laying down detailed rules for the implementation of Council regulation (EC) No 1698/2005, and that no breach of the requirement was reported in these audits.

Conclusion

On the basis of the information received, the Commission cannot identify a breach of the agriculture legislation, nor of its enforcement with respect to headlands and filter strips by the riverside parcels.