



30.9.2019

NOTICE TO MEMBERS

Subject: Petition No 1735/2013 by by Walter Berchter (German) on the pollution of two rivers in Germany

Petition No 0533/2014 by L.B. (German) on tightening up the directives concerning the potash industry

Petition No 1287/2014 by Peter Silbernagel (German) on non-compliance with environmental legislation in Germany

Petition No 0721/2015 by Otto Löwer (German) on behalf of the Bund für Umwelt und Naturschutz Deutschland e.V., supported by 3212 co-signatories, on drainage of saltwater in the federal state of Hesse

Petition No 0588/2016 by G.R. (German) on behalf of Oberweser - Bramwald e.V. regarding the dumping of industrial saline solutions in the Oberweser River in Germany and the resulting environmental burden

1. Summary of petition 1735/2013

The petitioner expresses concern at the pollution of the Weser and its tributary, the Werra, with large quantities of toxic potassium compounds, indicating that this is motivated by financial considerations. He is accordingly seeking an investigation.

Summary of petition 0533/2014

The petition relates to Directives 2000/60/EC, 2006/60/EC, 98/43/EEC and 2008/1/EC, 92/43/EEC, and 2009/147/EC, which can be applied when necessary in the potash mining industry, and is calling for them to be tightened up. In the first place, the petitioner is calling for the German Government to apply EU legislation in full. The directives in question relate

to the principles underlying EU water policy, extractive industry waste management, pollution prevention, the conservation of wild flora and fauna, and bird conservation. What the petition is seeking in particular is a ban on salt-water discharges into surface water and groundwater and on tailings left over from the mining process. It expresses the view that the above directives should be tightened up because they do not do enough in their present form to prevent pollution of the environment and the natural world.

Summary of petition 1287/2014

The petitioner reports that the company K S AG Kassel is failing to comply with environmental legislation, claiming that the company is discharging millions of cubic metres of brine (sodium chloride) into the ground, the Werra, the Weser and the North Sea.

Summary of petition 0721/2015

The petitioner asks the European Parliament to investigate the agreement between the government of the federal state of Hesse and a large undertaking. According to the petitioner, this agreement infringes Directive 2000/60/EC (the Water Framework Directive). The agreement provides for a four-stage plan for the drainage of saltwater. The petitioner states that the measures provided for in the agreement will destroy valuable nature, that the agreement distorts competition, that certain environmental limits (LAWA) are exceeded and that the agreement cannot be altered in the light of amendments to environmental law until 2075. The petitioner requests an investigation and, if possible, the launch of infringement proceedings.

Summary of petition 0588/2016

The petitioner is concerned about the manner in which saline solutions generated by the production process at a major multinational company in the area of Oberweser in Germany are being disposed of. He complains that the local prosecutor has previously filed charges for contamination of drinking water, as the company injects the discarded solutions at a great depth underground and that the same company plans to build a pipeline through which the solutions will end up in a high concentration in the waters of the Oberweser River. The last plan directly violates the prohibition on the deterioration of the Weser River dictated by the relevant EU law. At the same time, the company concealed the fact that the planned disposal of solutions in the river had been reduced to one sixth by decisions of local parliaments, so as to not ban the disposal concerned altogether, given the large amounts of the disposal which will continue in any case. He considers the disposal in the river system an unsustainable solution, whilst it is not possible to reduce the condensation of the discarded solutions due to the limited sediment they contain. He asks the local parliaments and the German Federal Government to force the company to prepare a plan for the disposal of the saline solutions at its own expense. He stresses that any fines that may be imposed by the EU on the grounds of a breach of the relevant legislation should not be borne by citizens and that the company must generally bear the disposal cost. Lastly, he states that there is the possibility the company [may move] its headquarters and production to countries in North and South America.

2. Admissibility

Petition 1735/2013 declared admissible on 23 June 2014.
Petition 0533/2014 declared admissible on 11 February 2015.
Petition 1287/2014 declared admissible on 27 April 2015
Petition 0721/2015 declared admissible on 19 February 2016
Petition 0588/2016 declared admissible on 27 October 2016

Information requested from Commission under Rule 227(6).

3. Commission reply, received on 28 November 2014

Petition 1735/2013

The Commission is aware of the issue of salt discharges by the potash industry in the rivers Werra and Weser. In response to a complaint, the Commission opened an infringement procedure against Germany on 22 June 2012 on account of failure to fulfil its obligations under the Water Framework Directive (2000/60/EC) with regard to the Werra-Weser river basin. In the Commission's view Germany has not taken the necessary measures to achieve the objectives of good water status by 2015 for several ground and surface waters as required by Article 4(1) of the Directive. It has also not fulfilled the conditions of Article 4(4) of the Directive for the postponement of the deadline, in particular since it has not included any specific measures in the River Basin Management Plan (RBMP) to reach these objectives. The Commission is in close contact with the German authorities, so that this breach can be rectified in the framework of the 2nd RBMP, which will be available for public consultation by December 2014.

Conclusion

The Commission addresses the issue of salt discharges in the rivers Werra and Weser through the infringement procedure to ensure that the requirements of the Water Framework Directive with respect to Werra-Weser river basin are fully met. The petitioner is encouraged to participate in the public consultation on the draft 2nd RBMP due for December 2014.

4. Commission reply to petition, received on 26 August 2015

1735/2013 (REV)

A draft river basin management plan and programme of measures for period 2015-2021 that cover the issue of salt discharges in Weser/Werra (2nd RBMP) was put to public consultations from 15 April 2015 to 15 October 2015. The Commission is in technical and legal discussions with the German authorities on the draft documents, with the aim of ensuring that in the framework of this process the infringement of the Water Framework Directive will be rectified.

The Commission continues to be in close contacts with the German authorities to achieve a resolution of the case in the framework of the 2nd RBMP. The petitioner is encouraged to participate in the public consultation on the draft 2nd RBMP.

5. Commission reply, received on 26 August 2015

Petition 0533/2014

The Commission is of the view that the EU set of rules in place to evaluate the environmental impact of projects¹, ensure the safety of facilities dealing with extractive waste², protect nature and biodiversity³⁴ and waters⁵ is sufficiently comprehensive and robust to avoid or mitigate impacts of extractive activities on human health, the quality of the environment and the wildlife.

These rules must be effectively implemented to reach their objectives. The implementation of EU environmental law lies within the responsibility of the Member States, which need to ensure that the environmental law is fully respected. Hence, it is for the national authorities to launch mining projects in full compliance with all relevant EU legislation.

In particular, the Directive 2006/21/EC on the management of extractive waste requires Member States to take the necessary measures to ensure that extractive waste is managed without endangering human health and without using processes or methods which could harm the environment, and in particular without risk to water, air, soil and fauna and flora, without causing a nuisance through noise or odours and without adversely affecting the landscape or places of special interest.

No waste facility shall be allowed to operate without a permit granted by the competent authority, as required by Article 7 of the Directive 2006/21/EC. Any permit produced pursuant to other national or Union legislation may be combined to form a single permit. The Commission is of the opinion that Member States that make use of this possibility should ensure the consistent implementation of all provisions dealing with extractive activities, such as potash mining.

As regards, for instance, the protection of water, Article 13 of the Directive 2006/21/EC establishes provisions aimed to prevent the deterioration of current water status, as defined by the Directive 2000/60/EC establishing a framework for Community action in the field of water policy (hereafter: Water Framework Directive). Member States have to ensure that the disposal of extractive waste generated by exploitation of potash, whether in solid, slurry or liquid form, into any receiving body of water, is allowed only if compliance with the Water Framework Directive is ensured.

1 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment; OJ L 26, 28.01.2012.

2 Directive 2006/21/EC of the European Parliament and of the Council on the management of extractive waste; OJ L 102, 11.4.2006.

3 Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds; OJ L 20, 26.01.2010.

4 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; OJ L 206, 22.7.1992.

5 Directive 2000/60/EC of the European Parliament and of the Council 23 October 2000 establishing a framework for Community action in the field of water policy; OJ L 327, 22.12.2000.

With regard to nature protection, in case of plans or projects such as a tailing pile extension that could have significant effects on the conservation objectives of a Natura-2000 site, the procedure set out in Article 6(3) and (4) of the Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora needs to be followed. According to these provisions, a project has to be subject to an appropriate assessment and if the assessment finds significant effects on the site, the project may only be authorised if there is an overriding public interest and there are no available alternatives. If the priority habitat under the Habitats Directive is affected, the Member State has to ask the Commission for an opinion.

The Commission is aware of the environmental problems related to the operations of the K+S GmbH. There is an on-going infringement procedure related to the salt discharges of the mentioned company into surface and ground water bodies in the Weser/Werra river basin. The Commission believes that the necessary measures were not yet taken to achieve the objectives of good water status by 2015 for several ground and surface waters as required by Article 4(1) of the Water Framework Directive, or to justify exemptions under Article 4(4) or 4(5) of the Water Framework Directive.

Discussions with the German authorities are ongoing with a view to swiftly resolving the issue. This case is a subject matter of Petition 1735/2013.

Conclusion

The Commission does not consider that new legislation applicable to the potash industry is needed. As shown above, there is a comprehensive set of EU rules in place to avoid or mitigate impacts of extractive activities on human health, the quality of the environment and the wildlife that need to be effectively implemented by the Member States.

The Commission is aware of the issue of discharges of the potash mining industry into the water bodies in Germany and is closely monitoring this issue, including through the on-going infringement procedure relating to the Weser/Werra river basin and the handling of a petition.

6. Commission reply, received on 26 August 2015

Petition 1287/2014

The Commission is aware of the issue of salt discharges by K+S GmbH into the ground and surface water bodies in the Weser/Werra river basin. As the Commission informed in its observations to the petitions 1735/2013 and 0533/2014, this issue is subject to an on-going infringement procedure concerning compliance with Article 4 of the Water Framework Directive¹. Discussions with the German authorities are ongoing with a view to resolving this case in the framework of the relevant 2nd River Basin Management Plan, which has been put to public consultations from 15 April 2015 to 15 October 2015.

Conclusion

¹ Directive 2000/60/EC of the European Parliament and of the Council 23 October 2000 establishing a framework for Community action in the field of water policy; OJ L 327, 22.12.2000.

The issue raised by the petitioner is the subject matter of petitions 1735/2013 and 0533/2014. The Commission is addressing this problem in the framework of the on-going infringement procedure and encourages the petitioner to participate in the public consultation on the draft 2nd RBMP.

7. Commission reply (REV II), received on 29 February 2016

Petitions 1735/2013 and 0533/2014

On 23 October 2015, the Commission addressed a supplementary letter of formal notice to the Federal Republic of Germany explaining its concerns as regards the draft river basin management plan and the programme of measures for the Weser/Werra region for the period of 2015 to 2021. Germany replied by submission of 22 December 2015.

The German reply is currently under consideration and assessment by the responsible services of the Commission. The infringement procedure is still pending.

8. Commission reply, received on 29 April 2016

Petition 0721/2015

The petitioner refers to the so-called "4-stage-plan", a purported agreement between the Ministry for the Environment of the Land Hessen and a large potash producer for the treatment of salt waste water from production and slag heaps in the region of the Werra and Weser rivers. The petitioner requests an assessment whether this plan would violate the provisions of Directive 2000/60/EC on establishing a framework for Community action in the field of water policy (the Water Framework Directive).

In 2012, the Commission opened an infringement procedure against the Federal Republic of Germany for failure to comply with the Water Framework Directive in the Weser river basin with regard to salt discharges by the potash industry. The issue has been the subject of extensive discussions between the Commission services and the German Government but also among the German *Länder* concerned. It is in this context that the Commission became aware of what is called the "4-stage-plan" which – in the view of the Commission – constituted in substance one of several proposals of how to achieve compliance with the Water Framework Directive. The Commission services understood that this proposal was introduced into the discussions by the Land of Hessen. The Commission services have repeatedly emphasized, however, that they can assess only those proposals that have been formally submitted by the Federal Government within the framework of the pending infringement procedure. It is not apparent that the Federal Government endorsed the "4-stage-plan" as it stood at the time when the present petition was introduced.

Conclusion

With regard to the petitioner's request the Commission would like to emphasise again that an infringement procedure is already ongoing with the objective to ensure compliance with the

Water Framework Directive in the Weser river basin.

9. Commission reply (REV III), received on 3 August 2016

Petitions 1735/2013 and 0533/2014

On 7 April 2016, Germany informed the Commission that the detailed management plan and the programme of measures for the period 2015-2021 for the Weser river basin with regard to salt pollution had been adopted on 18 March 2016.

The management plan and the programme of measures are currently being assessed by the Commission services to check their compliance with the Water Framework Directive. The Commission will thereafter decide on how to proceed with the infringement procedure.

10. Commission reply (REV I), received on 30 November 2016

Petition 0721/2015

The Commission understands that the "4 stage plan" had been the basis for the "Masterplan Salt" on which the management plan and the action programme "Salt" 2015 – 2021 for the Weser river basin are based. These two documents have been adopted by the "Weser Ministerkonferenz" on 18 March 2016.

The Commission services are currently analysing these documents in the framework of the infringement procedure against the Federal Republic of Germany for failure to comply with the Water Framework Directive in the Weser river basin.

11. Commission reply, received on 31 January 2017

Petition 0588/2016

Member States have to ensure that the disposal of extractive waste generated by the exploitation of potash, whether in solid, slurry or liquid form, into any receiving body of water, is in compliance with the Water Framework Directive.¹

It is noted that there is an ongoing infringement procedure against Germany related to the salt discharges of the company concerned into surface and ground water bodies in the Weser river basin because of a breach of the Water Framework Directive.

On 7 April 2016, Germany informed the Commission in the framework of the infringement

¹ Directive 2000/60/EC of the European Parliament and of the Council 23 October 2000 establishing a framework for Community action in the field of water policy; OJ L 327, 22.12.2000, p. 1–73

procedure that the detailed management plan and the programme of measures for the period 2015-2021 for the Weser river basin with regard to salt pollution had been adopted on 18 March 2016 by the "Flussgebietsgemeinschaft Weser" (Weser River Basin Community) in order to achieve compliance with the Water Framework Directive.

The management plan and the programme of measures are currently being assessed by the Commission services to check their compliance with the Water Framework Directive. The Commission will thereafter decide on how to proceed with the infringement procedure which is currently at the pre-litigation stage. The Commission also expects to discuss the case with the German authorities at an upcoming meeting dealing with ongoing infringement procedures in Berlin in spring 2017. Even if the Commission decides to continue this procedure there will be no penalty payment which can only be imposed by the Court of Justice in a second judgement after a Member State has not complied with a first judgement declaring a Member State to be in breach of EU law.

Conclusion

Depending on the outcome of the assessment of the above-mentioned plan and programme, the Commission will decide on the next steps in the framework of the infringement procedure which relates to the issues covered by the petition.

12. Commission reply (REV IV), received on 28 February 2017

Petitions 1735/2013 and 0533/2014

At the meeting of the Committee on Petitions of 24 January 2017, the Commission stressed the complexity of the case which is still being analysed in the framework of the ongoing infringement procedure on water pollution. The Commission has already received several elements from Germany and is currently waiting for the second River Basin Management Plan for the river basin district concerned.

Conclusion

The Commission is addressing the issue of salt discharges in the rivers Werra and Weser through the related infringement procedure. Once the second River Basin Management Plan is analysed, the Commission will inform the Parliament on the way forward.

13. Commission reply (REV II), received on 2 May 2017

Petition 0721/2015

The Commission stresses the complexity of the case which it is still analysing in the framework of the ongoing infringement procedure on water pollution. The Commission has already received several elements from Germany and is currently waiting for the second River Basin Management Plan for the river basin district concerned.

Conclusion

The Commission is addressing the issue of salt discharges in the rivers Werra and Weser through the related infringement procedure.

Once the second River Basin Management Plan is analysed, the Commission will inform the Parliament on the way forward.

14. Commission reply (REV V), received on 22 September 2017

Petitions 1735/2013, 0533/2014, 0721/2015 and 0588/2016

The Commission is currently assessing the second River Basin Management Plan for the river basin district concerned. Moreover, it addresses the issue of salt discharges in the rivers Werra and Weser through the related infringement procedure. With regard to the latter, the Commission is in close contact with the German government and has discussed essential issues in this context with the responsible German authorities at a meeting in May 2017 in Berlin. Further information on specific issues has still to be provided by Germany.

Conclusion

The Commission will inform the Parliament on the way forward once all the relevant assessments are carried out

15. Commission reply (REV VI), received on 30 September 2019

Petitions 1735/2013, 0533/2014, 1287/2014, 0721/2015 and 0588/2016

The Commission received a complaint maintaining that Germany did not comply with Directive 2000/60/EC¹ (the Water Framework Directive (WFD)) on establishing a framework for Community action in the field of water policy in the Weser river basin with regard to salt discharges by the potash industry. Based on this complaint an EU pilot was opened. A letter of formal notice was sent on 21 June 2012 regarding the breach of Article 4(4) WFD.

Germany, taking account of the Commission's comments, drafted a masterplan following a dialogue with the Commission. On 7 April 2016, Germany stated that all the *Länder* concerned had formally adopted a detailed masterplan "Salt". In October 2018, it submitted a status report, which showed significant progress towards compliance.

Therefore, the infringement procedures and the respective complaints by citizens were closed in June and July 2019. Compliance with the WFD has not yet been achieved, but the measures included in the River Basin Management Plan should significantly improve the quality of the

¹ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, *OJ L 327, 22.12.2000, p. 1–73*.

water.

The Commission will continue to monitor the situation and can reassess the situation at any point in time if there is evidence that the competent German authorities and concerned stakeholders fail to implement the masterplan in a timely and adequate manner.

Conclusion

Germany is currently implementing the salt masterplan, which will work to achieve compliance with EU law. However, the Commission can reassess the situation at any point in time if there is evidence that the competent German authorities and concerned stakeholders fail to implement the masterplan in a timely and adequate manner.