



.6.5.2019

NOTICE TO MEMBERS

Subject: Petition 0265/2007 by Natalia Gonzalez Menendez (Spanish) on behalf of the San Martin de Verina Neighbourhood Association, against industrial noise and air pollution

1. Summary of petition

The petitioner is protesting against the double exposure to pollution, by noise and of the air, from a steelworks situated close to a residential area. She states that the intolerable noise emissions have not been recorded by the local authorities, either as a measure required by law or as a matter of routine, and that the nuisance has continued for more than three years, but the municipal authorities are doing nothing to safeguard the interests of the home-owners. Similarly, the carbon dioxide emissions have not been monitored, even though they exceed the limits laid down in the relevant national legislation (RD 1073/02). She is calling on the Union to intervene.

2. Admissibility

Declared admissible on 26 July 2007. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 29 November 2007.

Community legislation on management of environmental noise (Directive 2002/49/CE)¹ requires environmental noise maps and action plans to manage environmental noise to be drawn up by 20 June 2007 and 18 July 2008, respectively, for agglomerations with more than 250 000 inhabitants. The Spanish authorities have confirmed to the Commission that the urban area of Gijón (271 039 inhabitants) is one of the agglomerations concerned. Noise sources that must be taken into account are transport infrastructures and industrial sites as listed at Annex I of

¹ OJ L 189, 18.7.2002, p. 12-26.

Directive 96/61/EC of 24 September 1996¹ on integrated pollution prevention and control. Member States may take other noise sources into account in their legislation.

For all the sources of noise concerned, the choice of environmental noise reduction measures and setting limit values or target values for environmental noise are a matter for the Member States or the authorities that they designate to apply the above directive.

The installation concerned could also be covered by Directive 96/61/EC if its capacity exceeds certain thresholds laid down in Annex I of this directive. According to the IPPC Directive, competent authorities are required to determine, for each installation, an integrated permit based on best available techniques to ensure a high level of protection of the environment taken as a whole, including noise. Competent authorities are also required to ensure that the conditions of the permit are complied with by the operator when operating the installation. Member States have a transition period until 30 October 2007 to ensure that existing installations are brought into full compliance with the directive.

The framework Directive 96/62/EC² and the Directive 1999/30/EC³ which sets the annual ambient air quality limit value for PM₁₀ do not impose specific requirements on limiting emissions or mandating operating restrictions of industrial operators. Under the provisions of the ambient air quality directives, the competent authority of the Member State must ensure that all limit values are being respected by their attainment dates throughout the territory, including in the vicinity of the industrial sources, and in particular in the urban areas where there is high risk of exposure for the population. The precise means and measures to be deployed is a matter for the Spanish authorities to decide.

The concentrations of PM₁₀ measured in the Gijón area exceed the limit values. This had already prompted measures which are outlined in the Gijón air quality plan. However, no real improvement can be seen as yet in the reported PM₁₀ concentration trends in the area. As regards compliance with Directive 99/30/EC, the Commission notes that in Gijón the PM₁₀ limit values for the protection of human health were exceeded in 2005 when the limit value entered into force. Exceedances of PM₁₀ limit values are widespread throughout EU and the Commission is currently requiring Member States to inform it of the measures taken to improve the situation and to meet the requirements of the air quality directives. The information received from the Member States will allow the Commission to assess better the extent of the problem and the action needed, either horizontally or in relation to specific locations. The Commission also intends to take proactive steps to assist Member States in defining the measures to correct the situation.

With respect to CO₂ emissions, the installation concerned could be covered by Directive 2003/87/EC establishing a scheme for greenhouse gas emissions allowance trading⁴ if its capacity exceeds certain thresholds laid down in Annex I of this directive. Moreover, the installation is obliged to comply with the requirements of Commission Decision 2007/589/EC establishing guidelines for the monitoring and reporting of greenhouse gas emissions pursuant

¹ OJ L 257, 10.10.1996, p. 26-40.

² OJ L 296, 21.11.1996, p. 55.

³ OJ L 163, 19.6.1999, p. 41.

⁴ OJ L 275, 25.10.2003, p. 32.

to Directive/2003/87/EC.¹ According to these guidelines, national authorities have to agree with the installation operator on a specific monitoring methodology and monitoring plan with respect to CO₂ emissions and taking into account the detailed requirements of activity-specific guidelines for the steel sector as they are described in Annex VI of Decision 2007/589/EC. By 31 March 2008, CO₂ emission reports have to be checked and verified by third party verifiers and then agreed by the competent authorities.

Conclusions

It has been established that the particulate matter PM₁₀ limit value has been exceeded in the Gijón area and Spain is currently under a legal duty to take all reasonable measures to bring about compliance with the air quality limit values for PM₁₀. However, the selection of the noise and air quality abatement measures remains at the discretion of the relevant Member State.

4. Further Commission reply (REV) received on 19 June 2009

Directive 2002/49/E contains the Community legislation as regards evaluation and management of noise in the environment. The Directive contains no Community limits for noise but leaves it to the discretion of the Member States to decide whether to establish limit values for noise and other measures aimed at reducing noise. According to the Directive Member States must draw up strategic noise maps and action plans aimed at managing ambient noise.

As regards to the agglomeration of Gijón, the Commission can confirm that it has received a noise map for the area as required by Directive 2002/49/EC². In this respect and others concerning noise maps, the report from the Spanish authorities on noise maps is being evaluated together with the reports from the other Member States and is not yet complete. Once this evaluation is complete any deficiencies in respect of Spain's compliance with the provisions of Directive 2002/49/EC may be pursued in accordance with the Treaty.

Noise maps and the action plans have been made and submitted to the Commission are available to the public³ in accordance with Article 9 of Directive 2002/49/EC.

The Commission can confirm that the installation concerned has a permit in accordance with Directive 2008/1/EC on integrated pollution prevention and control (IPPC)⁴. Spain has, however, been recently issued with a final written warning as regards the implementation of that directive. It has failed to demonstrate significant progress in reducing the high number of existing installations which are still not compliant with the requirements of the directive.

As regards the exposure to excessive air pollution in the area, the Commission notes, following the last official report by the Spanish authorities in September 2008 and its subsequent revision in April 2009, that the daily PM₁₀ limit value continued to be exceeded in 2007.

¹ OJ L 229, 31.08.2007, p.1.

² OJ L 189, 18.7.2002, p. 12-26.

³ http://circa.europa.eu/Public/irc/env/d_2002_49/library?l=/&vm=detailed&sb=Title.

⁴ OJ L 24, 29.1.2008, p.8.

Several Member States, including Spain, have met with difficulties in achieving compliance with the limit values for PM₁₀ since 2005 when those limit values entered into force. The new Directive 2008/50/EC¹ on ambient air quality and cleaner air for Europe provides Member States with a possibility to notify an exemption from the obligation to apply those limit values until June 2011, provided that certain conditions are met.

Spain submitted several notifications in 2008 and 2009 but the notifications did not include all zones with exceedances of the PM₁₀ limit values, including the agglomeration of Gijón. Subsequently, on 29 January 2009, the Commission launched infringement proceedings for non-compliance with the limit values set out in Directive 1999/30/EC². The reply was due in April 2009 and will be thoroughly analysed by the Commission. If a notification is submitted for Gijón, the Commission has nine months from the receipt of the notification to assess whether the conditions for the exemption are fulfilled. The assessment of the notification will also allow the Commission to look in-depth into how air quality is managed in each of the notified zones.

The Commission recalls that the protection of the environment by means of criminal law is regulated by Directive 2008/99/EC³. The directive, which is due to be transposed by 26 December 2010 at the latest, requires Member States to criminalise a list of serious environmental offences and make them subject to dissuasive, proportionate and effective criminal sanctions.

Conclusions

The particulate matter PM₁₀ daily limit value continues to be exceeded in the Gijón area and Spain is currently under a legal duty to take all the appropriate measures to bring about compliance with the air quality limit values for PM₁₀. It has also been issued a first warning letter. The Commission is, moreover, considering action to ensure the delivery of the noise action plan, required by January 2009. It should, however, be noted that the selection of the noise and air quality abatement measures remains the responsibility of the relevant Member State.

5. Further Commission reply (REV. II) received on 29 March 2011

The Spanish authorities submitted the reports based on the noise maps and the summaries of the action plans which are also available to the public⁴. The assessment of the reports, inter alia the one regarding the agglomeration of Gijón, showed that the requirements of Directive 2002/49/EC relating to the assessment and management of environmental noise⁵ were fulfilled.

The action plans submitted by the authorities are currently being assessed by the Commission. However, it should be noted that, according to Directive 2002/49/EC, the measures within the

¹ OJ L152, 11.6.2008, p.1.

² OJ L163, 29.6.2009, p.41.

³ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, OJ L 328, 6.12.2008, p. 28-37

⁴ <http://cdr.eionet.europa.eu/>.

⁵ OJ L 189, 18.7.2002, p.12.

action plans are fully within the competence of the Member States.

As regards compliance with Directive 2008/50/EC on ambient air quality and cleaner air for Europe¹, the Commission notes that according to the annual reports on air quality provided by the Spanish authorities for the years 2008 and 2009, the daily limit value for PM₁₀ continued to be exceeded in Gijón and in other zones. As a consequence, the Commission has, after two warnings, decided to bring the case to the Court of Justice of the European Union on 24 November 2010.

The Commission can confirm that the installation concerned has a permit in accordance with Directive 2008/1/EC on integrated pollution prevention and control (IPPC)².

Once the evaluation of the action plans on noise is complete, any deficiencies in respect of Spain's compliance with the provisions of Directive 2002/49/EC may be pursued in accordance with the EU Treaty.

6. Commission reply (REV. III), received on 16 November 2011

The Commission assessed the summaries of the action plans submitted pursuant to Article 8 of Directive 2002/49/EC, assessment and management of environmental noise. The agglomeration of Gijon was not included in the submitted summary reports. Therefore, the Commission will take the appropriate steps to address the issue with the Spanish authorities.

7. Commission reply (REV. IV), received on 30 April 2014

The Commission, after reviewing the second round of noise maps (June 2012) and action plans (July 2013) submitted by EU Member States as required under the Environmental Noise Directive (EC/202/49), noted that it had not received the noise maps and the action plan summary for the agglomeration of Gijon. Therefore, the Commission will take the appropriate steps to address the issue with the Spanish authorities.

8. Commission reply (REV.V), received on 31 October 2014

The Spanish authorities have in the meantime submitted an action plan for the agglomeration of Gijon to the Commission. The Commission has evaluated the submitted action plan and found that it does not fully comply with the requirements of Directive 2002/49/EC.

The Commission will continue to raise the issue with the Spanish authorities.

9. Further Commission reply (REV. VI), received on 30 November 2016

The Commission has launched an infringement procedure against Spain for not complying with the requirement to prepare and submit a noise action plan for the agglomeration of Gijón.

¹ OJ L 152, 11.6.2008, p.1.

² OJ L 24, 29.1.2008, p.8.

The EU legislation on greenhouse gas emissions from steel plants is covered by the EU Emissions Trading System. This system provides that installations have to surrender allowances corresponding to each ton emitted. Since each allowance has an economic price, this system implies that there is a cost for emitting greenhouse gases.

EU legislation does not provide for any specific limit on the amount of CO₂ that a plant can emit, as long as the operator of the plant buys and surrenders the corresponding amount of allowances. The reason why there are no plant-specific limits is that CO₂ emissions as such are not causing local health or environmental impacts.

10. Further Commission reply (REV. VII), received on 28 March 2018

Since the launch of an infringement procedure against Spain for not complying with the requirement to submit a noise action plan for the agglomeration of Gijón, the Commission received five replies from the Spanish authorities and is assessing them. Should the Commission conclude that a valid action plan is not yet in place, it will consider the necessary legal steps.

11. Further Commission reply (REV. VIII), received on 6 Mai 2019

The Commission's observations

Concerning noise, in July 2018 the Commission transmitted to the Spanish authorities the reasoned opinion No 2016/2118 contesting *inter alia* the absence of a noise action plan for the agglomeration of Gijón. Given that the Spanish authorities have not transmitted yet a valid action plan for Gijón, the Commission will consider the necessary further legal steps.

As regards air quality, the ambient air concentration levels for coarse particulate matter (PM₁₀) and all other monitored pollutants for air quality zone ES0304 (Gijón) have been in compliance with the standards set in EU ambient air quality legislation¹ for the past three reporting years (2014-2017). As for carbon dioxide (CO₂), this pollutant has no effect on local air quality.

Conclusion

The Commission will continue to monitor the situation.

¹ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, OJ L 152, 11.6.2008, p. 1–44.