



21.05.2019

NOTICE TO MEMBERS

Subject: Petition 1337/2008 by Nayden Chakarov (Bulgarian), with 12 signatures, on the Martiza-Iztock power plant and pollution of the area around the Bulgarian town of Stara Zagora

Petition 1865/2009 by I.P. (Bulgarian), on air pollution in the town of Stara Zagora in central Bulgaria

Petition 0257/2011 by Tsveta Hristova (Bulgarian), on behalf of the citizens' initiative 'Clean air over Stara Zagora', bearing approximately 30 000 signatures, on air pollution in the town of Stara Zagora in central Bulgaria

1. Summary of petition 1337/2008

The petitioner refers to the severe pollution of the area around the Bulgarian town of Stara Zagora, which is caused by the Maritza-Iztok power plant. Only two of the power plant's eight units are equipped with sulphur cleaning units, which means that the power plant does not comply with applicable EU legislation, including Council Directive 96/61/EC concerning integrated pollution prevention and control and Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants. The petitioner therefore calls on the European Parliament to ensure that the operation of the Maritza-Iztok power plant complies with the requirements of the abovementioned directives.

Summary of petition 1865/2009

The petitioner refers to the severe air pollution in the town of Stara Zagora in central Bulgaria. The petitioner claims that there are emissions of hydrochloric acid, hydrogen sulphide, and nitrogen dioxide. Research findings have also identified heavy metals and chemicals in plants, soil and food, which entail a serious risk to the health of the local population. The petitioner points out that the responsible Bulgarian authorities have failed to take the necessary measures to identify those responsible, and he therefore calls on the European Parliament to

intervene to ensure that a solution is found to this situation, which he regards as tantamount to genocide.

Summary of petition 0257/2011

The petitioner refers to serious air pollution in the town of Stara Zagora in central Bulgaria which, in her opinion, is caused by emissions of hydrogen chloride, hydrogen sulphide and nitrogen dioxide. Research results also indicate the presence of heavy metals and chemicals in plants, soil and foodstuffs, such as to constitute a serious threat to the health of the local population. The petitioner claims that the competent Bulgarian authorities have failed to take the measures necessary to identify those responsible, and she therefore calls on the European Parliament to intervene so as to ensure that a solution is found to this wholly unacceptable situation.

2. Admissibility

Declared admissible on 23 February 2009 for petition 1337/2008.

Declared admissible on 25 March 2010 for petition 1865/2009.

Declared admissible on 6 June 2011 for petition 0257/2011.

Information requested from Commission under Rule 216(6).

3. Commission reply, received on 19 June 2009.

The petitioner raises concerns about the severe pollution of the area around the Bulgarian town of Stara Zagora caused by the Maritza-Iztok power plant. He complains about the operating conditions of the installation and about compliance with Directive 2008/1/EC concerning integrated pollution prevention and control (IPPC)¹ and Directive 2001/80/EC on large combustion plants (LCP)².

The Maritza-Iztok power plant in Bulgaria was to comply with the requirements of the IPPC Directive as of 30 October 2007 and with the LCP Directive as of 1 January 2008.

The Commission was previously in contact with the Bulgarian authorities asking for specific information on the implementation of the applicable community legislation related to the installations cited in this petition. The Bulgarian authorities provided the following information on the plant TPP 2 (part of the Maritza-Iztok power plant). The authorities recognised that the TPP 2 plant was to comply with the emission limit values of the LCP Directive as of 1 January 2008. It is currently operating in accordance with IPPC permits issued in 2005. Technical equipment for emission abatement has been installed and continuous measurement systems have been established.

On the basis of this information, the Commission has started a detailed assessment of the permit issued for this plant. This assessment aims at verifying compliance with the requirements of the IPPC and LCP Directives.

1 OJ L 24/8, 29.01.2008 (previously: Directive 96/61/EC, OJ L 257, 10.10.96, p. 26).

2 OJ L 309, 27.11.01, p. 1.

The Commission will assess the outcome of the case analysis and the way Directives 2008/1/EC and 2001/80/EC are being implemented as regards the plant concerned. Depending on the results of this analysis, the Commission will consider whether further steps need to be taken.

4. REV Further Commission reply, received on 17 December 2009.

As indicated in the first communication for this petition, the Commission has assessed the permit of this installation issued in application of Directive 2008/11/EC concerning integrated pollution prevention and control¹. The result of this analysis is that the permit conditions are consistent with the provisions of that directive. Therefore, on these grounds, the Commission could not identify any breach of Community legislation.

The Commission will, however, constantly monitor the way Directives 2008/11/EC and 2001/80/EC on the limitation of emission of certain pollutants into the air from large combustion plants² are being implemented as regards the installation concerned and especially with regard to its compliance with the permit conditions.

5. REV II Further Commission reply, received on 16 March 2012

for petitions 1337/2008, 1865/2009 and 257/2011

As announced in its previous communication to the European Parliament, the Commission assessed the implementation of Directive 2001/80/EC on large combustion plants³ as regards the plant(s) concerned and their compliance with the intermediate ceilings for sulphur-dioxide (SO₂), nitrogen-oxides and dust.

As part of this assessment, the Commission contacted the Bulgarian authorities. Based on the analysis of the reply by the Bulgarian authorities, the Commission has launched an infringement procedure⁴ for failure to comply with the emission limit values for SO₂ with regard to TPP "Maritza Iztok 2" (Blocks 5 and 7), TPP "Republika" and TPP "Svilozha", and, under Annex VI to the Protocol concerning the conditions and arrangements for accession of the Republic of Bulgaria and Romania to the European Union, with regard to the intermediate annual emission ceilings for sulphur dioxide, nitrogen oxides and dust in respect of the years 2008, 2009 and 2010.

As regards the implementation of legislation regarding air quality, the following can be stated: Stara Zagora is situated in the air quality zone "South-East BG0006". This zone is exceeding the SO₂ hourly limit value of 350µg/m³ (not to be exceeded more than 24 times a calendar year), and has done so every year since the accession of Bulgaria to the EU. The zone is also exceeding both applicable PM₁₀ limit values, i.e. the daily limit value of 50µg/m³ (not to be exceeded more than 35 times a calendar year), and the annual limit value of 40 µg/m³, also ever since accession to the EU. The zone is in compliance with the nitrogen-dioxide limit

1 OJ L 24, 29.1.2008, p.8-29.

2 OJ L 309, 27.11.2001, p. 1-21.

3 OJ L 309, 27.11.01, p. 1.

4 2011/2222 (The Letter of Formal Notice was adopted by the Commission on 26 January 2012.)

values.

According to the information available from measuring stations situated in the city of Zagora itself, the SO₂ limit values have been complied with since 2008 but exceedences of the daily PM₁₀ limit values were still recorded in 2010.

The Commission has initiated two infringement proceedings against Bulgaria for failure to apply, on the one hand, the SO₂ limit values, and, on the other hand, the PM₁₀ limit values¹ in several zones and over several years. Both proceedings are ongoing.

6. REV III Further Commission reply, received on 30 April 2013

In the context of the infringement procedure² launched by the Commission against Bulgaria for not complying with the intermediate annual emission ceilings for sulphur dioxide, nitrogen oxides and dust in respect to years 2008, 2009 and 2010, as laid down in Annex VI to the Protocol concerning the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union, the Commission was not satisfied with the response to the letter of formal notice, and, therefore, a reasoned opinion was addressed to Bulgaria in January 2013.

The Commission is waiting for the reply of the Bulgarian authorities.

Stara Zagora is situated in the air quality zone "South-East BG0006". According to the information available from measuring stations, the zone has been exceeding every year since 2007 the annual PM₁₀ limit value of 40µg/m³, and also the daily value of 50µg/m³, more times than it is allowed under Directive 2008/50/EC on ambient air quality (35 times a calendar year).

This zone has been exceeding every year since 2007 the SO₂ hourly limit value of 350µg/m³ (not to be exceeded more than 24 times a calendar year), and, with the exception of 2010, also the daily limit value of 125µg/m³, (not to be exceeded more than 3 times a calendar year).

Two infringement procedures are on-going against Bulgaria for failure to apply, on the one hand, the SO₂ limit values, and, on the other hand, the PM₁₀ limit values³ in several zones and over several years.

In the meantime, new information has been received from the petitioner, which is currently being analysed by the Commission.

7. REV IV Further Commission reply, received on 16 December 2014

In its original communication, the Commission indicated that in the relevant air quality zone, the competent authorities had failed to ensure compliance with the limit values laid down by Directive 2008/50/EC⁴ with regard to two pollutants: PM₁₀ and SO₂.

As regards the breach of the PM₁₀ limit values, the Commission addressed an additional Reasoned Opinion to Bulgaria in June 2014. With regard to the breach of the SO₂ limit values, an additional Reasoned Opinion has been adopted in November 2014. In both cases,

¹ 2009/2135 and 2010/2109, respectively.

² 2011/2222.

³ 2009/2135 and 2010/2109, respectively.

⁴ OJ L 152 11.6.2008, p. 1

the infringement procedure covers the air quality zone of Stara Zagora.

8. REV V Further Commission reply, received on 30 October 2015

Petitions 1337/2008, 1865/2009 and 257/2011

In its additional communication, the Commission indicated that, in relation to the breach of the PM₁₀ limit values laid down by Directive 2008/50/EC¹, an additional Reasoned Opinion was addressed to Bulgaria in June 2014.

After assessing the reply to the additional reasoned opinion, in June 2015 the Commission decided to take the case to Court. The application to Court has been lodged and its number is C-488/15.

9. REV VI Further Commission reply, received on 30 July 2018

Petitions 1337/2008, 1865/2009 and 0257/2011

The Commission has not identified any breach of Directive 2010/75/EU on industrial emissions² which has replaced, since 1 January 2016, Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants³.

As regards the breach of the PM₁₀ limit values laid down by Directive 2008/50/EC⁴ (Air Quality Directive), the Court of Justice of the European Union (CJEU, or "the Court") delivered on 5 April 2017 its judgement on Case C-488/15⁵, where Bulgaria was referred to Court by the Commission on two accounts: its failure to observe the limit values for PM₁₀ and its failure to adopt and apply air quality plans with measures that would keep the exceedance period as short as possible.

The Court ruled in favour of the Commission.

The Commission services are now working in close cooperation with the Bulgarian authorities to ensure that the necessary measures are taken, at national level, to secure compliance with the Air Quality Directive.

10. REV VII Further Commission reply, received on 21 May 2019

Petitions 1337/2008, 1865/2009 and 0257/2011

Information published in ENDS DAILY on 24 January 2019 reports that Bulgaria has granted

¹ OJ L 152 11.6.2008, p. 1

² OJ L 334, 17.12.2010, p. 17

³ OJ L 309, 27.11.2001, p. 1

⁴ OJ L 152, 11.6.2008, p. 1

⁵ <http://curia.europa.eu/juris/liste.jsf?num=C-488/15>

a derogation under Article 15(4) of the Directive on industrial emissions (IED)¹ to the Maritza-Iztok power plant in respect of the permitted level of air pollutant emissions. This derogation has been granted despite the fact that this plant is located in zone BG0006 where ambient air quality standards for coarse particulate matter (PM₁₀) and sulphur dioxide (SO₂) are exceeded².

IED Article 15(4) allows the national competent authorities to not comply with the obligations in IED Article 15(3) by setting emission limit values (ELVs) in a permit which exceed the relevant Best Available Techniques (BAT)-Associated Emission Levels (BAT-AELs). BAT-AELs are set out in Commission Decisions on BAT conclusions adopted under IED Article 13(5). The main applicable BAT conclusions for large combustion plants, such as the Maritza-Iztok power plant, were published on 17 August 2017³ and must be implemented by 17 August 2021 at the latest, in accordance with IED Article 21(3).

IED Article 15(4) only allows derogations under strict conditions, i.e. in specific cases and if the requirements in this provision are fulfilled⁴. Furthermore, the minimum requirements set out in the IED (e.g. use of BAT) remain applicable if a derogation is granted.

According to the information reported, the Bulgarian competent authorities have granted a derogation under IED Article 15(4) to the Maritza-Iztok power plant without any justification or elements that would demonstrate compliance with the requirements set out in this provision. It has been reported that the environmental non-governmental organisation *Za Zemiata Access to Justice* (ClientEarth partners) has referred this matter to a national Court.

Conclusion

It is worth stressing that it is Commission practice not to intervene when litigation is ongoing before national courts.

¹ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) Text with EEA relevance, *OJ L 334, 17.12.2010, p. 17–119*.

²<https://www.clientearth.org/clientearth-partners-sue-as-toxic-eu-coal-plant-scores-permission-to-pollute-indefinitely/>

³ Commission Implementing Decision (EU) 2017/1442 of 31 July 2017 establishing best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council, for large combustion plants (notified under document C(2017) 5225) (Text with EEA relevance.), *OJ L 212, 17.8.2017, p. 1–82*.

⁴ Article 15(4) reads: “By way of derogation from paragraph 3, and without prejudice to article 18, the competent authority may, in specific cases, set less strict emission limit values. such a derogation may apply only where an assessment shows that the achievement of emission levels associated with the best available techniques as described in bat conclusions would lead to disproportionately higher costs compared to the environmental benefits due to:

(a) the geographical location or the local environmental conditions of the installation concerned; or
(b) the technical characteristics of the installation concerned.

The competent authority shall document in an annex to the permit conditions the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed.

The emission limit values set in accordance with the first subparagraph shall, however, not exceed the emission limit values set out in the annexes to this directive, where applicable.

The competent authority shall in any case ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved.”

However, this is without prejudice to the infringement proceedings initiated by the Commission regarding non-compliant air quality in the area where the Maritza-Iztok power plant is located. In particular, whilst the Court of Justice of the European Union ruled that Bulgaria infringed Directive 2008/50/EC¹ on ambient air quality in respect of PM₁₀ (Case C-488/15)², the Commission has launched another infringement procedure against Bulgaria concerning SO₂ exceedances. In this context, it is also worth recalling that the latest air quality report shows exceedances in 2017 of the PM₁₀ and SO₂ limit values in the area where the Maritza-Iztok power plant is located³.

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.

² <http://curia.europa.eu/juris/liste.jsf?num=C-488/15>

³ http://cdr.eionet.europa.eu/bg/eu/aqd/g/envw_gzgg/DataFlowG2017.xml/manage_document (zone BG0006)