



21.5.2019

NOTICE TO MEMBERS

Subject: Petition 0590/2009 by F. C. M. (Spanish), on the re-classification of agricultural land as available for urban development in the new General Urban Development Plan (PGOU) for Hondón in Alicante

1. Summary of petition

The petitioner owns a farm and has received European funds to help modernise the irrigation of his land. However, with the new PGOU for Hondón re-classifying the land bordering his farm as available for urban development, his land has been affected by access roads and is now exposed to a high risk of flooding because of the re-classification work carried out. The petitioner complains about the situation, says that the new urban development is being carried out in a protected area (SCI Sierra de Crevillente and Natura 2000 network), the aquifers are being over-exploited and no environmental impact study has been carried out.

2. Admissibility

Declared admissible on 9 September 2009. Information requested from Commission under Rule 216(6).

3. Commission reply, received on 2 September 2010.

The services of the Commission have examined the information provided by the petitioner in the light of the European Union law that might be applicable to this case.

The Water Framework Directive (WFD) 2000/60/EC¹ establishes the need for a 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

¹ Directive 2000/60/EC of 23.10.2000 of the European Parliament and of the Council establishing a framework for Community action in the field of water policy , (OJ L 327, 22.12.2000, P.1)

(RBMP). These plans shall include measures to aim at the achievement of good quantitative status of ground water by 2015 and controls of, for instance, ground water abstraction or replenishment of ground water resources. It should also include provisions on discharges from wastewater treatment plants, amongst others. It also includes a prohibition of direct discharges of pollutants to ground water. These measures shall be made operational at the latest by 22nd December 2012.

According to the WFD, the first RBMP was to be published by December 2009. Article 14 of the WFD establishes the obligation for Member States to encourage the active involvement of all interested parties in the process to develop the RBMP. According to the information available to the Commission, the implementation of the WFD in Spain is significantly delayed. The draft plans have not yet been published for consultation in most of the river basin districts. The Commission will closely follow the next steps in the implementation of the WFD, in particular the adoption of the river basin management plans. The Commission also opened an infringement case against Spain on 3rd June 2010 (Case N° 2010/2083) as Spain has not started consultations on draft River Basin Management Plans in all of its River Basin Districts and, consequently, neither adopted nor reported plans to the Commission by the March 2010 deadline.

Once the river basin management plans are adopted, the Commission will assess their contents to ensure they are in line with the requirements of the WFD, however, at this stage the Commission cannot assess the situation described by the petitioner.

Directive 2007/60/EC¹ on the assessment and management of flood risks requires flood risk assessment, flood mapping and the production and implementation of flood risk management plans. These plans need to be established by 2015.

Directive 2003/4/EC² deals with public access to environmental information. According to it, Member States have to ensure that public authorities make available environmental information held by or for them to any applicant at his/her request and without his/her having to state an interest. The directive provides for specific deadlines: as soon as possible or, at the latest, within one month after the receipt by the public authority or within two months after the receipt notably when the information requested is voluminous or complex. A refusal to access may be justified only by the exceptions exhaustively provided for in Article 4. It has to be notified to the applicant in writing or electronically within the time limits referred above, to state the reasons for the refusal and include information on the review procedures.

The petitioner says that he has made two applications for information (the first on 15th July 2008 based on the Law 30/1992 and the second on 26th August 2008 mentioning expressly the Law 27/2006, which transposes in the Spanish legal system, inter alia, Directive 2003/4/EC). In both cases no follow-up to his requests was ensured. It has to be pointed out that, where a request concerns access to environmental information in the meaning of Directive 2003/4/EC, even if the applicant did not mention, as a legal basis, this directive, the national law transposing it or indicated another legal basis, the request has to be treated as an

¹ OJ L288, 23/10/2007

² Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Directive 90/313/EEC, OJ L 41 of 14 February 2003.

application for access to environmental information as covered by Directive 2003/4/EC.

Any applicant who considers that his/her request for information has been ignored, wrongfully refused, in full or in part, or inadequately answered has access to the review procedures envisaged in Article 6, paragraphs 1 and 2. These procedures are provided for in Article 20 of the Law 27/2006. The petitioner is invited to use them.

In the absence of the River Basin Management Plan, the Commission is not in the position to identify a concrete breach of Directive 2000/60/EC at this stage. An infringement case has been opened against Spain for its failure to adopt the River Basin Management Plans for this region. As regards Directive 2007/60/EC, the Commission cannot identify any current breach of the directive, given that the key deadlines for implementation have not yet passed.

Even if it does not seem that, in the present case, the municipality complied with Directive 2003/4/EC, the Commission considers that, before initiating possible actions, the review procedures have to be used by the applicant, giving the competent authorities the possibility of addressing the situation.

The Commission will, however, investigate this issue further with the Spanish authorities.

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

The Water Framework Directive¹ established a strategic framework for the protection of all water bodies, i.e. rivers, lakes, coastal waters and groundwater. As the cornerstone of EU water policy, the Water Framework Directive (WFD) provides that all water bodies must meet the standard of “good status” as a rule by the end of 2015. To this end, Member States are under the obligation to draw up a river basin management plan (RBMP) and a programme of measures for each river basin district. These Programmes of Measures have to be operational by 2012. Member States were under the obligation to submit their draft RBMPs to public consultation and to submit the final version to the European Commission in 2010.

As Spain failed to meet the above obligation, an infringement procedure was opened (Case N° 2010/2083) with a letter of formal notice issued in June 2010 and a complementary letter of formal notice in October 2010. In January 2011, the Commission adopted a reasoned opinion against the Kingdom of Spain for its persistent failure to meet its obligations with regard to the adoption of the river basin management plans.

The Commission is currently in the process of assessing all the RBMPs received from the Member States and will do the same for Spain when it submits its plans, which are overdue. The Commission is, therefore, not in a position, at this stage, to provide any further advice to the petitioner, but would like to stress again the possibility for the petitioner to use the review procedures available under domestic law.

5. Commission reply (REV II), received on 28 August 2013

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).

On 4th of October 2012 the Kingdom of Spain was condemned by the Court of Justice for not having adopted river basin management plans according to the Water Framework Directive¹ (case C-403/11). The Commission is following very closely the implementation of the judgement by the Spanish authorities. To date, the river basin management plan for the Júcar river basin, where the development referred to by the petitioner is located, has not been adopted.

The Commission will assess the plans as soon as they are adopted and reported by the Spanish authorities, in particular as regards the issue of the alleged over-exploitation of the water resources. As regards the risk of increasing flooding in the area due to the project referred to by the petitioner, the river basin management plans are strategic documents and it is not likely that they would include information about such concrete projects. This is why the Commission would like to stress again the possibility for the petitioner to use the review procedures available under domestic law.

6. Commission reply (REV III), received on 31 March 2017

In January 2016, Spain officially adopted the second river basin management plan (RBMP) for the Júcar river basin district along with most other RBMPs. The extensive data underlying these plans are currently being reported to the Commission by the Spanish authorities.

The Commission will assess the reported plan and will publish an implementation report by 2018 covering all Member States of the European Union². The Commission has previously noted that quantitative status of groundwater bodies is problematic in the Júcar river basin district³. In this context, due attention will be paid to the issue of the alleged over-exploitation of the water resources. Once the second RBMPs have been assessed, the Commission will provide the petitioner with another communication.

7. Commission reply (REV IV), received on 21 May 2019

The Commission has conducted a general assessment of the second River Basin Management Plan under the Water Framework Directive⁴ and of the first Flood Risk Management Plans under the Floods Directive⁵, including those for the Júcar basin.

The Commission published in February 2019 the corresponding implementation report⁶ to Parliament and the Council, underpinned by assessments per Member State.

¹ 2000/60/EC, OJ L 327, 22.12.2000, p.1.

² See Article 18 of the Water Framework Directive, 2000/60/EC, OJ L 327, 22.12.2000, p.1.

³ See Commission Staff Working Document (2015)56: http://ec.europa.eu/environment/water/water-framework/pdf/4th_report/MS%20annex%20-%20Spain.pdf. Informal Spanish translation: http://ec.europa.eu/environment/water/water-framework/pdf/4th_report/MS%20annex%20-%20Spain_es.pdf

⁴ 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*.

⁵ Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks, OJ L 288, 6.11.2007, p. 27–34.

⁶ http://ec.europa.eu/environment/water/water-framework/impl_reports.htm

The assessment for Spain¹ identifies several pressures on groundwater resources in the Júcar basin, including abstractions. The assessment concludes that the Spanish authorities still need to improve the quantitative status of groundwater bodies and address existing pressures. The report also points out the need for increasing transparency in the application of exemptions, not least by improving the justification for their use.

At the same time, the Programme of Measures of the Júcar River Basin Management Plan refers to numerous ongoing and planned measures aimed to address existing groundwater pressures, the positive impacts of which are yet to materialise.

Conclusion

As regards the risk of increased flooding in the area due to the project referred to by the petitioner, the Commission notes that the Júcar Flood Risk Management Plan is a strategic document, which does not include information about individual projects. Therefore, the Commission encourages once again the petitioner to consider using the review procedures available under domestic law.

¹<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=SWD:2019:42:FIN&qid=1551205988853&from=EN>.