



19.12.2018

## NOTICE TO MEMBERS

**Subject: Petition No 0386/2018 by Isabel Vila (Spanish) on the Touro copper mine in Galicia**

### 1. Summary of petition

The petitioner calls for the site of the disused open-cast mine in Touro that was active between 1973 and 1986 to be returned to its former state owing to its adverse effects on the environment, particularly its polluting of the Ulla River and the Arousa estuary. She also asks for work in the copper mining project in O Pino, which affects areas within the Natura 2000 network, to be suspended.

### 2. Admissibility

Declared admissible on 29 August 2018. Information requested from Commission under Rule 216(6).

### 3. Commission reply, received on 19 December 2018

#### The Commission's observations

#### *On the abandoned mining waste facilities:*

The Commission notes that the Environmental Liability Directive<sup>1</sup> does not apply to the situation described by the petitioners, as the alleged environmental damage was caused before 30 April 2007, and is hence out of the temporal scope of the Directive.

In contrast, even though the abandoned waste facilities referred to by the petitioners have

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<sup>1</sup> Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56–75).

been inactive since 1986, the Mining Waste Directive<sup>1</sup> imposes the obligation upon the competent authorities to ensure that the extractive waste deposited therein 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, fauna and flora, without causing a nuisance through noise or odours and without adversely affecting the landscape or places of special interest.

In this regard, the Commission wishes to point out that Member States have the primary responsibility for transposing, applying and implementing EU law correctly and have to provide sufficient remedies to ensure effective legal protection in the fields covered by EU law. Furthermore, the Commission considers that the means of redress provided at national level are the most appropriate mechanism to deal with individual cases of incorrect application of EU law, such as the situation described by the petitioners<sup>2</sup>. In light thereof, the Commission kindly invites the petitioners to refer this case to the competent courts at national level if they consider that the above obligation is not being effectively enforced.

Further to this, the Water Framework Directive<sup>3</sup> requires that the competent authorities, in the context of the relevant River Basin Management Plan (RBMP)<sup>4</sup>, identify the impact of human activity on the status of surface waters and on groundwater, and adopt the necessary measures to achieve the environmental objectives for all bodies of water.

*On the project for new copper mine:*

The EIA Directive<sup>5</sup> requires that projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location be made subject, before development consent is given, to an assessment with regard to their effects. Mine projects like the one which is the subject of this petition are listed in Annex II to the EIA Directive and, therefore, the competent authorities are required to determine whether an assessment in accordance with the Directive is necessary.

In addition, according to the Habitats Directive<sup>6</sup>, if significant effects on any site included in the Natura 2000 Network are to be expected, the competent authorities can only agree to the project after having ascertained through an appropriate assessment that it will not adversely

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<sup>1</sup> Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC - Statement by the European Parliament, the Council and the Commission - OJ L 102, 11.4.2006, p. 15–34.

<sup>2</sup> See Communication from the Commission — EU law: Better results through better application - C/2016/8600 - OJ C 18, 19.1.2017, p. 10–20.

<sup>3</sup> 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.

<sup>4</sup> In the present case: Plan hidrológico de la demarcación hidrográfica de Galicia-Costa, aprobado por el Real decreto 11/2016, de 8 de enero, por el que se aprueban los planes hidrológicos de las demarcaciones hidrográficas de Galicia-Costa, de las cuencas mediterráneas andaluzas, del Guadalete-Barbate y del Tinto, Odiel y Piedras.

<sup>5</sup> 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 Text with EEA relevance - OJ L 26, 28.1.2012, p. 1–21, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance - OJ L 124, 25.4.2014, p. 1–18.

<sup>6</sup> 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, p. 7–50.

affect the integrity of the sites concerned.

It follows from the available information that the environmental assessment for the copper mine project is still underway and, consequently, no development consent has been granted by the competent authorities. The Commission is, therefore, unable to identify any indication pointing to an infringement of the above provisions of the EIA and Habitats Directives.

### Conclusions

Under these conditions, the Commission does not intend to give any further follow-up to this petition.