18.2.2020

NOTICE TO MEMBERS

Subject: Petition No 0301/2019 by S.A. (German), signed by one other person, on the impact on health of the operation of a biogas facility and a chicken fattening facility

1. Summary of petition

The petitioner states that she and her husband suffered damage to their health in 2015 as a result of over-production at a nearby biogas facility and an adjacent chicken-fattening facility in their town in Germany. She notes that both facilities produced harmful substances. Local residents had not been informed that inhalation of these substances released was harmful. In addition, the use of heavy agricultural vehicles seriously damaged the agricultural roads. According to the petitioner, the EU should intervene in environmental legislation whenever harm is caused to people.

2. Admissibility

Declared admissible on 30 September 2019. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 18 February 2020

Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources seems irrelevant for the petitioner as it only establishes a framework for the promotion of energy from renewable sources, including binding targets for the share of energy from renewable sources in the EU’s gross final energy consumption in 2030. It does not contain provisions related to the environmental and human health concerns stemming from the production of

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biogas.

The environmental impacts of the intensive rearing of poultry or pigs (IRPP) are covered by the Industrial Emissions Directive (IED)\(^2\). The petitioner describes an agro-industrial activity in which over 83,900 pieces of broiler chickens are reared. Activity 6.6 of Annex I of the IED mentions that installations rearing more than 40,000 places for poultry are included in the scope of the Directive.

IRPP installations are allowed to operate only after obtaining a permit issued by the competent authority. This permit should be in line with the provisions of the IED. The permit requirements, including emission limit values, must be based on the relevant Best Available Techniques (BAT), as laid down in the European BAT reference documents and their BAT conclusions. Additional measures shall be included in the permit when an environmental quality standard requires stricter conditions than those achievable by the use of the BAT. For IRPP installations, the relevant BAT conclusions are established in Commission Implementing Decision (EU) 2017/302 of 15 February 2017\(^3\). The permit conditions of existing IRPP installations will have to be updated to be made compliant with the BAT conclusions and implemented by 21 February 2021 at the latest. The permit conditions for new IRPP installations must be immediately compliant with the BAT conclusions and the installation must operate in accordance.

The IRPP BAT conclusions contain environmental requirements of interest to the petitioner. Examples are requirements related to odour, ammonia and dust emissions. The BAT conclusions establish, for example, environmental standards limiting the amount of nitrogen and phosphorous excreted by animals.

Furthermore, Article 23(5) of the IED, stating that ‘non-routine environmental inspections shall be carried out to investigate serious environmental complaints, serious environmental accidents, incidents and occurrences of non-compliance as soon as possible and, where appropriate, before the granting, reconsideration or update of a permit’ is of relevance to the petitioner.

Article 24 of the IED sets rules on access to information and public participation in the permit procedure. The public concerned and non-governmental organisations (NGOs) must be given early and effective opportunities to express opinions and comments within the framework of the procedure consisting in granting or updating an IED permit, e.g. when BAT conclusions are adopted or when an IED installation plans to undertake a significant change. Details on participation are set out in Annex IV to the IED, which aims at ensuring a meaningful participation, i.e. a timely communication of information, a real opportunity to express comments, an obligation for competent authorities to take the results of the consultation into account etc.

If a member of the public concerned or an NGO feels that its participation entitlement is

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breached (e.g. non-consultation), it is entitled to have access to a review procedure before a court of law or to an independent and impartial body established by national law to challenge the substantive or procedural legality of, for example, an IED permit granted to installations (Article 25 of the IED).

Neither the IED, nor the IRPP BAT conclusions contain provisions relevant to the traffic generated by the IRPP activity.

The biogas installation, processing the manure of the adjacent chicken farm, could be covered by Directive 2012/18/EU on the control of major-accident hazards involving dangerous substances (also known as the Seveso-III Directive)4. This potential coverage is however dependant upon the amount of biogas stored. Biogas plants can be qualified as ‘establishments’ within the meaning of the Directive if the amount of biogas exceeds the relevant thresholds set out in part 1 and/or part 2 of Annex I to the Seveso-III Directive. Biogas is classified as a flammable gas according to category P2 of part 1 of Annex I of the Directive. “Upgraded biogas’ is covered by category 18 (liquefied flammable gases categories 1 & 2 and note 19) of part 2 of Annex I. Depending on the amount of biogas, the biogas plant could be categorised as ‘Lower Tier (LT)’ or ‘Upper Tier (UT)’ establishment. The latter is subject to more stringent safety requirements.

The European Parliament suggests to recommend to the petitioner to submit a petition to the Lower Saxony Landtag. The Commission notes that the website referred to contains a section describing the limitations of such petitions: (https://www.landtag-niedersachsen.de/eingaben_grenzen_des_petitionsrechts/): “Decisions of the municipalities and districts as well as other public corporations in self-administration matters are only subject to limited (legal) control by the ‘Landtag’. Article 28 (2) of the Basic Law guarantees them - as does Article 57 (1) of the Constitution of Lower Saxony - the right to regulate their own affairs within the framework of the law. In carrying out these tasks, they are subject to municipal supervision, but municipal supervisory authorities may only intervene in the interest of the public good, but not to help an individual to obtain his or her rights”.

Conclusion

The national administrative and/or judicial bodies in charge of the implementation of the Industrial Emissions Directive (IED) are primarily responsible for the enforcement of EU law. In case of alleged non-compliance they have the appropriate means to address the problem if the concerns are found to be justified.

In the petitioner’s case, the responsible competent authority is the Umweltamt of the Landkreis Northeim (info@landkreis-northeim.de). Therefore, in addition to the observations of the European Parliament, the Commission suggests to encourage the petitioner to liaise with the competent authority.