



9.11.2020

NOTICE TO MEMBERS

Subject: Petition No 0511/2020 by X. E. P. (Spanish), on behalf of the Montescola Foundation, on pollution from the tin and tungsten mine of Santa Comba (Galicia)

1. Summary of petition

The petitioner states that the mine at Santa Comba, originally licensed under concessions granted between 1942 and 1947, extracted sulphur ore deposits but also removed significant amounts of arsenopyrite, pyrite and chalcopyrite, causing acidic run-off that contaminated the groundwater and nearby rivers. The mine closed in 1986. The petitioner states that, although the concessions should have lapsed and been declared void, in 2008 they were purchased by a new company which has apparently submitted a new project to restore and re-open the mine. Although reports had been issued stating that an environmental impact assessment (EIA) on the mine was needed, the authorities approved the projects, in flagrant disregard of the EU directives on the EIA (Environmental Impact Assessment) and public participation. The petitioner adds that the mining concessions have recently been purchased by an Australian company, Rafaella Resources Limited, which intends to mine for tin and tungsten and open new open-pit mines, without the necessary environmental permits. Meanwhile, an unconnected Swedish company, Eurobattery Minerals AB, intends to dig a huge open-cast nickel-copper-cobalt mine in areas of natural habitats protected by EU legislation. The petitioner reports that the Galician Government has systematically blocked access to environmental information about the Santa Comba mine, in breach of the Aarhus Convention and the related directive, adding that this has given rise to a communication to the UN's Aarhus Convention Compliance Committee, currently under consideration as procedure No ACCC/C/2017/153.

2. Admissibility

Declared admissible on 28 July 2020. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 9 November 2020

The petition

According to the information received by the Commission, the petitioner raises concerns over allegations of incorrect application of EU environmental legislation and environmental information being withheld by the Spanish authorities regarding two mine development projects in Galicia, Spain.

The Commission's observations

1. *On the implementation of the Environmental Impact Assessment (EIA) Directive¹*

The EIA Directive 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, such as the ones brought to the attention of the Commission, 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.

The petition refers to the mining permit granted for the Santa Comba tin and tungsten mine, which had been closed since 1986, without a prior environmental impact assessment (EIA) having been conducted in accordance with the provisions of the EIA Directive. It furthermore adds that a different operator has recently bought the mining concessions with the intention to continue exploiting the site, including by digging new open pits, allegedly without mandatory environmental permits.

The Commission considers that the specific review procedures at Member State level provided under the EIA Directive are the most appropriate mechanism to challenge the substantive or procedural legality of omissions, acts or decisions of the competent authorities in the context of an environmental impact assessment procedure.

2. *On the implementation of the Habitats Directive²*

The Habitats Directive sets out provisions for the safeguard of Natura 2000 sites against potentially damaging developments. Specifically, the competent authorities, prior to agreeing to any plan or project likely to have significantly adverse effects on a Natura 2000 site, must ascertain through an appropriate assessment that it will not adversely affect the integrity of the site concerned.

The Commission has issued guidance on how to reconcile quarrying and other mineral extraction activities with EU biodiversity and nature conservation requirements³. This guidance

¹ 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 16 April 2014, OJ L 124, 25.4.2014, p. 1–18 (the EIA Directive).

² 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.

³ “Non-Energy Mineral Extraction and Natura 2000” , http://ec.europa.eu/environment/nature/natura2000/management/docs/nee_i_n2000_guidance.pdf

was developed in close cooperation with Member State authorities and stakeholders and includes relevant examples of good practices.

The Commission draws attention to the fact that the above provisions apply only to habitats of Community importance as long as they are protected within a Natura 2000 site designated by the Member State. However, it is not possible to identify in light of the available information the exact location of the mining project or any specific Natura 2000 site that could be affected. Moreover, it appears from the available information that, to this date, no development consent has been granted by the Spanish authorities. Consequently, it is too premature to determine at this stage whether the provisions of the Habitats Directive have been correctly applied.

3. *On the implementation of the Mining Waste Directive⁴ and the Water Framework Directive⁵*

Directive 2006/21/EC requires that waste from the extraction and processing of mineral resources be properly managed in order to ensure the long-term stability of disposal facilities and to prevent or minimise any damage to human health or harm to the environment, in particular through water and soil pollution. Further to the provisions of the Directive, it should be mentioned that the Commission has published a reference document on the Best Available Techniques (BREF) for the management of waste from extractive industries, reviewed in 2018⁶ following an exchange of information between experts from Member States, industries concerned, non-governmental organisations promoting environmental protection and the Commission.

Under the Water Framework Directive, Directive 2000/60/EC, the competent authorities must identify in the context of the relevant River Basin Management Plan (RBMP)⁷ 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 26 February 2019, the Commission adopted the fifth Water Framework Directive Implementation Report – assessment of the second River Basin Management⁸, in accordance with Article 18 of the Directive. This report to the European Parliament and to the Council reviews the progress achieved by the Member States in the implementation of the Directive⁹ and an assessment of

⁴ 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

⁵ 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

⁶ The review was published by the Commission on 18 December 2018 as a Joint Research Centre (JRC) science for policy report entitled Best Available Techniques (BAT) Reference Document for the Management of Waste from Extractive Industries (MWEI BREF), <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/best-available-techniques-bat-reference-document-management-waste-extractive-industries>

⁷ 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.

⁸ Fifth Water Framework Directive Implementation Report – assessment of the second River Basin Management Plans and the first Floods Directive Implementation Report – assessment of the first Flood Risk Management Plans (2019), <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=COM:2019:95:FIN&from=EN>

⁹ The country-specific assessments for Spain's second River Basin Management Plans is the Commission Staff Working Documents accompanying the implementation report is available under: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=SWD:2019:42:FIN&qid=1551205988853&from=EN>

RBMPs¹⁰, and provides suggestions for the improvement of future Plans.

As guardian of the Treaties, the Commission has the duty to monitor the implementation of EU law under the control of the Court of Justice of the European Union. However, the primary responsibility for applying the above provisions of EU law correctly remains with the Member States. Moreover, pursuant to the principle of effective judicial protection¹¹, they must provide sufficient mechanisms to enable the public to challenge the validity of national measures considered incompatible with EU law.

The Commission observes that the allegations of untreated acidic mining leachates and runoff, abandoned tailings dams and lack of heavy metal motorisation of water discharges raised in this petition constitute individual instances of possible incorrect application of EU law, insofar as there is insufficient evidence of a general practice, of a problem of compliance of national legislation with EU law or of a systematic failure to comply with EU law. In light of the strategic approach to its enforcement policy¹², the Commission consequently considers that the means of redress available under Spanish law are the most adequate mechanism to deal satisfactorily with the above issues.

4. *On the Access to Environmental Information*

Directive 2003/4/EC¹³ guarantees the right of access to environmental information held by or for public authorities and sets out the basic terms and conditions of, and practical arrangements for, its exercise. The Directive provides for specific procedures to review administratively and judicially the acts or omissions of public authorities open to applicants who consider that their request for information has been ignored, wrongfully refused (whether in full or in part), inadequately answered or not duly dealt with. The specific review procedures available at national level, which must furthermore be expeditious and either free of charge or inexpensive, should be therefore exhausted by the petitioner prior to an investigation by the Commission into the allegations of withheld environmental information on the Santa Comba mine.

Conclusion

In view of the foregoing, the Commission does not intend to provide further follow-up to the issues raised in the present petition.

¹⁰<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=SWD:2019:30:FIN&qid=1551267381862&from=EN>

¹¹ Article 19(1) second subparagraph of the Treaty on European Union (TEU) and Article 47 Charter of Fundamental Rights of the European Union.

¹² As set out in the Communication from the Commission ‘EU law Better results through better application’, of 19 January 2017, (2017/C 18/02), DO C 18 de 19.1.2017, p. 10/20.

¹³ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC, OJ L 041 , 14/02/2003 P. 0026 – 0032.