NOTICE TO MEMBERS

Subject: Petition No 0478/2023 by Jean-Claude Oliva (French), on behalf of Coordination Eau Ile-de-France, on alleged violations by France of the Drinking Water Directive

1. Summary of petition

The petitioner accuses the French State of systemic breaches of the Drinking Water Directive for authorising a project to generalise the Osmose Inverse Lower Pressure (OIBP) in the factories of the Syndicat des Eaux Ile-de-France (SEDIF). The petitioner explains that SEDIF, a public body responsible for the public drinking water service, which delegates this service to a private company, wishes to generalise the OIBP process to its three Parisian drinking water production plants. OIBP is the equivalent for fresh water of desalination of seawater: desalination of seawater produces fresh water and brine; the OIBP on fresh water produces demineralised water, therefore non-potable, and a concentration of mineral salts and pollutants. According to the petitioner, the concentration of mineral salts and pollutants produced is directly discharged into natural environments, in the Seine river, without any treatment, upstream of other drinking water production plants. The same concentration of mineral salts and pollutants will reach the water abstractions and alluvial aquifers (or groundwaters) that supply the inhabitants of western Paris. This will cause a degradation of surface water bodies and ecological impacts on areas classified as Natura 2000 downstream of the OIBP plants, in violation of the Habitats Directive and the Birds Directive. The petitioner also points out that the use of adjuvants in the process raises the question of their residual presence in drinking water, which would violate Article 12 of the Water Framework Directive. In addition, the petitioner believes that the production of drinking water by the OIBP will entail an increase in water abstractions, which will affect the water price for users and the state of the environment and will increase energy consumption. This increase in energy consumption, in addition to having an impact on the price of water for users, will make the water access service more dependent on electricity. The petitioner considers that by authorising this project - with the risk of systematising the OIBP process to all treatment
plants at national level - France is stepping up its infringement already under way for failure to comply with the Drinking Water Directive (98/83/EC) which reached the stage of the reasoned opinion on 15 February 2023 (INFR(2020)2273).

2. **Admissibility**

Declared admissible on 3 July 2023. Information requested from Commission under Rule 227(6).

3. **Commission reply**, received on 30 August 2023

The quality of drinking water within the EU is regulated by the Drinking Water Directive (DWD). The DWD sets quality standards for drinking water within the EU for certain microbiological and chemical parameters, including nitrates. Member States shall take the measures necessary to ensure that water intended for human consumption is wholesome and clean, by meeting these quality standards. However, the Directive does not prescribe the methods to be used for achieving these standards, nor does it prescribe or prohibit any particular method for treating water to make it suitable for human consumption.

As regards the Water Framework Directive (WFD), in line with its Article 4(1) Member States had to ensure, by 21 December 2015, compliance of all water bodies with a set of environmental objectives, including that of securing that all surface water bodies achieve good ecological status or potential and good chemical status and groundwater bodies achieve a good chemical and quantitative status and the status of all water bodies is not deteriorated. Under certain conditions, Member States may justify, for a given water body, a postponement, up to 2027, of the deadline by which to achieve these objectives (Article 4(4) WFD) or the achievement of lower environmental objectives, provided that the criteria set by Article 4(5) are met.

In accordance with Article 7 WFD, for bodies used for the abstraction of drinking water, Member States shall ensure the necessary protection for the identified water bodies, with a view to avoid deterioration in their quality and thereby reduce the level of purification treatment required for the purpose of producing drinking water.

Where a new human sustainable development project, such as a generalised use of a new process to produce drinking water in one or more installations as in the case at hand, could entail deterioration of good status or compromise the achievement of good status of the water body it relates to, or of downstream water bodies in the same river basin district, it can be authorised only if the conditions outlined in Article 4(7) of the WFD are met. This requires an assessment of potential deterioration and, should such deterioration be likely, detailed justification in accordance with the criteria set out in Article 4(7) WFD and mitigation to minimise the impact.

Member States report progress on achieving the environmental WFD objectives every six years by means of reporting their River Basin Management Plans (RBMPs), in line with Article 13 WFD.

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The Commission monitors the progress in implementing the WFD within its on-going assessment of the third RBMPs and second Flood Risk Management Plans (FRMPs), covering the years 2021-2027, in particular as regards the reported status, the justifications for possible exemptions, including those under Article 4(7) WFD for new sustainable human development projects possibly deteriorating status, and the measures planned to bring all water bodies to good status by 2027. The RBMP for the RBD Seine-Normandie has been adopted.

Article 6(3) of the Habitats Directive requires that any plan or project neither directly connected with nor necessary for managing a Natura 2000 site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications in view of the site's conservation objectives. In line with the provisions of Article 6, paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

The petitioner also mentions the Nitrates Directive. In this respect, it should be noted that the Nitrates Directive aims to reduce and prevent pollution of waters with nitrates from agriculture but does not apply to nitrates from industrial installations, including drinking water installations.

Conclusions

The information so far provided in the petition does not allow the Commission to conclude whether the project will result in the deterioration of the ecological status of one or more water bodies, or whether it will significantly affect Natura 2000 sites.

The primary responsibility for correctly implementing EU legislation lies with the French competent authorities. The Commission therefore encourages the petitioner to investigate with the national authorities whether they have assessed the impacts of the project and their conformity with relevant EU legislation.

On its side, in line with the policy approach detailed more recently in the Commission Communication “Enforcing EU law for a Europe that delivers”, the Commission prioritises its enforcement efforts as Guardian of the Treaty on those structural cases that reveal a systematic breach of EU law in a Member State.

Should therefore subsequent evidence point to a systemic breach of EU law, the Commission will consider further action, as appropriate.

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3 The RBMP for Seine-Normandie is available here: [SDAGE 2022-2027 | Agence de l'Eau Seine-Normandie](eau-seine-normandie.fr)
6 COM(2022)518 final