



10.1.2024

NOTICE TO MEMBERS

Subject: Petition No 0185/2023 by Piera Casalini (Italian), on behalf of ‘Presidio 9 agosto 2021’, on alleged infringement by Italy of Directives 2000/60/EC and 2003/35/EC and the inability to access documents

1. Summary of petition

The petitioner claims that the project for the construction of wastewater treatment plants for waste produced in the Brescian municipalities of Gavardo and Montichiari along the Chiese river infringes Articles 4, 5 and 8 of Directive 60/2000/EC of 23 October 2000, the Aarhus Convention and Directive 2003/35/EC. He believes that the Sarca-Garda-Mincio subcatchment should be regarded as a single unit to be managed as a whole because of its specific hydro-morphological, ecological and environmental characteristics, within the meaning of Directive 2000/60/EC. In his view, the project would exacerbate the river's precarious situation, characterised by inconsistent flows and long dry periods due to the intensive use of its waters, and would not solve the problems relating to the lake's water quality. He also points out that the Peschiera del Garda sewage plant, run by Depurazioni Benacense S.c.r.l, has been operating for more than 40 years and could resolve the situation if utilised correctly. He complains that there is a tendency to hinder access to documents and information, and that the communities concerned are excluded from the decision-making process, noting that the technical and economic feasibility study could not be accessed for more than a year. He notes, too, that the project was based on the research that Acque Bresciane srl commissioned from the University of Brescia. It had to pick one of a number of alternatives proposed by the company on the basis of criteria laid down in the legislation, to which some discretionary parameters were added, with the result that the Gavardo-Montichiari option was chosen. He points out that, in June 2021, the Minister for Ecological Transition appointed a special commissioner who, with Decree-Law No 92 of 23 June 2021, chose the Gavardo-Montichiari solution. The petitioner contests this appointment, which infringes Article 120 of the Italian Constitution, and he cites the judgment of 22 June 2022 of the Regional Administrative Court of the Region of Lombardy, which upheld the appeal of the municipality of Montichiari, forcing the University of Brescia

to hand over the project documents. The petitioner therefore calls on the European institutions to launch a fact-finding investigation into possible infringement of European directives.

2. Admissibility

Declared admissible on 26 May 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 10 January 2024

This petition was submitted by several associations including “Mamme del Chiese”, who are the petitioner of PETI no. 902/21 for which the Commission already provided two written answers in 2022. In the last answer, Commission explained that it did not intend to provide further follow-up. As the two petitions relate to the same project, it is advised to treat them jointly. The petition concerns the construction of two waste water treatment plants (UWWTPs) in the municipalities of Gavardo and Montichiari (Lombardy) to treat wastewater generated on the shore of Lake Garda. The treated water will then be discharged into the basin of the Chiese River. The main arguments presented in this petition (access to documents and public participation in environmental decision-making procedures) were already addressed under PETI no. 902/21.

The Commission's observations

For access to documents concerns, the petitioner sent a ruling by the Italian Regional Administrative Tribunal¹ in which the tribunal found that a refusal of access to documents was unlawful and ordered the disclosure of the requested documents. As explained in the Commission's last answer under PETI no. 902/21, the information transmitted by the petitioner confirms that a judicial review procedure exists in Italy against wrongful refusals of access to environmental information and is being used. As regards public participation in environmental decision-making procedures, projects for the construction of waste water treatment plants fall within the scope of the Environmental Impact Assessment (EIA) Directive². UWWTPs with a capacity exceeding 150 000 population equivalent³, as well as UWWTPs below this threshold which are likely to have significant effects on the environment⁴ must be made subject to an assessment of their impacts on the environment prior to development consent (EIA procedure). According to this directive, the developer of a project shall prepare and submit an environmental impact assessment report which includes a description of the reasonable alternatives which are relevant to the project, and an indication of the main reasons for the option chosen, taking into account the effects of the project on the environment. In line with

¹ Ruling by TAR Lombardia, sez. Brescia, of 6 April 2022, no. 624/2022.

² 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, OJ L 26, 28.1.2012, p.1.

³ Such projects fall within Annex I(13) of the Directive and thus require an EIA in all cases (Article 4(1) of the EIA Directive).

⁴ Waste water treatment plants not included in Annex I(13) fall within Annex II(11)(c) of the EIA Directive. For Annex II projects, Member State have to determine, through a case-by-case examination and/or by using thresholds or criteria, if the projects must undergo an EIA (Article 4(2) of the EIA Directive).

the Aarhus Convention⁵ and Directive 2003/35/EC⁶, the public must be given the possibility to participate in the environmental decision-making procedure and the competent authorities must take the results of public consultation into account⁷. When a decision to grant development consent has been taken, the competent authority must inform the public of the decision, and make available, *inter alia*, information on the public participation process, the results of consultations and how those have been addressed⁸. In the present case, the petitioner is contesting the fact that the project and its alternatives were proposed without carrying out any in-depth study. He also claims that the project was decided arbitrarily and without any possibility of appeal. In its first answer to PETI 902/21, the Commission explained that no evidence of a breach of EU law could be identified, when it was not even clear whether the project had already been authorised. The present petition, which refers to a decision made by the prefect of Brescia, appointed Extraordinary Commissioner for the implementation of wastewater collection and treatment system of Lake Garda, does not clarify this point. In any event, in line with the Commission's approach to individual cases, the petitioner in PETI 902/21 was invited to refer the matter to the competent national authorities.

The only new element brought with this petition concerns the alleged non-compliance with the Water Framework Directive⁹ (WFD). According to the petitioner, the WFD would prohibit the mixing of water from different river basins, especially when wastewater is involved. Moreover, the petitioner considers that the project would exacerbate the River Chiese's precarious situation, characterised by inconsistent flows and long dry periods due to the intensive use of its waters. Firstly, contrary to what the petitioner claims, the WFD does not rule out the mixing of waters from different basins in all cases. In any event, the project does not provide for a direct redirection of water from the Garda-Bresciano-Veronese basin into the Chiese River but for the redirection of the load of wastewater currently treated and discharged into the Garda-Bresciano-Veronese basin to plants that will discharge the treated water into the Chiesa River.

Secondly, the WFD prohibits deterioration in the status of water bodies unless the conditions of Article 4(7) for new modifications and new sustainable human development activities are met. In the present case, it cannot be ruled out that the planned discharges of treated water into the River Chiese will lead to a deterioration in its status, but this must be verified by a dedicated assessment. If, on this basis, it would appear that deterioration may take place, the new project (new or expanded urban waste water treatment plant discharge) can only be authorised by demonstrating compliance with the criteria set out in Article 4(7) of the WFD.

Based on the information available, the Commission cannot identify any breach of the WFD. In any event, as the question concerns an individual project rather than a systemic issue of

⁵ UN/ECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, OJ 2005 L 124, p. 1.

⁶ Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC - Statement by the Commission, *OJ L 156*, 25.6.2003, p. 17–25.

⁷ Article 8 of the EIA Directive.

⁸ Article 9 of the EIA Directive.

⁹ 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.

potential non-compliance¹⁰, national courts would be best placed to address it.

Conclusions

The petitioner is invited to refer the matter to the competent national authorities.

¹⁰ As set out in the Communication of 19 January 2017 (EU law: Better results through better application - C/2016/8600, OJ C 18, 19.1.2017, p. 10–20) and in the Communication of 13 October 2022 COM(2022) 518 final - Enforcing EU law for a Europe that delivers.