REPORT
for the European Parliament's Committee on Petitions on the investigation regarding the situation at the San Finx Mine, Lousame
(Petition 0059/2017)

Presented by Asociación Autonómica e Ambiental Petón do Lobo, represented by its President Mr. Ismael Antonio López Pérez.

Background information on Petition 59/2017

In April 2016, in the face of social concern over several issues related to the situation at the San Finx Mine (Lousame, Galicia, Kingdom of Spain), the “Petón do Lobo” Autonomic and Environmental Association (referred to here as ‘the Association’) submitted a Complaint to the European Commission that was assigned file number CHAP(2016)01216, reporting alleged breaches of Union environmental law. The current status of this procedure at the Environment Directorate-General of the European Commission is unknown. On 8 April 2016 an additional graphic and document annex regarding the state of the San Finx Mine’s tailings dam was sent.

Following that Complaint, several inspection visits were carried out in the area, together with intense document-based research in several administrations. The results of this work are summarized in this Report for the European Parliament. Social awareness of the situation unfolding around the San Finx Mine has led to parliamentary questions being put forward at the Galician, Spanish and European parliaments. In council meetings held in the municipalities of Noia1, Outes2 and Muros3, councils have passed resolutions against an authorization permit for the discharge of mining waste water requested by the operating company. In 2017 the Coruña Provincial Assembly unanimously adopted a resolution pressing the Government of Galicia to evaluate the state of the Mine’s tailings dam to safeguard public safety and comply with environmental regulations.

Several written questions to the European Commission have been put forward at the European Parliament regarding a number of the issues raised in this Report, without receiving substantiated responses from the Commission: E-004299-16 and E-004301-16, on breaches of the Member State regarding the transposition and application of the provisions of Directives 2006/21/CE (mining waste) and 2011/92/UE, 2004/35/CE, 2001/42/CE (environmental impact assessment); E-006615-16, on the use of EU funds to support the San Finx Mine; E-008694-16, regarding environmental impacts on mussel gathering areas; E-008989-16, on the obligation to subject the project to environmental impact assessment; E-009298-16, on the breach of the environmental quality standards in the field of water policy established in Directive 2008/105/CE to be controlled and

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transposed by the Kingdom of Spain; E-000007-17, regarding impacts on mussel production; E-001604-17, reinstating the lack of compliance with the Member State’s obligations regarding European Union law on environmental impact assessment and mining waste; and E-001604-17, regarding a request of information about the San Finx Mines. In response to this last question, the answer given by Mr Vella on behalf of the Commission states: “The assessment of the available information in this case has not yet been completed by the Commission, and no official investigation has been launched yet, and the Spanish authorities have not yet been requested to submit their observations on the facts raised.”

As the Association received no response from the European Commission regarding Complaint CHAP(2016)01216 presented in April 2016 and considering the apparent deterioration of the environmental and public health situation as a result of the idleness of the competent national authorities, the Association put forward on 25 January 2017 a Petition to the European Parliament’s Committee on Petitions regarding “Absence of public information and participation in the authorization of the new mining project in Lousame. Contamination”. This expresses the absence of environmental impact assessment in the mining project, the abandonment of the mining waste deposits situated on the riverbed, the potential impacts over mussel gathering and public health and contamination of surface waters by heavy metals. In 21 June 2017 the Association received a communication from the Committee on Petitions announcing the admissibility on 31 May 2017 under file number 0059/2017. The communication states that the Committee on Petitions has requested that the European Commission carries out a preliminary investigation on the different aspects of the problem, also conveying the petition to the European Parliament’s Committee on Environment, Public Health and Food Safety.

The European Commission issues an answer on 29 November 2017 in which, without carrying out the preliminary investigation requested by the European Parliament, the Commission simply states that the issue can be presented “before a court of law or another independent and impartial body to challenge the substantive or procedural legality of decisions issued in the context of an environmental impact assessment procedure”, and indicates that “the Commission has been unable to identify in this case any issue of wider principle, sufficient evidence of a general practice, or a systematic failure to comply with EU law”. Thus concluding: “the Commission does not intend to give any further follow-up to this petition”.

Regarding the affirmations of the Commission, the Association has already taken several of the issues raised in this report before national and international bodies. Currently, there are three procedures at the Valedor do Pobo (Galicia’s ombudsman), 22180/17, 12686/16 and 454/16, regarding the situation at the San Finx Mines. The Valedora had to explicitly warn the Administration about its obligation to collaborate in the face of continuing lack of response. This Association also presented a Communication before the Aarhus Convention Compliance Committee on 24.07.2017 due to breaches of the rights of access to environmental information and public participation regarding the San Finx Mine and others, being declared admissible on 22.03.2018 under file number ACCC/C/2017/153 on the grounds of the systematic nature of the non-compliance.

On 22 June 2018 a communication is received from the Secretariat of the European Parliament’s Committee on Petitions, indicating that this petition “has been included in the agenda of the session of the Committee on Petitions to be held in Brussels on 11.07.2018”. The same communication offers the possibility of the Association participating or presenting additional documentation prior to this hearing. Under such circumstances, this Report has been prepared and submitted to the Committee’s Secretariat.

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Background on the San Finx Mines

The so-called “San Finx Mining Group” (“Grupo Minero San Finx”) is made up of 21 mining concessions and their extensions, the oldest having been granted in 1883 and being in force until 2066. The uninterrupted force and transmissions of the concessions is in sharp contrast with prolonged periods of inactivity and abandonment, in which the Administration did not initiate the legally prescribed expiry procedures (particularly during the 1990-2009 time lapse). This situation is systemic and generalized in Galicia’s Administration and particularly in the province of A Coruña, where the Administration ignores its obligations to act of its own motion in relation to the expiration of mining rights, even when called on by third parties. Currently and since 2015 the San Finx mining concessions are held by TUNGSTEN SAN FINX S.L. commercial company, singly administrated by its parent company VALORIZA MINERÍA S.L., which is part of the SACYR S.A. corporation. Other related commercial companies participate in the venture, particularly TUNGSTEN SAN JUAN S.L. and EUROPEAN TUNGSTEN COMPANY S.L., that seek to use the ore processing plant and waste piles to process ores extracted in other mines across the region.

The official mining production of the San Finx Mining Group between 1887 and 1943, a period when the mines were held by British owners, was 5.672 tons of tin and tungsten concentrates. This production implied the extraction of roughly 2 million tons of ores that produced enormous waste piles. Production peaks occurred in 1900, 1908, 1924-1931, 1934-1943 and 1950-1953 (disaggregated production data is unknown for the period after 1943), continuing on a regular basis until 1990 and with interruptions between 2009 and the present. As in any mine of such dimensions, the San Finx Mine has generated enormous environmental passives. To-date these have mostly been ignored by both concession holders and the Administration itself. Heavy metal contamination in the San Fins river, 7 km apart from the “Esteiro do Traba” Site of Community Importance (SCI) and mussel production areas, mostly due to Acid Mine Drainage, pile leachate and the presence and abandonment of the mining tailings dam, truly represent a ‘chemical time bomb’.

Mining operations came to a standstill in 1990. Prior to that, in 1987, the Public Prosecutor of the Regional Court of Coruña initiated criminal proceedings against the concession holders on the basis of alleged environmental crimes. In 1988 preliminary criminal investigation proceedings are initiated in the Noia Court of Instruction and several reports are elaborated in the said process. In one report signed on 12 September 1991 by Mr. Ramón Giménez de Azcárate, engineer at the provincial delegation of the Galician Regional Ministry of Agriculture, Farming and Forests, on the basis of water analyses, says that “a high accumulation of metals in the silts of the dam is inferred, and these will be incorporated to the stream during overflows”. It continues by stating that “The presence of metals in the water and periodic clouding during episodes of strong rains undoubtedly alter the river ecosystem, between the said dam and the mouth of the river in the TRABA river, over three kilometres apart, which is also evidenced by the failure of several salmonid repopulations carried out by this Administration”. None of the measures prescribed by the Administration engineer were carried out by the concession holders or the Administration, particularly the removal of the sludge from the mining tailings dam and its transportation to a controlled industrial waste facility, so the situation continues, possibly worsened, up to the present moment.

Apart from the above mentioned criminal proceedings, which have not concluded due to the paralysisation of the mine, on 27 October 1995 the 711 Command of the Environmental Protection Service (SEPRONA), Spanish Military Police, issued a Report regarding a serious contamination episode in the San Fins river that explains how the washing away of
the mining waste “permanently aggradate the said stream, creating a layer of sludge over the riverbed that produces negative effects on the stream vegetation (absent in part of the length of the river) and that of the river banks, negatively impacting the quality of the fluvial habitat and, as a consequence, in that of the animal populations existing in the area”. The report was submitted to the provincial head of Environmental Protection of the Galician Regional Administration, that in turn forwarded it to the Galician Department of Mines. Soon after the commercial exploitation of aggregates from the waste piles ceased and the mine was fully abandoned without any measures being taken by the Administration to prevent or minimize constant contamination due to acid mine drainage from the waste piles and the mine drainage adits.

Between 2001 and 2009 the concession holder did not present its annual Work Plans, but the mining Administration did not declare the expiration of the concessions as prescribed by the 1973 Mines Act. In 2001 the Administration notified the concession holder of its duty to “submit, within a maximum period of three months, a Restoration Plan, adapted to the reality of the mining operation and following the requirements of Royal Decree 2994/1982 on the restoration of the natural areas affected by open pit mines”, as well as the annual work plan. None of this ever happened, without further consequence. In 2003 the request of a work plan was reiterated, but a work plan was never received, without consequences. On 25.10.2004 the mining engineer of the Section of Mines of Coruña, Mr. Bernardo Morán Pérez issued a report on the “Situation of the mining concessions of the San Finx Mining Group”, after consulting the administrative files and carrying out a field visit. The report indicates that: “it follows that that the state of these concessions is of inactivity (there is temporary paralysis of authorizations for years 1990, 91, 94 and 96, but not subsequent), with only facility conservation and control tasks being carried out. Such state has been going on since 1990 as a consequence of the fall of tin and tungsten prices. The concession holder has not presented work plans since 2000. Considering such background, the following is reported: the concession holder must be required to submit within one month a project that establishes the safety measures to guarantee the safety of the paralyzed mining works, in accordance to article 169 of the General Regulation of Basic Mining Safety Norms and ITC.MIE.S.M.13.0.0l of the Regulation, to be sent and approved by this Provincial Delegation. The concession holder must also present within a maximum period of three months a Restoration Plan adapted to the reality of the mining operation and following the requirements of Royal Decree 2994/1982 on the restoration of the natural areas affected by open pit mines that had already been demanded on 21 September 2001”. None of these documents were submitted in spite of a formal requirement by the head of the Provincial Delegation, without further consequence.

In 2008 a change in the concession holder of the Mining Group occurred, falling under the ownership of INCREMENTO GRUPO INVERSOR SL, commercial company that reinitiated mining operations, between 2009 and 2012, soon after filing for bankruptcy. In 2009, as it will be explained in detail, the mining Administration approved a Mining Development Project and a Restoration Project, lacking the legally compulsory environmental impact and public participation procedures. In such circumstances, and also lacking a mine waste water discharge authorization of any kind, mining operations were resumed, with considerable production outputs in 2011 and 2012. While the Restoration Project (not subjected to environmental assessment or public participation) intentionally leaves out some of the most important environmental passives, such as the two mine tailings dams, some of the previous mining waste piles and the problem of heavy metal pollution, the Mining Development Project does not include any single measure to address the treatment of acid mine drainage coming from the mine drainage adits and waste piles leachate. In 2015 another commercial company, TUNGSTEN SAN FINX S.L., acquired the concessions and assumed all the rights and obligations of a concession holder, including the development and restoration projects approved in 2009.
Breaches of Union Law

This section briefly describes the most evident cases of breaches of Union Law that have been identified by this Association regarding the San Finx Mining Group. Only those breaches and non-compliance that are generalised and systematic, rather than isolated or occasional, are presented. These breaches appear repeatedly and thus deliberately in the case of the San Finx Mining Groups. They are also recurrent in other mines of the same province, namely the Touro, Santa Comba and Monte Neme mines, which are also generating acid mine drainage.


Directive 2000/60/EC establishes a set of water quality objectives, initially set for the year 2015. These objectives are quantifiable through a set of parameters, including those set in the Environmental Quality Standards (EQS), that establish maximum allowable limits for certain hazardous substances and priority hazardous substances. Taking into account the analyses included in the 12 September 1991 Report, it is a fact that the Kingdom of Spain, through the Galician Regional Administration, possesses knowledge of the magnitude of the pollution resulting from the San Finx Mines’ discharges. Twenty-four years later, considering the analyses dated on 23.06.2015 and sent by the concession holder itself to the Water Administration of Galicia, downstream from mining tailings dam No. 1 (X=513971 Y=4734167) Cadmium (a priority hazardous substance) levels of 7.47 µg/L exceed by 16 times the maximum allowable concentration (EQS-MAC) for Cadmium and 93 times the maximum allowable concentrations on annual average (EQS-AA), increasing by 311 times in relation to the surface water values detected 1 km upstream, that fall under the detection limits. In the same place and date, Copper values (272 microgr/L) and Zinc values (253 microgr/L) also exceeded maximum allowable concentrations. Even 1.5 km downstream (using the most recent analyses, taken by the Water Administration on 26/01/2017), Cadmium levels exceed 42.5 times the EQS-AA and 7.5 times the EQS-MAC; while for Copper they exceed 22.8 times the EQS-AA; and for Zinc 4 times the EQS-AA.

The fall of pH connected to acid mine drainage implies the dissolution of heavy metals, including hazardous and priority hazardous substances such as Cadmium, Copper and Zinc (and occasionally Mercury). All acid mine drainage, either coming from mine drainage adits, from mining waste piles leaching or from the mine tailings dams, are discharged into surface waters without any authorization. All acid mine drainage, either coming from mine drainage adits, from mining waste piles leaching or from the mine tailings dams, are discharged into surface waters without any authorization. Emissions from the Buenaventura Adit alone represent approximately 50,000 litres per hour. The Galician Administration has attempted to ignore the problem, allowing between 2009 and the present time (and, certainly, prior to that, for decades), constant discharges without any kind of control, authorization or register; but always with actual knowledge of their on going occurrence. Between 2015 and 2016 the mining Administration unsuccessfully attempted to obviate once again the waste-water discharge authorization process, but a different department of the Regional Administration (the Water department), required that a discharge authorization procedure take place. Within the context of this procedure and for the first time in the history of the San Finx Mining Group, the concession holder was subjected to a process of public participation in relation to its emissions. However, the documents made public refer exclusively to the discharge authorization request, and not the mine development proper or any other documentation from the mining authorities. In spite of this, and because the information made public included a number of water analyses, the degree and hazardousness of the discharges became known to the public. Two years later, however, and the Water Administration is yet to issue a resolution regarding the discharge authorization and has not forced the concession holder to adopt
cautionary measures to stop heavy metal pollution. Acid mine drainage discharges into surface waters with heavy metals continue unpunished and unrestrained at a rate of at least 45 m3/h according the numbers provided by the concession holder.

Heavy metals from the San Finx Mines end up being deposited in significant amounts in the Noia Estuary, a Site of Community Importance with very important mussel production 7 km downstream from the mines, producing adverse ecosystem effects as they pass through the river and preventing mussel gathering activities due to heavy metal sedimentation in large and extremely productive areas. Heavy metal levels in the sediments of the Noia Estuary (and especially in the Traba Estuary area) are unparalleled in other Galician estuaries while possible effects on public health remain unknown.


The ratification of the PRTR by the European Commission lead to the adoption of Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC. The origin of PRTR-Spain is a consequence of the previous EPER Register, as a consequence of Directive 2008/1/EC following Commission Decision of 17 July 2000 on the implementation of a European pollutant emission register. In 2011 the new Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) comes into force, with the goal of achieving a high level of environmental protection while simplifying the legal framework and administrative procedures. This text encompasses several pre-existing directives, including IPPC.

These instruments require that the Kingdom of Spain, as part to the protocol and a member state, must gather and make public information of industrial complexes with emissions to the atmosphere, water and ground of any of the pollutant substances that are included in Annex 2 of the Royal Decree 508/2007, which include Cadmium and its compounds, Copper and its compounds, and Zinc and its compounds, among others. The same Royal Decree 508/2007 established that underground mines and connected operations are subject to the established information requirements. However, neither the Spanish Register of Emissions and Pollutant Sources nor the European Pollutant Release and Transfer Register (E-PRTR) include any information regarding the emissions of polluting substances from the mining concessions held by Tungsten San Finx S.L. No emissions data from other mining operations with significant and verified emissions such as the Touro Copper mine (“San Rafael”), Santa Comba Mining Group or the Monte Neme Mines, is included. In fact, no emissions from any underground or open pit mine are reported, evidencing the _systematic and generalized character of the breach of Union and international law by Spanish public authorities_.

As already indicated for the San Finx case, the Administration has been aware, since at least 1991, of the results of emissions analyses. And since at least 2015 it has access to regular analyses that confirm emission values. In the waste water discharge authorization file DH.V15.54967 of the Galician Water Administration, analyses dating back to 23/06/2015 of effluents of one of the mine drainage adits (“Buenaventura”) can be found, registering values of 0,0127 micrograms/L for Cadmium, 0,352 micrograms/L for Copper and 0,533 micrograms/L for Zinc. The same administrative file includes new analyses dated on 26/01/2017 with almost identical values. The EQS-AA maximum allowable concentration for Cadmium is 0,00008 micrograms/L, while the EQS maximum allowable concentrations for Copper are 0,005 micrograms/L and for Zinc 0,030 micrograms/L. The same series of analyses demonstrate the downstream impacts of these heavy metals, clearly exceeding the EQS for these heavy metals.
Since 2016 and up to the present, this Association has made several requests for public environmental information related to the San Finx Mines and other mines from the same province that present similar issues. One of these requests, made on 20/04/2017, referred to an Inventory of Mining Dams and Waste Piles of Galicia issued in 1999, and over a year after the request, access to the said inventory has not yet been provided, in spite of a 8/11/2017 firm resolution of the Commission of Transparency of Galicia (RSCTG 55/2017) fully upholding the petition of this Association. Subsequently, the Aarhus Convention Compliance Committee admitted, on 22.03.2018, a Communication under file number ACCC/C/2017/153 highlighting a case of non-compliance by the Kingdom of Spain relating to its obligations in relation to the Aarhus Convention and, consequently, Directive 2003/4/CE. The systematic character of the non-compliance is articulated in the response to "Question 3. Systemic failure of the Galician Directorate General on Energy and Mines" exemplified through cases such as the recent Judgement 600/2017 of the High Court of Justice of Galicia, related to procedure 7363/2015, by which the Section of Mines of the Coruña Territorial Delegation (also responsible for the San Finx, Santa Comba, Touro San Rafael and Monte Neme mines) is ordered to provide the copies of public information documents regarding the mining concessions that had been requested 5 years earlier by the claimant. Currently, several dozen files in independent bodies such as the Commission of Transparency of Galicia, the Valedor do Pobo (Galicia’s Ombudsman) and the judiciary are on going in relation to continuous obstructions of the Galician mining administration in terms of access to public and environmental information on several mining projects. Such obstruction can only be considered in light of other breaches, such as the ones further detailed in subsequent sections of this Report.

Besides the cases mentioned above, the systemic and repeated infringement by the Kingdom of Spain regarding Directive 2003/4/EC is made clearly and sufficiently evident by the complete absence of public participation procedures in the mining development, restoration projects and related documentation of the San Finx Mining Group. The obligation to guarantee public participation and access to environmental information has been infringed systematically through the authorities' failure to subject the mining projects to an environmental impact assessment procedure, which any project is required to go through to become validly authorized (in accordance with the Directive), and which would necessarily involve public participation procedures. This violation has been repetitive in spite of being reported on several occasions. The Administration's obstruction and denial of copies of the documentation related to the San Finx mines is another component of such infringement. With this in mind, it is re-stated that the operators and concession holders of this particular mine are engaged in generalized and systematic non-compliance with the obligations established in Union and international law by the Member state; even if such conduct was not recurrent in other cases in the same area—which, as explained, it is– this non-compliance could still be called systemic. Indeed, the breaches of Union law have been systemic and carried out deliberately and knowingly. The information necessary to have developed a full understanding of the situation, and which clearly requires the mining operator to comply with environmental obligations from a position of non-compliance, is in the possession of the Administration, but the same Administration deliberately withholds such information from public scrutiny.

The “Resolution of transmission of mining rights” of the San Finx Mining Group in favor of INCREMENTO GRUPO INVERSOR S.L. was issued in 30/12/08 by the then Director General of Industry, Energy and Mines, Mr. Anxo R. Calvo Silvosa, and the Deputy Director General of Mineral Resources Mr. José Antonio Domínguez Varela; the transmission was issues on the condition that the concession holder would submit within a maximum period of three months, an updated mining development project and restoration project and “Submit, within a maximum period of three months, an Environmental Impact study of the said project, in accordance to Royal Legislative Decree 1/2008, of 11 January, which approves the revised text of the Law on Evaluation of Environmental Impact of Projects”. An environmental impact assessment would necessarily encompass the legally prescribed public participation process as well as require reports from different area departments or bodies. None of this ever happened in spite of the firm resolution of 30/12/08, never appealed by the concession holder, with clear conditions in relation to the prescribed environmental procedure.

In a “Report on the mining development project of the concessions included in the San Finx Mining Group in the municiplality of Lousame”, signed on 29.06.2009 by Mr. IGLESIAS SUÁREZ it is said that “the new concession holder must present an updated mining development project, as well as an updated restoration plan of the areas affected by the mine and an environmental study of the project”. The Report quotes the obligations under Royal Decree 975/2009, of June 12, on the management of waste from extractive industries and the protection and rehabilitation of areas affected by mining activities (replaced RD 2994/82), and that this includes the fulfilment of the environmental impact assessment procedure as a prerequisite to authorizing restoration plans (art. 4.3.e).

Regardless of all this, in “Resolution of 28 December 2009 approving the development, restoration and improvement of concentration facilities projects of the San Finx Mining Group” the new Director General of Energy and Mines, Mr. ÁNGEL BERNARDO TAHOSES, omits all reference to the condition of submitting an environmental impact study imposed by the firm Resolution of 30 December 2008. All mention regarding the condition of subjecting the projects to environmental procedure vanishes, without any legal change taking place regarding environmental assessment regulations, and in open violation of applicable Union Law. Also in violation of national legislation: Royal Legislative Decree 1/2008, of 11 January, which approves the revised text of the Law on Evaluation of Environmental Impact of Projects (in force until 12.12.2013) reinstated the obligation exactly in the same terms as the preceding RD Leg 1302/86. In fact, the previous concession holders of the San Finx Mining Group had already been required on several occasions prior to the Resolution of 28.12.2009 to comply with such norms by presenting and Environmental Impact Study, as stated in the background section.

RD Leg 1/2008 established (as current Law 21/2013) that “Projects that must be subjected to environmental impact assessment must include an environmental impact study with a scope and level of detail that will be previously defined by the environmental body”. By removing the environmental body, in this case the Galician Regional Ministry for the Environment, from the whole procedure in this project, in open breach of Union and national law, the Galician Administration has not only stolen the competence of the environmental body, but also those of all the remaining area administrations and entities connected to the protection of the environment that would have been called upon to issue their area reports regarding the project’s initial document, and also the public

participation of the general public through the mandatory public information procedure. Only through these flaws at the outset can a mining development and restoration project such as those approved for the San Finx Mine be successfully conceived and permitted. These developments are otherwise unimaginable and unbearable in the context of current legal norms, as they ignore and fail to address essential aspects such as acid mine drainage treatment or the suppression and restoration of the mine tailings (now abandoned).

The impenetrability of the Galician mining Administration, in breach of the right of access to public information, makes it extremely complex for an Association such as ours to gather the necessary evidence that would make it possible to demonstrate, in a national court of law, the systemic and generalized nature of the violation of Union law regarding environmental impact assessment. Beyond the case of San Finx, this Association has found evidence of the existence of a similar situation in the Santa Comba Mining Group, which was also held by INCREMENTO GRUPO INVERSOR S.L. Other mining operations in similar circumstances are currently being investigated.


In 1928 and 1939, respectively, the concession holders built two mine tailings dams, over the riverbed of the San Fins River, to serve as settling pools for solids and embankments for mining sludge. These two dams appeared in the annual Work Plans for the mine until the year 2000, when the concession holder ceased to submit such documents, at the same time that a norm regulating such dams came into force: *Order of 23 April 2000 that approves Additional Technical Instruction 08.02.01 of Chapter 12 of the General Regulation of Basic Mining Safety Norms 'Sludge Containment in the treatment processes of extractive industries’*, remaining in force until the passing of *Royal Decree 975/2009, of June 12, on the management of waste from extractive industries and the protection and rehabilitation of areas affected by mining activities*, transposing Directive 2006/21/EC. After the disasters of Aznalcóllar, in Spain, and Baia Mare, in Romania, such regulations put in place strict measures in relation to the design, operation, control and closure of mining waste deposits, including embankments, dams and piles.

Although the dams had been included in the “Development Plan of the Mining Concessions of the San Finx Mining Group within the municipality of Lousame (A Coruña)”, submitted in 12.02.2008, together with a “Restoration Plan of the Natural Area affected by Mining Activities”, documents that were never formally approved and that are radically different from those approved in 2009, the two mining tailings dams completely disappear in the Development and Restoration Projects approved in 2009, together with some of the existing mining piles, thus seeking to release the concession holder from environmental responsibilities for hundreds of thousands of cubic meters of accumulated mining waste posing great danger to the environment and public health. It must be noted that the largest of the dams was the site of the so-called “1960 catastrophe” or “disaster”, when a dam damper failure released thousands of cubic meters of mining sludge down river, covering lands downstream from the dam and rendering them sterile; also that as far back as 1991 the Galician Administration, in the report mentioned in the background section, had prescribed the withdrawal of mining waste held by the dams.

As a consequence of the actions taken by this Association, the Galician Water Administration has looked into this issue in the face of the passivity of the Mining Administration, requesting a number of reports to determine the state of the mine tailings dams. One such report of June 2017 concludes that “In the case of dam no. 2, almost completely clogged, situated downstream and with greater height, the washing of materials could **produce an important environmental impact in the event of dam failure**”. In spite of this critical hazard, today the Administration continues to fail to force the concession holder of the San Finx Mining Group to adopt measures for the restoration
of the area affected by the dams, or to carry out such measures directly on a subsidiary basis. This leads not only to the breach of Directive 2006/21/EC but also puts at risk the whole productive activity of the Noia Estuary, particularly mussel gathering, that takes place less than 7 km downstream, and also the health and safety of the populations in the proximities of the River. Instead of acting, the Administration has initiated an “ownership inquiry procedure” in which a peculiar form of amnesia is displayed regarding the reasons for the construction and use of the mining tailings dam, in spite of their being clearly featured in the annual mine Work Plans until the year 2000, in several historical documents and the files of the Administration, including the 1991 report.

All these details are perfectly well known, and there is even a Project for the “Development of the San Finx Tin and Tungsten Mines” written by Manuel Peón Martínez in 1940 (a year after the construction of the larger dam, or dam no. 2) that in pages 32 and 33 (Chapter 6 “Processing”, section “a) Mineral concentration plant”) explains in detail the technical and construction characteristics of the dams:

“Water clarification of turbid waters from the ore washing plant is carried out through the process of settling. In 1924 and 1925 three settling pools were built to capture the waste gravel and sands suspended in the water from the washing plant, so that it can be discharged into the river properly clarified. Later, in 1928, a wall-dam 4 meters high is built, transversally closing a glen and generating a dam with 4,200 cubic meters capacity, as an addition to the clarification system, and enabling the settling of sands that were not withheld in the previous pools.

“With the goal of completing this clarification system, recently, in 1939, another water settling deposit was designed and built, taking advantage of a natural gorge of the terrain and forming a dam through a weir in which the waters suffer a sufficient decrease of speed so that settling takes place with the intended outcomes, so that water may be used for different public purposes. The capacity of the dam is 8,400 cubic meters. This deposit captures sands and sludge –mostly sludge– that spill from the previous pools, and considering the respectable volume of the said dam, waters almost come to stillness, favourably allowing the sedimentary action of suspended materials through a long stretch and during enough time to achieve clarification. As the volume of water to be clarified is 34 cubic meters per hour, it takes some 10 days to fill up the dam. It is also know that the volume of sludge and sands suspended in the water is 0,83% and considering that the ore washing plants work at full load 24 hours a day and 300 days a year, the volume of sediment will be 2,000 cubic meters per year and thus it will take 4 years for the dam to be clogged. Clearance of the dam must be carried out every four years and in such way we achieve the total capture of the sands and impurities present in the waters making them available in good condition for public use.”

The continuity and abandonment of the dams and non-compliance with Union regulation regarding mining waste management has lead to continuing degradation and pollution of surrounding areas, a fact well known to the Administration. In an environmental report issued on 27.10.2010 by the Environmental Department of the Galician Administration, it was stated that “the mine has severely altered the restricted waters area, the river access easement, embankment and riverbed of the San Finx Mines River, mainly due to the creation of a waste pile and its washing away, completely clogging the riverbed as it passes by the pile”. It continues by indicating that the mine “caused the total disappearance of the river’s ichthyofauna and most water macrophages, as no other industrial discharge capable of such damage reaches the river. Alias, the tributaries of this river that are not affected by the mine have ichthyofauna”. The report concludes that “the reopening of the mine will lead to a worsening of the affected area and will preclude the natural regeneration of the area”. However, not only was the reopening of the mine with development and restoration projects approved without being subjected to mandatory environmental impact procedures, but on the basis of this and other reports, the Water Authority even granted a water concession. Granting such a concession should have required compliance with the environmental impact procedure condition established in the 2008 resolution transmitting mining rights, that is also part of the same file.
Conclusions

From all that has been stated, this Association concludes that the Kingdom of Spain had undoubtedly committed a systemic and generalized breach of its obligations as a Member state of the European Union, by refraining to guarantee compliance with the obligations established by Union law. Non-compliance has materialized as actions or failures to act by regional mining and water authorities. These failures and non-compliances are repetitive, continuous and knowingly committed. They have repeatedly been demonstrated by this Association, other environmental groups and public institutions, including the concerned municipalities, without any further consequence in regards to the mining operator, to the restoration of degraded areas, to the limitation of environmental damage and public health impacts, to the adoption of measures minimizing the impacts of mining activity, and the stubborn and deliberate concealment from public knowledge of the existing impacts, its harms and hazards and the absence of appropriate protective measures, all of which has been done by unlawfully limiting access to environmental information, not subjecting the mining project to public participation (denying the existence of acid mine drainage and the requirement of an environmental impact procedure that would imply public participation, and by denying copies of related documents after repetitive requests), thus allowing subsequent operators to escape from the environmental responsibility over damage caused. All of the above also occurs in other mines of the same province.

For all of the above reasons, it is requested that the European Parliament continues with the procedure initiated through this Petition and again calls on the European Commission to fulfil its duty of defending the Union's legal regime and, accordingly, initiates a full audit that confirms the extent of the systemic breaches committed by the regional mining and water authorities in Galicia (and, thus, by the Kingdom of Spain) in relation not only to the San Finx Mining Group but also in relation to other mining industries located in the provinces of A Coruña, Lugo, Ourense and Pontevedra.

Finally, this Association manifests before the European Parliament the severity of the response provided by the Commission on 29 November 2017, through which, without carrying out the preliminary investigation requested by the European Parliament, simply states that the issue can be presented ‘‘before a court of law or another independent and impartial body to challenge the substantive or procedural legality of decisions issued in the context of an environmental impact assessment procedure’’, and indicates that ‘‘the Commission has been unable to identify in this case any issue of wider principle, sufficient evidence of a general practice, or a systematic failure to comply with EU law’’. Thus concluding: “the Commission does not intend to give any further follow-up to this petition”.

Firstly, we inform the European Parliament that the Spanish Justice Administration has carried out and continues to carry out criminal investigations in relation to several facts that have been stated. If such investigations are successful, they may serve to establish the individual criminal responsibilities of a number of private individuals in light of their conduct regarding the situation of the San Finx Mining Group.

Secondly, and regardless of the former, such proceedings or the pressing of criminal charges by citizens in light of the actions or lack of actions by the Spanish Administration, are not valid reasons to support the European Commission’s dormancy in investigating such charges of repetitive and multi-sectoral infringement of Union law by a Member state. Considering the evidence, which affects a wide set of normative sectors and is thus generalized, this Association believes that, beyond a necessary investigation, a full EU audit is regarding the compliance of the Kingdom of Spain in Galicia with regulations on water quality, waste discharge, mining waste management, access to environmental information, public participation, and environmental impact assessment, in relation to all of the mining operations currently in existence, legal or illegally, is urgently needed.

All of which is brought to the attention of the European Parliament, on 4 July 2018.