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powerplant at Visé, Belgium

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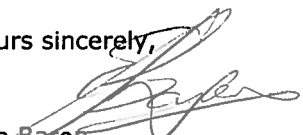
Dear Members of the Implementation Committee,

In april the Netherlands received a letter from the Chair of the Implementation Committee, Mattias Sauer on behalf of the Implementation Committee regarding a planned combined-cycle gas turbine power plant at Visé in Belgium. The Committee seeks information on the transboundary EIA between Belgium (the Walloon region) and the Netherlands regarding this project and whether there has been proper public participation in the affected Party (the Netherlands). In particular, the Committee has requested written information on:

- a) the permitting or consent and EIA procedures
- b) whether there has been a notification
- c) whether the Netherlands have chosen to participate in the transboundary EIA
- d) what opportunities have been provided for public participation by Belgium and the Netherlands with both Parties being responsible,
- e) whether there were any bilateral agreements governing the transboundary EIA procedure.

We have provided information on the issues requested by the Implementation Committee in the attached document (appendix I).

Yours sincerely,


Eva Baron
Focal Point Netherlands,
Convention on Environmental Impact Assessment
in a transboundary context (Espoo Convention)

Appendix I: information on the 5 issues as requested by the Implementation Committee

a. the permitting or consent and EIA procedures

In the Netherlands the EIA procedure is integrated into the permitting procedure and therefore the decision on the permit is the same as the final decision referred to in Article 6 of the Espoo Convention. In the final decision on the proposed activity, the outcome of the environmental impact assessment is taken into account, including the environmental impact assessment documentation as well as the comments thereon received. In the Netherlands the environmental impact assessment documentation is presented in an Environmental Impact Assessment report, which has been approved by the concerned authorities prior to the final decision, i.e. the decision on the permit in this case.

However, in this case the procedures of the Walloon government (being the Party of Origin) have been followed with respect to the EIA and permitting procedure.

b. whether there has been a notification

Initially a notification as stipulated in Article 3 of the Convention that "for a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of Origin shall, for the purposes of ensuring adequate and effective consultations under Article 5, notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity", did not take place.

By means of a publication in a Dutch local newspaper on the 30th of May 2007, the SPE company (initiator of the combined-cycle gas turbine (STEG) power plant in Visé) informed the Dutch public about: a) the intention to apply for a permit for a planned STEG power plant and b) a EIA would be carried out conform Walloon legislation ("Milieucode") before applying for the actual permit.

However, the relevant Dutch authorities (province and municipalities) were not informed personally *at the same time* the public was informed through the publication of 30th of May, neither by SPE nor the municipality of Visé (or any other body of the Walloon government). However, the Dutch municipality of Eijsden noticed the publication in the Dutch local newspaper and informed the other relevant Dutch authorities (province of Limburg, the provincial water authority (Rijkswaterstaat Limburg) and the municipality of Maastricht).

On the 14th of June 2007 the municipality of Eijsden *did* receive a notice: SPE sent a joint press release by SPE and the municipality of Visé by fax. The press release stated the rescheduling of the public meeting from the 15th of June to the 12th of July 2007, an invitation to attend this meeting, the notice that the citizens of the relevant municipalities (including Eijsden) would be informed by publication in relevant newspapers and the possibility to express remarks and suggestions regarding the project and the EIA until the 31st of August 2007. In second instance this can be seen as a notification, as a municipality in the Party of Origin was one of the authors.

c) whether the Netherlands have chosen to participate in the transboundary EIA

The Netherlands did chose to participate in the transboundary EIA procedure. On the 5th of July 2007 and again on the 10th of July 2007, the Ministry of VROM in the person of the focal point of the Espoo Convention, requested the focal point for the Espoo Convention of the Walloon government, Belgium, by email to be informed about the project and the transboundary EIA procedure. This request was done on behalf of the province of Limburg as they were not directly informed, and, as is indicated above, nor was the municipality of Eijsden initially. On the 10th of July 2007

the Ministry of VROM received a reply from the Walloon government about the EIA procedure. This reply indicated that 1) according to the Walloon legislation the EIA is conducted before the request and was at that time under way taking into account the possibility of transboundary impacts, and b) a confirmation that the relevant Dutch authorities would be involved in the EIA procedure and would be sent a copy of EIA report to the Governor of the Dutch Limburg and to the city (cities) likely to be affected by the project as soon as the EIA report would be received by the Walloon Ministry (conform Walloon legislation).¹

In their joint comment on the project and scope and alternatives of the EIA (that still had to be conducted) dated the 12th of July 2007, the relevant Dutch authorities (being the municipality of Eijsden, the province of Limburg and Rijkswaterstaat Limburg) also directly expressed their interest and willingness to participate in the EIA procedure and be kept informed about the relevant steps in the procedure. In addition, the municipality of Eijsden requested for a meeting with SPE on the project and the procedure to be followed after they had been informed about the public meeting to be held on the 12th of July 2007 (postponed from the original date of the 15th of Juni 2007), thereby expressing there interest to participate in the EIA procedure. The meeting took place on the 4th of July 2007 between the municipality of Eijsden and SPE, in which the technology of the project, the possible transboundary environmental impacts and the procedure and planning were discussed in more detail.

d) what opportunities have been provided for public participation by Belgium and the Netherlands with both Parties being responsible

In the following we have mentioned the opportunities that were provided for public participation to the public of the Netherlands (and the public of Belgium, Walloon region) in the period between the first publication by the applicant SPE on the 30st of May 2007 and the 27th of February 2009, the date the letter by the non-gouvernemental organisation "Comité Centrale Née" was received by the Implementation Committee.

The following opportunities were provided for public participation to the public of Belgium (Walloon region) and the Netherlands:

- on the 12th of July 2007 there was a public meeting organised in Visé, Belgium to inform and consult the public about the project on the combined-cycle gas turbine powerplant on the initiative of the company SPE (initiator of the project). Originally the meeting should have taken place on the 15th of June 2007, but due to local festivities the municipality of Visé together with SPE decided to postpone the meeting. The municipality of Eijsden was notified personally by fax on the 14th of June 2007 about the postponement. The joint press release of the municipality of Eijsden en SPE sent by fax on the 14th of Juny 2007 informed the municipality of Eijsden that the public of Belgium and the Netherlands, in casu the inhabitants of Eijsden, would be informed by means of a publication in the same way that the public was informed for the initial meeting on the 15th of June 2007. For the Dutch public this meant a publication in the local newspaper 'De Etalage' as this is customary to inform the public of Eijsden. The publication concerning the meeting on the 12th of July 2007 was published the 18th of June 2007 in the local newspaper "de Etalage" by SPE. At the public meeting interpreters were present for the Dutch citizens.

¹ Effectively, a copy of the EIA report together with the request for a permit was only sent to the municipality of Eijsden. After a request by the province of Limburg to the municipality of Vise (by fax on the 16th of September 2008) the province of Limburg received a copy of EIA-report and the permit request as well .

- On the 21st of August 2007 there was an extra public meeting for those citizens that could not be present at the first public meeting on the 12th of July due to the holiday period. Information about this meeting was published by SPE in the newspaper "De Limburger" on the 28th of July 2007, referring to the meeting held on the 12th of July 2007 and reminding the public comments could be issued until the 31 of August 2007 to the municipality of Visé.
- As mentioned before, besides during the public meetings, the public was given the opportunity to express their written views until the 31st of August 2007; these comments could include 1) suggestions and remarks on the project, 2) special matters to be included in the EIA report and 3) possible alternatives that reasonably could be taken into account by the applicant (SPE) in the EIA-report. The deadline for the written views was mentioned at the public meetings and in the publications (see above) on the public meetings on the 12th of July and the 21st of August 2007 in the local newspaper 'de Etalage' and the regional newspaper 'de Limburger'.
- On the 24th of September 2008 there was a public meeting concerning both the EIA report and the permit application for the combined-cycle gas turbine power plant at the municipality of Visé for the public. This public meeting had been announced by the applicant SPE in the local newspaper 'de Etalage' a week earlier, around the 14th of September 2008. The publication invited the public to attend the meeting in order to hear about the progress on the project and informed the public that the application for the permit had recently occurred. Interpreters were present to inform the Dutch public and authorities in their native language.
- Both the notification to the municipality of Eijsden from the municipality of Visé on the 11th of September 2008 stating that the EIA report was finished and a permit application issued, and the publication by SPE on the 14th of September 2008 concerning the public meeting on the 24th of September, did not give notice to a) documentation being available to the public and where to find it, and b) the possibility for the public to issue comments accompanied with a deadline. Therefore (in accordance with Article 4 of the Espoo Convention) the municipality of Eijsden decided to publish a notice in the local Dutch newspaper 'de Etalage', informing the Dutch public about the possibility to comment on the EIA report and the permit application for the planned combined-cycle gas turbine powerplant in Visé, indicating a) where to find the issue for the permit and accompanying EIA report (municipality of Visé) and respectively a translated summary of the EIA report (the municipality of Eijsden), b) about the possibility to issue oral or written comments on the publications from the 16th of September until the 15th of October 2008 and c) about the possibility to request for additional information/clarification on the available documentation. The actual documentation (permit application and EIA report) was received by Eijsden five days after the initial notification on the 11th of September 2008, in casu the 16th of September 2008. The necessary information about the period and location to gain access to the relevant documentation and submit comments on the EIA-report was eventually found and retrieved by Eijsden from the website of the municipality of Visé. Consequently, the publication date in the local newspaper (around the 22th of September 2008) where to find the documents etcetera, was a few days later than the 16th of September 2008, the first official possibility for issuing comments. On their request (by fax dated the 16th of September 2008) the province of Limburg received the documentation (notification, request for permit and the EIA report on CD-ROM) on the 24th of September 2008. The province of Limburg and municipality of Eijsden informed

the other relevant Dutch government bodies (Rijkswaterstaat Limburg, province of Maastricht) on their own account.

e) whether there were any bilateral agreements governing the transboundary EIA procedure

There is no formal bilateral agreement governing the transboundary EIA procedure between the Netherlands and Belgium, in casu the Walloon government. The Dutch government does have bilateral agreements with respectively the Flemish government (Belgium) and the relevant German border provinces. Due to the number of cases with Flanders and Germany, being (far) more numerous than with the Walloon government, priority has been given to establish bilateral agreements with Flanders and Germany. The bilateral agreement with the Flemish government is currently being updated in order to include arrangements on transboundary strategic impact assessment (SEA) for plans and programs. The Dutch government also has a bilateral agreement with the relevant German provinces. There already have been contacts between the province of Limburg and (some of) the relevant German border provinces to commence the process of updating the existing bilateral agreement in order to include procedures in case of a transboundary SEA in the course of the second half of 2009.

The Dutch government has the intention to contact the Walloon government on establishing a bilateral agreement after completing the updates of the two present bilateral agreements with respectively Germany and Flanders, due to it's positive experience with the other bordering governments. As there has been an exchange between the Dutch government and the Walloon government on the desirability of a bilateral agreement in the past, the Dutch government has good faith that a bilateral agreement will be established in the future.