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**Recommended letter**

United Nations  
Economic Commission for Europe  
Att. Mr. Jeremy Wates  
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Vienna, on 25.2.2008  
06018 / U9/BS / 72.doc

**REF:** communication with the AARHUS Compliance Committee concerning decision making on establishment of a landfill in Kazokiskes/Lithuania  
Ref. ACCC/C/2006/16  
Comment to the draft findings and recommendations

Dear Mr. Wates,  
Dear Members of the AARHUS Compliance Committee,

We would like to provide on behalf of our client, association of Kazokiskes community, our comments to the draft findings of the Compliance Committee submitted to us on February 12<sup>th</sup>, 2008.

**1, Early Public Participation when all options are open  
- article 6, paragraph 4**

Regarding early public participation when all options are open (Art. 6 para. 4) it is stated in point 70 of the draft findings and recommendations, that *"the requirement for "early public participation when all options are open" should be seen first of all in a concept of tiered decision-making, whereby at each stage of decision making certain options are discussed and selected with the participation of public and each consecutive stage of decision making addresses only the issues within the option already selected at the preceding stage."*

Further the Committee states, that *"within each and every such procedure where public participation is required, it should be provided early in the procedure when all options are open and effective public participation can take place."*

Further the Committee states in point 71, that *"the fact, that certain decisions took place; when certain options were already decided up*

Bankverbindung: Bank Austria Creditanstalt (BLZ: 12000), 240-115-135/00

IBAN: A135 1200 0240 1151 3500, BIC: BKAUATWW  
ATU 13372107

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*on (landfill or waste incinerator) and when only two possible locations were discussed does not seem to exceed the above limits of discretion".*

*In this respect the Committee further states under point 73., that "a key issue is whether the public has had the opportunity to participate in the decision making on those technological choices at one or other stage in the overall process, and before the "events on the ground" have effectively eliminated alternative options".*

The communicants would like to stress that they fully agree with the above quoted explanations of the Compliance Committee.

*In point 74. of the draft findings the Committee is stating, that the Committee is not convinced that those questions concerning technology choices, which had effectively been ruled out by the de facto existence of the landfill installation (such is the major choice between landfill and waste incinerator) did not fall within the scope of the earlier decisions, in which there were opportunities for the public to participate.*

The communicants understand this statement in so far that the Lithuanian authorities were under the must under the AARHUS Convention that the "main choice between landfill and waste incinerator" for example was decided in the frame of a procedure with public participation, but that the Compliance Committee, is not convinced that this decision was not taken in the frame of a procedure where public participation took place or was at least possible.

In this respect the communicants would like to draw the attention of the Compliance Committee to the position of the Ministry of Environment submitted to the Compliance Committee with letter of October 6<sup>th</sup>, 2006.

*In this position the Government of Lithuania under the point "environmental impact assessment, technical project and construction permit" (page 7, chapter 4 and 5) states,*

*"it should be stressed out that pursuant to applicable Lithuanian legislation the possibility of consideration of different alternatives is set forth in the EIA procedure, which is obviously the initial one within the entire design stage. In carrying out the EIA of the landfill of Vilnius County two alternative sites for construction of the aforementioned landfill were analyzed, the public was informed about the proposed economical activity within the initial stage, so it could be stated the public has been provided with the opportunity to discuss the issue of alternative sites for construction of the landfill".*

Further the Government is stating, that

*"in the technical project stage it is already impossible to change basic solutions contained in the EIA report, such as of the proposed economic activity to be developed, selected waste management methods, the site for implementation of activity etc."*

The party is thereby confirming that in the frame of the EIA procedure the only alternatives, which were presented to the public were two alternative sites. The Government/party therefore does not dispute the argument of the communicants that the only alternatives ever presented to the public were two alternative sites in the frame

of the EIA procedure and that the EIA procedure was the only procedure, in which ever any alternatives were presented to the public.

Therefore the communicants can not fully agree with the Compliance Committee in point 74 of the draft findings and recommendations that the Committee is not convinced that those questions concerning technology choices, such as the main choice between landfill and waste incinerator did not fall into the scope of an earlier decision, with the opportunity for public participation, as the Lithuanian Government itself is confirming, that the only alternatives ever presented to the public were the two alternative sites in the frame of the EIA procedure.

The Government is not disputing that never any studies, on alternatives like waste incinerator were not just not presented to the public, but that such studies do not even exist, respectively did not exist before decision to establish a landfill was taken.

As described above the Compliance Committee states in the draft findings and recommendations, that decisions on the main choice of technologies (like in the present case between landfill and waste incinerator) are decisions, which have to be taken in the frame of a procedure, which provides for public participation.

There can be actually no doubt that the ruling out of alternatives to a landfill regarding Kazokiskes was not taken in the frame of a procedure, which provided public participation, as the party does not even maintain so.

The communicants therefore kindly request the Committee to amend the draft findings and recommendations and to add in point 88. of the findings, that by failing to present to the public an outline of the studies made on alternatives to a landfill, like waste incinerator, the Lithuanian authorities failed to apply with the requirement of Art. 6 lit.e of the Convention.

On behalf of Kazokiskes Community

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