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Wien, am 1.4.2008
06018 / US/BS / 78.doc

Betrifft: communication with the AARHUS Convention
Compliance Committee concerning compliance by
the European Community with the Convention
Ref. ACCC/C/2006/17
Comment to the draft findings and recommenda-
tions

Dear members of the Compliance Committee,

In accordance with your communication of March 20th, 2008 we submit on behalf of the communicant, within the given deadline till April 4th, 2008 our comments to the draft findings and recommendations of February 20th 2008.

1.) General remarks:

First of all we would like to stress that we overall agree with the draft findings and recommendations and in principle accept that the community comes to the conclusion that there was no violation of the convention when transposing the Aarhus Convention into the EIA and IPPC directive.

We accept and agree with this position of the compliance committee based on the reasoning/ findings in para. 53 of the draft findings and recommendations, which we read (summarized) in the following way:

It is in line with the convention, if the IPPC directive requires that the IPPC permitting process in accordance with the IPPC directive starts after the construction is finalised (or started) under the precondition that the public had the opportunity to participate in the decision making on

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

IBAN: AT35 1200 0240 1151 3500, BIC: BKAUATWW

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the technological choices at one or other stage in the overall process, before the construction, therefore before the "events on the ground" have effectively eliminated alternative options.

In our understanding the key message of the draft findings and recommendations in this respect is, that the IPPC directive and the EIA directive are in line with the Aarhus Convention under the precondition that these regulations are interpreted and applied in the sense of the Convention, which requires, in case the procedure is initiated after constructions started, that the public had the opportunity to participate in an earlier procedure regarding all aspects and choices, concerning which it is no realistic to be changed anymore after construction.

In this respect we would like to refer to Annex 5 of our communications, the letter of the European Commission of December 12th, 2005, in which the European Commission (DG Environment) stated that it is in line with the IPPC directive that no new installation is "operating" without a permit, but the Commission does not mention any preconditions, under which circumstances it is in line with the IPPC directive to initiate a procedure for issuing an IPPC permission only after construction.

With this letter the DG Environment of the European Commission is stating that it is always in line with the IPPC directive to initiate a procedure on issuing an IPPC permission after construction of an installation, also without any prior possibility for the public on an earlier stage to participate in the decision making procedure on the technological choices, which realistically are not changeable anymore after construction .

Annex 5 (the above letter of the European Commission) demonstrates, that it is not common sense that the IPPC directive is interpreted in the way as indicated by the Compliance Committee.

Therefore we believe that in the final findings and recommendations it should be more clearly stressed that the Compliance of the IPPC directive with the AARHUS Convention is only given, if the IPPC directive is interpreted as described above.

2.) Request for amendment of the draft findings and recommendations:

Based on the above arguments we therefore ask the Compliance Committee to amend para. 61 of the draft findings and recommendations the main findings regarding no compliance in the following way:

61. The Committee is not convinced that the matters examined by it in response to the communication establish any failure by the European Community to comply with the provisions of the Aarhus Convention when transposing them into the EIA and IPPC Directives.

This finding is based on the obligation to interpret the IPPC directive in a way that guarantees early public participation regarding the decision making at a stage when all options are open, hence in case the procedure for issuing and IPPC permission started only after construction is finalized, this is only in line with the Aarhus Convention, if the public had the opportunity to participate at an earlier stage in the decision

making, regarding those aspects of the installation which realistically can not be changed anymore after construction is finalized.

3.) No findings regarding financing of an installation concerning which the Aarhus Convention was violated:

The Communication was also based on our argument that the European Community is financing an installation (landfill in Kazokiskes), concerning which the Aarhus Convention was not correctly observed in the decision making process. The draft finding and recommendations do not cover this argument. We would highly appreciate a statement of the Compliance Committee on this aspect of the Communication. We are aware that a similar question is subject to Communication ACCC/C/2007/21.

For the Kazokiskes Community:


~~Ulfen Saiburg~~


Ramune Duleviciene