

RECHTSANWÄLTE
SIMONFAY & SALBURG
WIEN – BUDAPEST - VILNIUS

To the
European Communities
Directorate-General Environment
Directorate A
ENV.A2 – Legal Implementation and Enforcement
Att Mr. Julio Garcia Burgués
Head of Unit
B-1049 Brussels
BELGIEN

Vienna, on August 24th, 2005
05149 / US/BS / 6SB

**RE: Complain to the Commission of the European Communities
Concerning failure to comply with the Community Law regarding
the Republic of Lithuania
Reference No: SG 2005/A/1201
Your letter of August 17th, 2005, ENV A2/MT D(2005)15997**

Dear Mr. Burgués,

Thank you very much for your letter of August 17th, 2005. We highly appreciate that the Commission Services confirmed to us that based on the facts presented by us an integrated permit according to the IPPC directive should be issued for the intended landfill in Kazokiskes and that the provisions of directive 2003/35/EC amending directive 96/61/EC should be applied.

It is the main point of the complainants that the IPPC directive as amended by directive 2003/35/EC should be applied for this landfill.

The additional points raised by us regarding the landfill directive and the packaging directive were just intended as additional information.

We fully agree that regarding the landfill directive and the packaging directive currently the Lithuanian authorities are not infringing Community Law, but the complainants are of the opinion that, if the landfill is established as intended by the Lithuanian authorities, Lithuania will in the future also infringe these directives. As mentioned in the letter of the complainants of May 24th, 2005 we would like to inform you on the current position of the Ministry of Environment:

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1.) Current situation respectively current infringement of Community Law through the Lithuanian authorities

Due to the activities of the complainants and the several requests the complainants wrote to the Lithuanian authorities. The Lithuanian authorities respectively the Ministry of Environment (the State Inspectorate on Environment Protection) gave up the position that no IPPC permission is needed for the intended landfill.

With letter of July 19th, 2005 the State Inspectorate on Environment Protection confirmed to the Lithuanian advocate of the complainants that an IPPC permission for the intended "regional" landfill will be issued, but the authority states **that the permission will be only issued after the construction of the landfill is finished.**

The fact that the Lithuanian authorities intend to build the landfill and to only afterwards carry out a procedure for issuing an IPPC permission is for several reasons not acceptable to the complainants, respectively is for several reasons an infringement of Community Law.

a.) Public participation as provided by directive 96/61/EC amended by directive 2003/35/EC
Directive 96/61/EC on integrated prevention and pollution control as amended by directive 2003/35/EC provides that the member states have to ensure that the public concerned **is given an early and effective opportunity** to participate in the procedure for issuing a permit for a new installation.

The Lithuanian authorities now confirm that directive 96/61/EC is applicable to the intended landfill, therefore the Lithuanian authorities have to ensure that the complainants are given an effective opportunity to participate in the procedure regarding the permit for the intended landfill.

The complainants, respectively the public concerned, will have not effective possibility at all to participate in the procedure for issuing an IPPC permission for this landfill, if the procedure to issue this permission is only initiated and the public is only informed about the details of the landfill, after the construction of the landfill is finalized, by building the landfill the authorities establish facts, which are practically for economic reasons irreversible.

It has to be taken into account that the total costs of the realisation of the waste management plan for Vilnius region are estimated with over EUR 20 Mio., which becomes clear from the financing memorandum between Lithuania and the European Commission, Registration number ISPA 2002/LT/16/B/BE/012 of April 18th, 2003.

The financial assistance from the European Commission is fixed with EUR 10,450.000,00 and the assistance grant is fixed at 50 % of the total costs..

It is unrealistic to assume that after million of Euros are spent on constructing the landfill the public concerned will have still an influence on the technical details of the landfill, as any changes to the already constructed landfill would cause tremendous additional costs and losses.

Therefore an effective participation of the public concerned is only possible, if the procedure on issuing an IPPC permission is carried out and the public concerned integrated in this procedure, before the construction of the landfill starts.

The complainants are aware that Art. 4 of directive 96/61/EC provides: *“that the member states have to ensure that no new installation is operated without a permit issued in accordance with this directive”* and that therefore theoretically it could be argued that an installation can be constructed without a permit, and that it is sufficient that the permit according to directive 96/61/EC is only issued after the construction is finalized, before operation starts. This is exactly the position of the Lithuanian authorities as stated in the letter of June 13th, 2005 of the Vilnius Region Environmental Protection Department to the UAB VAATC, the company, which is supposed to establish and operate the intended landfill.

But despite the above wording of directive 96/61/EC the complainants are highly convinced that according to Community Law already for the construction of a new installation, respectively the construction of the landfill in Kazokiskes an IPPC permission is needed, especially since coming into force of directive 2003/35/EC:

With directive 2003/35/EC it was the intention of the European Legislator to ensure that the public concerned has an effective possibility to participate in the procedures on the establishment and permitting of installations with an environmental impact. Therefore it is clearly provided in Art. 15a para.1 of directive 96/61/EC, as amended by directive 2003/35/EC, that the public concerned has to be given an **early and effective** opportunity to participate in the procedures.

“Effective” requests that the public concerned has the chance to influence the details of the intended installation and that the public concerned is able to request amendments, conditions or warranties to the installation. The effectiveness of the participation of the public concerned is only given, when the public concerned can make its proposals and suggestions before an installation is constructed and before any change to the installation would cause tremendous additional costs.

Especially since coming into force of directive 2003/35/EC there can be no doubt that the public concerned has to be informed and integrated before an installation falling under directive 96/61/EC is constructed.

As the Lithuanian authorities refuse to properly inform the public about the intended landfill and refuse to integrate the public concerned before the construction of the landfill is finalized, the complainants are highly convinced that the Republic of Lithuania is infringing Community Law or is intending to infringe Community Law.

Furthermore the argument of the Lithuanian authorities that an IPPC permission is only needed after construction of the landfill is finalized, is also contrary to Lithuanian Law transposing the respective Community Legislation.

Art. 19 of the Lithuanian Law on Environmental Protection issued on January 1st, 1992, No. 1-223 as amended on March 24th, 1992 provides *that economic entities and individuals before starting to exploit objects of economic activity and in undertaking of economic activities shall get permission in cases provided by laws and under rules provided by laws.*

Article 1 of this law provides a list of definitions inter alia § 12 of Article 1 defines: *“economic activity is any economic and other activity that has or might have an impact on environment”*.

Therefore it is clear that constructing the landfill itself is an economic activity as the construction itself already has an impact on the environment, not just because of the construction works itself, but also because as mentioned above constructing the landfill will irreversibly determine the future landfill and therefore the construction of the landfill has or at least may have a clear impact on the environment.

Therefore also according to Lithuanian Law an IPPC permission is required for the construction of the intended landfill

Also the statement of the responsible Lithuanian authority, the State Inspectorate on Environmental Protection, in the letter of July 19th, 2005, that the permit *will be issued* after construction is finalized demonstrates that the Lithuanian authorities are not willing in respect of the landfill in Kazokiskes to follow the IPPC procedure. The authority confirmed that a permission will be issued after construction, but the authorities does not state that a procedure on the issuing of a permit will be initiated after construction.

Therefore the authority indirectly confirms the intention no matter, if the requirements established by directive 96/61/EC are fulfilled or not, a permit will be issued anyhow.

Evidence: letter of the Lithuanian State Inspectorate on Environmental Protection of July 19th, 2005 to advocate Duleviciene Exhibit ./15
 Letter of the Vilnius Region Environmental Protection Department to UAB VAATC of July 19th, 2005 Exhibit./16
 Article 19 of the Lithuanian Law on Environmental Protection Exhibit ./17
 Article 1 para. 12 of the Lithuanian Law on Environmental Protection Exhibit ./18

2.) Potential waste of community funds

As already mentioned above with financing memorandum ISPA number 2002/LT/16/B/BE/012 signed by member of the European Commission Barnier on December 17th, 2002, the European Commission agreed to co-financed 50 % of the costs for the establishment and realisation of a waste management plan for the Vilnius region. The maximum amount for this assistance was fixed with EUR 10,465.500,00.

As also mentioned above one of the main point of this waste management plan is the establishment of the mentioned Vilnius regional landfill in Kazokiskes.

As stated above the Lithuanian authorities intend to construct the region landfill without issuing the permissions necessary for operating the landfill, especially the IPPC permission.

The Lithuanian authorities therefore take the risk that the construction of the landfill will be finalized, but that it will not be possible to operate the landfill or that significant changes, which would cause tremendous additional costs might be necessary to be able to operate the landfill respectively to put the already constructed landfill in line with the requirements of the IPPC directive.

By this the Lithuanian authorities are not just risking a waste of public Lithuanian funds, but also the waste of the Community funds, because as mentioned above, the Community will finance 50 % of the construction of the landfill.

In this respect it has to be stressed that if the Lithuanian authorities carry out a proper procedure regarding the required IPPC permission after the landfill is constructed this risk, that the already constructed landfill can not be operated, is very high.

This risk is especially high, because directive 96/61/EC as amended by directive 2033/35/EC provides in Art. 15a that the public concerned has to have access to a review *procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions subjective to this directive.*

The complainants, as public concerned therefore have the guaranteed right to challenge a future IPPC permission for the intended landfill on the base that not the best available technology is used for preventing emissions. The complainants already now can ensure that they will take chance of this possibility.

Taking into account that nobody can guarantee that an independent court or tribunal as provided by directive 96/61/EC will rule that the landfill, which the Lithuanian authorities now intend to construct, fulfils the criteria of best available technology, it is clear that the intention of the Lithuanian authorities to construct the landfill and spend thereby Millions of public funds of Lithuania and funds of the Community is an unacceptable risk on the waste of public funds.

Also on this base the complainants suggest the European Community to insists that the Lithuanian authorities carry out the required procedures according to EU directives on environmental protection before the construction of the landfill is started. In this respect the complainants suggest that it might be appropriate and useful, if this complaint is regarding the potential waste of public funds not only handled by DG Environment, but also by the DG responsible for the Community funds allocated for the construction of the intended landfill, to our information the DG Regional Policy.

3.) Existing landfill

With decision of January 13th, 2005 the Lithuanian authorities issued an “IPPC permission” for the current local landfill at the territory of the intended Kazokiskes regional landfill. This so called “IPPC permission” was issued by the authorities without fulfilling any of the requirements necessary for such a permission.

But as the issue of the existing landfill is total different to the issue of the intended regional landfill the complainants do not broach the issue of the existing landfill in this complaint, but would like to inform that the complainants intend to submit a separate complaint about the existing landfill.

We highly appreciate that you stated in your letter of August 17th, 2005 that a meeting with the competent officials form the European Commission is possible, although you are of the opinion that such a meeting is not necessary.

We still would very much appreciate such a meeting between the competent officials and the advocates of the complainants to discuss the issue in more detail, especially because the issue is very urgent as the Lithuanian authorities already started tendering the construction works. The tender was published on August 6th, 2005 under the reference number 2005-S151-15058 and is open till September 30th, 2005.

We would highly appreciate, if you could provide us with the possibility for such a meeting after September 26th, 2005.

For the complainants:

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Ramune Duleviciene

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Ulrich Salburg