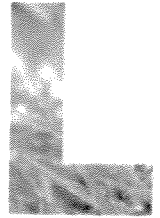


ELISABETH FREYTAG

Head of the Division of EU Affairs - Environment  
Division V/8



lebensministerium.at

Mr. Jeremy Wates  
Secretary to the AARHUS Convention  
United Nations Economic Commission  
for Europe; Environment and Human  
Settlement Division  
Room 332, Palais des Nations  
CH-1211 Geneva 10

Vienna,

18/09/09

**Ref.: ACCC/C/2008/26 – Austria**  
**Communication to the Aarhus Convention Compliance Committee;**  
**supplementary statement by Austria**

Dear Mr. Wates!

The government of Austria as Party concerned would like to react to the draft findings of the compliance committee and express its positive attitude. The government of Austria agrees with the draft findings.

Due to the comments by NETT of 14 September 2009 and by the Ökobüro of 15 September 2009 we would like to send some further comments as well.

Detailed comments:

We would especially like to underline the factual statements in para. 53, namely that there is no authorization given yet for a construction of a road in the Enns valley and in para 56. that the planning process is still ongoing. Also the statement in paras 59. – 61 are fully correct and reflect the current situation.



Federal Ministry of Agriculture, Forestry, Environment and Water Management, A-1010 Wien, Stubenbastei 5

Phone +43 1 51522 1302, fax (+43 1) 515 22-7301, e-mail: elisabeth.freytag@lebensministerium.at

DVR 0000183, Bank PSK 5060904, BLZ 60000, BIC OPSKATWW, IBAN AT 77 6000 0000 0506 0904, UID ATU 37979906

Nevertheless we want to highlight once again that the Austrian Highway Code is a law for traffic regulation and not an environmental instrument. The references of the Committee in para. 63. therefore have to be seen in this context.

An examination of possible impacts of a traffic regulation can seriously be done only once such a regulation is issued. Otherwise one would have to examine every possible regulation in the area concerned based on the Austrian Highway Code. Restrictions based on that law are manifold and of great variability, as for example speed limits, and it is likely that an appreciable speed limit will reduce the traffic through the Enns Valley. Thus – in following the argumentation of the communicant – also speed limits - would have environmental influences.

The legal situation in Austria is as follows: Because the regulatory authority must carry out a law-determined examination procedure based on the Austrian Highway Code (as for example safety of traffic and comparable parameters) prior a 7.5 ton restriction is being issued, a link between the two decision making processes prior to the issuance of the regulation would be an unlawful presumption of the judgement of the authority of the Province of Styria by an administrative decision maker.

But the responsible authority certainly work on the presumption of a 7.5ton-restriction as a basis for further investigations of road variants in case of the issuance of such a regulation for the area concerned. It seems also possible to us to account for the ban even prior to the issuance of a regulation in case that the issuance will be really probable because of the official expertises once all expertises will be available.

Further we want to declare that we advised to the continuation/carrying out of a strategic environmental assessment already in our statement prior to the 23<sup>rd</sup> meeting of the compliance committee.

Finally we want to point out that the communicant and especially the so far non involved Ökobüro is supplying political proclamations (published in a newspaper) as if these were decisions with legal impacts. We further would like to point out, that we have to follow the legal procedures and not political proclamations.

With best regards,

A handwritten signature in black ink, appearing to be 'G. F. H. P.' or similar, written in a cursive style.