



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Petitions

1.9.2009

NOTICE TO MEMBERS

Subject: Petition 1885/2008 by Viniczay Tibor (Hungarian), on behalf of the Szentgotthard municipal authorities, concerning the siting of a waste incineration plant in Lafnitztal, Austria

1. Summary of petition

The petitioner, Mayor of Szentgotthard, expresses concern at plans to site a waste incineration plant at the Heiligenkreuz industrial complex in Lafnitztal, Austria, which will have an annual incineration capacity of 325 000 tonnes of refuse. He indicates that the plant in question, which is to be situated near to three wildlife parks (in Austria, Hungary and Slovenia) will have serious implications for the tourist industry and affect Natura 2000 areas, as well as leading to increased volumes of lorry traffic transporting waste to the plant from various localities, and that plant emissions will have an adverse effect on the health of local residents. He therefore urges the Austrian Government to reconsider the projected incinerator.

2. Admissibility

Declared admissible on 10 April 2009. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 1 September 2009.

The petitioners object, in essence, to the construction of a waste disposal unit (incinerator) in Heiligenkreuz on the grounds that it violates EC legislation in particular the Habitats, EIA (Environmental Impact Assessment), Incineration of Waste and IPPC Directives. Hungarians, Austrians and Slovenians in the region have protested in recent years against the location of this incinerator considering it as a threat to the quality of life, health, natural environment and future development perspectives (tourism) built around natural environment and thermal

CM\789490EN.doc

PE428.078

resources.

The planned and approved waste-to-energy plant is to be built on the Austrian side of the cross border Industrial Park Heiligenkreuz/Szentgotthárd established in 1997. The petitioners claim that its operation may also have an impact on three nationally protected areas, one in Austria (Nature Park Raab), another in Hungary (National Park Őrség) and a third in Slovenia (Goricko Nature Protection Area), as well as on Natura 2000 sites both in Austria and Hungary.

Moreover, the petitioners express concerns about the planned capacity of the incinerator (capacity of 325 000 tonnes/year compared to a 35 000 tonnes/year waste production in Burgenland province) which they consider as oversized and which would lead to a 'waste tourism' and additional transport impact. Finally, they claim that cumulative effects, mainly related to the amount of smoke were not sufficiently considered and that the public opinion as expressed in a local referendum in Szentgotthárd was not taken into account.

The Commission's comments on the petitioners' objections based on the legal instruments listed above are as follows:

*EIA Directive*¹

a) Consultations:

Publicly available information suggests that cross-border consultations were carried out in accordance with Art. 7 of the EIA Directive and Article 5 of the Espoo Convention², allowing the respective national authorities and also the concerned public of the possibly affected cross-border regions in Hungary and Slovenia to express their opinion. However, the competent authorities do not have the obligation to accept all the comments received, but they are obliged to examine them and provide to the public the main reasons and considerations on which their decision to grant the development consent is based.

b) Cumulative impacts:

For a project that is subject to an environmental impact assessment, the EIA Directive stipulates that the description of the assessment of the likely significant effects of a project, undertaken in accordance with its Article 5, should also cover cumulative effects (Annex IV; footnote).

Environmental Impact studies carried out for the project show that during the assessment process, cumulative impacts were addressed. It seems that there are different experts' views on the methodological approaches and the conclusions to be drawn from the data obtained.

*Habitats Directive*³

1 Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (*OJ L 175, 5.7.1985, p. 40*)

2 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991) - the 'Espoo (EIA) Convention'

3 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of

Given the presence of Natura 2000 sites, it should be noted that Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora may be applicable. Article 6(3) of the directive requires that any plan or project not directly connected with or necessary to the management of a Natura 2000 site, but likely to have a significant effect thereon, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. It is for the national competent authorities to ensure that the relevant provisions are respected.

Incineration of Waste Directive¹

All waste incineration plants and co-incineration plants have to comply with Directive 2000/76/EC on the incineration of waste. The requirements include a permit to operate the plant that specifies operating conditions, emission limit values, and control, monitoring and reporting obligations. This Community environmental legislation makes the incineration of waste one of the most stringently regulated and controlled industrial activities. Its implementation and enforcement, including appropriate environmental inspections of the installations, are the responsibility of Member States.

IPPC Directive²

Annex I of Directive 2008/1/EC concerning integrated pollution prevention and control (hereinafter: IPPC Directive, codified version of Directive 96/61/EC) lists the categories of industrial activities which fall within the scope of this directive. This includes installations for the incineration of municipal waste (household waste and similar commercial, industrial and institutional wastes) with a capacity exceeding 3 tonnes per hour. Based on the information submitted by the petitioner, the installation would fall under the scope of the IPPC Directive.

The IPPC Directive requires installations falling under its scope to operate in accordance with permits including emission limit values based on the best available techniques (BAT), designed to prevent and, where that is not practicable, generally to reduce emissions and the impact on the environment as a whole. The prevention or reduction of emissions to air, water and soil should, therefore, be dealt with in the environmental permits issued in accordance with the IPPC Directive.

The Commission has adopted a number of BAT reference documents (BREFs) covering the activities that fall within the scope of the IPPC Directive, that are to be taken into account by the competent authorities when establishing BAT-based emission limit values, equivalent parameters or technical measures for such installations. A BREF on waste incineration was adopted in 2006 and will have to be considered for the permitting of the installation concerned by this petition.

Air Quality Directives¹

wild fauna and flora (*OJ L 206*, 22.7.1992, p. 7)

1 Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste (*OJ L 332*, 28.12.2000, p. 91)

2 Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (*OJ L 24*, 29.1.2008, p.8)

There are no specific provisions under air quality directives related to the planning or operation of individual installations. Competent authorities are obliged to ensure compliance with the air quality limit values such as daily and annual limit value for PM10. The air quality zone AT01 includes the area in question and is in exceedance of a PM10 limit value. However, the more detailed spatial information provided by the Austrian authorities in the notification under Art.22 of Directive 2008/50/EC, demonstrates that the exceedance is limited to the northern part of the zone and does not include the area in question. Consequently, the air quality plan excludes the area in question and there is no further information available as to the projected PM10 impact of this planned infrastructure development in the zone.

Prevalent winds indicate that a significant proportion of the pollution generated by this installation would be transported into Hungary, which is already struggling with exceedances of the PM10 limit values in downwind zones. An Environmental Impact Assessment indicates, however, that the increase in concentration levels is marginal and that it occurs principally in the close vicinity of the installation on the Austrian side.

Article 8 Directive 96/62/EC and Article 25 Directive 2008/50/EC require that Member States co-operate, and when appropriate, draw up joined activities in order to remove exceedances where such are occurring due to significant pollution originating in another State. There is no such obligation for co-operation in respect of emissions that will only arise in the future.

Permitting process/appeals

On 05 February 2009, the Burgenland Authority issued a building permit for the waste-to-energy combustion plant. 485 citizens appealed against the decision of the Burgenland government. Since 17th April, 2009, the case is pending with the independent Environment Senate established under the Federal Ministry of Environment.

Parliamentary question

The case addressed by the present petition has already been the subject of a parliamentary question to the Commission in November 2008 (P-5609/2008). At that time, the Commission answered that it was unaware of any breaches of the Community legislation due to the planned operation of the installation concerned on the basis of the available information. The Commission's comments on this question remain basically valid as the petition does not provide any new information to suggest a violation of Community legislation.

Conclusions

On the basis of the information provided, the Commission cannot identify a breach of Community environmental legislation. Should the petitioners provide new and detailed information and substantial evidence of assumed non-compliance with EU laws enabling the Commission to assess the legal issues in relation to the above-mentioned EU directives, it

1 Framework Directive 96/62/EC, OJ L296, 21.11.96, directive 1999/30/EC. L163, 29.6.1999, directive 2008/50/EC, OJ L152, 11.6.2008

would consider further investigation of this matter.