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UNITED NATIONS

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29 October 2009

Dr. Géza Simonfay
Andrássy út 36 II, em 5
H-1061 Budapest

Mag. Ulrich Salburg
Neustiftgasse 3/6
1070 Vienna/Austria
Fax: 0043/1/526 58 58

Dear Dr. Simonfay and Mr. Salburg,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Austria with provisions of the Convention in connection with the construction of a waste incinerator in the province of Burgenland (Ref. ACCC/C/2009/39)

With reference to the letter dated 26 August 2009 sent to you, I am writing to inform you that, at its twenty-fifth meeting (22-25 September 2009) the Committee determined on a preliminary basis that the communication above was admissible in accordance with paragraph 20 of the annex to decision I/7. A copy of the preliminary determination on admissibility is attached. Please note, however, that the Committee has not reached any conclusions with respect to the compliance issues referred to in the communication.

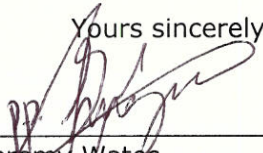
The communication is being forwarded to the Party concerned in accordance with paragraph 22 of the annex to decision I/7, together with the preliminary determination on admissibility. The Party concerned is being invited to provide a response to the communication as soon as possible and at the latest within five months, in accordance with paragraph 23 of the annex to decision I/7.

Additionally, in order to facilitate further consideration of the communication, the Committee has requested the secretariat to invite you to address a number of questions that are annexed to this letter. Please provide any supplementary documentation which is necessary to substantiate your response to the above questions. At the same time, you are encouraged to avoid submitting to the Committee excessive documentation which is not strictly relevant to the allegation of non-compliance.

In a letter to the Party concerned, a copy of which is attached for your information, the Committee has invited the Government to address other questions. You are welcome to respond to those questions if you so wish.

Please do not hesitate to contact the secretariat if you have any questions.

Yours sincerely,



Jeremy Wates
Secretary

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

CC: Ms. Lieselotte FELDMANN, Federal Ministry of Agriculture, Forests, Environment and Water Management, VIENNA, Austria
Mr. Tibor Viniczay, Mayor of the Municipality of Szentgotthard (Szentgotthard varos), Hungary

Encs. Preliminary determination on admissibility
Datasheet on the communication
Letter to the Party concerned dated 29 October 2009

Annex – Questions posed by the Committee

1. When and how did the Municipality of Szentgotthard obtain information about the decision-making process relating to the intended construction of the incinerator?
2. How was the Municipality of Szentgotthard involved in the decision-making that took place in Hungary, to define Hungary's official position with regard to the construction of the incinerator by Austria?
3. How is the relationship between the obligations of the central government of Hungary and the Municipality of Szentgotthard to represent the interests of the population in transboundary cases?
4. According to the Constitution and/or other legislation of Hungary, is the Government of Hungary responsible and/or authorized to represent the interests of all population of Hungary (and/or local self-governments) at the international level?
5. Do the institutions owned by the Municipality of Szentgotthard (schools, kinder gardens, foster home and a day care centre for Elderly, etc) constitute integral part of the municipal institution as a whole? Or do they constitute separate legal entities entitled to act as the public and participate in the decision-making process relating to the intended construction of the incinerator? And how does this consideration relate to the status of the public authority of the Municipality of Szentgotthard?
6. It seems from your response that the plans concerning the development of thermal baths and other tourism activities in Szentgotthard were the main reason for the Municipality of Szentgotthard to participate in the decision-making process in Austria. Please explain whether the Municipality of Szentgotthard is (or will be) involved in the planning (and/or permitting) of the development of thermal baths and other tourism activities in Szentgotthard as the authority responsible of the decision-making or as a representative member of the public.
7. Please explain whether the Municipality of Szentgotthard in its efforts to participate in the decision-making process concerning the intended construction of the incinerator was acting on behalf of the population (and/or the schools, kinder gardens, foster home, day care centre for Elderly, and other institutions it owned) as their representative or as a legal person acting independently (in other words, please clarify who was the party to the legal relationship and whose rights were violated: the Municipality of Szentgotthard or the population of Szentgotthard represented by the Municipality?). In case the Municipality of Szentgotthard was acting on behalf of the population of Szentgotthard (as their representative), please specify, if the Austrian authority responsible for the decision-making was informed about this fact and how. Please also clarify who is the communicant in this communication: the population of Szentgotthard, represented by the Mayor (as a public authority) or the Municipality of Szentgotthard as the owner of real estate.
8. In case the Government of the Federal Land of Burgenland has not considered admissible the appeal of the Municipality of Szentgotthard (submitted on 25 February 2009), or in case any other administrative organ or court in Austria has denied access to review procedures for the Municipality of Szentgotthard (and/or for any representative of the public concerned resident of the Municipality of Szentgotthard challenging the decision of the Government of the Federal Land of Burgenland on permitting the intended construction of the incinerator), please provide the Committee with a copy of the related administrative and/or judicial decisions that denied access to justice and a copy of the appeal documents as well.

9. Please provide the Compliance Committee with a copy of your correspondence with the Austrian authority regarding your participation in the decision-making process.
10. Please provide the Compliance Committee with a copy of the normative acts and/or provisions of the normative acts you mentioned in your communication (including inter alia the Act on Local Municipalities and articles of the Constitution of Hungary related to the local self-governments).
11. Please provide the Compliance Committee with a copy of the decision of the referendum mentioned in your communication.
12. Please inform the Committee on how you reflect on the principle of international law that only governments can act against governments, and what in your view would be the impact of this principle in the present case.