

## **Statement from the Hellenic Ministry of Environment and Energy concerning the Communication**

**PRE/ACCC/C/2017/148**

First of all, on behalf of the Hellenic Ministry of Environment and Energy, I would like to thank the Compliance Committee for the invitation to attend its 58<sup>th</sup> Meeting and submit our Statement. Since our services and competent authorities still examine the substantial issues of the communication, we would like to share with you our preliminary thoughts and views. The international rule of the exhaustion of domestic remedies before taking to international remedies is one of the fundamental rules in international law. Access to an international institution is very useful and should be available, but as a last option, after all the available domestic remedies have been exhausted. In the case under examination, the communicants have not even used, let alone exhausted all the domestic remedies that are available within the Greek institutional and constitutional framework. For example the JMD No.9269/2007, has established measures for the judicial protection of the public against acts or omissions of the administration regarding environmental issues. There are several types of administrative actions for appeal against administrative decisions, such as the remedy's request which is submitted to the same administrative authority which issued it, the hierarchical appeal which is submitted to the superior authority of the one which issues the administrative decision, the special appeal which is provided by a specific legal provision setting a deadline within which should be exercised and examined the legitimacy, the quasi-judicial action which examines not only the legitimacy but also the substance of the case. Additionally, the Greek legal framework provides for the judicial protection right which can be exercised either by an action of compensation or by a petition for invalidation before the Council State.

More specifically, on the issue of access to national judicial system, we emphasize the following:

- In accordance with the fundamental principle of separation of powers (Judicial, legislative and executive) enshrined in Article 26 of the Constitution, statutory law provisions are not directly challenged before the courts. However, according to the Council of State (Plenary CoS 376/2014), there is possibility for challenging directly a provision of statutory law under special circumstances and more specifically when said provision is of a "photographic nature" and not a provision of general nature. Moreover, anyone can challenge in court the legitimacy of all secondary legal acts such as Presidential Decrees, ministerial decisions, executive acts etc. including the environmental permits which are issued according to the Law 4014/2011.
- It should be pointed out that the aforementioned law, apart from transposing the EIA Directive, aims at enhancing transparency and promoting stakeholder's participation in decision making and it is not specific law.
- The communicants claim that the environmental legislation (Dir 2010/75) has not been followed and there is an infringement of the EU and national legislation on environmental protection.
- All environmental terms and conditions are depicted in the environmental permit (Decisions on approval of Environmental Terms, AEPO).

- AEPO are Ministerial Decisions and can be challenged before the Council of State (Presidential Degree 18/1989). Therefore, there is no provision preventing anyone from taking legal action against the AEPO at the Council of State. If these communicants truly believed that there was a legal problem, they could have appealed at the Council of State but they have not done so for any of these AEPOs.
- The operational license does not refer in substance to the environmental protection and thus, it is irrelevant to the issue at stake.
- The communicants are not satisfied with the Greek policy towards lignite plants and they would like to stop power generation from lignite plants. However this is a political discussion and not a legal one.

Additionally, the Environmental Inspectors Body is another means of domestic remedy for environmental matters, which has not been used so far for this case by the communicants

To conclude, we believe that the communicants did not exhaust all the domestic remedies before submitting their communication. Additionally, in our view the communication is vague because it does not identify specific environmental violations that have a negative impact on the environment but it only contains general references for the operation of the lignite power plants.