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#### **MoP decision IV/9e Slovakia: Statement**

Dear Fiona,

Following the Compliance Committee discussion on Tuesday 17. December 2013 morning, I submit in writing what I aimed to argue. In the case of the NPP Mochovce permitting procedures were carried out without prior EIA procedure. Since the Slovak legislation provides for public participation only if an EIA was carried out, no public participation was provided in the permitting procedures.

In the former Slovak legislation there were problems with public participation in permitting procedures even in cases when an EIA was mandatory. This situation was cured by the legislative changes demonstrated in the Slovak government's statements in this post-MoP process. This is a very positive development and we acknowledge that.

However, the Mochovce case falls in the small potential gap between thresholds triggering the EIA directive on those of the Aarhus Convention. The EIA directive's thresholds regarding reconsideration and updates of permits are higher than those of the Convention. This can lead to the situation that a project falls under the Aarhus Convention, but not under the EIA directive, if you follow the strict wording of the directive.

Such an interpretation of the EIA directive is in potential conflict with EU law. With regard to public participation the EIA directive has to be interpreted in line with the Aarhus Convention that has a superior rank in EU law compared to secondary legislation as the ACCC decided in former cases. Recent case law of the CFEU confirms the strict interpretation of project changes under the EIA-

directive (C-121/11; C-275/09) that seem to be not compatible with the Aarhus Convention. This issue was briefly discussed on a general level at the opening session on Tuesday morning.

Slovakia relies with regard to public participation on the EIA directive and its corresponding domestic legislation. This potentially excludes permitting procedures that take place outside the scope of EIA-procedures. The latter was the origin of this compliance case on the Mochovce NPP. It is the discretion of the Committee to decide whether it is sufficient for Slovakia to rely on the EIA directive regarding public participation in Article 6 procedures or whether additional legislative acts are needed.



Thomas ALGE  
Director OEKOBUEO