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May 15, 2007

Mr. Jeremy Wates
Secretary
Convention on Access to Information, Public Participation in Decision-making and
Access to Justice in Environmental Matters (Aarhus Convention)
United Nations Economic Commission for Europe
Environment, Housing and Land Management Division
CH- 1211 Geneva 10, Switzerland

Dear Mr. Wates:

*Your Ref.: Draft Findings and Recommendations of the Aarhus Convention Compliance
Committee with regard to communication
(ACCC/C/2005/12; Draft Findings version 23 March 2007)*

Referring to your letter dated 29 March 2007, the World Bank has received the invitation from the Aarhus Convention Secretariat to respond to the Draft Recommendations and Findings set forth by the Aarhus Convention Compliance Committee as per the above references.

The World Bank wishes to note its appreciation for the diligent and transparent manner in which the Committee has carried out its work, and the opportunity to comment on the Draft. The World Bank is fully supportive of the Aarhus Convention and will continue to support its implementation as requested by its member governments, as well as through the relevant World Bank safeguard policies and practices.

The World Bank also recognizes that the Aarhus Convention is binding upon its member states, and that the requested response regarding issues of compliance with the Convention is directed to Albania.

Nevertheless, the World Bank takes note of certain draft findings and recommendations by the Committee, principally, the following paragraphs that relate to the World Bank financed project: 15-16, 31, 37, 64, 67-69, 77 and 81-86. In regard to these paragraphs, the World Bank respectfully submits its comments as follows:

Project Scope

15. The communicant sent a letter to the Committee on 30 September 2006 commenting on the World Bank response. It stated that even if the World Bank was not directly involved in the industrial park, the Bank was aware of the other components that were envisaged for the industrial park as well as the

intention to expand the TEP itself from a capacity of 100 MW up to a capacity of 300 MW. Despite this, public presentations of the project had only addressed the impact and emissions from a 100 MW power plant, thus failing to take into account the future cumulative environmental impact of these projects. Thus, the information presented by the project's proponents during the public consultation process was, in the view of the communicant, 'oriented to disinformation'.

Comment. The TEP project was prepared and appraised independently from the other projects mentioned (Industrial and Energy Park; Oil storage terminal and port infrastructure; Oil and gas pipelines).

The TEP funded by the World Bank, the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD) is designed as a stand-alone project and would be implemented as such. The project contemplates the construction/rehabilitation of: (i) an undersea pipeline; (ii) an off-shore fuel oil tanker terminal and (iii) distillate fuel handling and storage facilities, to provide fuel dedicated to the TEP. These project components carry an additional cost of about €10million out of a total estimated projected cost of €90million. If the TEP were associated with the oil storage terminal and port infrastructure mentioned in the Request, then the €10 million component related to supplying fuel for the TEP would not have been required, since it would have duplicated investments for items (i)-(iii) above. The least cost solution would have been to supply fuel to the TEP using much cheaper on-shore pipelines connecting it to the oil storage terminal and port infrastructure or the Industrial and Energy Park.

The EIA and public consultations for the TEP focused on the impact and emissions of a 100MW plant. However, the potential and requirements for future expansion to 300 MW were mentioned and studied. For example, the Final Environmental Impact Assessment – Vlore Combined Cycle Generation Facility (MWH Consulting, October 6, 2003), contains the following information:

Page 89: “Reduction in transmission system losses and voltage profile improvement – Albania's power system has a low voltage profile. The development of a new plant in the system, whether its capacity is 100 or 300 MW, will affect the voltage profile of the power system. Any voltage improvement to the power system provides direct financial benefit to the owner of the system through lower fuel costs, less electricity imports, etc. Transmission is a critical factor in determining the viability of a new generation facility. As a result, it was given a high level weighting.

“Transmission availability and proximity – MWH also evaluated the transmission capacity of the site (100 and 300 MW) as well as its proximity to the nearest interconnection point. Since the development of new transmission lines and towers to the nearest interconnection point can be extremely costly, MWH gave this criteria a high level weighting.”

Page 231: Includes a slide from the presentation used in the second consultation meeting of April 2, 2003, where under the title “Project Highlights” It is stated “Capacity Size 80-110 MW, with Possible Expansion to 300 MW”

Volume 2 Final EIA Addendum, Page 1: “The installed capacity of the Project will depend upon equipment offers during the EPC bidding process, but will be in the 90 to 130 MW range. However, all analyses performed for the Final EIA were based on the largest potential capacity size.”

Page 6, note b on Table A.1: “b Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001, On the limitation of emissions of certain pollutants into the air from large combustion plants. If the total plant capacity exceeds 300 MW, then the SO₂ limit is more restrictive, depending on the size of the plant.”

See also the references in three different newspaper articles of November 1, 2002 (Annex 1-3), where higher capacities are mentioned.

Public Consultation

16. The communicant furthermore stated that there was no evidence that intellectuals and NGOs of Vlora had participated in the meeting on 31 October 2002. Besides, this meeting had taken place after the approval of the Siting Study and Feasibility Study. The communicant argued that at that stage there had been a lack of publication of information. It cited the director of the National Agency for Energy, Mr. Besim Islami, who, in answer to a question from a member of the public at the public meeting on 3 September 2003, admitted that “There were not any views taken on this phase from the local government, as this was not requested from the company for the reason of confidence and prudence. In these days and in the last month we have been passing into these explanatory and indispensable procedural meetings.”

31. The Committee has not been provided with any evidence of public participation including notification or public announcement in the process leading up to Decision No. 20.

37. As regards the participation of the public in the three public meetings referred to in the previous paragraphs, varying degrees of information are available to the Committee:

(a) The introductory meeting on 31 October 2002 was attended by various representatives of national and local authorities as well as, according to the Party concerned, intellectuals and NGOs of Vlora. The communicant disputes the claim that intellectuals and NGOs of Vlora participated. The Committee has repeatedly requested¹ the Party concerned to provide specific information concerning the process of notification for the meeting (for residents, NGOs and other stakeholders) and a list of participants, but no such information has been forthcoming.

Comment. The World Bank would appreciate the opportunity to gain further understanding regarding certain timing elements under the Aarhus Convention. To the best of our knowledge, the middle pillar of Aarhus regarding public participation in decision-making has most often

¹ Initially by letter of 16 December 2005.

been interpreted as within the EIA process. In some cases, there may be varied timing regarding siting, zoning, or other early potential actions by authorities prior to environmental studies being undertaken. For the World Bank, the primary vehicle for input from the public on new projects takes place surrounding the development and elaboration of the environmental impact assessment and we seek to ensure full and fair early participation principally as it relates to the environmental assessment instruments. (Please see footnote 2 on page 6 of this letter).

Nevertheless, in this particular case, we wish to point out that public consultation did indeed take place in October 2002, where the project was presented – including a discussion of alternative sites. This first meeting in October 2002 was to introduce the project to the public and to begin the EIA public consultation process. The minutes of the 2002 meeting, as provided from the records of the Ministry of Economy, note a question (No. 11) from the discussion session in which the public consultation nature of the meeting is emphasized and the Aarhus convention is mentioned. Question No. 16 in the same minutes presents the consideration of alternative sites and the reasons why the Vlore region was selected. The meeting was attended by representatives of the public and NGOs, which were invited directly by the local authorities of Vlore. In addition, the meeting was covered by the media. The following points are of note:

- Letter from the then Minister of Economy Victor Doda to Mr. Iftikhar Khalil (Task Manager for the World Bank), dated November 15, 2002, with Prot. No. 6689/9 referring to the October 2002 meeting “in front of all stakeholders and Non Governmental Organization (based in Vlora) to inform them about this very important project”;
- Report (“The minutes of the presentative meeting on Vlora TEC”) in English;
- Proces Verbal --as above in Albanian; and
- Newspaper articles in three National Albanian Newspapers of November 1, 2002 referring to the public consultation meeting.

Mr. Besim Islami, who headed the process on behalf of the National Energy Agency, stated that invitations for the meetings were sent directly to relevant NGOs identified in Vlore, Vlore University students and faculty, the local and national media, as well as individual citizens. Unfortunately records of the invitation process are no longer available. It was assumed that the record of participants (and their affiliations) as noted in the minutes of the meeting (annex 4), as well as the coverage by local and national media would be sufficient to ensure that consultation of important stakeholders did indeed take place. Mr. Islami maintains that many of those who attended the second consultation meeting on April 2, 2003 (an account of which is presented as an annex to the EIA) were also present at the first meeting.

67. Contrary to the decision-making process leading up to the designation of the site of the industrial and energy park, the decision-making process relating to the proposed TEP involved some elements of public participation, e.g. public notifications, public meetings, availability of ELA documentation and so on. However, as regards Decision No. 20, dated 19 February 2003, which establishes the site of the TEP, the only element of public participation in this phase of the process appears to have been the public meeting that took place in Vlora on 31 October 2002. The issues of who was notified of the meeting and

invited to participate in it, the content of the notification, and who actually participated, are therefore important. As mentioned above (para. 37(a)), the Party concerned asserted that among those who participated in the meeting were "intellectuals and NGOs of Vlora" This assertion has been strongly disputed by the communicant. Unfortunately, despite repeated requests by the Committee, the Party concerned has failed to provide specific information on these points. The obscure circumstances around the meeting in October 2002, and the failure of the Party concerned to provide anything to substantiate the claim that the October meeting was duly announced and open for public participation, clearly point to the conclusion that the Party concerned failed to comply with the requirements for public participation set out in paragraphs 3, 4 and 8 of article 6 of the Convention.

Comment. Please see above discussion on paragraphs 16, 37 (a) and 31.

64. The Committee is aware that at least two of the three decisions that it has chosen to focus on would need to be followed by further decisions on whether to grant environmental, construction and operating permits (and possibly other types of permit) before the activities in question could legitimately commence. However, public participation must take place at an early stage of the environmental decision-making process under the Aarhus Convention. Therefore it is important to consider whether public participation has been provided for at a sufficiently early stage of the environmental decision-making processes in these cases.

68. The two meetings that took place on 2 April 2003 and 3 September 2003, respectively, obviously occurred after the adoption of Decision No. 20, and therefore cannot be considered as events contributing to the involvement of the public in that decision. Thus, they do not mitigate the failure of the Party concerned to comply with the Convention in the process leading to Decision No. 20 of 19 February 2003.

69. Even so, the Committee wishes to make a short comment on these meetings as well, since they also give rise to concern. No information has been provided by the Party concerned to demonstrate that the meetings in April and September 2003 were publicly announced, so as to make it possible also for members of the public opposing the project to actively take part in the decision-making. Nor has the Party concerned been able to give any reasonable explanation as to why the rather strong local opposition to the project, indicated by the 14,000 people calling for a referendum, was not heard or represented properly at any of these meetings. It is thus clear to the Committee that the invitation process also at this stage was selective and insufficient. The only public notification, in the form of newspaper advertisements, that was presented to the Committee related to meetings that took place later in 2004. Thus the Committee notes that, despite some subsequent efforts to improve the means for public participation, there were several shortcomings also in the decision-making process after February 2003.

77. With respect to the proposed thermal electric power plant (paras. 67-69), the Committee finds that the decision by the Council of Territorial Adjustment of the Republic of Albania on the siting of the TEP near Vlora (Decision No. 20 of 19 February 2003) is subject to the requirements of article 6, paragraphs 3, 4 and 8. Although some efforts were made to provide for public participation, these largely took place after the crucial decision on siting and were subject to some qualitative deficiencies, leading the Committee to find that the Party concerned failed to comply with the requirements in question.

Comment. Meaningful consultation and disclosure are required under World Bank safeguard policies². As the project was classified as Category A, thereby requiring a full environmental assessment, it included public consultations at the design stage of the site-specific environmental assessment (EA) in April 2003 as well as at the draft EA report stage in September 2003. Notification of these consultation meetings was carried out by Government (as per Bank policy), and the minutes of these meetings were included in the final EA report (October 2003). Each of these meetings and the EA report itself reference the alternatives examined under earlier pre-feasibility and feasibility studies in the latter half of 2002; a process which led to the recommendation of the current site in Vlore. The alternatives analysis included a range of analytical criteria, including suitability for the environment. No substantial objections were raised as to the selection of the Vlore site during the EA process from October 2003 through World Bank Board approval on March 16, 2004. Had significant objections been raised during this period on either substantive or procedural grounds, then the World Bank would have considered delaying project preparation until they were adequately addressed. The World Bank considers that the Government's approach met World Bank Operational Policy requirements with respect to the project in question.

International Financial Institutions need to determine how wide a range of associated investments should be considered in their review of projects on a case by case basis. For example, the suggestion raised at one point during preparation that an industrial park could be located near the TEP was an important local issue. It was clear from the Bank's feasibility studies and sector work, however, that Albania's energy needs required a TEP to augment regional supplies in any case and that an industrial park need not be "linked" to it, be it from a technical, financial or due diligence perspective.

We would like to note that in 2002 and 2003, Albania was suffering from power shortages and the government was making every effort to show that it was responding to the situation by developing new projects. The publication of relevant articles in the press shows clearly that the matter was of national interest and the prospects of new power generation in the southern part of the country could only be welcome to alleviate the shortages. During 2003 the project and its EIA were presented and discussed publicly in at least two occasions, the draft final EIA was published and made available for more than 30 days in the Vlore public library before the September 2003 Consultation meeting, and an invitation for comments was issued. In addition, the World Bank has a policy of publishing the EIA for 120 days in its own Infoshop before

² Please note that the World Bank's OP4.01 states at paragraph 14: "*For all Category A and B projects proposed for IBRD or IDA financing, during the EA process, the borrower consults project-affected groups and local nongovernmental organizations (NGOs) about the project's environmental aspects and takes their views into account. The borrower initiates such consultations as early as possible. For Category A projects, the borrower consults these groups at least twice: (a) shortly after environmental screening and before the terms of reference for the EA are finalized; and (b) once a draft EA report is prepared.*"

presenting the project to the Board. No significant issues or objections were raised about the project in 2003 up to the World Bank approval of the project in February 19, 2004. The TEP project only became an issue when it was presented, wrongly, as associated with the other projects mentioned in the complaint and again during the 2005 elections.

Respectfully, we submit our view that Bank safeguard policies support the Convention by seeking early and meaningful dialogue. The Bank would welcome an opportunity to ascertain with UN ECE and the Committee those areas where clarity would be helpful in balancing broad programmatic objectives with the practicalities of project-specific due diligence.

Recommendations

81. The Committee recommends that the Party concerned take the necessary legislative, regulatory, administrative and other measures to ensure that:

(a) A clear, transparent and consistent framework to implement the provisions of the Convention in Albanian legislation is established;

(b) In order to comply with article 7 of the Aarhus Convention, "practical and/or other provisions for the public to participate during the preparation of plans and programmes relating to the environment" are in place not only during preparation of individual projects, including through development of detailed procedures and practical measures to implement article 25 of the EIA Law of Albania;

(c) The public which may participate is identified;

(d) Notification of the public is made at an early stage for projects and plans, when options are open, not when decisions are already made;

(e) Notification of the entire public which may participate, including non-governmental organizations opposed to the project, is provided, and notifications are announced by appropriate means and in an effective manner so as to ensure that the various categories of the public which may participate are reached, and records kept of such notifications;

(f) The locations where the draft EIA can be inspected by the public before public meetings are publicized at a sufficiently early stage, giving members of the public time and opportunities to present their comments.

(g) Public opinions are heard and taken into account by the public authority making the relevant decisions in order to ensure meaningful public participation;

82. Having regard to paragraph 37 (d), in conjunction with paragraph 36 (b), of the annex to decision I/7, the Committee recommends the Party concerned to take particular care to ensure early and adequate opportunities for public participation in any subsequent phases in the permitting process for the industrial and energy park and the associated projects.

83. The Committee also recommends that the measures proposed in paragraphs 80 to 82 be taken or elaborated, as appropriate, in consultation with relevant NGOs.

84. The Committee invites the Party concerned to draw up an action plan for implementing the above recommendations and to submit this to the Committee by 15 September 2007.

85. The Committee invites the Party concerned to provide information to the Committee by 15 January 2008 on the measures taken and the results achieved in implementation of the above recommendations.

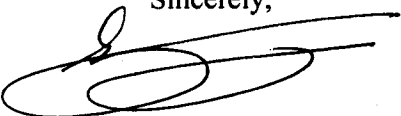
86. The Committee requests the secretariat, and invites relevant international and regional organizations and financial institutions, to provide advice and assistance to the Party concerned as necessary in the implementation of the measures referred to in paragraphs 80 to 88.

Comment: Regarding the recommendations in section B. (paragraphs 81-86), please note that the World Bank welcomes the suggestion by the Committee regarding assistance to Albania in reviewing and enhancing its legal and institutional framework pertaining to the Aarhus Convention, and takes this opportunity to convey to the Convention Secretariat and the Committee that we will soon communicate our interest in providing this assistance. We hope that this will give us an opportunity to collaborate with the Convention in addressing this important matter.

In closing, the World Bank wishes to advise the Committee that the Inspection Panel has received a Request for Inspection on the subject project. According to the internal process for such Requests, Bank management has until June 1, 2007 to respond to the Panel regarding the claims made in the Request. If during our review of the case we determine the availability of relevant factual information which can be disclosed according to the Bank's disclosure policy, this will be shared with the Aarhus Secretariat through a supplemental letter.

If you have any questions, please do not hesitate to contact me. Both I and our Bank team will be pleased to assist you in your very important endeavors.

Sincerely,

for 

Orsalia Kalantzopoulos
Country Director and Regional Coordinator
for Southeast Europe
Europe and Central Asia Region

Attachment