

**TO THE COMPLIANCE COMMITTEE OF THE
CONVENTION ON ACCESS TO INFORMATION, PUBLIC
PARTICIPATION IN DECISION MAKING AND ACCESS TO
JUSTICE IN ENVIRONMENTAL MATTERS**

**Complainant: Association for Nature, Environment and Sustainable
Development “Sunce”**

Ref. ACCC/C/2012/66

**RESPONSE OF THE MINISTRY OF ENVIRONMENTAL AND
NATURE PROTECTION OF THE REPUBLIC OF CROATIA**

Zagreb, 8 October 2012

1. INTRODUCTION

1. Ministry of Environmental and Nature Protection of the Republic of Croatia has on 17 May 2012 received a communication from the Compliance Committee of the Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (the Aarhus Convention).
2. The applicant, Association for Nature, Environment and Sustainable Development “Sunce”, from Split, Croatia, has lodged a communication regarding a possible non-compliance with Article 7 of the Aarhus Convention. The applicant’s communication concerns possible non-compliance regarding public participation in adoption of waste management plans at local and regional level.
3. The Compliance Committee has considered the admissibility of the communication and has decided it to be admissible on a preliminary basis.
4. The Compliance Committee has invited the parties to address a number of questions regarding the case. The Compliance Committee has addressed the following questions to the Ministry of Environmental and Nature Protection:

1. What is the applicable legislation for the adoption of waste management plans? What are the specific legal provisions to ensure public participation procedures in the adoption of plans?

2. How is waste management policy designed in Croatia? At what government level are waste management plans prepared and adopted? For example, is the adoption/approval of waste management plans under the competence of a Ministry or of the local authorities?

3. Do you consider waste management policy to be part of the environmental and/or sustainable development policy? If not, why? If yes, do you think that waste management plans are plans under Article 7 of the Convention, and what are the “appropriate practical and/or other provisions for the public to participate during the preparation” of these plans?

4. Is the private sector involved/consulted in the preparation of waste management plans?

2. WRITTEN RESPONSE TO THE QUESTIONS:

1. What is the applicable legislation for the adoption of waste management plans? What are the specific legal provisions to ensure public participation procedures in the adoption of plans?

5. The applicable legislation for adoption of waste management plans is the Waste Act (OG No. 178/04, 111/06, 60/08, 87/09). According to the provisions of the Waste Act, waste management plans are adopted at the national level (Waste Management Plan of the Republic of Croatia (OG No. 85/07,126/10, 31/11), at the county level (including the City of Zagreb, which also has the status of a county) and also at the town and

municipality level. According to Article 11 of the Waste Act, a town and municipality waste management plan is adopted by the town or municipal council, and its implementation is supervised by a competent county office. Mayors of towns and municipalities are obliged to report on the implementation of the waste management plans to their respective councils. After the council adopts the reports, they are delivered to the Ministry of Environmental and Nature Protection and to the Environmental Protection Agency. The Agency prepares a unified report on waste management plans and displays it in public.

6. A waste management plan of a town or a municipality contains:
 1. measures for separate collection of municipal waste,
 2. measures for managing and supervising municipal waste landfills,
 3. a list of locations polluted by waste and of dump sites,
 4. schedule of remediation activities for dump sites and environment polluted by waste,
 5. sources and financial means necessary for remediation.
7. The Environmental Protection Act (OG No. 110/07) is the legal document that ensures public participation in adoption of plans and programmes related to the environment. The Environmental Protection Act in Article 142 stipulates that the public also has the right to express their opinions, objections and suggestions on draft proposals of plans and programmes concerning the environment, for which the obligation of strategic assessment is not prescribed.
8. More detailed rules for public participation in adoption of plans and programmes are provided in the Regulation on information and participation of the public and public concerned in environmental matters (OG No. 64/08). The mentioned Regulation provides details on how to implement public participation. Regarding the plans and programmes that are related to environment, and do not need a strategic environmental assessment (which by itself includes public participation), the Regulation stipulates that the body which, under the law or the decision of the Government of the Republic of Croatia, as well as the decision of the representative body of the local or regional self-government unit, is competent for developing the plan or programme shall publish the information on the development of the draft proposal of the plan or programme on its web page. As paragraph 3 of Article 14 of the Regulation stipulates, plans for which strategic assessment is not performed are all plans for which the obligation of strategic assessment is not prescribed by the Act, but the adoption of which is prescribed by the law and they concern the environment. Furthermore, the public which has the right to express their opinions, objections and proposals on the draft proposals of the mentioned plans is the public which may be affected by those plans and programmes during their implementation.

2. How is waste management policy designed in Croatia? At what government level are waste management plans prepared and adopted? For example, is the adoption/approval of waste management plans within the competence of a Ministry or of the local authorities?

9. Croatian policy, at the state level, is defined in the Waste Management Strategy which is a part of the Sustainable Development Strategy. Both documents were adopted by the Parliament. The state's waste management plan is a technical document for the

implementation of waste management policy defined in the Waste Management Strategy, and is adopted by the Government. Waste Act, besides strategy (Waste Act Art. 8) and state's Waste Management Plan (Waste Act Art. 9), also prescribes that there are waste management plans of counties (Waste Act Art. 10 and 11a) and towns and municipalities (Waste Act Art. 11 and 11a). A general rule stated in the Waste Act is that a town's or municipality's WM plan must be in line with the county's WM plan, and county's WM plan must be in line with the state's WM plan. National, regional and local administrative bodies are responsible for preparation and adoption of their waste management plans respectively. County's waste management plan is prepared and adopted by the county assembly, and municipal and town WM plan is prepared and adopted by the town or municipal assembly.

10. There is no prescribed specific approval procedure.

3. Do you consider waste management policy to be part of the environmental and/or sustainable development policy? If not, why? If yes, do you think that waste management plans are plans under Article 7 of the Convention, and what are the “appropriate practical and/or other provisions for the public to participate during the preparation” of these plans?

11. According to the Waste Act, waste management policy is part of sustainable development policy, and Waste Management Strategy is a part of Sustainable Development Strategy, which is adopted by the Parliament on the basis of the Environmental Protection Act. Waste Management Strategy is a document that defines waste management policy on the state level, and waste management plans are operational documents for enforcement of the policy under the strategy.

12. Waste management policy is part of sustainable development policy, since the Waste Management Strategy is a part of the SD strategy. WM strategy is currently the document that defines waste management policy at the state level, and waste management plans are operational documents for enforcement of the policy defined by the strategy.

13. According to Waste Act a town's or municipality's WM plans contains the following:

1. measures for separate collection of municipal waste,

This mainly considers local implementation of regulations for special waste categories, is primarily used for defining relationship between special waste categories (SWC) concessionaires at national or county level and local company in charge for handling municipal waste. It can also contain locations of containers for SWC, locations of recycling yards and similar information.

2. measures for managing and supervising landfills for municipal waste,

These provisions mainly consider implementation of landfill regulations which are mostly defined by the Ordinance and Treaty of Accession of the Republic of Croatia to the European Union. In general these are the provisions for temporal plan/time table for closing of landfills which is heavily connected with waste management centres projects, and available funds on state and local level.

3. a list of locations polluted by waste and of unregulated landfills(dumpsites),

Self-explanatory. It is a list of dumpsite and polluted locations generated from entries by local municipal supervisors.

4. *Schedule of remediation activities for unregulated landfills and environment polluted by waste,*

Time table of remediation activities for locations under no.3.

5. *sources and financial means necessary for remediation.*

Financial plan for remediation activities for locations under no.3.

From, prescribed and above mentioned it is clear that town or county WM plans does not contain any of the information stated in Art. 6, para 6 of the Convention.

14. Namely, Article 6, paragraph 6 of the Convention gives a list of information relevant to the decision-making that is available at the time of the public participation procedure. None of the parts of the town or a municipality waste management plans contains information listed in Article 6, paragraph 6 of the Convention, since the town and municipality waste management plans neither include any information related to descriptions of sites, significant impacts on the environment and possible emissions or alternatives, nor do they disclose any information that has not been displayed in public participation procedures for county waste management plans or for waste management documents at the national level. Town and municipality waste management plans do not include locations for new waste management facilities or sites for new landfills, neither have they taken the form of programmes or policies (see *France ACCC/C/2007, ECE/MP.PP/C.1/2009/6/Add.1, 8 February 2011, para. 34*).

15. Finally, the respondent finds that due to the mentioned circumstances town and municipality waste management plans do not meet any of the thresholds under Article 6, paragraph 4 of the Convention. Although they are entitled as “plans”, it does not necessarily mean that they are plans in substance, but rather implementation documents for waste management policy documents on a higher level. Therefore, the respondent finds that town and municipality waste management plans do not fall within the scope of Article 7 of the Convention (see *United Kingdom ACCC/C/2008/27, ECE/MP.PP./C.1/2010/6/Add.2, November 2010, para. 41*). Moreover, the waste management policy documents on a higher level, such as the County Waste Management Plan and the State’s Waste Management Plan and also county spatial plans which include all the information relevant regarding waste management policy, all must undergo strategic environmental assessment, which mandatorily includes public participation.

4. Is the private sector involved/consulted in the preparation of waste management plans?

16. Not obligatory and direct, but WM plans of a town or municipality is a document that:
- “heavily leans” on town’s or municipal’s spatial plan for which public consultation is obligatory,
- in line with county and state WM plans and WM strategy
Furthermore, public debate/participation is mandatory on a project basis according to EIA procedures.

CONCLUSION

17. With regard to this response, the Ministry of Environmental and Nature Protection of the Republic of Croatia deems that there was no violation of the Convention. Furthermore, the Ministry finds the applicant's complaint to be manifestly unfounded and therefore it should be dismissed.

Minister

Mihael Zmajlović