From: Alexandre Peñalver Cabre [redacted]
Sent: mardi, 17 septembre 2024 13:56
To: ECE-Aarhus-Compliance <aarhus.compliance@un.org>
Cc: Fiona Marshall <fiona.marshall@un.org>
Subject: Re: Decision VII/8p (Spain) - Party concerned's comments on communicant's email of 23.08.2024
Importance: High

Dear Fiona,

I I would have liked to participate in the next session of Compliance Committee on 19th September, but it is impossible for me because I have class at the School of Law at the same time and this is the first week of the course.

So, I send some brief comments about the response of the Party in its mail 5th September. We consider that its arguments are not news and do not undermine that the Party remains not fully comply with paragraph 2 (b) of the Decision VII/8p concerning Spain. For this reason, we reiterate our considerations that we sent 23th August and that we complete below. So, it is clearly insufficient the amendment introduced by article 10 bis on Royal Decree 815/2013 which states: "(...) Likewise, they will send to the municipalities the announcement of said resolutions, making available to the public for exhibition on the bulletin boards of the municipalities in which the facilities are located for a minimum period of twenty calendar days.".

First, the Party insists that the purpose of an integrated environmental permit (IEP) is to assess compliance with emission regulations at the site (not beyond in other municipalities) and it is under the Environmental Impact Assessment (EIA) where the potential long range effects are assessed and other municipalities affected are determined and notified. The Party states that it would be duplication and it is impossible to notify potentially affected municipalities in the IEP procedure but not in EIA procedure.

We honestly do not understand these considerations as they are incorrect because EIA procedure is a part of the IEP procedure. In addition, EIA must be taken into account in the IEP permit (Art. 42 Spanish Act 21/2013, 9 December, on Environment Assessment. It is clear that there is not any duplication.

We must insist that, as the Compliance Committee have said, this requirement should be for all municipalities affected by the activity and not only in the municipality where the activity will be undertaken (for instance, Second progress review of the implementation of decision VI/8j on compliance by Spain with its obligations under the Convention, para. 44 and 48.c.iv).

The arguments of the Party based, especially in EIA law, do not undermine the need for this requirement. The aim is that all public which may be affected must be informed of the environmental permit. And as usual EIA study (as in this case UNILAND) determine the scope of the activity and, by so many, the affected municipalities.

Second, the Party are not agree when the Compliance Committee have said that "individuals living in the immediate vicinity, parties with a specific interest and all members of the public who submitted comments during the public participation procedure on the proposed decision are personally notified of the decision on the integrated environmental permit once taken".

The first response of the Party said that General Administrative Procedure Law (Article 40 of Law 39/2015) satisfies this requirement and therefore it would be redundant to modify Royal Decree 815/2013 with this purpose, since the Law has a higher hierarchy and is directly applicable.

And we said on 23th August, this response does not satisfy the requirement because this Article states the notifications only for one case "interested parties with rights or interests affected by the act'. But not for the other two cases (individuals living in the immediate vicinity and all members of the public who submitted comments during the public participation procedure on the proposed decision). Article 40 of Law 39/2015 states an administrative minimum general standard for notifications. But for environmental cases can be established, as usual, more exigent standards and specially when they are from international conventions (in this case, Aarhus Convention). And, finally, the general administrative standard (Article 20 of the Act 39/2015) is not higher hierarchy because Article 10 Royal Decree 815/2013 develops another different Act about environmental permits (Royal Legislative Decree 1/2016).

Now, the Party states: a) it believes that on the subject of individuals living in the immediate vicinity, public bulleting is a better option and also immediate vicinity is an abstract concept, and b) any interested party is always notified in any procedure, including IEP, as Law 39/2015 and there is no need to duplicate. Our considerations are: a) immediate vicinity is not an abstract concept, there is no any explanation why is considered a better option by the Party and immediate vicinity is legal term which is defined in different IEP laws such as Art. 20.2 Catalan Act 20/2009 and Art. 31 Catalan Regulation 136/1999 on IEP (both of them were mentioned in this Uniland case by the Party and the communicant); and b) there is no any duplication about interest party but a very important clarification on environmental matters as we mentioned above..

Best regards,

Àlex

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