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January 31, 2020

Ms. Margrethe Vestager
Executive Vice President of the European Commission
for a Europe Fit for the Digital Age

Ms. Elisa Ferreira
Commissioner for Cohesion and Reforms

Dear Ms. Vestager,
Dear Ms. Ferreira,

On October 18, 2019, Competition DG awarded €64 million in subsidies for the construction of a municipal waste incineration plant with a capacity of 160,000 tonnes/year in Gdansk.

The full text of the decision was published at
https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55100.

In the opinion of the undersigned NGOs, the Commission's decision was hasty and was not based on a thorough analysis of the submitted documentation, it is our belief that the project violates a number of provisions in both EU and national law:

1. The building permit for the incineration plant was issued on October 9, 2019 by the President of Gdańsk. In addition to the fact that the decision was issued carelessly it did not include full text as it should have under point 1.1, and it had incorrect numbering of two of its points. It omitted as well significant conditions contained in the environmental permit of December 30, 2011, namely:

- No indication of waste codes approved for incineration. Moreover, the permit contains an unfortunate entry *h) to process only a strictly selected fraction of municipal waste with an optimal energy and morphological composition for the installations*, which may well mean that selectively collected and recyclable waste can be sent for incineration.
- A requirement to utilise generated heat during the summer and winter season.

2. When the investor applied for a building permit, on December 21, 2018, it no longer had a valid environmental permit in accordance with national regulations. The environmental permit became final on February 3, 2012, and was valid for 6 years, until February 4, 2018. It could be extended to 10 years, provided that the authority that issued the permit accepted that the investment would be carried out in defined stages and that the conditions for implementing the project as set out in the environmental permit have not changed. The decision on staging the investment was issued on February 27, 2017 but it was not notified to the parties to the proceedings, nor was it published on the investor's or the city's website. The Environmental Impact Assessment (EIA) report from 2011 only distinguished three standard stages of the investment which do not need any specific extension in form of a decision: construction, implementation and decommissioning. Additional divisions of the investment into the stages are not included in the case documentation nor in updated EIA report. In addition, in a letter dated February 20, 2019 the President of Gdańsk called on the investor to clarify the stages of the project. In reply, the investor stated that "the provisions on the stages have been removed" hence it confirmed that there will be no staging of the investment.

The scope of the investment approved by the building permit has been significantly changed compared to its environmental permit. The number of incineration lines were reduced from two to one which increased the risk of a possible plant failure, i.e. accumulation of waste at the facility, or a power outage which can turn off the odour and leachate control system. The assumed calorific value of waste accepted for incineration was reduced hence the energy efficiency of the installation was lowered.

3. The investor has not submitted the cost-benefit analysis of the investment required by national regulation [Art. 10a of the Energy Law of April 10, 1997].

This analysis - required for all entrepreneurs planning to construct an energy generating installation with a nominal power output above 20 MW - would enable assessment of assumptions regarding the amount of heat and electricity it may generate and sell, the fee rate of waste for incineration, the operating costs of the installation, and thus allow for estimating the period of reimbursement of expenses incurred for its construction, and comparison of its economic efficiency with other methods of municipal waste management.

4. An important aspect for the acceptance of a waste incineration installation under EU and Polish environmental law is energy recovery and its use, as well as high energy efficiency in the cogeneration process. The project documentation has serious deficiencies in this respect. It has not been shown that the installation will be meeting the criteria for high-efficiency cogeneration as specified in the information on the Commission's website. In the justification of the building permit and in the documentation made available to the parties before issuing this decision, there is no information to suggest whether or not the facility will meet the R1 energy efficiency formula. In particular, the EIA report does not contain relevant data or calculations in this regard. This is a violation of Article 23(4), Article 38(1) and Annex II of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, BAT19 and BAT20 of the conclusions of Best Available Techniques (BAT) Reference Document for Waste Incineration, Final Draft (December 2018).

Although the strategic documents of the development of the City of Gdańsk indicate the possibility of using energy from the incineration plant for the purposes of heat supply, there is no date and financial security associated with the task of building a heating pipeline (About 2.5 km long, along with a cross-section under a city highway and construction of a heat

pressure boosting station). Such tasks are only outlined on a backup list of the Investment Priority Database, adopted by the City Council and in the Operational Program Infrastructure and Environment valid until 2023. It should also be noted that the “Low-emission Economy Plan for the City of Gdańsk” states that for main heat sources the city has a 10% surplus of power, and in local heating plants this surplus ranges from 30 to as much as 70%. The Plan does not specify to what extent the heat from the incinerator will possibly be used.

5. The European Commission decision includes the construction of a heating network connection which was not covered by either the EIA report, the environmental permit nor the building permit. This means that the project includes a task that if implemented, does not have any formal or legal grounds.

6. The European Commission’s decision states that the incinerator will generate 123 GWh/year of electricity but the EIA report states that the facility will generate 109 GWh/year, and sell to a grid 86 GWh/year. The EC’s decision also states that the incinerator will produce 444 TJ/year of heat but the EIA report and any other document of the permit process do not provide any information in this respect. There are therefore inconsistencies between the documented energy performances of the incinerator between the European Commission decision and the EIA as well as the permit.

7. The area of Gdańsk is covered by the Air Protection Program for the Tri-City agglomeration zone (Gdańsk, Gdynia and Sopot) due to exceeding the air quality standard in the scope of benzo(a)pyrene (BaP) and PM10 dust. For the investment area, the BaP exceedances reach 6 ng/m³, i.e. six times compared to the recommended target level of 1 ng/m³. In Gdańsk there are areas with even higher exceedances, above 10 ng/m³. In the case of PM10 24h exceedance of the permissible concentration of 50 µg/m³ occurred in most stations for 25 to 39 days a year. According to the estimates of the EIA report, the incineration plant will emit 5.22 t/a polycyclic aromatic hydrocarbons and 23.5 t/a PM10 and PM2.5 dust, hence it will additionally contribute to increasing the concentration of these harmful compounds in the area covered by the remedial program. Therefore, pursuant to Article 225 of the Environmental Protection Act, the investor should be obliged to finance compensation measures that will result in a 30% reduction in pollution emissions from other installations to the extend of the amount of gas or dust allowed to be released into the air by the incineration plant. The issued building permit does not include such a requirement, nor is this information included in the EIA report.

8. At the end of December 2019, TNZ received a geotechnical and sanitary opinion commissioned by the incinerator investor regarding the land on which the investment is to be located. The opinion states that the incineration plant is to be built in the area of the former landfill. This land is unstable and, therefore, will require *strengthening of the native weak bearing ground, dense piling under cubature facilities, roads and areas of heavy traffic [...]. The need to perform deep excavations for some cubature objects will be associated with the emission of gases, bioaerosols and odors. [...] Due to possible problems at the stage of construction and operation, due to gas emissions, consideration should be given to removing all or part of the anthropogenic land (contaminated and containing waste) i.e. up to approx. 300 thousand m³. [...] The results of previous studies indicate the need to include in the project the risks associated with construction work in an environment creating an explosion risk and the risk of employees being in an atmosphere of toxic / harmful gases, mixtures of volatile organic compounds) and an increased risk of infection with pathogenic microorganisms.* This information as well as the problems and threats described in the opinion were not previously described in the project documentation, including the Environmental Impact Assessment report.

Moreover, according to par. 18 of the Regulation of the Minister of the Environment of 30 April 2013 on landfills, *no buildings may be built [on landfills] for a period of fifty years from the date of closure of the landfill, excavations performed, ground and underground installations, excluding installations related to the functioning of the landfill.* This period may be shortened, however, provided that the investment does not cause any threat to human life, health or the environment. In this case, there is no such certainty, which is stated in the geotechnical and sanitary opinion.

The Society for Earth, being a party to the proceedings, submitted on September 7, 2019 to the President of Gdańsk some of the above main objections to the project, however they were treated evasively or unresolved.

The undersigned non-governmental organizations demand that the Commission re-verify the legality of the documentation submitted by the investor, and the appropriateness of granting financial resources for the construction of the waste incineration plant in Gdańsk.

Sincerely yours,

Piotr Rymarowicz

Chairman of the Society for Earth (TNZ)

Tomasz Rozwadowski, PhD, Eng. of Architecture

Chairman of the Polish Ecological Club Pomerania
Branch (PKE OP)