

November 25, 2014

Energo Zelena submitted Request for Arbitration against Republic of Serbia and suspends operations of its rendering plant in Indjija

Belgium companies Energo-Zelena and Zelena submitted the Request for Arbitration against Republic of Serbia to International Center for Settlement of Investment Disputes in Washington DC (ICSID). They have been forced to take these measures due to systematic omission of Republic of Serbia to enforce its own legislation on treatment of animal by-products thus jeopardizing viability of Energo-Zelena's operations in Serbia. The Board of Directors also decided to suspend the operations of its Indjija based plant that is the only rendering facility for treatment of hazardous ABP in Serbia fully compliant with the Serbian legislation.

Companies Energo-Zelena d.o.o. and Zelena N.V. decided to start international investment arbitration against Republic of Serbia before International Center for Settlement of Investment Disputes in Washington DC (ICSID) due to substantial and recurrent damage and losses caused to its rendering business by repeated wrongful acts and omissions by the competent authorities of Serbia.

The business case of Energo-Zelena, the only rendering plant for treatment of hazardous ABP in Serbia that fully complies with legislation, is based on two corner-stones: the first is implementation of Serbian law and regulations (Veterinary Act¹ and Regulation on ABP treatment²) applicable to the treatment of ABP and the second is equal treatment of all rendering plants on the market. Instead, Energo-Zelena has been continuously exposed to blatant discrimination and unfair competition on the market.

By its systematic omissions to enforce its own legislation on treatment of animal by-products Serbia has not only caused significant damage to Energo-Zelena, but also endangered the environment and public health of Serbian citizens and citizens of other countries and Serbia breached its international obligations, in this case obligations under the bilateral investment treaty with Belgium (*Agreement between Belgium-Luxemburg Economic Union and Serbia and Montenegro on the Reciprocal Promotion and Investment Protection* that entered into force in 2007).

Energo-Zelena tried to resolve this dispute amicably. On 28 March 2014, it sent the *Notice of Submission of Investment Dispute to Amicable Settlement Negotiations* to the highest

¹ Veterinary Act ("Official Gazette of the Republic of Serbia", no. 91/2005, 30/2010 and 93/2012)

² Regulation on animal waste and animal by-products categorization and treatment ("Official Gazette of the Republic of Serbia, no.31/11)

authorities in Serbia. However, despite the investor's continued devotion to cooperation and finding an amicable solution, it faced a series of empty promises, continued flagrant breaches of the law and an obvious lack of good intentions from Serbia's side. As a result, the investor submitted the Request for Arbitration to ICSID on October 24, 2014 which was registered and published on ICSID's website on November 7, 2014 (<https://icsid.worldbank.org/ICSID/FrontServlet?requestType=GenCaseDtIsRH&actionVal=ListPending>).

To mitigate further losses, the Board of Directors decided to suspend all Energo-Zelena's activities related to ABP collection and treatment as of November 29, 2014 and to ultimately close the plant in Indjija by the end of December this year. Until end of December, all 43 employees of Energo-Zelena will remain employed. In early November, Energo-Zelena informed the Veterinary Directorate and the Head of the Veterinary Inspection about its plans and the timing, providing in this way additional two months time for amicable settlement of present dispute without irreversible consequences.

"Company Energo-Zelena and its Belgium shareholder Zelena N.V. are committed to the Serbian market. We initially invested EUR 21.5 million in a state-of-art rendering plant for treatment of hazardous ABP with intention to establish long-term business and create viable business partnerships and relations in Serbia. The best example of our commitment was unselfish support of our Company and our employees during the floods when we supported the Government of Serbia and Bosnia and Herzegovina in fighting the consequences of devastating floods. However, our company, which operates the only rendering plant for treatment of hazardous ABP that is fully compliant with Serbian legislation, has been continuously exposed to unfair competition and blatant discrimination. When we entered Serbian market we expected the Serbian state to implement its own legislation. This is not happening in practice, the opposite is true: as foreign direct investors we have been continuously discriminated. As a result our investment is severely jeopardized and the company is operating with substantial loss. We are deeply disappointed with the investment climate in Serbia and the unwillingness of the Serbian Government to respect its own law and to establish a constructive dialogue in order to find a solution for the problem. We started international arbitration before International Centre for Settlement of Investment Disputes in Washington DC as it is the only way to protect our investment", says Tom Hanson, Director of Energo-Zelena.

APPENDIX 1: What does it actually mean that the ABP law is not being implemented or what is the current situation on ABP market?

1. Serbia tolerates continuous non-compliant behavior of veterinary inspectors and allows their breaching the law. Though veterinary inspectors have obligation and full authority to enforce the law, to control and supervise all participants on ABPs market, this is not taking place in practice.
2. Since not properly controlled, supervised and penalized, some ABP producers and two state owned rendering plants are dumping ABP into the nature thus polluting it.
3. As the consequence of not being properly controlled by veterinary inspectors and eventually penalized, some ABP producers mix hazardous and non-hazardous waste in order to reduce their costs for collection and treatment of the waste (the cost price for collection and treatment of hazardous ABP is several times higher than for non-hazardous ABP). This is very dangerous since hazardous ABP, whose final products can be used solely as fuels for energy or fertilizers, if not properly marked and separated may be mixed with non-hazardous waste and in that way enter food and feed chain thus jeopardizing public health (final products of non-hazardous ABP may be used for feed production, in the pharmaceutical production, candy production, cosmetics)
4. Activities of Veterinary Directorate and veterinary inspectors create typical conflict of interest (COI) situation on Serbian ABP market: Veterinary Directorate owns, manages and controls two outdated, non-compliant, state owned rendering plants in Sombor and Cuprija. At the same time Veterinary Inspection controls all other rendering plants, their suppliers and customers.
5. Predatory pricing of state owned rendering plants from Sombor and Cuprija is also tolerated. Those companies reduced gate fees for collection and treatment of hazardous ABP for more than 50% (increase ranges from 50% and 75%) in less than 18 months without any commercial logic (this started at the time when Energo-Zelena started its operations in Serbia).
6. Serbia annually generates 250,000 tons of ABP. Only 70,000 tons is being treated in both compliant and non-compliant rendering plants. 180,000 tons is missing (equivalent of 50 trucks/day 365 days/year). One part of this waste is being dumped into the nature, the other part re-enters the food chain, thus severely jeopardizing environment and public health.
7. Only 10,000 tons of hazardous ABP (in total 110,000-115,000 tons) is being treated properly according to the law (ABPs split on Serbian market is the following: 40-45% is hazardous ABP and 55-60% is non-hazardous ABP).

APPENDIX 2: About Energo-Zelena

Company Energo-Zelena d.o.o. is a wholly owned subsidiary of Belgian company Zelena N.V.

The Investor initiated the project being strongly encouraged and supported by all relevant state institutions and representatives of state administration on all levels (Republic of Serbia, Vojvodina Province and city of Indija). Upon the finalization of the plant construction and equipment installation at the of 2012, the Investor obtained all necessary permits and approvals. The plant officially started its operations in the first quarter of 2013. The processing capacity of the plant is 150,000 tons of hazardous animal waste annually. The designed capacity combines realistic market capacity in Serbia (around 110,000 - 115,000 tons of hazardous animal waste per year), i.e. the quantities of hazardous ABPs that are being generated on the market every year plus capacities for emergency situations (e.g. floods in Serbia and Bosnia this year).

Energo-Zelena's facility is among the most modern zero waste emission ABP processing plants in the world with state-of-the-art air and wastewater treatment processes.

Today, Energo-Zelena employs 43 Serbian people. If Serbia had implemented its own legislation, it would have been possible to employ 100 people at least.

Energo-Zelena processed during the floods in May more than 1,000 tons of animal waste from both Serbia and Bosnia and Herzegovina thus preventing possible contamination and various diseases. The costs related to this support have been carried fully by Energo-Zelena and its employees as sign of support to the Serbian population and authorities.

Energo-Zelena's investment project in Indjija was nominated by Vojvodina Investment Promotion Agency at **UNCTAD's Investment Promotion Awards 2014** in October (<http://my.rs/yqc>). The project was ranked among top ten "green" projects in 2014 globally.