

English version of the letter to be sent to LPN in reply to its request for internal review

Dear Sir,

Thank you for your mail dated 31 July 2008 whereby you requested, on behalf of LPN, the Commission to review its decision of 28 February 2008 closing infringement procedure 2003/4523 concerning the Baixo Sabor dam project in Portugal.

Your request for internal review has been lodged on the basis of Title IV of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13). Its purpose is to request the Commission to review its above-mentioned decision of 28 February 2008 in the light of the comments set out in your mail of 31 July 2008.

The Commission has carefully considered your request in the light of the provisions of Title IV of Regulation No 1367/2006, and its Articles 10 and 11 in particular, in conjunction with the relevant provisions of Article 2 of that Regulation.

It follows from a combined reading of Articles 2 and 10 of Regulation No 1367/2006 that a request for internal review may only be lodged against administrative acts, as defined in Article 2(1)(g), which are not taken by the Commission in its capacity as an administrative review body. Article 2(2)(b) of Regulation No 1367/2006 expressly provides that decisions taken within the ambit of Articles 226 and 228 of the Treaty establishing the European Community concerning infringement proceedings constitute acts adopted in such a capacity.

Without prejudice to any comments it might have with respect to any other of the criteria provided for in Title IV of Regulation No 1367/2006 concerning the admissibility of your request for internal review, the Commission considers that its decision of 28 February 2008 is excluded from the scope of application of Title IV pursuant to Article 2(2)(b) of that Regulation.

On the basis of the aforementioned observations, the Commission considers your request to be inadmissible.

Should you not agree with the present reply, you may bring the matter before the European Ombudsman or before the Court of First Instance if you have a complaint which falls within the conditions laid down in Articles 195 and 230 respectively of the Treaty.

Yours faithfully,