

Attn.: Ms Fiona Marshall

Environmental Affairs Officer - Secretary to the Compliance Committee
Convention on Access to Information, Public Participation in Decision-making
and Access to Justice in Environmental Matters
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
CH- 1211 Geneva 10, Switzerland
Email: aarhus.compliance@unece.org

Dear Ms. Marshall,

We have received the Communicants' comments on response to our letter dated on November 25, 2016, in relation to the communication ACCC/C/2014/105 ("Communication"). We strongly believe that in order to avoid misunderstanding on the Communicants' side some issues are necessary to be clarified. These issues are the followings:

I. "as to information provided on Question III b) Hungary refused to provide summary of the main conclusion of the SEA for Energy Policy 2008-2020"

1. None of our submission to the Compliance Committee ever stated that 40/2008. (IV.17.) Parl. Resolution was subject to a strategic environment assessment process (SEA), neither that SEA was made. For that simple reason we could not have provided the main conclusion of the SEA and obviously the SEA could not have been sent to the Communicants. Please see our legal opinion on whether SEA should have been made under the Aarhus Convention in case of the 40/2008. (IV.17.) Parl. Resolution under points 1-6. in our last letter sent November 25, 2016.
2. We believe that in case the Communicants states that SEA of 40/2008. (IV.17.) Parl. Resolution was made the existence of the SEA in question should be proved by the Communicants themselves. Hungary asks the Committee to call upon the Communicants to provide documentary evidence on their above statement.

II. "as to information provided on Question II b) National Environmental Council cannot be regarded as a body to facilitate public participation"

3. As the Communicants cited the relevant provision of the Act LIII:1995 on general rules of Environmental Protection "*the National Environmental Council consisting up to 22 members, shall operate in the interest of establishing a broad social [...] base for environment protection." "(3) In the Council, representatives a) of public organisations registered with environmental protection goals [...]" According to the Communicants "*this body cannot be regarded as a tool which facilitates public participation*". Is there any logical explanation why not? The participating organisations represent their members and the wide interest of other stakeholders.*

They – like the Communicants themselves – communicate to and obtain inputs from the public.

4. According to our understanding NEC is a good tool to provide scientific and social base for governmental and parliamentary lawmakers especially in the case of policy documents when provisions of Article 6 of the Aarhus Convention is not obligatory. See our legal position on this issue under points 3-5. in our last letter sent November 25, 2016.
5. We would also like to emphasize that not only NEC was involved, but Hungary provided numerous documentary evidences of public participation measures carried out during the preparation of the 2006-2030 Thesis of the new Hungarian Energy Policy which served as background document of the adopted 40/2008. (IV.17.) Parl. Resolution on Energy Policy of Hungary 2008-2020. See information provided on this issue under points 12-17. in our last letter sent November 25, 2016.
6. The Communicants also stated that Hungary failed to prove evidence on the participation of NEC in the negotiation procedure regarding the new energy policy document (stated under point 19 in our last letter sent November 25, 2016). As documentary evidence please find attached to this letter two more documents. One of those is an invitation to NEC's meeting held September 17, 2007, sent by the NEC secretary and the other is the working program of the NEC issued September 9, 2007. The first item of the working program is "*the proposal of the new energy policy of Hungary 2007-2020.*"

III. "as to information provided on Question IV

- (1) no proofs were given of comments received or how they were taken into account,
- (2) the answers came not from the Ministry,
- (3) This is a good illustration how our comments were treated"

7. First of all as it was elaborated in our last letter sent on November 25, 2016 the preparation of the new energy policy of Hungary was a broad task carried out by the Expert Committee established by the Ministry of Economy and Transport. As the result of this task, the document of *2006-2030 Thesis of the new Hungarian Energy Policy* was elaborated. This document served as background document to the proposal of the Parl. Resolution of the new Hungarian Energy Policy 2007-2020. At the end of this long procedure, 40/2008. (IV.17.) Parl. Resolution on the Hungarian Energy Policy 2008-2020 was adopted by the Parliament April 17, 2008. (Therefore the policy is from 2008 to 2020 and not from 2007.)
8. The Communicants state that their "*communication was about subsequent process & studies which started in 2007 and went on till the Energy Policy was adopted*". This statement is not in line with the above therefore Hungary asks the Committee to call upon the Communicants to provide documentary evidence on their statement of *subsequent process & studies started in 2007.*
9. Regarding that according to the Communicants "*no proofs were given of comments received or how they were taken into account,*" Hungary believes that the almost 20 emails provide sufficient evidence on public participation carried out.

10. Regarding that according to the Communicants "*the answers came not from the Ministry*", Hungary would like to emphasize that the Expert Committee who sent the answers was established by the Ministry of Economy and Transport and the Committee acted in this capacity during the procedure. At the same time according to our understanding of the Aarhus Convention there is no legal obligation which would exclude expert bodies acting on behalf of the government from the implementation of public participation rights.
11. Hungary would like to emphasize that the emails sent serve to provide sufficient evidence on the public participation took place. The citation of the Communicants does not prove other but that the comments – including the Communicants' – were received, treated and answered by the Expert Committee, each comment in the same and equal way.

IV. Conclusions

12. The investigation of the communication ACCC/C/2014/105 has been going on for more than two years; and we are carried far away from the original communication. Regarding the experience gained during this long time Hungary believes that this procedure seems to lack important legal guarantees any procedure should include. As a matter of fact, the burden of proof should lie with the Party who brings a claim in a dispute. In our case this is the Communicants who stated numerous things since this procedure has started.
13. According to Art 19 of Decision I/7 the communication shall be supported by corroborating information which means that the burden of proof and persuasion lie with the Communicants. Therefore Hungary asks respectfully the Committee to call upon the Communicants to provide documentary or other form of evidence to prove all their statements done in this procedure. These evidences to be presented should be suitable and enough to persuade the Committee of fact that their side is correct.

Sincerely,

Andrea Barad
National Focal Point
Aarhus Convention
Hungary

Attachments (2 items): NEC invitation
NEC working program