

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,

Thank you for your letter dated November 5, 2016, enclosed with further questions related to the communication ACCC/C/2014/105 ("**Communication**"). Hungary hereby submits these explanations and clarifications to questions raised by the Committee. Hungary respectfully asks the Committee to take them into consideration.

The questions are:

- I. **Please provide the Committee with an English translation of the table of contents of the 2008-2020 Energy Policy of Hungary, adopted by 40/2008. (IV.17.) Parliament Resolution, any parts of the Energy Policy which summarize its content (e.g. introduction, summary executive summary, conclusions).**
- II. **Did the draft of the 2008-2020 Energy Policy of Hungary that was subject to the public participation procedure include any options or alternatives? If yes, please briefly describe the options or alternatives that were included.**
- III. **Please summarize the main conclusions of the SEA of the 2008-2020 Energy Policy of Hungary.**
- IV. **Please summarize how the comments by the public on the draft 2008-2020 Energy Policy were taken into account by the Government and/or the Parliament. Please also provide available documentary evidence of how the comments were taken into account by the Government and/or the Parliament (together with an English translation thereof).**

Regarding that Question I-II and IV are closely connected, please find below first our comments on **Question III**, as the following:

What is SEA and whether it should have been applied to 40/2008. (IV.17.) Parliament Resolution

1. *Strategic Environmental Assessment (SEA) is determined by Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the*

impacts of certain plans and programs on the environment and also by the Protocol to the Espoo Convention. The purpose of SEA under both instruments is to ensure that the environmental consequences of plans and programmes are identified and assessed before their adoption. Accordingly, the scopes of these instruments cover public plans and programmes. According to Article 2 point a. of the Directive¹, and also Article 2 point 5. of the Protocol², 40/2008. (IV.17.) Parliament Resolution is neither plan nor program, as it fails to meet the terms of the definition at least in relation to two conditions. On one hand the Resolution was not adopted through a legislative procedure – as Parliament Resolution does not qualify as a legislative act –, on the other hand, the elaboration and adoption of this document was not required by legislative, regulatory or administrative provisions. Therefore, 40/2008. (IV.17.) Parliament Resolution did not fall under the scope of these instruments and was not subject of SEA procedure. More on this and the legal nature of the 40/2008. (IV.17.) Parliament Resolution please also see detailed argumentation under points 31-37. and 39-42. of our reply sent on March 9, 2016.

Whether Aarhus Convention requires SEA to be carried out under Article 7 thereof

2. According to Article 7 of the Convention and the Implementation Guide thereof it shall be stated that however “proper public participation procedures in the context of SEA are a valuable tool to assist in the implementation of Article 7”³, the Convention does not oblige Parties to undertake environmental assessments, such as SEA in order to implement Article 7 of the Convention.
3. Apart from SEA, the Convention determines public participation requirements in case of preparation of plans and programmes relating to the environment. However, regarding policies – fourth sentence of Article 7 – the Convention determines different level of obligations. “Policies are set apart from plans and programmes under the Convention”⁴, as it says that *in the preparation of policies relating to the environment “to the extent appropriate, each Party shall endeavour to provide opportunities for public participation”⁵.* Align with the text and the understanding of the Implementation Guide⁶, there is no express incorporation of the provisions of Article 6 in case of policies.
4. Regarding point 1, within the framework of the Convention terminology, 40/2008. (IV.17.) Parliament Resolution could exclusionary qualify as policy, however it is not legally assured as no definition or description determined for *policy relating to the environment* in the official text of the Aarhus Convention.

Whether Aarhus Compliance Committee is powered to investigate if SEA was carried out when 40/2008. (IV.17.) Parliament Resolution was prepared

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1. ¹ “plans and programs shall mean plans and programs, including those co-financed by the European Community, as well as any modifications to them: which (i) are subject to preparation and/or adoption by an authority at national, regional or local level or which are prepared by an authority for adoption, through a legislative procedure by Parliament or Government, and which (ii) are required by legislative, regulatory or administrative provisions;”
 2. ² “Plans and programs means plans and programs and any modifications to them that are: (a) Required by legislative, regulatory or administrative provisions; and (b) Subject to preparation and/or adoption by an authority or prepared by an authority for adoption, through a formal procedure, by a parliament or a government.”
 - ³ The Aarhus Convention, An Implementation Guide 2014: Article 7 and strategic environmental assessment (p174)
 - ⁴ The Aarhus Convention, An Implementation Guide 2014: Article 7 and strategic environmental assessment (p180)
 - ⁵ Article 7 of the Aarhus Convention

5. Regarding point 3-4, there is no legal obligation on the Parties to undertake SEA in the preparation of policies relating to the environment.
6. Pursuant to preamb. para. 1 and also to Art. 15 of Decision I/7, the Compliance Committee was established for the review of compliance by the Parties with their obligations under the Convention. Therefore, the Compliance Committee's competence shall be limited to the examination of compliance of the Parties with the obligations derive from the Convention. Consequently, it falls beyond the Committee's competence to examine whether SEA was – regardless if any legal basis exists which would have obliged Hungary to undertake it – carried out or not when 40/2008. (IV.17.) Parliament Resolution was elaborated.

Regarding **Question I-II** and **IV**, our comments are provided below:

7. To Question I, please find enclosed the English version of the full text of the 40/2008. (IV.17.) Parliament Resolution.
8. Regarding Question II on whether *any options or alternatives were included in the 40/2008. (IV.17.) Parliament Resolution on Energy Policy*, please be informed of the followings:
9. From the text of the Energy Policy it can be understood that in order to reach the main objectives as the effectiveness of security of supply, competitiveness and sustainability the Parliament asked the Government to implement certain measures. These measures covers all relevant fields such as
 - elaboration of energy efficiency strategy (para.12. point c),
 - further develop legal framework on the promotion of high-efficiency cogeneration and the utilisation of renewable energy sources (para.12. point e),
 - preparatory works on nuclear capacities in order to replace the operating nuclear units (para.12. point f),
 - measures in order to moderate the growth rate of the gas import dependency (para.12. point h),
 - initiation the early creation of regional energy markets (para.12. point i),
 - initiation the review of electricity system regulation capabilities (para.12. point j),
 - or
 - elaboration of the strategy for increasing the utilisation of renewable energy sources (para.12. point l);in order to achieve the main objectives. These measures can be regarded as options since all these measures aimed at the achievement of the determined objectives.
10. On the other hand, regarding the text of the Convention, it must be stated that there is no obligation to include options or alternatives in policy documents. According to our understanding, the obligation of presenting alternatives is applied to the Proponent only when describes the significant effects of the proposed activity pursuant to Article 6 para. 6. point e. of the Convention.

11. Regarding Question II on whether *was the draft 2008-2020 Energy Policy subject to the public participation* and Question IV on *how the comments of the public on the draft 2008-2020 Energy Policy were taken into account*, please be informed of the followings:
12. In order to elaborate the new and comprehensive energy policy document, in 2005^Z the Ministry of Economy and Transport established an Expert Committee. This Committee consisted of 15 subcommittees and over 60 recognized experts. Each subcommittee dealt with a different topic as: energy market liberalisation, prognosis of the Hungarian energy demand, the role of renewable energy resources in energy supply, the availability of fossil resources, future of nuclear energy, tools of Energy efficiency, R+D perspectives of energy sectors, etc.
13. In course of 2005 and the first half of 2006, chapters of the new energy policy document were elaborated, 19 chapters, altogether. During 2006 – in line with Article 5 para. 7 of the Convention – through widespread consultation with experts and the public, the chapters were further developed and finalised. During this process the public was involved both ways, actively and passively.
14. First, the chapters were published on the internet, they were available to anyone who wanted to learn out more on the new directions of the Hungarian energy policy and wanted to make comments on it. As documentary evidence please find attached the letter of Deputy State Secretary of the Ministry of Economy and Transport (05_GKM_letter_to_MTA_EB) in which it is described that the Expert Committee was established in order to elaborate the chapters of the energy policy. The Deputy State Secretary also noted in his letter that as further chapters are developed they will be available on the website in order to have the interested persons comment on them.
15. Second, the chapters as basis of the future energy policy were sent to particular persons (please find attachment of 001_list of NGOs and others) in order to have their opinion. According to the list, Energia Klub – among other NGOs and persons – received the document.
16. As documentary evidence of the public participation process described above and on how the comments were taken into account during the process, please find enclosed the following attachments:

01_reply_Bárkány György
 01_Bárkány György
 03_a_reply_Energia Klub
 03_b_reply_Energia Klub
 03_c_reply_Energia Klub
 03_Energia Klub Környezetvédelmi Egyesület
 03_reply_Energia Klub Környezetvédelmi Egyesület
 03_reply_Energia Klub
 04_Paks NPP
 05_GKM_letter_to_MTA_EB

^Z Prior to the adoption of 40/2008. (IV.17.) Parliament Resolution, 21/1993. (IV.9.) Parliament Resolution on the Hungarian Energy Policy was in force.

06_ **Kapros Zoltán**
06_ **reply_Kapros Zoltán**
07_ **Komlós Ferenc**
08_ **CIB Bank Zrt.**
08_ **reply_CIB Bank Zrt.**
09_ **Levegő Munkacsoport**
09_ **reply_Levegő Munkacsoport**
10_ **Magyar Energiafogyasztók Szövetsége**
11_ **MATÁSZSZ_Dr. habil Garbai László**
11_ **reply_MATÁSZSZ_Dr. habil Garbai László**
12_ **Nagycsaládosok Országos Egyesülete**
13_ **ÖKO-ENERG**
13_ **reply_ÖKO-ENERG**
14_ **PANNONPOWER HOLDING Rt.**
14_ **reply_PANNONPOWER HOLDING Rt.**
15_ **Popovics Attila**
15_ **Popovics Attila**

17. Instead of the English translation of the attachments, please find the short summary of their content. These documents contain solid evidences of public participation took place and also presents the way the comments were handled by the Expert Committee. These e-mails contain the opinion of the persons⁸ named in the attachment's title and also the Expert Committee's views on these opinions provided. According to the Committee's replies (*_reply* attachments) in many cases the Committee agreed on numerous elements of these opinions and incorporated to the chapter concerned.
18. After closing this process the finalised document was published⁹. This document served as background paper for the new energy policy document.
19. The proposal of the Resolution on the Energy Policy – containing an environmental assessment – was sent to the National Environment Protection Council¹⁰ for comment in accordance with the rules of the special procedure established by art. 44 para. 2 of act 1995:LIII (on Environment Protection). The National Environment Protection Council commented on the draft proposal, and as part of this process, gave non-governmental organizations opportunity to also comment on the document.
20. The proposal was submitted to the Parliament February 4. 2008, and made available on the Parliament's website.

⁸ The present attachments are the covering letters only. Each letter – as it can be seen in each e-mail - has an attachment which contained the opinion itself. However, these e-mails are sent to the Compliance Committee in order to prove evidence on the public participation process, thus the opinions themselves are irrelevant in that aspects, therefore they are not attached.

⁹ ftp://ftp.energia.bme.hu/pub/Tananyagok-archivuma/Egyetemi-kepzes/lpari-energetika/magy_energiapol_tezisei1.pdf

¹⁰ National Environment Protection Council: the body responsible for making proposals and providing advice and comments to the Government on environmental issues. The National Environment Protection Council has wide-ranging rights in commenting on draft legislation, strategic plans and plans and programmes that are expected to have a significant impact on the environment; regarding some issues, it has the power to submit proposals to the Government etc. It is made up of 21 elected (delegated) members, divided equally between representatives of environmental non-governmental organisations, professional and business groups (chosen by their preferred method) and academia

21. During the Parliamentary adoption process, from February 5, 2008 to April 15, 2008, seven different Parliament Committees negotiated the proposal (e.g. Environmental Protection Committee, Committee on Foreign Affairs, Parliament Committee of Economy and IT etc). Some of these negotiations were also conducted with element of public participation. For documentary evidence, please see the following minutes of negotiation of Parliament Committee of Economy and IT
- minutes of February 13, 2008 when *Beliczai Erzsébet (Levegő Munkacsoport, a Hungarian NGO dealing with environmental protection issues)*¹¹ also participated,
 - minutes of March 12, 2008 when Chambers and press (*Magyar Nemzet*) were also involved¹²,
 - minutes of April 2, 2008 when *Komlós Ferenc* citizen, the press such as *Magyar Nemzet* and *Napi Gazdaság* and also civil organization as *Ipari Energiafogyasztók Fóruma* were present¹³.

Conclusions

22. Based on the above facts, we believe that the Hungarian Government acted prudently and in line with the relevant provisions in particular Article 5 para. 3 point c., para. 5 point a., and para. 7 point a., and also article 7 of the Convention when 40/2008. (IV.17.) Parliament Resolution on Energy Policy was elaborated and adopted.

Sincerely,

Andrea Barad
National Focal Point
Aarhus Convention
Hungary

Attachments:

1. English text of 40/2008. (IV.17.) Parliament Resolution on Energy Policy
2. 001_list of NGOs and others
3. 01-16_e-mail evidence on public participation took place

¹¹ http://www.parlament.hu/documents/static/biz38/bizjkv38/GB/0802131.htm#_Toc191040800

¹² http://www.parlament.hu/documents/static/biz38/bizjkv38/GB/0803121.htm#_Toc193516532

¹³ http://www.parlament.hu/documents/static/biz38/bizjkv38/GB/0804021.htm#_Toc195941198