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CLIMATE POLICY INSTITUTE
APPLIED COMMUNICATIONS

GREENPEACE

9 March 2016

Ms. Fiona Marshall
Secretary to the Aarhus Convention Complience Committee
United Nations Economic Commission for Europe
Palais des Nations, Room 429-2
CH-1211 Geneva 10, Switzerland

Dear Ms. Marshall,

Re: Communication to the Aarhus Convention Complience Committee concerning compliance by Hungary in connection with a plan to extend the Paks Nuclear Power Plant (ACCC/C/2014/105)

In your letter on 3 February 2016 you informed us that the Committee has further questions, based on the discussion of the above communication at its fiftieth meeting (Geneva, 6-9 October 2015).

Please, find below our answers to the Committee's request.

Yours sincerely,

Zsuzsanna Koritár
Energiaklub

András Perger
Greenpeace Hungary

Questions to both the Party and the communicants:

1. Please list the provisions of Hungarian legislation that directly transpose the Aarhus Convention's provisions concerning access to environmental information and in particular, the provisions transposing the following:

- **Article 2, paragraph 2 of the Convention (in the context of access to environmental information);**

While the Data Protection Act of 2011 consequentially speaks of a "body that performs public tasks" ("közfeladatot ellátó szerv"), Article 4, Point 37 speaks of "body that performs public services" (közszolgáltatást nyújtó szerv), too and establishes that they are both subjects of access to environmental information responsibilities. However, the Data Protection Act is the only Hungarian legislation that contains the overall system of access to environmental (and any other public interest) data and the term "body that performs public tasks" seem to cover only the public authorities in narrower sense.

Please see a more detailed answer under Question 2.a.

- **Article 2, paragraph 3 of the Convention;**

Act CXII of 2011 on Information self management and information freedom, Article 3, Point 5:

'*public information*' shall mean any known fact, data and information, other than personal data, that are processed and/or used by any person or body attending to statutory State or municipal government functions or performing other public duties provided for by the relevant legislation (including those data pertaining to the activities of the given person or body), irrespective of the method or format in which it is recorded, and whether autonomous or part of a compilation, such as, in particular, data relating to powers and competencies, organizational structures, professional activities and the evaluation of such activities covering various aspects thereof, such as efficiency, the types of data held and the regulations governing operations, as well as data relating to financial management and to contracts concluded;

- **Article 4, paragraphs 1(a), 2, 3, 4 (including the requirement that: "The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment") and article 4, paragraph 7 of the Convention;**

Act CXII of 2011 on Information self management and information freedom, Point 20. General provisions on access to information of public interest

Section 26. (1) Any person or body attending to statutory State or municipal government functions or performing other public duties provided for by the relevant legislation (hereinafter referred to collectively as "body with public service functions") shall allow free access to the public information and information of public interest they have on file to any person, save where otherwise provided for in this Act.

(3) Unless otherwise prescribed by law, any data, other than personal data, that is processed by bodies or persons providing services prescribed mandatory by law or under contract with any governmental agency, central or local, if such services are not available in any other way or form, to the extent necessary for their activities shall be deemed information of public interest.

Section 27. (1) Access to public information or information of public interest shall be restricted if it has been classified under the Act on the Protection of Classified Information.

(2) Right of access to public information and information of public interest may be restricted by law - with the specific type of data indicated - where considered necessary for one of the following reasons:

a) defense;
b) national security;
c) prevention and prosecution of criminal offenses;
d) environmental protection and nature preservation;
e) central financial or foreign exchange policy;
f) external relations, relations with international organizations;
g) court proceedings or administrative proceedings;
h) intellectual property rights.

(3) Any data that is related to the central budget, the budget of a local government, the appropriation of European Union financial assistance, any subsidies and allowances in which the budget is involved, the management, control, use and appropriation and encumbrance of central and local government assets, and the acquisition of any rights in connection with such assets shall be deemed information of public interest, and as such shall not be deemed business secrets, nor shall any data that specific other legislation prescribes - in the public interest - as public information. Such publication, however, shall not include any data pertaining to protected know-how that, if made public, would be unreasonably detrimental for the business operation to which it is related, provided that withholding such information shall not interfere with the availability of, and access to, information of public interest.

(3a) Any natural or legal person, or unincorporated business association entering into a financial or business relationship with a sub-system of the central budget shall, upon request, supply information for any member of the general public in connection with such relationship that is deemed public under Subsection (3). The obligation referred to above may be satisfied by the public disclosure of information of public interest, or, if the information requested had previously been made public electronically, by way of reference to the public source where the data is available.

(4) Access to public information may also be limited by European Union legislation with a view to any important economic or financial interests of the European Union, including monetary, fiscal and tax policies.

(5) Any information compiled or recorded by a body with public service functions as part of, and in support of, a decision-making process for which it is vested with powers and competence, shall not

be made available to the public for ten years from the date it was compiled or recorded. Access to these information may be authorized by the head of the agency that controls the information in question upon weighing the public interest in allowing or disallowing access to such information.

(6) A request for disclosure of information underlying a decision may be rejected after the decision is adopted, but within the time limit referred to in Subsection (5), if the information is retained to support a future decision as well, or if disclosure is likely to jeopardize the legal functioning of the body with public service functions or the discharging of its duties without any undue influence, such as in particular the freedom to express its position during the preliminary stages of the decision-making process on account of which the information was required in the first place.

(7) The time limit for restriction of access as defined in Subsection (5) to certain specific information underlying a decision may be reduced by law.

(8) This Chapter shall not apply to the disclosure of information from official records that is subject to the provisions of specific other legislation.

Section 28. (1) Information of public interest shall be made available to anyone upon a request presented verbally, in writing or by electronic means. Access to information of public interest shall be governed by the provisions of this Act pertaining to public information.

(2) Unless otherwise provided for by law, the processing of personal data in connection with any disclosure upon request is permitted only to the extent necessary for disclosure, for the examination of the request for the purposes under Subsection (1a) of Section 29, including the collection of payment of charges for compliance with the request, where applicable. Following the time period provided for in Subsection (1a) of Section 29 and upon receipt of the said payment, the personal data of the requesting party must be erased without delay.

(3) If any part of the request is unclear, the data controller shall ask the requesting party to clarify.

Section 29. (1) The body with public service functions, that has the information of public interest on record must comply with requests for public information at the earliest opportunity after receipt of the request, within not more than fifteen days.

(1a) The body with public service functions, that has the information on record, shall not be required to comply with the request for information inasmuch as it is identical to the request submitted by the party for the same data within a period of one year, provided that no change took place in the data within that same category in the meantime.

(1b) The body with public service functions, that has the information on record, shall not be required to comply with the request for information if the requesting party did not give his name, or its corporate name if other than a natural person, and any contact information for sending information and notices related to the request for information.

(2) If a request for information is substantial in terms of size and volume, or if compliance with the request is likely to entail unreasonable hardship on the staff of the body with public service functions

in carrying out its normal duties, the time limit referred to in Subsection (1) may be extended by fifteen days on one occasion, of which the requesting party shall be informed within fifteen days of the date of receipt of the request.

Section 30. (1) If a document that contains information of public interest also contains any data that cannot be disclosed to the requesting party, this data must be rendered unrecognizable on the copy.

(2) Information shall be supplied in a readily intelligible form and by way of the means asked for by the requesting party, provided that the body with public service functions controlling the information is capable to meet such request without unreasonable hardship. If the information requested had previously been made public electronically, the request may be fulfilled by way of reference to the public source where the data is available. A request for information may not be refused on the grounds that it cannot be made available in a readily intelligible form.

(3) When a request for information is refused, the requesting party must be notified thereof within fifteen days after receipt of the request days in writing, or by electronic means if the requesting party has conveyed his electronic mailing address, and must be given the reasons of refusal, including information on the remedies available. The controller shall keep records on the requests refused, including the reasons, and shall inform the Authority thereof each year, by 31 January.

(4) A request for public information by a person whose native language is not Hungarian may not be refused for reasons that it was written in his native language or in any other language he understands.

(5) If, as regards the refusal of any request for access to public information, the data controller is granted discretionary authority by law, refusal shall be exercised within narrow limits, and the request for access to public information may be refused only if the underlying public interest outweighs the public interest for allowing access to the public information in question.

Section 31. (1) In the event of failure to meet the deadline for the refusal or compliance with a request for access to public information, or with the deadline extended by the data controller pursuant to Subsection (2) of Section 29, and the requesting party may bring the case before the court for having the fee charged for compliance with the request reviewed.

(2) The burden of proof to verify the lawfulness and the reasons of refusal, and the reasons for determining the amount of the fee chargeable for compliance with the request lies with the data controller.

- **Article 5, paragraphs 1, 2 5, 6 and 7 of the Convention.**

Act CXII of 2011 on Information self management and information freedom

Section 32. Bodies with public service functions shall promote and ensure that the general public is provided with accurate information in a timely fashion concerning the matters under their competence, such as the budgets of the central and municipal governments and the implementation thereof, the management of assets controlled by the central and municipal governments, the

appropriation of public funds, and special and exclusive rights conferred upon market actors, private organizations or individuals.

Section 33. (1) Access to public information whose publication is rendered mandatory under this Act shall be made available through the internet, in digital format, to the general public without any restriction, in a manner not to allow the identification of specific individuals, in a format allowing for printing or copying without any loss or distortion of data, free of charge, covering also the functions of consultation, downloading, printing, copying and network transmission (hereinafter referred to as "electronic publication"). Access to information disseminated as per the above shall not be made contingent upon the disclosure of personal data.

(2) Unless otherwise provided for by law, the following shall disseminate specific information defined on the publication lists referred to in Section 37:

a) Köztársasági Elnök Hivatala (President of the Republic), Országgyűlés Hivatala (Parliament), Alkotmánybíróság Hivatala (Constitutional Court), Alapvető Jogok Biztosának Hivatala (Commissioner for Fundamental Rights), Állami Számvevőszék (State Audit Office), Magyar Tudományos Akadémia (Hungarian Academy of Sciences), Magyar Művészeti Akadémia (Hungarian Academy of Arts), Országos Bírósági Hivatal (National Office for the Judiciary), Legfőbb Ügyészség (Prosecutor General's Office);

c) with the exception of central administrative authorities and government bodies, including national chambers and associations; and

d) Budapest and county government agencies.

(3) The bodies with public service functions, other than those listed in Subsection (2), shall have the option to fulfill their obligation of publication by electronic means, defined in Section 37, through their own website or other websites maintained jointly with their associations, or by other bodies appointed to supervise their organizational and professional infrastructure, or coordinating their operations, or through a central website set up for this purpose.

(4) Any public education institution having no national or regional duties, shall discharge their obligation of publication by electronic means under this Act by way of data disclosure to the information systems specified by the relevant legislation governing the given sector.

Section 34. (1) The data source, if disseminating information through the website of others, shall transfer the data - in accordance with Section 35 - to the data disseminator, who shall take measures for having the data published on a website, and shall ascertain that the name of the body from which public information originates or to which it pertains is clearly indicated.

(2) The data disseminator shall design the website used for publication with facilities to disseminate data and information, and shall ensure that the website runs without interruption and it is properly maintained, and that data are updated on a regular basis.

(3) The website used for dissemination shall offer easily understandable information concerning the rules of access to public information, including the remedies available.

Section 35. (1) The head of the data source subject to electronic publication shall provide for having the data and information specified on the publication lists defined in Section 37 published accurately, up-to-date and on a regular basis, and for having them sent to the data disseminator.

(2) Responsibility for the publication of the data by electronic means, continuous access, and for keeping them authentic and regularly updates lies with the data disseminator.

(3) The data source and the data disseminator shall adopt internal regulations for laying down the detailed rules for discharging the obligations referred to in Subsection (1) and Subsection (2), respectively.

(4) Information published electronically may not be removed from the website, unless otherwise provided for by this Act or other legislation. In the event of dissolution of a body, the obligation of publication shall devolve upon the successor.

Section 36. Dissemination of the information specified in the publication lists referred to in Section 37 shall be without prejudice to the obligation of the given body concerning the publication of public information or information of public interest prescribed in other legislation.

Act LIII of 1995 on the General Rules of Environmental Protection, Gathering and Providing Information and Publicity

Section 12 (1) With a view to the exercise of civil rights and responsibilities, the bodies vested with public duties shall facilitate everyone in becoming knowledgeable and enlightened regarding the essential connections between the environment and health, activities that damage the environment and the importance thereof.

(2) Everyone has the right to have access to environmental information considered data of public interest in accordance with specific other legislation.

(3) State agencies and local governments - with the exception of the courts and legislative bodies in that capacity -, bodies discharging certain environment-related obligations or providing public services, and bodies and persons vested with public duties (hereinafter referred to as “public authorities holding environmental information”) shall, within the realm of their responsibilities, monitor the status of the environment and its impact on human health, provide access to and make available the environmental information that is available, and shall publish - by way of electronic means or otherwise - the environmental information to the extent governed in specific other legislation, as well as the list of information they control or that is stored on their behalf.

(4) The public authorities holding environmental information shall enlighten the general public and those seeking environmental information of their entitlement to have access to environmental

information, and shall facilitate the obtaining of access to environmental information. To this end, the public authorities holding environmental information may appoint an information officer.

(5) Access to information on emissions into the environment may not be refused on the grounds that it is personal data, business secret, tax secret, or that it pertains to natural habitat of wild fauna and flora under special protection, the location of depleted natural resources, or to the location of geological conservation of nature preservation areas.

(6) Where a public authority does not have the environmental information requested, it shall forward the application to the public authority holding the environmental information in question, and shall notify the applicant accordingly, or shall inform the applicant concerning the public authorities where the environmental information requested is available.

(7) If a request is formulated in too general a manner or the desired environmental information cannot be identified from the request, the public authority holding environmental information shall ask the applicant to specify the request within 5 days following receipt of it.

(8) Any final resolution, or any resolution declared enforceable irrespective of any appeal, falling within the scope of the Act on the General Rules of Administrative Proceedings, as well as any environmental administrative agreement, the implementation of which are likely to have significant environmental effects, shall be published.

(9) Users of the environment shall be obliged to provide information regarding any environmental impairment and environmental hazards and endangerment for which they are responsible. In the event of non-compliance an action may be initiated at the body exercising legal oversight over the user of the environment.

Government Decree No 311/2005 (XII.25.) on the procedures for accessing environmental information by the public

On the basis of the authorisation granted in Section 110(7)(r) of Act LIII of 1995 on the general rules for environmental protection (the 'Environmental Protection Act'), the Government hereby orders the following:

Section 1. The scope of the Decree shall extend to environmental information and the body holding environmental information as defined in Section 12(3) of the Environmental Protection Act.

Section 2. Irrespective of its form of appearance, all information (data) relating to the following shall be environmental information:

(a) the environment and the state of the environmental components, including biodiversity and its components and genetically modified organisms, as well as the interaction between these components;

(b) the environmental load, including noise, radiation, waste, and the direct or indirect release of radioactive waste into the environment if it has or is likely to have impact on the components of the environment specified in paragraph (a);

(c) measures relating to the environment, in particular the sectoral policies, legislation, plans, programmes and agreements relating thereto and activities that have or are likely to have impact on the environment and environmental impacts specified in paragraphs (a) and (b), as well as measures taken and activities carried out to protect the environment and the environmental components;

(d) reports on the implementation of environmental legislation;

(e) cost efficiency and other economic analyses and assumptions used within the framework of the measures and activities referred to in paragraph (c);

(f) the state of human health and safety, including the contamination of the food chain, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the environmental components or any factor or measure referred to in paragraph (b) or (c) through such components.

Section 3. Unless otherwise provided by law, the body holding environmental information shall disclose, electronically or otherwise, the following documents containing environmental information to the public:

(a) international treaties, legislation, including European Community acts, and reports on the implementation thereof;

(b) sector policies, strategies, reports, plans and programmes relating to the environment and reports on the implementation thereof;

(c) state of the environment reports;

(d) data from the ad hoc or continuous monitoring of activities that have or likely to have impact on the environment or data summarising them;

(e) environmental impact statements and risk assessments concerning environmental components;

(f) the items specified in separate legislation, in particular lists of environmental information held by or stored for the body.

Section 4. The body holding environmental information shall keep a register of environmental information in electronic databases as far as possible and, if technical conditions are in place, shall also display the environmental information on its Internet website, and shall update the displayed data, as required.

Section 5. When granting the application for environmental information specified in Section 2(b), the body holding environmental information shall inform the applicant about the location of the information on measurement procedures, if available, including the analytical, sampling and sample

pre-treatment methods used for compiling the information, or information on the standardised procedure used.

Section 6. In the event of a direct threat to human health or the environment, regardless of whether it is caused by a human activity or a natural cause, the body holding environmental information shall publish the environmental information in its possession or stored for it for the population affected by the expected impact immediately and without delay, making it possible to take measures to prevent or mitigate any harm arising from the threat.

Section 7. The Minister for the Environment and Water Management shall draft a report on the practical experience of public access to environmental information and shall submit it to the Commission.

Section 8. This Decree shall enter into force on 1 January 2006.

Section 9. This Government Decree serves compliance with Article 2(1), Article 7(1), (2) and (4), Article 8(1) and (2), and Article 9(1) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.

Government Decree No 357/2014 (XII.29.) on the nuclear safety requirements for nuclear installations

Annex 1

3. Point 1.2.3.0200 of Annex 1 to the Nuclear Safety Code is replaced by the following:

'1.2.3.0200 The establishment licence shall be effective until the commissioning licence becomes final, but for a maximum of 10 years from the date of issue thereof. The duration of the licence may be extended on application for a further five years, but the applicant shall demonstrate that the conditions of issuing the licence still exist. In the case of a facility for the interim storage of spent fuel, the establishment licence shall be in force until the commencement of the commissioning of the last module. Prior to the start of the individual establishment phases, the applicant shall demonstrate that the conditions for issuing the licence still exist.'

2. a) Please explain if, and under what circumstances, commercial companies are considered to "perform public administrative functions" or "have public responsibilities or functions or provide public services in relation to the environment" under Hungarian legislation and/or relevant case law of the Hungarian courts.

Pursuant to Section 19(1) of the Data Protection Act, agencies or persons performing state or municipal responsibilities and other public service tasks specified by law (hereinafter collectively referred to as the 'Agency') shall facilitate and ensure the accurate and quick provision of information to the public in cases falling within its sphere their responsibilities, in particular, in respect of the state and municipal budgets and the implementation thereof, the management of state and municipal assets, the use of public funds and contracts concluded therefor, and of granting special or exclusive rights to market players and private organisations and persons.

Based on the Judgement of the Metropolitan Court No. 65.P. 21.120/2011./10 (Annex 8 of the Communication) "*the Defendant (i.e. MVM) continues to qualify as an agency performing public service tasks, but its capacity as controller of data of public interest is based primarily on the fact that it is a business organisation operating with an interest held by the state in the long term, in which the state exercises its ownership rights through MNV Zrt. (Hungarian state Holding Company Ltd.)*."

Pursuant to Section 5 (2) of the State Property Act (Act 106/2007) '*Bodies or entities managing or holding State property shall qualify as bodies or entities performing public service tasks under the Act on the publicity of data of public interest*'.

Based on the Judgement of the County Court No. 13.Gf.40.024/2011/4 '*The defendant (i.e. Paks Ltd.), as one of the subsidiaries of the MVM Group, is under the strategic management of MVM Ltd., as parent company, under a domination agreement concluded between them. MVM Ltd. exercises a controlling influence, as defined in the Accounting Act, in the defendant. The defendant fulfils the obligation to provide data prescribed in Act CXXII of 2009 on increasing the transparency of the operation of publicly owned companies on its Internet website. […] On the basis of the foregoing, under Section 5(2) of Act CVI of 2007 on State assets, the defendant, as a (legal) entity managing and holding State assets, shall qualify as a (legal) entity performing public service tasks for the purposes of the Data Protection Act*.'

While the Data Protection Act of 2011 consequentially speaks of a "body that performs public tasks" ("közfeladatot ellátó szerv"), Article 4, Point 37 speaks of "body that performs public services" (közszolgáltatást nyújtó szerv), too and establishes that they are both subjects of access to environmental information responsibilities. However, the Data Protection Act is the only Hungarian legislation that contains the overall system of access to environmental (and any other public interest) data and the term "body that performs public tasks" seem to cover only the public authorities in narrower sense.

Act LIII of 1995 on the General Rules of Environmental Protection

37. spatial data controller: a body or entity creating, managing, regularly updating and holding spatial data, performing state or municipal tasks relating to spatial data, performing environment-related

public service tasks or providing environment-related public services specified in legislation, as well as natural persons or legal entities performing environment-related tasks or providing environment-related public services overseen by the former. Courts and legislative bodies shall not be deemed spatial data controllers insofar as they act within their above responsibilities and authority;

The Hungarian courts also took under consideration the notion of "body under the State budget" (költségvetési szerv) that is defined by the Act. CXCV of 2011. on the State Budget

Act CXCV of 2011 on the state budget, 5. Concept and activities of budgetary agency

Section 7(1) The budgetary agency is a legal entity established for performing public service tasks specified in legislation or in the memorandum of association thereof.

(2) The activities of the budgetary agency may be:

(a) a core activity that is an activity specified as its basic professional task in the legislation providing for its establishment or in the memorandum of association thereof as well as non-profit activities specified in paragraph (3);

(b) entrepreneurial activity, which is a production, service or sales activity performed for the purpose of pecuniary gain, from non-state budget funds and on a non-mandatory basis.

(3) The budgetary agency may use the capacities available to it for performing its basic professional task. Exceptionally, it may utilise its temporarily free capacities for activities performed on a non-mandatory basis.

b) If MVM Paks NPP Ltd., MVM Hungarian Electricity Ltd., or another company related to the Paks nuclear power plant, are considered to "perform public administrative functions" or "have public responsibilities or functions or provide public services in relation to the environment", please provide an English translation of the acts of creation (documents establishing) the company.

Under Section 29(3) of Act CVI of 2007 on State assets (the 'State Assets Act'), MNV Ltd. is entitled to establish economic organisations and to exercise ownership (membership, shareholders') rights in them on behalf of the Hungarian State. MVM Hungarian Electricity Ltd. (MVM Ltd.) is included in the annex to the State Assets Act in the list of companies operating with interest in the company held by the State in the long term with an indication of the State's share as 75% + 1 vote. Therefore, MNV Ltd. holds a share of over 75% in MVM Ltd., which the State is entitled to.

3. Please explain the precise legal consequences for the planned extension of the Paks Nuclear Power Plant of the following Parliament Resolutions.

a) Parliament Resolution No. 40/2008 (IV. 17.) Ogy on the Energy Policy of Hungary in the Period 2008-2020;

According to Section 12(f) of the Resolution, the National Assembly requests the Government to '*(f) begin its decision preparation work relating to new nuclear power plant capacities. Following technical, environmental and public consultations to lay the ground for the project, it should lay its proposals relating to the necessity and conditions of the project as well as the type/model and siting of the power plant before the National Assembly in due time*.'

This point of the Resolution should have served as the basis of the Parliament Resolution No. 25/2009 Ogy. Parliament Resolution No. 40/208 (Iv. 17) Ogy determined the framework of conditions needed for giving the consent pursuant to Article 7 (2) of the Atomic Energy Act.

However, as the assessment of the Ombudsman of Future Generations concluded: '*Proposal for Resolution No H/9173 was prepared not in accordance with Section 12(f) of the Parliament Resolution on energy and the obligation of the State to protect institutions, as defined in Section 43(4) and (5) of the Environmental Protection Act and based on Section 48/A of the Environmental Protection Act. It cannot be established from the document prepared by the Government whether the Government has conducted, under Parliament Resolution No 40/2008 (IV.17.) Ogy, the technical, environmental and social consultations to lay the ground for the project, required for decision preparation, in the appropriate scope and what results they had, and did not include environmental information about the rate of expansion of the nuclear energy sector and proposals for the need for, and conditions of, the project as well as proposals for the type/model and installation of the power plant to the extent necessary to determine the increase in the market share of the nuclear sector on the energy market*.'

b) Parliament Resolution No. 25/2009 (IV. 2.) Ogy (by which the Parliament gave its "preliminary, principal consent to start the preparatory activities of establishing new block(s) at the site of the Paks nuclear power plant");

The "principal consent" cannot be regarded as a general approval to nuclear energy. Both from the Atomic Energy Act and the Parliament Resolution No. 25/2009 (IV. 2.) Ogy. it clearly follows that consent was needed for particular, individual projects, based on which it could be determined whether the share of nuclear would increase within the Hungarian energy sector and what consequences this would have on the energy sector. Without this consent the Paks II project could not be started.

However, in practice this was not the case with the resolution, as the assessment of the Ombudsman of Future Generations concluded: '*It is questionable, furthermore, what the exact aim of the draft resolution submitted by the mover, according to which the National Assembly consents to 'the commencement of activities for the preparation of the establishment of new unit(s) at the site of the*

Paks Nuclear Power Plant', is. The phrase 'activities for the preparation' may cover the assessment of the need for the project, but may also mean an authorisation given for the preparation of the design documentation necessary for the permitting procedure. Thus, as a result of the general consent given by the National Assembly, irrespective of the decision of the National Assembly, the type of the project to be carried out may be determined even after the adoption of the resolution. Considering the fact that they influence the energy plan of Hungary in the long run, the preparatory document and the draft resolution of the National Assembly should have been sufficiently specific and well-founded.'

c) Parliament Resolution No. 77/2011 (X. 14.), approving National Energy Strategy for the period up to 2030;

It is a document describing the priorities regarding Hungarian energy policy, with no actual legal consequences.

In what, if any, respects are any of the Parliament Resolutions binding upon the subsequent decision-making procedures concerning the planned extension?

Parliament Resolution No. 25/2009 Ogy is binding in a sense that it was the condition to start the actual planning of the extension of the power plant (see Art. 7(2) of the Atomic Energy Act Act).

4. For each of the Parliament Resolutions listed in question 3 above, please state whether you consider that the Resolution, or document approved by it, should be considered a plan, programme or policy relating to the environment under article 7 of the Convention or not.

All of the three resolutions are relevant under Article 7 of the convention, because of these general characteristics:

a) the time factor: these decisions precede the concrete decisions on the actual project (EIA and construction permitting),

b) location: they determine that the extension should take place in Paks, but do not specify the place of it exactly

c) subject: the decisions do not target technical details, do not deal with such issues as the bodies, persons who will design and construct the investments, but create a background upon which these issues can be decided

d) stage: in a tiered decision-making procedure that leads to the construction of the new blocks of the power plant these policy decisions occupy the very first place

e) decision nature: they are decisions preceded by scientific and policy developments, the Teller and the Lévai projects. We note here that these two projects were performed solely by nuclear experts, they totally excluded from these procedures the representatives of other professions or any members and organisations of the public.

f) environmental nature: nuclear energy production is a key issue for environmental protection from several angles: they determine the energy mix of a country (almost totally eradicate the resources for searching and developing alternative energy sources more favourable to the environment), they determine the safety of people, the built and natural environment; and also entail with serious environmental pollution and dangers during mining, transport, production and storage of the exhausted fuel materials.

The decision 40/2008 was a policy decision in the meaning of Article 7 (this is supported by nature of the decision and the clear link with the decision 25/2009).

The decision 25/2009 is a planning decision in the meaning of Article 7:

- It is not a project-level decision, as the government started EIA procedures for Paks project after that decision
- It is required by law (Art 7(2) of the Act on Atomic Energy). Specifically, “the preliminary, principal approval of the parliament is necessary in the following cases: (1) for the preparatory activities for building a new nuclear facility or (2) for expanding existing NPP by new block(s).”
- It has a nature of a “decision in principle” and further permitting is envisaged under national legislation for specific project
- It is “relating to the environment”

The decision 77/2011 is a policy decision, as its name ‘National Energy Strategy” suggests.

5. Please clearly describe the opportunities that the public had to participate during the preparation of each of the Parliament Resolutions listed in question 3 above, or documents approved by them.

Parliament Resolution 40/2008

During the preparation of the 2008 Parliament Resolution, the Ministry in charge for energy matters (at that time Ministry of Economy and Transport) launched a so-called public consultation. Between 15 June and 15 July of 2008 the concept of the energy policy was published on the website of the Ministry, with the opportunity for sending comments to the concept by anyone. After the one month long commenting period, three section meetings, with the participation of the interested experts and organisations were held.

However, the preparation of the final text of the energy policy and the decision making structure was not clear. It remained unclear whether the comments were taken into account and how those were put into the text at all. It should be mentioned, that the actual Resolution, which was approved by the Parliament (and to which the energy policy paper was attached as an annex only), was never discussed with the participants of the earlier participation process, which was limited to discuss the energy policy paper only.

Strategic environmental assessment is said to have been prepared to the policy, nevertheless, there is no sign that it was published or not.

According to the statement of the Parliamentary Commissioner for Future Generations, the draft of the resolution on the energy policy as well as the strategic environmental assessment were sent to the National Environmental Council for comments, according to the existing legislation. We note here, that the Environmental Code, Articles 43-45 contain certain vague provisions concerning public participation in such high level policy making procedures (first of all via the National Environmental Council that encompasses 7 members from environmental NGOs), but the detailed, implementation level rules of these general provisions have been never worked out.

Parliament Resolution 25/2009

Since the information about the Teller Project, which preceded Parliament Resolution 2009, was not available for the public or was available only with such long delay that made actual participation impossible, we can say that the public had no opportunity to participate in the preparation of the above Parliamentary Resolution.

Parliament Resolution of 2011

Into the preparation process of the 2011 energy strategy, organisations and experts were involved, as a result of the targeted invitation of the Ministry in charge for the matter. Because the process was non-transparent: tasks and decision making structure remained unclear, Energiaklub left the process. Strategic environmental assessment was prepared to the strategy, however, the involvement of the public was not implemented, which is testified by the SEA, as the chapter that would describe the public participation process, is missing from the SEA.

6. Was any information (explanatory materials, fact sheets, analyses etc.), related to the above Parliament Resolutions, or documents approved by them, published before their adoption in accordance with article 5, paragraph 7 of the Convention?

To the 2008 Resolution, only the concept paper of the policy was published. Others, like background studies, analyses, the SEA, and the text of the resolution was omitted from the participation process.

To the 2009 Resolution not any document was published; these analyses, background studies were prepared in the frame of the Teller-project, and those were made public only after the court cases that were initiated by the Energiaklub.

To the 2011 Resolution, the SEA process was not implemented; only one background study, an economic impact analysis was published; the text of the energy strategy was available, rather irregularly for the organisations and experts who participated in the process.

7. What is the current stage of the decision-making (permitting) process for the planned extension of the Paks Nuclear Power Plant? Which, if any, aspects of this project have already been decided upon, and by what act(s) or decision(s)? What kind of decisions are yet to be issued in the future?

As for the date (09.03.2016) environmental licensing process is an ongoing process. The process was started in December 2014; according to information available, the public participation process has been finished, the evaluation of the raised questions and the given answers is being processed. Decision of the authority (Baranya County Government Office) is expected for the spring 2016.

Nuclear safety licensing was also started in 2014, with site suitability licensing: the Hungarian Atomic Energy Authority licensed the concerning program of the project company MVM Paks II Ltd.

Although the project company MVM Paks II Ltd and its Russian partner Nizhny Novgorod Engineering Company Atomenergoproekt signed contracts in December 2014 on delivery of the units, fuel supply and cooperation in operation and maintenance, final decision on the investment (aka ordering the units) has not been made by the project company (according to the letter of the Directorate General for Competition of the European Commission, written to the Hungarian government, on the investigation of the possible aid to the Paks nuclear power plant).

Questions to the communicants:

10. What information requested in the individual requests mentioned in the communication has never been provided and which therefore, in your view, amounts to a breach of the provisions of the Convention?

Our requests concerning the information and documents of the Teller-project were finally met by the decision of the Hungarian Court. However, information was late, as, without any public knowledge on the Teller-project before the decision of the Parliament (Parliament Resolution of 2009), even the request could be sent lately.

In the frame of the information request process related to the Lévai project, Energiaklub learned, after successfully suing the MVM, that there were 72 contracts made within the project by end of 2012. After the access to the analysis, reports, studies and other documentation that had been prepared according to the contracts were denied, Energiaklub turned to the Hungarian National Authority for Data Protection and Freedom of Information, which called the MVM to release these information.

The MVM failed to publish all the materials. In the Annex (see attached table) we listed all the 72 contracts, and noted with green colour the documents which were published. This amounts to 13 of the 72. Four items, from the 59 that are missing and contain environmental information as well, we noted with red colour, and translated its subject.

11. Did the fact that the information requested in the individual requests was either not provided in a timely manner, or not provided at all, prevent the communicants from being able to effectively participate in any decision making (permitting) process for the planned extension of the Paks Nuclear Power Plant ? If yes, please specify which of the decision-making processes.

Out of the three Parliamentary Resolutions, the 25/2009 was the most crucial one regarding the particular decision on Paks II. As the proposal only became public a few weeks before the actual parliamentary procedure, there was no real decision making procedure related to this resolution. It turned out only after the adoption of the resolution that the documents of the Teller project served as the basis of the resolution. They were not only unavailable for the public, but also for the MPs, who had to vote on the subject. This is why it was only in November 2009 when Energiaklub first asked for the Teller documents. Had there been a proper decision making process preceding the resolution, the not providing of the documents would have prevented Energiaklub to effectively participate. And, vice versa, had Energiaklub known about the Teller documents and their preparatory character on time before the parliamentary resolution, it could have requested a proper decision making procedure.

12. Why did Energiaklub apply to the National Data Protection Agency in November 2012 regarding the request for information addressed to MVM Hungarian Electricity Ltd. instead of the court? What is the difference between the procedure before the court and the National Data Protection Agency, in particular with respect to the possible remedy?

Both procedures have advantages and disadvantages. The Data Protection Agency is a specialised governmental body that has very rich experiences in access to information matters and could be more sensitive towards environmental democracy, while it is true that its findings are not directly binding to the administrative bodies (however, because of the high prestige of the Agency, the findings and statements of it are mostly obeyed), see Art. 56. of the Data Protection Act.

Also, the procedures of the Agency have a 2 month deadline, which is shorter than a court procedure. With a positive decision from the Agency with such a short deadline Energiaklub hoped to get an official position, which could have been used in the following court procedures. This would have made data requests easier and court cases shorter. However, the practice was different, the Agency needed a much longer time.

13. Please explain further your allegation regarding article 5, paragraph 7 of the Convention. Which specific information do you allege that the Party concerned should have published under this provision, but has failed to do so?

Our allegation is based on the following arguments:

(a) Studies and analysis were used to frame energy policy

Parliament's Decision 40/2008 "On the energy policy of 2008-2020" was a policy decision to use nuclear energy in the future. Decision 25/2009 was a planning decision to construct nuclear units at Paks NPP (a "plan" in the meaning of Article 7 of the Convention) and had a clear reference to decision 40/2008. Both decisions were based on studies, analysis and materials resulting from Teller and Levai projects.

(b) Nuclear energy use is clearly a matter falling within the scope of the Aarhus Convention, which triggers application of the Article 5, paragraph 7, subpara (b).

(c) Nuclear energy use is an important factor in framing national environmental policy, which triggers application of the Article 5, paragraph 7, subpara (a) of the Convention.

(d) No studies, analysis, materials or facts were published at all and later denied access too on all occasions by the government, as substantiated in other parts of our communication.

In summary, we allege that Hungary was in non-compliance with its obligations under Article 5, paragraph 7, subparagraphs (a) and (b) by not publishing and denying access to the studies, analysis and materials resulting from Teller and Levai projects.