

27 May 2020

Mr. R.G.J. Dercksen
The Netherlands

Dear Mr. Dercksen,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the Netherlands with provisions of the Convention in connection with public participation in the decision-making of the Utrecht provincial government on wind farms

I refer to the above communication submitted by you on 17 August 2016 on behalf of yourself and eight other members of the public. Please find enclosed a list of questions from the Chair and Vice Chair of the Committee for the communicants' written reply.

Please send your replies to the enclosed questions to aarhus.compliance@un.org by **Monday, 22 June 2020**.

Please do not hesitate to contact the secretariat if you have any questions regarding the above.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Enc: Questions to the communicants

Questions to the communicants

1. On what date was the Regional Plan for Utrecht 2005-2015 (*Streekplan Utrecht 2005-2015*) adopted? Between what dates were the public participation procedures regarding the Regional Plan for Utrecht 2005-2015 carried out?

Please note that the Committee can only review the compliance with the Convention of decision-making that was carried out **after** the entry into force of the Convention in the Party concerned on 29 March 2005. The Committee thus cannot review any public participation procedures or decision-making that took place before that date.

2. What is the legal character and legal effect of the “Provincial Spatial Policy Strategy 2013-2028”? Is it binding on subsequent decisions on specific wind farms or is it a matter to be taken into account by decision-makers but not binding?
3. Please provide “page 47 et seq” of the Memorandum of Reply referred to in paragraph 6.4.2 of the communication, together with an English translation thereof.
4. Was the proposed amendment to increase the target of the Provincial Spatial Policy Strategy 2013-2028 to 65.5 MW in 2020 subject to any form of public participation procedure? If so, please briefly describe the procedure including the relevant dates and explain in what respects the public participation procedure allegedly failed to meet the requirements of article 7 of the Convention. Please provide any relevant documents to substantiate your answer.
5. In paragraph 6.5.1, you claim that the increased target for 2020 of 65.5 MW was “the result of a new agreement between national government and the provinces”.
 - (a) To which agreement do you refer? Please provide the text of that agreement if publicly available, together with an English translation of the relevant parts.
 - (b) Is the agreement binding on the provinces? If not, what are its legal effects, if any?
 - (c) Was the agreement subject to any form of public participation procedure prior to its adoption, and if so, please describe that public participation procedure, including how the public was notified and the relevant dates.
 - (d) Could that agreement have been challenged in either the administrative or civil courts? Did any member of the public do so, and if so, what was the outcome. Please provide the text of any relevant court decisions, together with an English translation of the key parts.
6. For each of the following instruments, please clarify whether it could have been challenged **directly** in the administrative courts of the Party concerned:
 - (a) The Regional Plan for Utrecht 2005-2015 (*Streekplan Utrecht 2005-2015*);
 - (b) The Provincial Spatial Policy Strategy 2013-2028 (*Provinciale Ruimtelijke Structuurvisie 2013-2028*);
 - (c) The revisions of the Provincial Spatial Policy Strategy 2013-2028, referred to at paras. 6.4.3- 6.5.1 of the communication.

7. For any of the instruments listed in question 6 above that could not have been challenged directly in the administrative courts of the Party concerned, please explain why, in your view, the **incidental review** of such instruments through the challenge of decisions on specific activities under section 8.1 of the General Administrative Law Act (*Algemene wet bestuursrecht*) would not have been an effective and sufficient means of redress. Can the incidental review of the underlying instrument result in the court setting aside the underlying instrument?
8. Would the **civil courts** have the power to set aside any of the instruments listed in question 6 (a)-(c) above? If not, what are the possible remedies of the civil courts if an appeal was made challenging the failure to provide public participation with respect to any of the instruments listed in question 6 (a)-(c).
9. Regarding the proposed wind farm near the municipality of Vianen (paras. 6.4.3 and 6.4.4 of the communication):
 - (a) Has the wind farm yet been permitted? If so, on what date?
 - (b) How many turbines does the wind farm include and what is its joint capacity in megawatts?
 - (c) Was the wind farm subject to an EIA prior to being permitted?
 - (d) Was the wind farm subject to a public participation procedure prior to being permitted and if so, between what dates? Do you consider that the public participation procedure met the requirements of article 6, and if not, with which provisions in your view did it not comply? Please provide relevant documents to substantiate your reply, together with English translations of the key parts.
 - (e) Please explain your allegation in paragraph 6.4.4 of your communication that “a not-to-be-changed fact was that the wind farm could be constructed with the Provincial Government’s approval as soon as the municipality and developer had agreed on the conditions for the wind farm in question”.
 - (f) With respect to your allegation in paragraph 6.4.4 that the municipality had agreed to provide spatial planning assistance for the proposed wind farm, what does this “spatial planning assistance” consist of? Does an agreement by the municipality to provide spatial planning assistance necessarily mean that the proposed activity will be permitted or are proposed activities sometimes turned down even though spatial development assistance has been provided? Please provide evidence to substantiate your answer.
 - (g) Did the communicants or any other members of the public challenge the decision to permit the wind farm near the municipality of Vianen in the courts? If so, what was the outcome of the challenge? Please provide any relevant court decisions, together with an English translation of the key parts.

10. Besides the proposed wind farm near the municipality of Vianen, does your communication allege a failure by the Party concerned to comply with article 6 with respect to decisions to permit other specific wind farms? If so, please identify each such wind farm addressed in the text of your communication, together with the paragraph or footnote of your communication in which it is mentioned (please note that only wind farms already referred to in the communication are relevant).
11. For each wind farm referred to in your reply to question 10 above:
- (a) Has the wind farm yet been permitted? If so, on what date?
 - (b) How many turbines does the wind farm include and what is its joint capacity in megawatts?
 - (c) Was the wind farm subject to an EIA prior to being permitted?
 - (d) Was the wind farm subject to a public participation procedure prior to being permitted and if so, between what dates? Do you consider that the public participation procedure met the requirements of article 6, and if not, with which provisions in your view did it not comply? Please provide relevant documents to substantiate your reply, together with English translations of the key parts.
 - (e) Did the communicants or any other members of the public challenge the decision to permit the wind farm in the courts? If so, what was the outcome of the challenge? Please provide any relevant court decisions, together with an English translation of the key parts.
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