

March 20, 2015

Aarhus Convention Compliance Committee

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 (Aarhus Convention)
United Nations Economic Commission for Europe
Environment Division
Email: aarhus.compliance@unece.org

RE: Communication ACCC/C/2014/105

Dear Ms. Marshall,

Thank you for your letter dated September 15, 2014, enclosed with the communication ACCC/C/2014/105 ("**Communication**"). Having had the necessary consultations conducted and the allegations in the Communication carefully analyzed, Hungary submits these explanations and statements clarifying the matters raised in the Communication pursuant to §23 of the Annex ("**Annex**") to Decision I/7 of the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention or the "**Convention**").

Here below, we examine the Communication, as follows:

| | | |
|------|--|----|
| I. | Introduction..... | 1 |
| II. | Objection to the admissibility of the Communication | 2 |
| | (i) Bona fide..... | 2 |
| | (ii) Case N°1..... | 2 |
| | (iii) Case N°2..... | 3 |
| | (iv) Case N°3..... | 3 |
| | (v) Case N°4..... | 3 |
| | (vi) Conclusions | 3 |
| III. | Publicity and participation of the public in the Project..... | 4 |
| | (i) The Paks Project in energy policy documents..... | 4 |
| | (i) Laws requiring public participation in the adoption of energy policy documents..... | 6 |
| | (ii) Participation in the decision-making regarding the Paks Project | 7 |
| | (iii) Measures by the Project Company to inform the public and ensure transparency | 8 |
| | (iv) Implementation of the rights enshrined in the Convention by other means..... | 8 |
| IV. | Opinion..... | 8 |
| V. | Summary..... | 10 |

I. Introduction

1. This Communication affects certain aspects of a mega project aimed at replacing the nuclear energy capacity of the existing units in the city of Paks, which units are to be decommissioned between 2032 and 2037. After years of preparations the Project was put on track by resolutions of the Parliament the first in April 2008¹, the next in this process ² in April 2009 followed by the most relevant in 2011

¹ 40/2008.(IV.17.) OGY

² 25/2009.(IV.4.) OGY

and two intergovernmental agreements in January and March of 2014, both were subsequently voted into acts³ and began taking effect after the principal commercial contract in December 2014 was signed. The whole Project is open to public scrutiny inasmuch as and at the time when national security, intellectual property rights and third parties' respectable interests permit. All environmental aspects of the Project are and will timely be made publicly available and the public is continuously invited to participate in the decision-makings.

2. In terms of this Communication the objective of the Convention is to secure the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention. The Convention has been ratified by the Hungarian Parliament as act 2001:LXXXI and has been in effect since 2001.
3. As alleged in the Communication, Hungary violated Article 3, 4, 5.(7) and 7 of the Convention and, in order to support such allegations, the complainers refer to four cases as the facts of their Communication. As elaborated in some details below, none of those cases appear to support such allegations; consequently the Communication do not outwardly appear to be worthy of consideration.
4. Nevertheless, convinced that the importance of the Project warrants for it and in the interest of transparency, our objection to the admissibility of the Communication will be followed below with a summary of Hungary's compliance with Article 3 and 4 of the Convention.

II. Objection to the admissibility of the Communication

(i) Bona fide

5. As we understand, pursuant to §20 of the Annex, prior to considerations on the merits, the Compliance Committee ("Committee") shall first determine whether a communication under chapter VI is admissible or not.
6. The Committee shall not consider a communication that is abusive, manifestly unreasonable or incompatible with the provisions of the Decision I/7 or with the Convention. Also, the Committee should at all relevant stages take into account any available domestic remedy unless the application of the remedy is unreasonably prolonged or obviously does not provide an effective and sufficient means of redress.
7. In its 2011 country report⁴, the OECD International Energy Agency, a highly respected expert body, observed, as follows: *"Nuclear power has a high level of public and political support in Hungary. The Paks NPP is the largest source of greenhouse gas emission-free electricity generation. With the government's plan to reduce carbon emissions in electricity generation and the need to replace ageing generating facilities, initiatives to increase plant lifetime operation at Paks and to possibly build additional NPPs are under way."*
8. Under the heading of facts, the complainers refer to four cases of alleged violations of Hungary of Article 3 and 4 of the Convention.

(ii) Case N°1

9. Case N°1 was in reference to a request for information by Energiaklub made in June 2010. The addressee of such request was MVM Paks Nuclear Power Plant Ltd. ("**Paks Ltd.**"), a corporation fully owned by MVM Ltd., another corporation, 99.91% of the shares of which is held by MNV Ltd, a third corporation which is fully owned by the state of Hungary, i.e. Paks Ltd's great-grandparent was almost wholly the state of Hungary, exercising indirect shareholder's control.

³ acts 2014:II and 2014:XXIV

⁴ see at http://www.iea.org/publications/freepublications/publication/hungary2011_web.pdf

10. First, Paks Ltd., like its parents, is a commercial company and certainly not a "public authority" as defined in Article 2.(2) of the Convention, consequently, as such, stands beyond the scope of the Convention.
11. Second, like Article 2. (1) and 2.(2).(a) of EU Directive 2003/98/EC, the until then untested §19.(1) of the act 1992:LXIII (then in force) on the Protection of Personal Data and the Disclosure of Information of Public Interest addressed the information rendering obligation to "*state or local public authorities and agencies and other bodies attending to the public duties specified by law*" and not to commercial companies. Notwithstanding, the courts of Hungary, somewhat re-making the law, interpreted the definition of addressees to include government controlled commercial companies, too. It shall be noted that this opinion was unknown at the time Energiaklub's request.
12. Third, as the complainers put it, Energiaklub filed its civil complaint in September 2010, and obtained a favorable second instance judgment within 7 months, as early as April 2011. This fact and the promptness of the judgment demonstrate the availability and competence of domestic court remedy.
13. Fourth. The case concerned the release of thousands of pages of documents of information protected by third parties' intellectual property rights and with confidential commercial information. Redacting those documents necessitated time and the consensus of several holders of those rights. Notwithstanding, except for 7 pieces, Energiaklub obtained them within 5 months from the ruling.
14. As Energiaklub obtained a long time ago all the documents it wanted, inclusion of this historical Case N°1 into this Communication appears to be abusive. As the complainers do not even point to an action or inaction of the state of Hungary it is manifestly unreasonable, too. Finally, as the case was against a commercial company, it is also incompatible with the spirit and the provisions of the Decision I/7 and with the Convention.

(iii) Case N°2

15. Case N°2 mirrors Case N°1. Here again a commercial company was requested by Energiaklub to release documents that after speedy court proceedings and necessary redactions have been complied with. The arguments as at Case N°1 stand here too, this case is abusive, manifestly unreasonable and incompatible with the provisions of the Decision I/7 and with the Convention.

(iv) Case N°3

16. Case N°3 is somewhat odd as it is about the activity of a council that never ever existed. The government resolution about the establishment and tasks of a certain council has not been carried out and so the resolution became redundant. *Obiter dictum*, please note that government resolutions are not considered to be laws in Hungary. This Case N°3 is manifestly unreasonable as it about the non-release of non-existent information. As such this Case N°3 lacks seriousness and we believe this is also incompatible with the provisions of the Decision I/7 and with the Convention.

(v) Case N°4

17. Case N°4 is difficult to follow in terms of what the complainers are about to complain of. Otherwise, as it will be presented below, thousands and thousands of pages of information have been and will be in time released to the public. Also, only the Hungarian Atomic Energy Agency and only in 2014 held 9 public hearings⁵ to consult with the public as meant in the Convention.

(vi) Conclusions

⁵ See at http://www.haea.gov.hu/web/v3/OAHPortal.nsf/web?openagent&menu=05&submenu=5_3

18. This one at hand is a Communication that does not belong at the Committee as it rests on a fundamental misunderstanding of this Committee's functions as set forth in the Convention and in the Decision I/7 that forms the sole basis for this Committee's competence.
19. It is unclear from the Communication – which has been consistently confusing, vague, and contradictory (see Cases N°3-4) – precisely what the complainers contend. At times (see Summary), it appears to condemn the entire structure of regulatory efforts, such as when it protests that the mechanism Hungary established to support the replacement of aging nuclear energy generating facilities. Complainers seem to suggest that Hungary should have designed its program differently. If this is the case, the same charge could be brought against dozens of countries but in any case these questions were beyond the scope of the consideration of the Committee. At other times, the complainers seem to chide Hungary for inexact compliance with the Convention norms during 2010 and 2013. To be clear, the Committee is hardly the appropriate forum for challenging corporate actions or non-actions (as in Cases N°1-2). Hungary's legal system provides a variety of avenues for both corporate and agency reconsideration and judicial recourse for review of any such corporate and administrative action or non-action. Energiaklub has availed itself liberally of those other fora, bringing numerous claims in the Hungarian courts on precisely the same facts raised in this Communication. Some of these claims have been resolved in Energiaklub's favor, others against it, and still others remain pending.
20. Accordingly, Hungary requests that the Committee resolve against consideration of the Communication.

III. Publicity and participation of the public in the Project

21. Under this Title the major measures are presented taken by Hungary in order to prove its compliance with the provisions of the Convention with particular regard to the Project.
22. On one hand this Title shows that the relevant legal environment is adequate and efficient to ensure the rights defined by the Convention, and in some cases greater or more guarantees are provided.
23. On the other hand this Title proves that, as opposed to the allegations of the Communication according to which *"there was no real decision-making process, only secret procedures of preliminary preparation were carried out and the final decision itself has been made"* the Hungarian government in power at the time conducted a proper and transparent decision-making process including reasonable time-frames for the different phases, allowed sufficient time for informing the public and for the public to prepare and participate effectively during the environmental decision-making. During the decades of the decision-making process of the maintenance of nuclear capacities, Hungary met the relevant international and EU requirements.
24. Paragraphs 25-35 below show that the Project, serves for the long-term maintenance of the Hungarian nuclear capacities, has always been a clear and well-articulated intention of the Government in power and it has always been present in the relevant documents determining Hungary's energy policy. These documents – according to the relevant EU regulations – went through widespread consultation in which the public including the relevant organizations participated. In order to provide the public with relevant (not only environmental) information, the studies and analyses supporting these documents – with a total volume of tens of thousands of pages – have also been publicly available. (See at Annex I)

(i) The Paks Project in energy policy documents

25. As opposed to the allegations of the Communication developing Hungary's nuclear capacity has been a key topic since the 1980s. In social and economic justification of the necessity of the extension of the Paks NPP, comprehensive studies were elaborated, the main conclusions of which were included in publicly available documents determining Hungary's energy policy.

26. Firstly in 2006, a comprehensive document on Hungary's energy policy was drawn up, covering 2006-2030. The document states that *"...not only today should nuclear energy play an important role in Hungary's energy mix, but this has to remain the case also in long term. In addition to the planned lifetime extension of the existing four units of the Paks NPP, the possibility of building one or more additional units before 2030 should be kept on the agenda."* Regarding the European Union's energy policy, it states *"neither the EU nor Hungary will be able to achieve its fundamental energy policy goals without using nuclear energy to a greater extent."* The conclusion of the document is that *"in order to achieve the greatest security of supply and the lowest cost, in addition to extending the lifetime of the existing units of Paks NPP, the construction of new units(s) is to be preferred."*
27. Secondly, on 17 April 2008, the Hungarian Parliament adopted its resolution of 40/2008. (IV. 17.) on the energy policy of 2008-2020. Section 12 f) calls on the Government to *commence preparatory work and then submit proposals to the Parliament in order to put in place new nuclear power generation capacities.*
28. Subsequently – pursuant to Article 7 paragraph 2 of act 1996: CXVI on the Atomic Energy – in its Decision of 25/2009 (IV. 4.) the Hungarian Parliament has given its preliminary decision in principle in order to *commence the preparatory activities of the construction of one or more new units at the Paks NPP.*
29. It should be noted that preparatory work of new nuclear power plants can only be commenced if the Parliament gives its decision in principle required by law as mentioned above, which places responsibility on the Government when requests it. At the same time, the decision in principle given by the Parliament – although it expresses the importance of the issue – is to be considered rather formal in terms of the environmental legal requirements.
30. The importance of the Parliament's decision in principle – despite what decision JNO-128/2010⁶ cited in the Communication of the Parliamentary Commissioner for Future Generations states – resides in the fact that the consent is given by the highest representative body in the country, elected by the people. Due to the partly formal nature of this decision in principle, it does not constitute a modification of the 2008-2020 energy policy adopted by the resolution of the Parliament of 40/2008 (IV.7.), as this was carried out through the adoption of the National Energy Strategy, as indicated by Section 6 of resolution of the Parliament of 77/2011 (X.14.). Therefore, the continuity of energy policy decisions is ensured by resolution of the Parliament of 77/2011 (X. 14.) on the National Energy Strategy.
31. The 'Joint Effort' vision in the National Energy Strategy, considered to be the most realistic and therefore to be implemented. It is represented by the 'Nuclear- Coal-Green' scenario in terms of electricity generation. One of the most important elements of the scenario is *"the long-term preservation of nuclear energy in the energy mix"*. The National Energy Strategy plans for two nuclear units to be put into operation by 2030, with approx. 1000 MW each.
32. In Hungary's electricity production the role of nuclear power is crucial. The Paks NPP produced – according to preliminary data – 36.7 % of the electricity consumed in Hungary in 2014 (due to the high share of imports means that more than half of the electricity generated in Hungary is nuclear). Thus one of the key elements of ensuring the security of supply is to maintaining nuclear power generation capacity. As it was mentioned before, the currently operating units of the Paks NPP are expected to be decommissioned between 2032 and 2037 therefore this electricity generation capacity needs to be replaced.
33. The Hungarian Independent Transmission Operator Company Ltd.'s (hereinafter referred to as MAVIR) 2012 source analysis predicts that only half of the current power generation capacity will remain in place by 2030. Replacing the lost capacities – also taking into account the expected increase in electricity demand – requires adding a total of 7300 MW of new capacity by 2030.

⁶ http://www.jno.hu/hu/af/jno-128-2010_paksbovites.pdf

MAVIR's generation capacity analysis (the loss of a significant amount of capacity due to the aging of plants) and the prediction of consumer demand (at least ~1 % increase per year) clearly prove the need for the new nuclear units.

34. The signing of the Agreement between the Government of Hungary and the Government of the Russian Federation to cooperate on the utilization of nuclear energy for peaceful purposes, promulgated by act 2014:II as an important step in the implementation of the Nuclear-Coal-Green scenario of the National Energy Strategy.
35. Achieving Hungary's economic, energy and climate policy goals and replacing the traditional, greenhouse gas emitting power plants to be decommissioned over the next decade requires an adequate solution that can provide electricity at an industrial scale for a long time in a competitive way, reliably and safely. The convention promulgated by act 2014:XXIV, which, in accordance with Article 9 of the above framework agreement, covers a loan to be provided by the Russian Party in order to financing 80 % of the costs of the construction of the two nuclear units.

(i) Laws requiring public participation in the adoption of energy policy documents

36. As energy policy is of special environmental importance, many environmental requirements apply in course of the elaboration and adoption of it. Therefore all of the energy policy documents mentioned above went through broad consultations ensuring public participation in governmental decision-making processes in accordance with the relevant provisions of the act 1995:LIII on the Environment Protection and Gov. Decree 2/2005 (I. 11.) on the environmental assessment of certain plans and programs, they also underwent a strategic environmental assessment (hereinafter referred to as the SEA Decree).
37. A strategic environmental assessment is compulsory pursuant to the relevant provisions of the SEA Decree which is responsible for transposing EC Directive 2001/42 on the assessment of the effects of certain plans and programs on the environment, according to which an environmental evaluation is carried out in order to show the overall environmental effects of the energy policy documents. During this process the policy document and its environmental impact assessment report are sent to the competent environmental body and also to the National Environment Protection Council². The members of this Council are partly delegated by non-governmental organizations. During the strategic environmental assessment, both the energy policy and its environmental assessment are publicly available on the Ministry of National Development's website for at least 30 days in order to provide the public with the opportunity to comment on them. The comments from the public shall be considered by the Ministry when finalizing the energy policy document.
38. For instance in the elaboration of the National Energy Strategy, the Ministry of National Development consulted with almost 110 organizations: businesses, scientific and professional bodies, NGOs, higher education institutions, energy producing and distributing companies and organizations of energy users. Additionally, the Ministry took into account the recommendations of consultative technical committees operating next to the Ministry and the International Energy Agency, as well as the energy policy of the European Union. The general public had a chance to learn about and comment on the National Energy Strategy in the course of public consultation.
39. The signing of the Agreement between the Government of Hungary and the Government of the Russian Federation to cooperate on the utilization of nuclear energy for peaceful purposes, promulgated by act 2014:II, is part of the implementation of the Nuclear-Coal-Green scenario of the

² 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.

National Energy Strategy: the cooperation aimed at the construction of two WWER nuclear units with an output of at least 1000 MW each ensures the planned long-term maintenance of nuclear capacity.

40. Achieving Hungary's economic, energy, climate and CO₂ policy goals and replacing the traditional, greenhouse gas emitting power plants that will be decommissioned over the next decade requires a solution that can provide electricity at an industrial scale for a long time in a competitive way, reliably and safely. The convention promulgated by act 2014:XXIV, which, in accordance with Article 9 of the above framework agreement, covers a loan to be provided by the Government of the Russian Federation to the Government of Hungary for the purpose of financing the construction of the two nuclear units is related to this issue.
41. As it seems obvious, during this long decision-making process the Government neither has failed to meet its obligations of broad examination, preparation and consultation, nor has impeded the wide public to exercise its rights of participation.

(ii) Participation in the decision-making regarding the Paks Project

42. Environmental licensing procedures applying to the planned activity are regulated basically by the act 1995:LIII on Environment Protection and the Gov. Decree of 314/2005 (XII.25.) on environmental impact assessment. These regulations serve the transposition of relevant EU Directives, in particular the ones on environment impact assessment and the Aarhus convention, as the EU has also been a Party to the Convention since May 2005. Pursuant to the Espoo Convention (promulgated by Gov. Decree 148/1999 (X. 13.) in Hungary) international environmental impact assessment procedure is also carried out by the Ministry of Agriculture.
43. Pursuant to the laws mentioned above, any activity that has or may have effects on the environment may be commenced after receipt of the environmental license issued by the environmental protection authority. The construction of the new units deemed as an activity requires environmental licensing. This licensing procedure consist of two phases: the first phase is the non-compulsory preliminary consultation, during which the competent authority – with the participation of the competent administrative agencies – gives its opinion on the content requirements regarding the environmental impact assessment to be submitted later, in the second phase which is the proper licensing procedure. Both phases are dominated by public participation during the national as well as the international process.
44. In December 2012, the Project Company decided to initiate this preliminary consultation and prepared the preliminary consultation documentation (hereinafter referred to as PCD) which was available to the general public in full. The competent authority welcomed the comments from the Hungarian and international public and also from the competent agencies to whom the document was sent. As a result of the preliminary consultation, the competent authority determined that there was no reason excluding the planned activity, and it therefore issued an opinion regarding the content requirements of the environmental impact assessment.
45. It is regrettable but not a single comment was received on the documents from the Hungarian public. As part of the international environmental impact assessment procedure the PCD was sent to 30 European countries (twenty-six other EU member states, all of Hungary's neighboring countries and, at the request of Greenpeace Switzerland, Switzerland). The countries that joined the process as parties (Austria, Czech Republic, Greece, Croatia, Malta, Germany, Romania, Slovakia, Slovenia, Ukraine) sent questions and comments. Out of the ten countries, eight made comments; Slovenia and Ukraine did not. The questions were classified and summarized based on their subject area, and responses were presented in the relevant chapter of the environmental impact assessment (hereinafter referred to as EIA) and the chapter of the EIA on international issues.
46. As part of the process of the Hungarian Atomic Energy Agency a public hearing was held on May 5 on the license procedure of the examination and assessment of the site of the new nuclear units.

Greenpeace Hungary was represented at the public hearing, and the minutes of the hearing indicate that the questions asked by Greenpeace Hungary received adequate responses.

47. The second phase of the environmental impact assessment procedure began on December 19, 2014, with the submission of the environmental impact assessment documentation (hereinafter referred to as EIA Documentation or Documentation) and consists of almost two thousand pages. The Documentation was published and it is available for anyone in full at <http://www.ddktf.hu/doc/paks.zip> and on the Project Company's website at www.mvmpaks2.hu. In the course of the procedure, the competent environment protection authority fully ensures the rights of the public, and public hearings and consultations will be held in Hungary and also in the countries that are parties to the procedure. Both Energiaklub and Greenpeace Hungary are parties to the procedure.
48. Paragraphs 42-47 prove that the general public, including non-governmental organizations (in Hungary and abroad), have had widespread opportunities to participate in the procedures concerning environmental information in connection with the Project. At this point I would like to emphasize that Hungary as member of the EU has strict obligations in the field of environment protection. Should Hungary fail to fulfill its obligations or violate any EU regulations the European Commission as well as other member countries have the right to contest Hungary before the European Court of Justice. The Hungarian Government is in close and regular consultation with the experts of the European Commission regarding the Project. Thus as neither EU Pilot procedure nor infringement procedure have been launched in this context it should be evident that Hungary is in compliance with the relevant EU regulations, in particular with the environment impact assessment, the strategic environmental impact assessment and the Aarhus convention, as previously stated.

(iii) Measures by the Project Company to inform the public and ensure transparency

49. It is evident obvious such a project desires widespread social acceptance and thus the Project Company carries out numerous activities in order to provide information to the public and to forums for dialogue. For instance a *The Energy of Our Future Interactive Truck* has been touring the country since 2009, offering the general public, local communities, NGOs and the representatives of local institutions the chance of a personal meeting and interactive dialogue on the Project. The Project Company organized several road shows on the planned construction of the new nuclear units, and the Company even runs a Facebook account to reach a wider public.

(iv) Implementation of the rights enshrined in the Convention by other means

50. On the initiative of the Regional Environmental Centre, with the cooperation of the Office of the Parliamentary Commissioner for Future Generations, the "Roundtable for promoting public participation regarding environmental issues related to the use of atomic energy" (hereinafter referred to as Roundtable) was set up on May 7, 2010. The goal of the Roundtable was to support the implementation of the Convention, to promote effectiveness and transparency in the public participation and information access with regard to the use of atomic energy. The Ministry of National Development and the Project Company also participated in its work. The Roundtable also discussed the issues related to the construction of the planned new units at the nuclear power plant with the relevant non-governmental organizations. It has to be mentioned that in the work of the Roundtable the representatives of non-governmental organizations behaved rather un-cooperatively and only focused on criticizing decisions that had already been taken and published, instead of working on proposals aimed at making public participation in official decision-making more effective. Since February 21, 2014, the Roundtable has been inactive as non-governmental organizations – including Energiaklub, EMLA and Greenpeace Hungary – suspended their participation.

IV. Opinion

51. Regarding the alleged violation of Article 3 paragraph 1 and 3 of the Convention: As proven in the present submission Hungary fulfilled its obligation under Article 3. Hungary has taken adequate

measures to establish and maintain a clear, transparent and consistent framework in which the compatibility between the provisions is achieved and proper enforcement measures are provided. Hungary not only ensures that all relevant legislation is clear and consistent with the Convention, but with necessary legislative actions, also guards against the inconsistent application of that legislation by public authorities.

52. As shown under the Objection title above and in the Communication, inconsistent judicial decisions may have occurred, but the significant parts of the requested information was made available according to the final ruling of the Court. On one hand the Hungarian legal environment contains the proper regulations in order to provide the public with an adequate opportunity to apply to the court to seek redress on environmental claims. In addition even after a rather lengthy process of legal interpretation and development by the courts of different levels judicial and administrative bodies now interpret and apply the relevant legislation in a clear, transparent and consistent manner.
53. As shown in great detail by the last (2014) national report submitted according to the Article 10 paragraph 2 of the Convention, Hungarian regulations and legal framework adequately ensure the implementation of the provisions of the Convention. The national report according to the relevant provisions of the decisions I/8., II/10., III/5 and IV/4., was elaborated by the Ministry responsible through broad public consultation. As the basic legal framework is presented in detail in the previous national reports we believe it unnecessary to repeat the main provisions here in the present submission thus at this point we are simply stating that the legal framework serves as adequate implementation of the Convention shown in the national reports.
54. Regarding alleged violation of Article 4 paragraph 2 and 3 c) of the Convention: Firstly it should be put down that according to the final ruling of the court in the cases referred by the Communication, Energiaklub obtained almost all the documents requested in a fairly short time regarding the fact that its request aimed at the release of thousands of pages of documents full with information protected by third parties' intellectual property rights and with confidential commercial information. Redacting those documents obviously needed time and the consensus of several holders of those rights.
55. It should also be emphasized that in the course of the lawsuits, the defendant only refused to release some of the information concerns business secrets as both the legal regulations in force and the Convention clearly allow this, and therefore this cannot be grounds for arguing that the good faith principle was violated.
56. Additionally, the basic role of the Convention is to ensure that the public has access to environmental information, is allowed to participate in environmental decision-making and has access to justice. Article 2 paragraph 3 of the Convention defines the concept of environmental information accordingly, thus establishing the material scope of the Convention. This material scope is reflected in Article 2 of Gov. Decree 311/2005 (XII. 25.) on public access to environmental information, and Article 12 paragraph 2 of the act 1995:LIII on Environment Protection states that everyone has the right to have access to environmental information as data of public interest in accordance with specific other legislation, thus indicating the rules of access procedures. Regarding the court proceedings and decisions⁸ referred to in their Communication shows that neither of the plaintiff claims were based on the fact that the data requested was environmental information, and as such subject to the release obligation contained in the Convention. Therefore, the court decisions ordering the defendant to release the data requested were not based on the legal act promulgating the Aarhus Convention, but on the relevant provisions of the act 1992:LXIII on the Protection of Personal Data and the Disclosure of Information of Public Interest (then in force) and the act 2007:CVI on State Property. Thus, in our opinion the cases cited in the complaint do not fall within the scope of the Convention, and therefore do not constitute the violation of the Convention.

⁸ Regarding Teller Project: Szekszárd City Court's decision 27.G.40079/2010/14 issued 7 February 2011; Tolna County Court's decision 13.GF.40.024/2011/14 issued 27 April 2011; Szekszárd City Court's decision 27.G.40.077/2011/5 issued 18 January 2012. Regarding the Lévai Project: Budapest Court's decision 65.P.21.120/2011./10 issued 16 February 2012; Szekszárd Regional Court's decision 13.GF.40.012/2012/4 issued 4 April 2012

57. Alleged violation of Article 5 paragraph 7 and Article 7 of the Convention: as previously stated the strategies on energy policy have special environmental importance in accordance with the principle of integration, therefore several environmental requirements apply during the course of their elaboration and adoption. This decision-making process requires very active information dissemination and public participation. Paragraphs 5-15 of III part of the present submission show that all energy policy documents containing the definite intention of the Government in power to implement the Project of the extension of the Paks NPP, went through widespread consultation with the participation of the general public. All of these strategies were examined from an environmental point of view according to EU legislation and therefore their strategic environmental impacts were detected and assessed and also consulted on with the public.
58. According to the relevant provisions of the Convention Hungary fully ensured the public participation concerning plans, programs and policies relating to the environment, and made available the facts and analyses of facts for major environmental policy proposals. In order to provide the public with relevant (and not simply environmental) information, the studies and analyses supporting major energy policy documents and the Project itself – with a total volume of tens of thousands of pages – have also been made publicly available. (See at Annex I)

V. Summary

59. For the reasons stated above, the complainers simply have not alleged claims within realm of this Committee's jurisdiction.
60. Article 15 of the Convention on the Review of Compliance, provides that "[T]he Meeting of the Parties shall establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of this Convention." These arrangements have been established in the Annex to Decision I/7. The Convention goes on that "[T]hese arrangements shall allow for appropriate public involvement and may include the option of considering communications from members of the public on matters related to this Convention." (underline added) Paragraphs 20-10 limit the power of the Committee and prevent it from dealing with frivolous communications.
61. Objectionable regulatory, government and even corporate actions may be pursued in the local courts, as Energiaklub already has extensively done. But absent colorable claims for violation of the Aarhus Convention, the complainers may not recast those same complaints as violations of the Convention.
62. Serious accusations presented in uncertain terms, without true and accurate particularity, without setting out in detail each and every allegation made and the relevant facts and laws does not warrant this high level of attention. Accordingly, Hungary requests that the Committee, dismiss each of complainers' claims and resolve against consideration of those claims.

Sincerely,



Andrea Barad
National Focal Point
Hungary