Hungary's reply to the Aarhus Convention Compliance Committee

regarding the draft findings and recommendations with regard to communication ACCC/C/2014/105 concerning compliance by Hungary

Thank you very much for the opportunity to be able to send our comments regarding the draft findings (hereinafter: Draft), in connection to which we suggest the following amendments:

1. We suggest the following amendment to point 21 of the Draft:

"21. Section 19(5) of the 1992 Data Protection Act provided that, unless otherwise prescribed by law, any data that is for internal use or that is related to a decision-making process shall not be available to the public for twenty years from the date on which it is processed. Upon request, the head of the respective agency may authorize access to such data. A similar provision appeared at one point in time under section 19(a)(1) and (2) of the Act. According to 21(1) of the 1992 Data Protection Act: when a person's request for public information is refused, he may file for court action. According to 21(2) of the 1992 Data Protection Act the burden of proof of compliance with the law lies with the data processor agency. The court shall hear such cases under priority (21(6) of the 1992 Data Protection Act) and 21(7) of the same act sets out that when the decision is in favour of the plaintiff, the court shall order the data processor agency to provide the information. [1]"

Reasoning: in order to present the completeness of the process for requesting public information we find it necessary to include the rules of the court procedure.

2. We suggest amending part 'B. Facts' of the Draft with the following new paragraph 'Energiaklub's information requests':

"Resolutions 40/2008 and 25/2009

Energiaklub did not take the opportunity to request public information regarding the preparatory data of these resolutions – contrarily to the cases of Teller and Lévai projects and the Nuclear Energy Governmental Council, where it took this possibility. However, this possibility was provided to them by the procedure of point 21 and at the end by the opportunity to turn to the court as well. (This is also true for the other Communicant, Greenpeace Hungary.)"

Reasoning: also for the sake of completeness we would like to note that Communicants would have had the possibility to request public information regarding the preparatory documents of these resolutions and as a final solution to request these information via the court but they did not take this opportunity.

3. Regarding points 145 and 146 of the Draft our comments are the following:

[1] Communication, annex 1, p. 9.

We are still convinced that Resolution 40/2008 was not considered to be a "policy", at least not until its submission to the Parliament. The Resolution originally consisted only of point 12 of the finally adopted version, which sets out *tasks* to the Government. It is possible during the *exact execution* of these tasks to further extend social dialogue – as it widely occurred regarding the given resolution. This is exactly what happened in the case of the Parliamentary Resolution No. 77/2011, namely the National Energy Strategy where a SEA was carried out and the related document was publicly published.

We find this important because during the preparation of Resolution 40/2008 it was not predictable whether the Parliament would amend it or not to become a "policy".

4. Regarding points 158, 160-163 and 173-174 of the Draft we maintain our previous opinion, and our comments are the following:

"158. Besides the texts of the various versions of the draft 2007-2020 energy policy (which following the Resolution's 2008 adoption, became the 2008-2020 energy policy), the Committee considers that at least two further documents have been put before it that must be considered relevant and important in framing the 2008-2020 energy policy. First, the "Background document on the draft Parliamentary Resolution no H/4858 on the energy policy concept for the period 2007-2020" that was put before the Parliament and, second, the ~~environmental~~ assessment analysis dated 5 June 2007 that was required to be prepared under article 43(1) of the Environmental Code.

159. The "Background document" put before the Parliament was, and still is, available to the public on the Parliament's website.

160. In contrast, the Committee understands that the ~~environmental~~ assessment analysis required under article 43(1) of the Environmental Code ~~was~~ is not identical to the document of "environmental assessment" required by the *Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment*.~~not made available to the public during the preparation of the draft 2007-2020 energy policy (which became Resolution 44/2008 on the 2008-2020 Energy Policy)~~.

161. The Committee welcomes that article 43(1) of the Environmental Code requires assessment analysis of draft proposed acts and other pieces of legislation and ~~"~~concepts~~"~~ of national and regional importance related to the environment, which ~~–~~are not subject to ~~mandatory~~ environmental assessment. Consequently, assessment analysis as well as the draft 2007-2020 energy policy (which became Resolution 40/2008 on the 2008-2020 Energy Policy) were not required to be made available to the public during the preparation.

161.a The Committee notes that in order to fulfil its obligation requested by article 43(1) of the Environmental Code, the developer ordered a document to assess environment-related issues concerning the energy policy in its own discretion and taking into account the needs of the developer. Since the Environmental Code does not specify further requirements on the content and methodology of this *assessment analysis*, developer used subject items relevant from the Annex of the SEA Directive and the Government Decree on SEA. Unfortunately, the developer used a wrong terminology as a title of the document, they called it "környezeti vizsgálat" (in paraphrased translation strictly following the literal meaning of the original text – i.e. mirror translation – as "environmental assessment"), which term should have been

reserved *only for those* assessments undertaken within the SEA procedure by the requirements of the SEA legislation. The Committee also observes that there have not been any other documents elaborated within the framework of the procedure, and the Party concerned referred in its all previous communication as "environmental assessment" is in fact the "assessment analysis" document.

162. However, since the environmental assessment was not a legal requirement for the preparation of the draft 2007-2020 energy policy, the Committee considers that the assessment does not constitute~~s~~ an "analysis of facts" that the Party concerned "considered to be relevant and important in framing" the 2007-2020 energy policy. ~~Pursuant to article 5(7)(a) of the Convention, the environmental assessment should thus have been made available to the public during the preparation of the draft 2007-2020 energy policy, not least so that the public could effectively exercise their opportunities to participate under article 7, final sentence, of the Convention.~~

163. Based on the foregoing, the Committee finds that, by using the terminology for ~~not publishing the~~ environmental assessment of the draft 2007-2020 energy policy prepared under article 43(1) of the Environmental Code is obscuring and misleading, which, in consequence, caused the misinformation and misunderstanding by the participants in the procedure. T~~t~~he Party concerned is requested to arrange necessary administrative and practical measures to ensure avoiding such a situation with regard to the assessment analysis of policies relating to the environment prepared under article 43(1) of the Environmental Code.

[…]

173. The Committee finds that, by not publishing the ~~environmental~~ assessment analysis of the draft 2007-2020 energy policy prepared under article 43(1) of the Environmental Code, the Party concerned is in ~~failed to~~ compliance~~y~~ with article 7, final sentence, in conjunction with article 5(7)(a) of the Convention.

174. The Committee pursuant to paragraph 35 of the annex to decision I/7 of the Meeting of the Parties, [and noting the agreement of the Party concerned that the Committee take the measures request in paragraph 36(b) of the annex to decision I/7,] recommends that the Party concerned takes the necessary ~~legislative, regulatory,~~ administrative and practical measures to ensure avoiding such a situation with regard to the ~~that environmental~~ assessment analysis~~s~~ of policies relating to the environment prepared under article 43(1) of the Environmental Code~~, or any legislation that supersedes it, are made available to the public so that they can effectively exercise their opportunities to participate under article 7, final sentence, of the Convention.~~ ."

5. Technical comment: the numbering of the Energy policy precisely is "Resolution 40/2008", although in the Draft it was often referred to with a different numbering so we propose to correct it.

Budapest, 22 July 2021