Dear Committee,

The Polish Party maintains its view presented in the correspondence sent in the cases 151, 154 and 158 to date. There is no adequate time in the formula of my speech to refer to all aspects brought up under these proceedings, thus it will be limited to the following issues:

I. The first one refers to meeting the formal prerequisites of the communication,
II. The second one refers to diversified legal nature of the acts of law selected by the Committee to examine in these joined cases;
III. The third issue is discussing the Polish legal solutions in context of access to justice i.e. meeting the requirement referred to in Article 9 (3) of the Aarhus Convention.

All these have a significant impact on examining these cases.

I. Formal prerequisites of the communication.

First of all, let me remind that pursuant to the decision I/7, the Communicant should support its charges with relevant information. Demonstrating the exhaustion of all available local remedies in specific case is a good practice. Only their exhaustion could form the basis to draw the conclusions on compliance of national law with the Aarhus Convention.

In context of the cases being the subject-matter of the hearing, it is clear from the content of the individual communications that this condition is not met. The communications provide only a general review of administrative case-law referring to the Polish plans/programmes, making no references to the specific nature of individual cases.

In our opinion, this means that the formal condition of admissibility (*exhaustion of local remedies*) of the proceeding before the Aarhus Committee is not met.

The explanation provided in one of the communications stating that the Communicant made use of none local remedies, because it classified the applicable regulations as the systemic problems – is insufficient in the opinion of the Polish Party (letter by Stowarzyszenie Pracownia na rzecz Wszystkich Istot (*Association Workshop for All Beings*), 10 May 2018, p. 9) and should be supported by the decision with participation of the Communicant.

II. Diversified legal nature of plans/programmes referred to in the communications

Classifying all plans or programmes listed in these cases functioning in the Polish legal system into one category is an unjustified simplification and may lead to wrongful conclusions. In order to demonstrate the differences between them, let me provide a presentation featuring their form and method of adoption. These differences are particularly visible, when describing these acts in context of three criteria:

1) an authority adopting a document,
2) legal status;
3) task/function in their domain – i.e. what is their content.

There is no adequate time to fully describe each act during an oral presentation. However, it is worth to return to the key issue that – from the perspective of the Polish legislation – a part of acts is the generally applicable law. Some plans and programmes are of internal and technical nature, while the other are the acts of local law (i.e. air protection programme). Legal nature of a document affects its classification both from the perspective of the Polish and international law – the Aarhus Convention.

We believe that application of Article 9(3) of the Convention to at least a part of these plans is unjustified.

III. Access to justice

Access to justice was broadly discussed in the written correspondence. I will not repeat all arguments presented by the Polish Party.

Nonetheless, the following issues should be brought to attention.

Let me start from the prerequisites governing the participation of the environmental organisations in the judicial and administrative proceedings. In this context, the key legal basis is Article 33(2) of the Act – Law on proceedings before administrative courts (LPAC). Taking part as a participant may be also submitted for by a private individual, who did not participate in the administrative procedure, provided that the result of this procedure is linked to its legal interests, including also a community-based organisation in the cases of the other private individuals, provided that the case is related to the scope of its statutory activity.

Pursuant to Article 33(2) of LPAC, a community-based organisation may submit for participation in the judicial proceeding in the cases of the other private individuals, provided that the case relates to the scope of its statutory activity.

The Polish Supreme Administrative Court (of 23 September 2016, II OZ 972/16) stated that, with a view to Article 33(2) of LPAC:

1) Each objective laid down in the statute granted or adopted in accordance with the applicable law in force may justify the request to admit to an administrative proceeding, provided that the object of the proceeding falls within the scope of activities of the community-based organisation.
2) Participation of the community-based organisation must correspond to the mission of administrative justice i.e. enhance implementation of the "judicial administrative control".
3) The community-based organisation may act for one of the parties, strengthening its position in the proceeding, or perform its actions under the proceeding independently from the interests of neither of the parties, focusing only on compliance with the requirements of social interest

Importantly, according to the case law, the community-based organisation, which participated in the judicial proceeding in the case on the basis of the appeal of the other entity against the resolution, is entitled to lodge a cassation appeal also when the appellant does not execute its

right to appeal (judgment of the Supreme Administrative Court of 19 June 2012, case file no. 836/12).

To summarise: the above means that the Polish legislation provides the legal basis to ensure participation of an environmental organisation in the proceeding before an administrative court. Moreover – such organisation has the right to lodge a cassation appeal (to the Supreme administrative Court) against the judgment passed in the case by a voivodeship administrative court.

With regard to the plans and programmes being the acts of generally applicable law, access to justice cannot fall within the scope of Article 9(3) of the Aarhus convention, which is laid down in Article 8 thereof.

I would like to maintain the view that Article 9(3) of the Convention shall not apply to the forest management plan (FMP) due to its internal and technical nature. Notwithstanding the above, we wish to present an example of the case related to a forest management plan brought before the civil court. For the sake of litigation prudence, the pending proceeding before a civil court, in which the NGO challenged an activity resulting from specification of tasks to be implemented by the forest districts under the forest management plan should be mentioned. In this proceeding, the court secured claims by prohibiting the respondent (State Treasury – State Forests National Forest Holding, General Directorate of the State Forests and the forests districts concerned) to engage in tree logging (wood acquisition) activities at the area concerned in future by means of a decision.

To summarise, the presented arguments should be repeated. The communications in joined cases 151, 154 and 158 fail to meet the formal prerequisites, since the Communicant did not make use of the available local remedies to challenge the listed environmental protection plans/programmes.

The plans and programmes covered by the joined communications are of diversified natures, thus require a separate analysis by the Committee.

As a matter of principle, the environmental organisations have broad range of rights and remedies in the judicial and administrative proceeding.

Thank you for your attention.