



## **Opening statement of**

### **THE NETHERLANDS**

54<sup>th</sup> meeting of the Aarhus Convention Compliance Committee

Discussion of the Communication concerning compliance by the Netherlands in connection  
with access to documents relating to the granting of permits for two power plants  
(ACCC/C/2014/124)

**29 September 2016**

## INTRODUCTORY STATEMENT ON BEHALF OF THE NETHERLANDS

### ***Head of delegation The Netherlands – Noortje van Rijssen***

- Mr Chairman, distinguished members of the Committee, ladies and gentlemen,
- It is an honour for me to address your distinguished Committee on the occasion of the discussion of the Communication concerning compliance by the Netherlands in connection with access to information relating to the granting of permits for two power plants. My delegation is looking forward to a productive exchange of views.
- We are all at your disposal to answer any questions you may have on the implementation of the Convention, and will do so to the best of our ability.
- Mister Chairman, this communication concerns the question whether Article 2, paragraph 3, and Article 4, paragraph 3 (c), of the Convention have been complied with in connection with access to documents relating to the granting of permits for two power plants.
- It concerns one gas-fired power plant and one coal-fired power plant in the *Eemshaven*, a port area in the province of *Groningen* at the edge of the *Waddenzee*.

- Following an application for information by Greenpeace on the basis of the Government Information (Public Access) Act, two thirds of the documents were fully disclosed, followed by further disclosure of documents in the period thereafter.
- During the ensuing court procedures, both the district court as well as the Council of State was in a position to review each of the non-disclosed documents, thus being able to assess the decisions of the Provincial Executive of *Groningen* with respect to the disclosure of documents.
- The courts, in two instances, therefore reviewed whether the decisions on disclosure were made diligently and in accordance with the requirements of the Convention.
- Bearing in mind the fact that the highest administrative court in the Netherlands concluded that the non-disclosure of certain documents was in conformity with the Convention, I would like to refer to the Guidance Document on the Aarhus Convention Compliance Mechanism that sets out as a key point that the compliance procedure is designed to improve compliance with the Convention and is not a redress procedure for alleged violations of individual rights.
- This is why, in our view, a detailed discussion on the contents or alleged contents of the non-disclosed documents should be

avoided. Since the compliance procedure aims to facilitate compliance by Parties with their obligations under the Convention, we consider that the discussion should focus more in general on the question whether the Netherlands correctly implements and applies Article 2, paragraph 3, of the Convention with respect to environmental information and Article 4, paragraph 3 (c), of the Convention with respect to internal communications of public authorities.

- In compliance with the Convention, an assessment was made for all the documents to verify if the documents contained environmental information – and were therefore subject to the provisions of the Convention – and if so, whether any exceptions applied to the principle of access to environmental information.
- On the basis of Article 2, paragraph 3, of the Convention, it was considered that part of the documents do not include environmental information. These documents do not include information concerning the state of environmental elements, factors affecting these elements, or the state of human health and safety. Nor do these documents concern measures or activities which affect or may affect the elements and factors of the environment, measures or activities to protect these elements, or cost-benefit and other economic analyses and assumptions used in connection with these measures and activities. Only documents

that actually include this information can be considered to be environmental information, a mere reference to environmental information is not sufficient to fall under the definition.

- For the documents that did include environmental information, an assessment was made to take into consideration the exceptions for non-disclosure as provided for by the Convention. As set out in our Statement, access to environmental information and the exceptions thereto, are implemented in the Netherlands in the Government Information (Public Access) Act and the Environmental Management Act.
- In accordance with Article 4, paragraph 3 (c), of the Convention, some documents that were exchanged within the Provincial Executive of *Groningen* as an administrative authority were not disclosed on the basis of the “internal communications” exception. Some of the documents that were not disclosed concern communications between the public authorities and external actors, but in that case the documents exchanged between the parties were intended to be used for internal communication in the phase of judicial review of the permit decisions for the construction of the two power plants in the *Eemshaven*.
- In the Convention, the term ‘internal communications’ is not defined. The text of the Convention does not exclude the involvement of external actors in ‘internal communications’ either.

- The Provincial Executive of *Groningen* made use of the technical expertise of the external actors and the documents exchanged in this respect were drawn up for confidential exchange of views to prepare for the court proceedings. According to standard case-law of the Council of State such an exchange is part of the “internal communications” exception.
- In addition, a request for environmental information may be refused in accordance with Article 4, paragraph 3 (c), of the Convention, if it concerns material in the course of completion. In the case of the *Eemshaven* power plants, disclosure of such draft documents, some of which were exchanged between the public authorities and external actors, was refused, but the actual environmental substance of these draft documents became public because the final documents had been made available during the court proceedings.
- Where the non-disclosed documents contain personal opinions on policy, the public interests of the disclosure of possible environmental information were weighed against the protection of the personal opinions on policy. The public interest in disclosure was sufficiently served since the actual environmental information was already public.
- All the documents that include environmental information, exchanged in the period before the appeal proceedings in

connection with the granting of the permits, were disclosed.

Accordingly, there was complete transparency in the procedure on the granting of the permits and the non-disclosure of certain documents exchanged during the appeal proceedings cannot be claimed to cause any disadvantage to the procedural position of Greenpeace.

- On this basis, the Government is of the view that all requirements for access to environmental information under Article 2, paragraph 3, and Article 4, paragraph 3 (c), of the Convention have been correctly implemented in Dutch law and have been complied with in connection with access to documents relating to the granting of permits for the two power plants.
- Mr Chairman, distinguished members of the Committee, thank you for your attention. We look forward to a constructive dialogue with your Committee and stand ready to answer any questions you may have.