



Aarhus Convention Compliance Committee
Attn. Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

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Ref.

MinBuza-2016.

Encl.: 1

Via e-mail only

Date 3 June 2016
Re Ref. Communication ACCC/C/2014/124
Coal-fired power plants in Groningen

Dear Ms Marshall,

In the letter from Greenpeace of 20 January 2016 to the Aarhus Convention Compliance Committee in connection with communication ACCC/C/2014/124, reference is made to the course of the permit proceedings for the power plants in the *Eemshaven*, as well as to the implementation in the Netherlands of Article 4, paragraph 3 (c), of the Convention.

Course of the permit proceedings

With respect to the course of the permit procedures, the Government observes that the first permit for RWE under the Nature Conservancy Act 1998 was granted in 2008, but was annulled by the Council of State on 24 August 2011. As a result of the judgment of the Council of State, RWE had to file a new application for a permit, with a new permit procedure, including objection and court proceedings. As set out in paragraph 12 of the Government's Statement of 26 November 2015, Greenpeace's request for information included documents exchanged in the course of the court proceedings at the Council of State in connection with the first permit procedure. The rationale of the refusal to disclose information exchanged in the context of the court proceedings was that the administrative authority and the permit holders should be able to exchange views in such proceedings in a confidential manner. Contrary to the preceding phase of the granting of the permits in which all documents exchanged with the permit holders were disclosed, during the court proceedings, the Provincial Executive of *Groningen* was assisted by the permit holders' technical expertise and intended to use this information for internal communications. Therefore, as confirmed by the Council of State, not the interest – procedural or other – of the Executive of *Groningen* and the involved parties is decisive in qualifying the information as internal communications, but the purpose for which the document was drawn up, i.e. confidential exchange of views to prepare for the court proceedings by the Provincial Executive of *Groningen*.

Material in the course of completion

The Government would like to underline the fact that many of the non-disclosed documents concerned draft documents. In its Statement of 26 November 2015, the Government explained that all environmental information was disclosed in this case. This does not mean that all draft documents containing this environmental

information were disclosed. In accordance with Article 4, paragraph 3 (c), of the Convention, a request for environmental information may be refused if it concerns material in the course of completion. In the case of the *Eemshaven* power plants, disclosure of draft documents was refused, but the actual environmental substance of these draft documents became public afterwards in the final documents. The exception for material in the course of completion is incorporated in the Netherlands in Section 11, subsection 1, of the Government Information (Public Access) Act. In accordance with case law, draft documents are also considered to be documents drawn up for internal consultation, including amendments to or comments on such draft documents when, compared to the final document, they are considered personal opinions on policy. Pursuant to Section 11, subsection 4, of the Government Information (Public Access) Act, the disclosure of personal opinions on policy contained in these draft documents may only be refused if the interests of protecting personal opinions on policy outweigh the public interest served by disclosure. Such refusal requires thus a balancing of the interests.

Date
3 June 2016

Balancing of interests

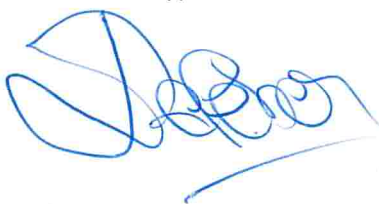
With respect to the balancing of interests as foreseen in Article 4, paragraph 3 (c), of the Convention, I wish to refer the Committee to the enclosed English translation of the objection decision, dated 15 August 2012, to which reference is made in paragraph 14 of the Government's Statement. Some of the documents drawn up for internal consultation do contain environmental information. However, all the environmental information was made public, either in the phase of the granting of the permits or in the phase of court proceedings, as part of the final documents, including any ecological reports. This is why the protection of the personal opinions on policy expressed in these documents was given more weight than the public interest of disclosure of these documents. The Council of State endorsed this view.

Information on imperative reasons of overriding public interest

As explained in paragraphs 52-54 of the Government's Statement, information on imperative reasons of overriding public interest that can be considered to be environmental information, as contained in the final ECN report on the necessity of selecting the *Eemshaven* as the location for the power plants (paragraph 8 of the Statement), was disclosed. However, not all documents, including e-mails and 'question and answer' documents, used to prepare in a confidential manner for the court proceedings and referring to imperative reasons of overriding public interest, contain environmental information and, therefore, not all such documents are subject to the provisions of the Aarhus Convention.

Hence, I would like to convey that my Government's position remains as expressed previously with respect to communication ACCC/C/2014/124.

Yours sincerely,



René Lefeber
Deputy Legal Adviser