

### **Comments on the NLVOW's reply**

- The Government maintains the position it set out in its initial statement of 11 August 2016 and its letter of 13 April 2018 in response to the questions posed by the Compliance Committee, to which the Government would refer. Section E.3 of the Government's initial statement mentions in particular the decision-making procedure relating to the setting up of wind turbines and the provisions of the Convention that are relevant to the instruments used. In addition, the Government wishes to make a number of further observations in response to the applicant's reply to the Compliance Committee's questions.
- Regarding the communication with project initiators (section A (context), paragraphs 5 and 6 of the NLVOW's reply): initiators of wind turbine projects are usually (and understandably) intensively involved with the development of plans regarding their specific projects. Therefore, discussions take place and documents are exchanged between the competent authority and the project initiator. This does not mean however that stakeholders or the public at large are not included in the process or that their interests, views and concerns are not taken into account. As mentioned in the initial statement, stakeholder consultations and participation procedures take place at an early stage in the decision-making process for specific projects.
- Regarding the perceived futility of bringing a case (section B of the NLVOW's reply): the fact that the Council of State has consistently followed a line of reasoning that the applicant disagrees with does not mean that any appeal to the Council of State in similar cases is pointless. The judgment of the Council of State of 27 May 2015 (regarding wind farm *Den Tol*; ECLI:NL:RVS:2015:1621) to which the Government referred in its initial statement demonstrates that the Council of State thoroughly reviews the substantive and procedural legality of decisions presented to it, taking into account all relevant international obligations, which in this particular case led to a decision in favour of the applicant.
- Regarding the manner in which the Council of State reviews public participation (section C of the NLVOW's reply): the Council of State has not consistently refused to review the manner in which competent authorities organise public participation. On the contrary, as the NLVOW has illustrated, the Council of State has on several occasions reviewed the Netherlands' legal procedures for public participation and their application in practice, and has concluded that they were in accordance with the requirements of the Aarhus Convention. For instance, in its judgment of 21 February 2018 (regarding the wind farm *De Drentse Monden en Oostermoer*; ECLI:NL:RVS:2018:616), the Council of State explicitly considered whether early public participation, when all options are still open and effective public participation can take place, had been organised in that particular case. It repeated its conclusion that article 6, paragraph 4 of Directive 2011/92/EU (similar in substance to article 6, paragraph 4 of the Aarhus Convention) had been correctly implemented in Dutch law, proceeded to consider whether the relevant legal procedures had been complied with in the particular case and decided that this had been the case.
- Regarding the possibility of a civil law procedure (section D of the NLVOW's reply): in its answer of 13 April 2018 (to question 3), the Government refers to relevant aspects of a possible civil law procedure. The Government would emphasise that a court of law, whether civil or administrative, makes its own assessment of an individual case, based on the merits of that particular case. Courts are not bound by earlier judgments from other courts in other cases. However, courts will usually consider earlier judgments on similar subjects in the interests of ensuring legal certainty and legal equality.