ANNEX II – Relevant extracts from the Unofficial translation of authority decision of 78-140/2016

[Headers, comments and emphasis from the communicants added in bold and underline]

BARANYA COUNTY GOVERNMENT OFFICE Ref: 78-140/2016

Re: Environmental permit for MVM Paks II. Atomerőmű Fejlesztő Zrt. for the new nuclear power plant units planned at the sites identified by lot numbers 8803/16 and 8803/17 at the premises of the Paks Nuclear Power Plant, Paks

Desk officer: Tibor Emesz
dr. Ferenc Jeges-Varga
Phone: 72-567-146

Annexes: Te, L, R

DECISION

[I. References in the decision to input from the communicants]

Page 61

The Hungarian Atomic Energy Authority issued administrative consent under file number OAH-2015-00509-0034/2016 on 29 June 2016 in response to the stipulations in the Clarification and the **evaluation of comments received from the domestic and international public** up to the publication of the Clarification.

[The concerning documentation has not been made available to the public]

Page 91

6.4. Czech Republic
The Affected Party did not think it was necessary to hold a public forum and only requested written consultation. The Affected Party notified her preliminary statement on 31 August 2015, and the Party of Origin notified the Affected Party of its official responses to that statement as well as to the questions asked by **CALLA** Association for the Protection of the Environment on 3 March 2016. Next, the Affected Party notified its final official statement on 29 March 2016 including the following major assertion (based on the document issued by the Ministry of Environmental Protection of the Czech Republic done in Prague on 29 March 2016):

a) the Affected Party accepts the responses given by the Party of Origin to the questions notified in the preliminary statement and considers the consultation procedure conducted under the Espoo Convention closed.

The Affected Party asked no further questions. It can therefore be ascertained that the consultation procedure conducted according to Article 5 of the Espoo Convention closed.

Page 107

7.2. Comments about the heat pollution of the Danube:

Regarding the heat pollution of the Danube comments were received from Greenpeace, the Energy Club, **Jan Haverkamp** in his capacity as nuclear and energy policy advisor of Greenpeace Central and Eastern Europe, the **Austrian Institute of Ecology**, the **Munich Institute of Environmental Protection** operating as an association, **Brigitte Artmann** on behalf of the German association Alliance '90/The Greens, **Greenpeace Energy eG Germany**, the Ukrainian EPL Ekologija-Pravo-Ljudina ("Environmental Protection-Law-People") international non-profit organisation and VEGO (Pan-Ukrainian Environmental Protection Civil Association), and **CALLA** Association for the Protection of the Environment from the Czech Republic. Comments were also received in the form of an official position from the Republic of Croatia as well as in writing from Hungarian and foreign citizens and orally at public hearings and open fora.

- comments relating to the heat pollution of the Danube as regards the ability to comply with and control observance of the legal and regulatory requirements applicable to warming the water of the Danube
- a question about how the Developer will solve taking water temperature measurements taking into account the need to respond at a realistic time so as to ensure compliance with the thermal ceiling imposed under law, and
- a question about how the Developer will ensure ongoing compliance with the thermal ceiling requirements of the authorities, how it will control the operation of the new units in order to prevent instances of heat load in excess of imposed limits.

[…]

[The responsible authority did not refer to the communicants' input explicitly in any other case]

[II. References to chosen issues where the communicants' was not sufficiently taken into account]

[Concerning art. 3(8) – harassment of public participating in procedures]

Page 100

- *comments concerning the "intimidating" atmosphere of the public hearing and the neutrality of the moderator*

The Government Office came to the following conclusions upon evaluating the above comment:

- All in all, the public hearing progressed in a dignified manner without major disturbances and was not charged with intimidation. However, the presiding chair reminded the attendees to abide by the Rules on several occasions so as to maintain law and order at the public hearing. Moreover, the Government Office paid attention throughout the whole event to ensuring that all of the participants get a chance to express their views and it also facilitated the free expression of opinions even with the use of demonstrative means, but it also reminded participants that they should respect the opinions of others.
- Taking also into account the provision of Article 3(8) of the Aarhus Convention, comments, remarks, opinions and positions could be put forward in one of two alternative ways, either personally or channelled through the moderator, which provided a vehicle for hearing the contributions, opinions, questions and positions of participants who did not wish to take the floor personally.
- Based on all of the above and also forward to the provisions of Article 3(8) of the Aarhus Convention, it can be ascertained that the Government Office ensured effective participation in the public hearing for persons wishing to exercise their rights, as each participant could put forward positions and opinions and raise questions either directly or through a representative.

[Concerning art. 6(4) – early public participation when all options are open;
and
Art. 6(6)(e) (lack of information about alternatives studied by the applicant – in conjunction with art. 6(4) – role of the energy policy)]

Page 104 and further

- *comments about not conducting the international environmental impact assessment procedure under the Espoo Convention and not involving the public at a time when all of the options are still open [since the Government had already made its decision about the technology to be used for power generation (nuclear power), the site (Paks), the type of reactor (VVER-1200) and the supplier (Russia)] and by doing so the Hungarian party has violated Article 6(4) of the Aarhus Convention, which requires the parties to provide for early public participation, when all options are open.*

The Government Office came to the following conclusions upon evaluating the above comment:

- Section 5/A(1) of the G Decree allows the Developer to start preliminary consultations with the environment protection authority. Subsection (2) provides that preliminary consultations are held so that the environment protection authority can furnish the Developer with a facilitating written opinion about the required content of the environmental EIAS and to allow the public to express an opinion about the planned activity.
- Developer applied for starting preliminary consultation pursuant to Section 5/A(1) of the G Decree on 10 November 2012. The Legal Predecessor of the Government Office acting upon the provisions of Section 13 of the G Decree sent the documents required for starting an international procedure to the Ministry and the latter notified all of the neighbouring countries and all EU member states about launching a preliminary consultation procedure as required by the provisions of the Espoo Convention and international practice. Moreover, forward to a notice received from Greenpeace Switzerland, Switzerland was also involved. As part of the preliminary consultation procedure, a total of 30 countries received a package of documents compiled in accordance with Annex 4 of the G Decree to disseminate fundamental information about the planned activity to a broad audience.
- The authority of the notified party provided access to the documentation for the public and sent it to its authorities with the competence to examine special questions for comments. During the procedure, the Legal Predecessor of the Government Office received a large number of comments transferred by the Ministry responsible for coordinating the procedure. The Legal Predecessor of the Government Office sent the comments to the Developer pursuant to Section 5/B(6) of the G Decree taking into account the ability to keep the 45 day deadline set forth in Section 5/B(4) of the G Decree in effect at the time, and the Developer took into account those comments in preparing the EIAS.
- As a result of a legal analysis of the comment in question it can be ascertained that for a practical interpretation of the provision of Article 6(4) of the Aarhus Convention, the term "all options are open" is interpreted to mean on the basis of the guidelines issued by the Aarhus Compliance Committee operated under the auspices of the UN that early public participation must be ensured in the environmental impact assessment procedure, i.e. at a time in the decision-making process when the authority may take into account public comments in merit and make its decision accordingly. When all of the options are still open for the authority to make its decision.
- As legal grounds for the above, the Aarhus Compliance Committee pointed out in its decision ACC/C/2006/16 (Lithuania) that in case national law envisages public participation during the preliminary consultation (scoping), it appears to provide for early public participation as required in Article 6(4) of the Aarhus Convention.
- This interpretation is also supported by Article 6(4) of the EIA Directive, which provides as follows: "The public concerned shall be given early and effective opportunities to participate in

the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken."

- It is to be stressed, furthermore, that issuing a license as a result of the present environmental impact assessment procedure shall by all means precede the issuance by the authority responsible for nuclear security of a regulatory license to construction, commission and operation the units pursuant to Section 66(5) of the EP Act. It follows from the above that even this environmental impact assessment procedure constitutes the early part of the request procedure seeking consent for the development of the new units, hence the provisions set in Article 6(4) of the Aarhus Convention are not violated even in that respect.
- In view of the above, the Government Office ascertained as a result of evaluating the comment that it had acted in compliance with the provisions of the G Decree and the Aarhus Convention as well as the standard international practices of giving effect to the Convention.

[Concerning Art. 6(6)(d) (insufficient quality of the non-technical summary)]

Page 106 and further

- *comments concerning the content covered by the EIAS and the Non-technical Summary, as some comments qualified those as incomplete (the components claimed to be missing from the submitted documentation include in particular the presentation of a long term strategy relevant to radioactive wastes and spent fuel rods and a discussion of the impacts on cultural heritage, as well as the economic and social impacts, the dismantling of the units, accidents and the consequences of incidents)*

The Government Office came to the following conclusions upon evaluating the above comment:

- The Government Office is under obligation to examine the content covered by the submitted documentation forward to the law in effect and in doing so must take into consideration the G Decree, which contains comprehensive rules about the mandatory substance of the EIAS, and in particular Annex 6 to the G Decree. On the other hand it has to take into account the provisions of sector level legal regulations relating to the environmental impact of the planned activity (including in particular the provisions on clean air, protection from noise and vibration, environmental radiology, landscape and nature protection and waste management). Furthermore, the Developer had to consider for the purposes of compiling the EIAS the opinion of the authority issued in closing the preliminary consultation along with the comments of public administration bodies participating in the preliminary consultation received from the Government Office pursuant to Annex 12 of the G Decree and any remarks relevant to the environmental impact received from the public concerned.
- The Government Office examined the appropriateness of the substance of the documentation submitted to obtain the environmental license both in terms of volume and content. When it identified instances of incompleteness, it requested the Developer to supply additional documents or statements in order to clarify the facts. As regards the Non-technical Summary, it could be determined upon the submission of that document that it met the requirements laid down in section 8 of Annex 6 to the G Decree and that it was acceptable for the purpose of conducting a public procedure and needed no further additions. As regards the EIAS, it could be ascertained, considering also the content covered by additional submissions and clarifications requested by the Government Office, that it complied with the requirements of content and volume set out in the relevant legal regulations.
- Eventually, the Government Office made this decision in possession of the EIAS and its supplements, the decisions of special authorities, comments received from the general public

in Hungary and foreign countries, the official positions of Affected Parties and all available data and information relevant to the case.

[Concerning Art. 6(7) in conjunction with art.s 2(4) and 2(5) (public participation open to the public)]

Page 83 and further

5. The participation of Client environment protection organisations in the procedure:

The following organisations established to represent environment protection interests and carrying out their activity in the planned impact area have requested registration as a client under the procedure pursuant to Section 15(5) of the Administrative Proceedings Act and Section 98(1) of the EP Act, provided that none of these organisations qualify to political party or as an advocacy body.

[… listing NGOs that were accepted because of their national coverage …]

The Government Office recognised the client status of the organisations listed above with reference to the organisation bylaws and final court decisions on registration attached pursuant to Section 9(5) of the G Decree.

In addition to the above, Csaba Figler, acting as power of attorney for the president of **Egészséges Ivóvízért és Környezetért Egyesület** (Association for Healthy Drinking Water and the Environment, 7145 Sárpilis, Zrínyi utca 3., hereinafter: EIKE) submitted an application for recognizing the client status of EIKE on 14 May 2015.
An evaluation of the attached bylaws and the registration data confirmed that the registered activity of EIKE was targeted at protecting the right to a healthy environment as a fundamental right, and it was also confirmed that the area of operation of EIKE did not coincide with the impact area which is subject to this procedure. Therefore, as Csaba Figler failed to verify EIKE's client status under Section 15(5) of the Administrative Proceedings Act and Section 98(1) of the EP Act, the Government Office refused to recognise EIKE's client status in an order issued under file number 558-162/2015.
Csaba Figler appealed the order issued by the Government Office by the applicable deadline. NIEN conducted a second instance procedure to evaluate the appeal in substance and dismissed it as unfounded, and therefore issued an order under file number OKTF-KP/9879-3/2015 to uphold the first instance order of the Government Office.

Page 95 and further

- *comments indicating the need to hold public hearings in regional centres in Hungary in addition to that held in Paks on 7 May 2015 given that the project is of national significance and affects the whole population, and it is particularly important therefore to broaden the scope of the procedure to cover the widest possible circle of the public;*
- *objections raised regarding the appropriateness of announcing the public hearing in Paks*

The Government Office came to the following conclusions upon evaluating the comments on the basis of applicable legal regulations.

- The purpose of a public hearing held as part of the procedure is to furnish the public with information about the planned activity received directly from the Developer. The public may ask the Developer questions about the planned activity and its expected environmental impacts, may ask the Government Office and the participating special authorities questions about the procedure. Pursuant to Article 6(7) of the Aarhus Convention, public hearings also

serve to allow the public make comments and to channel important public remarks, analyses and opinions about the planned activity to the Government Office.

- Section 63(1)a) of the Administrative Proceedings Act provides that an authority shall hold a public hearing when it is required by law. Under that authorisation, the environmental authority holds a public hearing during environmental impact assessment procedures pursuant to Section 9(1) of the G Decree. Section 9(2) of the G Decree specifies the option to hold public hearings at several locations, if several settlements are affected or if the number of affected parties justifies doing so.
- It follows from the EIAS that the impact area of the activity in question affects the town of Paks as the location of the establishment and the settlements of Dunaszentbenedek, Uszód, Foktő and Gerjen. Taking all of the above into account, the Government Office held a public hearing in compliance with the legal requirements in the Theatre Hall of Csengey Dénes Cultural Centre in the town of Paks, the location of the establishment on 7 May 2015 so as to inform the public and to become familiar with opinions and comments.
- Acting upon Section 9(4) of the G Decree, the Government Office sent its notification dated 2 April 2015 about the venue and date of the public hearing to the participating special authorities, the Developer, the Energy Club, REFLEX, Clean Air Action Group and Greenpeace as non-governmental organisations with client status justified pursuant to Section 9(5) of the G Degree up to that stage of the procedure, the Ministry conducting the international environmental impact assessment procedure and the organisations involved in the procedure up to that stage by virtue of the provision of domestic legal assistance and dr. Marcell Szabó, Deputy Commissioner for Future Generations, taking into account Section 21(1)c) of Act CXI of 2011 on the Commissioner of Fundamental Rights. The Government Office notified Védegylet of the venue and date of the public hearing on 22 April 2015 after the non-governmental organisation registered as client and certified client status on 13 April 2015.
- Pursuant to Sections 9(6) and (7) of the G Decree, the Government Office published its communication about the public hearing in compliance with the rules governing the communication by way of announcements on the website www.ddkvf.hu on 2 April 2015 and also on the website www.kormanyhivatal.hu/hu/baranya on 8 April 2015. The Government Office published its communication regarding the public hearing at the same website along with all of the communications made during the procedure on 24 April 2015. The Government Office also posted its communication about the public hearing on its bulletin board at its Pécs offices in Papnövelde utca 13-15 on 2 April 2015 and forwarded it for announcement to the notaries of municipalities participating in the procedure.
- The communication about the public hearing was posted on the bulletin board of their respective offices by the Honorary Chief Notary of the Town of Paks on 7 April 2015, by the Notary of the Joint Municipal Office of Dunaszentgyörgy in respect of Gerjen on 8 April 2015, and by the Notary of the Joint Municipal Office of Géderlak in respect of Úszód and Dunaszentbenedek on 8 April 2015. Also, the communication was also posted for public viewing on the website of the town of Paks (www.paks.hu). As regards Foktő, the Government Office sent the communication to the Notary of the Joint Municipal Office of Kalocsa, who forwarded it to the Notary of the Joint Municipal Office of Fajsz since the local governments of the villages of Fajsz and Foktő set up a joint municipal office as of 1 January 2015. Nevertheless, the Notary of the Joint Municipal Office of Kalocsa also posted the communication for public viewing between 9 April 2015 and 7 May 2015, and the communication was also posted publicly at the Fajsz centre of the Joint Municipal Office of Fajsz between 21 April 2015 and 7 May 2015 and at the branch office in Foktő between 3 April 2015 and 4 May 2015.
- However, publication in a local daily paper is no longer required under the G Decree since 1 January 2013, the Government Office has published the communication in two local papers. The decision to do so was motivated by the desire to give more emphasis on informing local

inhabitants by announcing the public hearing in the issues of Petőfi Népe and Tolnai Népújság published on 5 May 2015, a day close to the date of the public hearing.

- Based on the above, the Government Office ascertained while evaluating the above comments received from the public from a legal perspective that the legal regulations applicable to announcing the public hearing were observed, moreover, the Government Office widened the mandatory scope of announcing the public hearing by publishing its communication in local papers so as to allow all interested parties to attend the event.
- The public hearing was organised with the affected public showing pronounced interest through high participation. The auditorium of the theatre at Csengey Dénes Cultural Centre, which can seat 440 persons, was full. People who could not get a seat in the auditorium could follow the public hearing in a room with seats for 50 persons called Nagy Klub (Large Club), and screens were also mounted at the front gate of the building for people outside. The public hearing lasted more than 6 hours and the Government Office closed the hearing only after ascertaining upon asking the participants repeatedly that no member of the public intended to take the floor.
- Pursuant to Section 9(1) of the G Decree, the Government Office is under the obligation to hold one public hearing during the procedure in question. The expectation regarding the selection of the venue and date of a public hearing suggest that the venue and date shall be specified in a manner to ensure it does not prevent the public from participating. Public hearings must be held in a manner to facilitate participation by the members of the public, but that does not mean that public hearings shall be held at several venues. The Government Office has the discretion to decide whether or not there is a need to organise more than one public hearing at additional venues. Considering the set of settlements situated in the impact area of the planned activity, the Government Office found no justification for holding additional public hearings (at other venues) in the course of evaluating this question.
- By virtue of the relevant legal regulations, including the provisions of the Aarhus Convention, it can be ascertained that the participation of the public concerned at the public hearing was properly ensured and that the Government Office conducted the public hearing by attaining its objectives.

[Concerning Art. 6(8) (due account taken)]

[For this we refer to the full decision – a summary of issues is mentioned in the text of the communication. Hereunder we only quote where the Authority has removed a large volume of viewpoints and concerns from the assessment, because it deemed that these had no influence on environmental impact (sic!)]

Page 126

7.6. Comments with no relevance for environmental impacts:

- *comments concerning the intergovernmental cooperation subject to the Intergovernmental Agreement between the Government of Hungary and the Government of the Russian Federation in the Field of the Peaceful Use of Nuclear Energy and the classification of related data as state secret, the energy policy and National Energy Strategy of Hungary, the failure to invite tenders in compliance with the public procurement policy of the European Union, other negotiations and procedures pending with the European Union, the supply of fuel rods, the financing of the proposed nuclear power plants, the profitability of construction and operation, the stability of the electricity grid and the security of supply of electric power, reliability of the organisation supplying the technology, its liability for nuclear damage arising from accidents beyond design basis accidents and design basis accidents, the financial and public support for nuclear energy in Hungary and abroad,*

statements about the Hungarian electricity system, uranium mining, the organisational structure of the future Developer and the suitability of the Central Nuclear Monetary Fund.

Regarding the comments with no relevance for environmental impacts, the Government Office came to the following conclusions.

- Pursuant to the rules laid down in the Administrative Proceedings Act, the Government Office is bound by the application of the Developer, which means the application restricts the scope of its decision. Moreover, a fundamental rule of the Administrative Proceedings Act about the onus of proof and the duty to clarify the facts resting with the Government Office is also enforced. Accordingly, the Government Office acts ex officio to establish the facts, to determine the method and scope of substantiation with evidence and in doing so is not bound by the evidence submitted by clients, yet it must take into account all material circumstances regarding the case while clarifying the facts. The framework for that is determined by the legal norms regulating the powers of the Government Office and the scope of the procedure.
- Observing the international and EU norms listed above, the Government Office acts upon the authorisation granted (powers vested) by the provisions of the EP Act and the G Decree and makes its regulatory decision on the matter at hand as provided in Sections 6-16 of the G Decree and by giving effect to the requirements laid down in sectoral legislation. Given all of the above, it can be ascertained that the Government Office may only scrutinise in this procedure the potential environmental impacts that relate to the planned activity and must make its decision on whether or not an environmental license may be issued in possession of relevant information related closely to the planned activity.
- The scope of information of relevance for this procedure are laid down in Annex 6 (General Requirements regarding the Content of Environmental Impact Studies) of the G Decree with a view to Appendix II of the Espoo Convention (Content of the environmental impact assessment documentation), Articles 6(6)a)-f) of the Aarhus Convention and Annex 4 of the EIA Directive (Information for the Environmental Impact Assessment Report).
- On these grounds it can be ascertained that the Government Office is not in the position due to lack of powers to make a decision about the questions related to the topics listed above, either because some of the issues raised may not be subject to a regulatory procedure or because the Government Office has no power in respect of the issues. Accordingly, the Government Office could not evaluate the comments received about those issues during the decision-making process pursuant to Section 10(1) of the G Decree.