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**Submission on non-compliance by  
HUNGARY  
on issues concerning public participation  
in the case of the Paks II EIA procedure**

**Communication to the  
Aarhus Convention Compliance Committee**

**I. Information on correspondents submitting the communication**

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## **II. Party concerned**

Name of the Party concerned by the communication: **Hungary**

The party concerned ratified the Convention on 3 July 2001 without declarations or reservations.

## **III. Length of the communication**

Summary:

Hungary is in the process of construction of the Paks II nuclear power plant. For this project, an EIA was carried out in a transboundary procedure under the Espoo Convention, including public participation. The communicants participated in this procedure. After the conclusion of the procedure, they found non-compliance by Hungary on issues of procedure (art. 3(8) and art. 6 of the Convention), issues of content (art. 6(6) and 6(8) of the Convention) and access to justice (art. 9(2), possibly art. 9(3) and 9(4) of the Convention).

## **IV. Facts of the communication**

In 2009, the Hungarian government decided the start of the construction of new nuclear capacity at the site of the nuclear power plant (NPP) Paks on the shore of the Danube River in South Hungary and included this in its Energy Strategy 2030, which was not subjected to a transboundary public participation procedure.

In 2013, Hungary started a scoping phase for an Environmental Impact Assessment and notified surrounding countries.

In 2015, an Environmental Impact Assessment procedure was started. The responsible authority for the procedure was the Baranya county government office. The EIA was prepared by the utility MVM, owner of the Paks NPP, supported by the envoy for the construction of new capacity at Paks at the office of the Prime Minister, Attila Aszódi.

Early 2015, Hungary notified under the Espoo Convention all members of the EU, the Republic of Moldova, and Ukraine of its intention to build Paks II. Austria, Croatia, Romania, the Czech Republic, Germany, Greece, Malta, Slovakia, Slovenia, Serbia and Ukraine notified Hungary that they wanted to participate in a transboundary environmental impact assessment. Switzerland requested notification under art. 3(7) of the Espoo Convention.

EIA documentation was translated into English, and the chapters on transboundary impacts and the so-called non-technical summary were also translated in the languages of the countries participating in the procedure. These documents were published on:

<http://www.kormany.hu/hu/foldmuvelesugyi-miniszterium/hirek/nemzetkozi-kornyezetvedelmi-hatasvizsgalati-eljarasok>

Hungary organised public hearings on 7 May 2015 in the town of Paks for public from the direct surroundings of the power plant and national NGOs, and in cooperation with national governments in Croatia on 21 September 2015 in Osijek; in Austria on 23 September 2015 in Vienna; in Romania on 28 September in Oradea, on 29 September in Timisoara and 14 October in Bucharest; in Ukraine on 7 October 2015 in Kiev; in Slovenia on 12 October 2015 in Ljubljana; in Germany on 20 and 21 October 2015 in Munich; and in Serbia on 5 November 2015 in Belgrade.



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During the hearing time, additional documentation dated on 21 April 2015, was delivered, and the date for submissions prolonged to the end of 2015.

On 11 June 2015, Jan Haverkamp, commissioned by Greenpeace CEE, submitted a statement on the Environmental Impact Assessment NPP Paks II<sup>1</sup>, so did the Österreichisches Ökologie-Institut 23 September 2015<sup>2</sup>. Also the other communicants submitted statements.

In July 2016, additional information was sent to notified countries for further input, but not to those organisations and people already involved in the procedure. An expert statement in commission of the Austrian Ministry of Agriculture, Forestry, Environment and Water Management concluded that this documentation only covered issues important for the surrounding municipalities.

On 29 September 2016, the Baranya County government office approved the Environmental Impact Assessment. The decision was posted on the Hungarian website and sent to the Espoo notification contact points of the participating countries. Participants in the procedure were not directly informed about the decision. Appeal was possible until 30 October 2016.

None of the organisations and individuals represented in this communication (further: the communicants) received any substantial information directly from the responsible authorities in Hungary during the procedure, also not after they had made submissions directly to the responsible authorities in Hungary or when the responsible authorities in Hungary received their submissions via their national Espoo contact point. This includes the additional information released after summer 2015, as well as the additional information released in July 2016, as well as the final decision released on 29 September 2016. All communicants had included their contact data in their submissions.

The communicants instead had to collect their information – if possible at all – themselves, mostly over indirect sources, that is after accessing several Hungarian websites after they learned from others that documentation was available, or from the website of the responsible authority of one of the countries participating in the transboundary procedure. This holds true for the information on the scoping phase, the main documentation, as well as the additional documentation delivered after summer 2015 and in July 2016.

The communicants participated in the procedures in the following ways:

**Österreichisches Ökologie-Institut:** Participated as NGO (environmental protection) from Austria, a potentially impacted country. Commented as experts in commission for the Austrian Ministry of Agriculture, Forestry, Environment and Water Management on the EIA scoping documentation in 2013. Submitted its own viewpoints as NGO in the main EIA procedure in 2015. Made submissions as NGO during the public hearing in Vienna. Sent a complaint to the responsible Hungarian authority and to the Austrian authority.

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<sup>1</sup>See **Annex IV:** Haverkamp, Jan, *Comments on the Environmental Impact Assessment “Implementation of New Nuclear Power Plant Units at the Paks Site” made by MVM Paks II Zrt*, Vienna (2015) Greenpeace Central and Eastern Europe; [http://www.nuclear-transparency-watch.eu/wp-content/uploads/2015/12/20150604\\_Paks\\_II\\_EIA\\_Submission\\_JH\\_Greenpeace-lpl.pdf](http://www.nuclear-transparency-watch.eu/wp-content/uploads/2015/12/20150604_Paks_II_EIA_Submission_JH_Greenpeace-lpl.pdf)

<sup>2</sup>See **Annex V:** Mraz, Gabriele, and Reinhard Uhrig, *Statement for the Transboundary Environmental Impact Assessment NPP Paks II/Hungary*, Vienna (2015) Austrian Institute of Ecology, GLOBAL 2000/FoE Austria; [http://www.ecology.at/files/paks2\\_Statement\\_en.pdf](http://www.ecology.at/files/paks2_Statement_en.pdf)

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**Umweltinstitut München:** Participated as NGO (environmental protection) from Germany, a potentially impacted country. Commented on the EIA scoping documentation in 2013. Submitted viewpoints in the main EIA procedure in 2015; Made submissions during the public hearing in München.

**Greenpeace Energy e.G.:** Participated as cooperative (supply and development of renewable energy) from Germany, a potentially impacted country. Made a submission in the main EIA procedure in 2015.

**Calla - Sdružení pro záchranu prostředí, z.s.:** Participated as NGO (environmental protection) from the Czech Republic, a potentially impacted country. Made a submission in the main EIA procedure in 2015. Complained to the Czech Minister of Environment about procedural mistakes (i.e. not being informed timely of the final decision). Sent a complaint to the responsible Hungarian authority.

**Fundatia Terra Mileniul III:** Participated as NGO (environmental protection) from Romania, a potentially impacted country. Made submissions during the public hearings in Romania. Sent a complaint to the Romanian Minister because of the lack of opportunity to appeal because they were not considered a party (“client”). Sent a complaint to the responsible Hungarian authority.

**Brigitte Artmann:** Participated as potentially impacted citizen from a potentially impacted country. Submitted viewpoints in the scoping phase in 2013 and in the main EIA phase in 2015. Requested access to the technical data of the chosen reactor type via the Bavarian authorities, but never received these. Submitted viewpoints during the public hearing in München. Received during these hearings a verbal commitment from the Hungarian authorities that the requested technical data would be made available in the public participation procedure. She received one answer on one question (a denial that a large release of I-131 would be possible<sup>3</sup>), but never received the requested information, nor where and how she could submit viewpoints on it. Also requested the Hungarian authorities via the Bavarian authorities a copy of the protocol of the hearing in München, which she never received.

**Jan Haverkamp:** Participated as potentially impacted citizen from a potentially impacted country (Poland and later the Netherlands) and advisor to various environmental NGOs (incl. Greenpeace CEE in Austria, Greenpeace Hungary, Greenpeace Slovakia, Energiaklub and others). Made two submissions during the main EIA phase in 2015. Submitted viewpoints during the public hearings in Paks and Vienna.

The communicants did not receive directly any information about the final decision released on 29 September. When they heard about the decision, this was either from their national (non-Hungarian) authorities or by word-of-mouth from other environmental NGOs. In all cases, this information did not reach them before early 2017, far after the final appeal date of 30 October 2016.

In Hungary, the Hungarian NGOs Energiaklub and Greenpeace Hungary, as official “clients” in the procedure, prepared an appeal to the responsible authority, which was dismissed. They then prepared for court appeal, but because of changes in the legislation, they appeared to have submitted their final appeal text in the first half of 2017 to a wrong authority, which did not forward it to the right address, so that all possibilities for appeal for these two NGOs were finished.

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<sup>3</sup>See **Annex VII:** Response from the then still foreseen operator MVM Paks II, forwarded by the Ministry of Environment of Bavaria to Brigitte Artmann on 16 March 2016. Not published on the internet.

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The communicants have waited in 2017 for notification of the final decision on the environmental permit, but never received this. The Österreichisches Ökologie-Institut, the Czech Calla and the Romanian Terra Mileniul III sent letters to the responsible Hungarian authorities to ask for clarification. In the (Hungarian language) response, it appears they are not perceived by the Hungarian authorities as official “clients” in the procedure and hence were not informed about the outcome of the decision or possibilities for appeal and other remedies.<sup>4</sup>

The communicants needed most of 2018 to get clarification about the situation, and decided to file an appeal to the Hungarian court system in the third quarter of 2018.

Part of the confusion that needed to be clarified was the issue of standing before court: because foreign participants were not designated the status of “client” in the procedure, there was uncertainty about whether they would have standing in any appeal procedure. However, the communicants decided to prepare an appeal in spite of this unclarity.

This engagement was stopped in January 2019, when the Supreme Court in Hungary, the Curia, took a decision that makes it impossible to appeal decisions after officially set time-limits have expired, also in case the potential appellant may not have known for justifiable reasons of these time limits. This means that the way to local remedy for the communicants in Hungary has been closed.<sup>5</sup>

## **V. Provisions of the Convention alleged to be in non-compliance**

The communicants allege non-compliance by Hungary with the following articles of the Aarhus Convention:

- Art. 3(4) – difficult registration procedures and lack of support to NGOs
- Art. 3(8) – non-harassment of public participating in procedures (harassment of public during the hearing in Paks)
- Art. 6(4) – early public participation when all options are open (The procedure only addressed construction of Paks II at the Paks site on the basis of the Hungarian Energy Strategy 2030)
- Art. 6(6)(d) (insufficient quality of the non-technical summary)
- Art. 6(6)(e) (lack of information about alternatives studied by the applicant – in conjunction with art. 6(4) – role of the Hungarian Energy Strategy 2030)
- Art. 6(7) in conjunction with art. 2(5) (public participation open to the public concerned)
- Art. 6(8) – (it is not possible to assess to what extent viewpoints from the public were taken into account. The final decision documentation lacks an overview of viewpoints and their use.)
- Art. 6(9) – (The communicants were not informed of the decision and for those that found information later, when they received information, deadlines for appeal had already passed)
- Art. 6(10) – (The Hungarian government substantially changed the implementation timeline of the programme without public participation, including not informing participants in the EIA procedure of these changes)
- Art. 9(2) in conjunction with art. 2(5) and art. 3(9) – (Lack of standing in access to justice, insufficient time for access to justice).

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<sup>4</sup>See **Annex VIII**, Letters from Hungarian authorities

<sup>5</sup>See **Annex VI**: Supreme Court (Curia) No. 1/2019. KMJE, <https://kuria-birosag.hu/hu/print/joghat/12019-szamu-kmje-hatarozat>



- And possibly 9(3) in conjunction with art. 2(4), 2(5) and art. 3(9) – (idem for individual participants from potentially impacted countries in the procedure)
- Art. 9(4) – (fair and timely procedures, prohibitive costs)

## VI. Nature of alleged non-compliance

The communicants allege specific instances of non-compliance by Hungary with respect to the preparation of the construction of the Paks II nuclear power station. In some aspects, these instances also indicate systemic non-compliance arising from the Hungarian legal framework. The communicants allege non-compliance with the following articles of the Aarhus Convention:

### Non-compliance with article 3

#### 1. Art. 3(4) – difficult registration procedures and lack of support to NGOs

Even though various foreign NGOs and individuals took part in the procedure and submitted their statements, all documents and notices addressed to them were in Hungarian. This significantly complicated their capability to react to the notices in an adequate timeframe and led to translation costs. The requirements to be granted standing included the submission of various official translations into Hungarian (statements, statutes of the organisation, court registration etc.) and authentications to prove that the name and signature belongs to the person who is authorized to represent the organisation.<sup>6</sup> In this regard, the Hungarian authorities failed to provide appropriate recognition and support to foreign environmental organisations.

#### 2. Art. 3(8) – non-harassment of public participating in procedures

One of the communicants (Jan Haverkamp) noticed the following during his participation in the public hearing in Paks (see also statement in his submission in the procedure to the authority):<sup>7</sup>

- Although only around 30 members of the present public submitted comments, information etc., the hall was filled with between 300 and 400 people. Most of this crowd consisted of people working for the existing Paks nuclear power station. On several occasions, when members of the public submitting comments, information etc. made critical remarks about the procedure or the content of the project, they were jeered by the crowd, causing an intimidating atmosphere.
- The representative of the project, the government envoy Attila Aszódi, on at least three occasions verbally attacked members of the public submitting their comments, information, etc.

The moderator, representative of the responsible authority, did not interfere. In its final decision, though not indicated probably in reaction on the submission by the communicant Jan Haverkamp, the authority explicitly denies the facts of intimidation during the hearing.<sup>8</sup>

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<sup>6</sup>See **Annex VIII**, letter from the Baranya County Government Office received by Terra Mileniul III, the Österreichisches Ökologie-Institut and Calla, the letter from the Pest County Government office received by Österreichisches Ökologie-Institut.

<sup>7</sup>See **Annex IV**: points 11.9 and 11.10 on page 6.

<sup>8</sup>See **Annex I**, page 100 in: Baranya County Government Office, *Decision Environmental License – Unofficial translation of authority decision of 78-140/2016*, Pécs (2016);

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Acting as a representative of the Party, members of the responsible authority are obliged to ensure that the principles of the Convention can be exercised in compliance with Article 3(8). The communicants do not have any information whether the Hungarian legislation on public participation provides for any guidelines or other rules to prevent harassment during public hearings.

#### Non-compliance with article 6

3. The construction of a nuclear reactor is an activity subject to Article 6(1) and Annex I(1) of the Convention for which participation of the public concerned must be provided within permitting procedures. In procedures where public participation is required, this must be carried out early in the procedure “as to ensure that indeed all options are open and effective participation can take place”.<sup>9</sup>
4. It should be noted, that the Paks II nuclear power plant project is an “ultra-hazardous” activity<sup>10</sup>, and that the public concerned according to Article 2(5) in this case includes persons and environmental organisations far beyond Hungary’s borders. Should a severe accident occur, the range of adverse effects could extend over enormous geographical areas even beyond neighbouring countries.
5. Art. 6(4) – early public participation when all options are open  
The procedure only addressed the construction of the Paks II nuclear power station at the existing Paks site on the basis of the Hungarian Energy Strategy 2030. There were no alternative locations in Hungary taken into account, nor alternative nuclear reactor designs, nor alternative ways (as part of a zero-option) that could cover the needed energy production. Even if the Hungarian Energy Strategy 2030 had done so, these alternatives were not included in the project EIA documentation so that any justification could have been made on the basis of a proper comparison of options, including input during public participation.  
It is not in line with art. 6(4) of the Convention, when the decision-making process at the time of public participation is already at a stage when there is no realistic possibility for different choices to be accepted.<sup>11</sup> In order to comply with the requirements of art. 6(4) the public therefore should have been consulted already within the decision-making procedure on the Hungarian Energy Strategy 2030. On this matter, the communicants refer to the allegations of non-compliance of Hungary with the Convention outlined in communication ACCC/2014/105. From this other Paks II case, it can be concluded that the Hungarian legal framework does not ensure that the public has an opportunity to provide input before alternative options are eliminated.  
The failure to publish an outline of the main alternatives studied by the applicant within the public participation process also indicates non-compliance with art. 6(6).  
Concerning alternative locations: The entire Danube bank is a designated Natura2000 area. From that perspective, it would have been logical to try to find another location than the

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[http://www.kormany.hu/download/2/cb/e0000/Paks\\_II\\_EIA\\_Decision\\_\(Environmental\\_Permit\)\\_EN.pdf](http://www.kormany.hu/download/2/cb/e0000/Paks_II_EIA_Decision_(Environmental_Permit)_EN.pdf)

<sup>9</sup>ACCC/C/2006/16 (Lithuania) ECE/MP.PP/2008/5/Add.6, para 71.

<sup>10</sup>ACCC/C/2012/71 (Czech Republic) ECE/MP.PP/C.1/2017/3, para’s 73 and further.

<sup>11</sup>ACCC/C/2006/17 (European Community), ECE/MP.PP/2008/5/Add.10, para 54.



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Danube bank. No such alternatives were taken into account.

Concerning alternative reactor designs: Hungary chose for the Rosatom VVER1200 design without an open tender, and during the EIA procedure, there was no information about potential alternative designs. Among many other issues, concerning cooling options this could have made a considerable difference.

Concerning alternatives, including the zero-option: For alternative energy generation options, the authors of the EIA study referred to the adopted national Energy Strategy 2030, which does not sufficiently look into such alternatives, nor was submitted to a transboundary SEA or other form of public participation including potentially affected residents outside of Hungary. Several communicants referred in their submission to a study on alternatives submitted in the procedure by the Hungarian NGO Energiaklub to this extent.<sup>12</sup>

On page 122 and further of the unofficial translation of the environmental permit<sup>13</sup> it is stated that after the Intergovernmental Agreement between Hungary and Russia went into force, it was no longer reasonable to assess all reactor technologies that were listed in the scoping report. This argument for the decision for the chosen Russian reactor type does not seem to be based on the result of an assessment of environmental impacts.

The authority argued that submitting the scoping phase of the EIA to public participation would be sufficient to provide for early and effective opportunities to participate in the environmental decision making (see page 104 and further of the environmental permit).<sup>14</sup> The fact that in case of the Paks II nuclear power station, alternatives, including zero alternatives (e.g. alternative ways to fulfil demands), alternative siting possibilities and alternative technologies (designs) have not been taken into account in the scoping phase indicates that this scoping phase in itself did not make Hungary fulfil the obligations under art. 6(4).

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

The information provided by Hungary within the public participation process was insufficient regarding the non-technical summary. Consisting of largely technical data cut and pasted from the main report, it neither clearly described the main proposals for the project nor a clearly formulated justification for choices made. It did not attempt in any convincing way to explain the complex technical issues involved in a clear way to the larger public, including the use of visualisations, as required according to Appendix II of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).<sup>15</sup>

7. Art. 6(6)(e) (lack of information about alternatives studied by the applicant – in conjunction with art. 6(4) – role of the energy policy)

See point 5 above.

8. Art. 6(7) in conjunction with art. 2(4) and art. 2(5) (public participation open to the public)

One of the communicants (Jan Haverkamp) pointed out in his submission in the EIA procedure<sup>16</sup> that participation in the EIA procedure for the Hungarian public was restricted to:

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<sup>12</sup>Lechtenböhmer, Stefan, e.a., *Alternative and Sustainable Energy Scenarios for Hungary*, Budapest (2016) Zöld Műhely Alapítvány; <https://energiaklub.hu/en/study/alternative-and-sustainable-energy-scenarios-for-hungary-3945>

<sup>13</sup>See **Annex I**, page 122 and further

<sup>14</sup>See **Annex I**, page 104 and further

<sup>15</sup>See **Annex IV**, page 4, point 7

<sup>16</sup>See **Annex IV**, page 4, point 8

- Individuals from the municipalities directly bordering to the nuclear power station;
- NGOs that either have a geographical national scope on environmental protection or NGOs that have a limited geographical scope including the municipalities surrounding the nuclear power station.

The communicant pointed out that art. 6(7) of the Aarhus Convention gives members of the public, without any restriction, the right to submit comments, information, analyses or opinions during public participation processes. Earlier articles give the public concerned the right to be informed about public participation and receive access to the relevant information. In their decisions, the Hungarian authorities have at least excluded one Hungarian NGO from participation as “client” in the EIA procedure,<sup>17</sup> as well as the foreign NGOs the Österreichisches Ökologie-Institut, Calla and Terra Mileniul III.<sup>18</sup> But much more important, art. 2(5) of the Aarhus Convention defines the public concerned as “*the public affected or likely to be affected by, or having an interest in, the environmental decision-making.*” Because of the use of large amounts of highly radioactive material concentrated in the reactors and fuel ponds and storages, the potential hazard of a severe accident by which substantial amounts of radioactive substances are emitted into the environment cannot be excluded, as the experiences with Chernobyl and Fukushima have shown. This means that the public concerned in Hungary is far larger than defined for the public participation procedure in this EIA.

#### 9. Art. 6(8)

It is not possible to assess to what extent viewpoints from the public were taken into account. The final decision documentation lacks an overview of viewpoints and an argued overview of their consideration. Among many others, the following issues brought forward by the communicants were not taken into sufficient account:

- Issues concerning the heat burden for the Danube River – confirmed to be valid during problems with cooling of the existing Paks NPP during the hot summer of 2018;
- “unintended, unexpected or uncontrolled radioactive emissions shall be prevented with proper measures” - submissions asked for more clarity, which was not given;
- Insufficient assessment of synergetic effects of operation of the old nuclear reactors of the existing Paks nuclear power plant at the same time as the new ones;
- No alternative sites or other alternative solutions for electricity generation were assessed, especially not with an eye on the fact that the whole Danube shore is a Natura2000 territory;
- There was no detailed assessment of nuclear emergency preparedness and response; there was none in the case of a severe accident with a substantive emission of radioactive substances (it was assumed no radioactivity would be released to reach further than the fence, or further than a distance of 800 meters of the project). The given assessments of emergency preparedness and response were made on the basis of too low source terms (no INES 7 accidents were taken into account);

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<sup>17</sup>This concerns Csaba Figler, Figler, acting as power of attorney for the president of Egészséges Ivóvízért és Környezetért Egyesület (Association for Healthy Drinking Water and the Environment); see unofficial English translation of the environmental permit in **Annex I**, page 84

<sup>18</sup>See **Annex VIII** – Letter from the Hungarian Baranya County Government Office received by the Österreichisches Ökologie-Institut, Calla and Terra Mileniul III and the letter from the Pest County Government Office received by the Österreichisches Ökologie-Institut.

- Alternative nuclear designs were not taken into account;
- There was a lack of sufficient information about spent fuel and radioactive waste production, management and final disposal.
- There was a lack of information on the impact on the development of clean and renewable energy sources and energy efficiency technologies, including economic impacts, as well as no comparison with the use of these resources as viable alternative;
- No evaluation of health risks, including of regular operation, even though information to that extent was provided by the communicants;
- The issue of liability for nuclear damage was not addressed. This liability is currently capped at 100 Million SDR (currently 123 Million EUR),<sup>19</sup> and in comparison with the hundreds of Billions of Euro damage suffered by citizens in the case of the Fukushima catastrophe completely insufficient;
- A large set of issues was deemed to have no influence on the environmental impact,<sup>20</sup> although submissions from among others the communicants made clear they have;
- Important parameters of the project were changed after the EIA procedure.

According to art. 6(8) of the Convention, the discussion of how public participation was taken into account must be part of the written reasoned decision. The lack of a comprehensible overview with explanations why comments of the public were disregarded or how they were taken into account is not in line with art. 6(8).<sup>21</sup> Another indication that the procedure did not meet the requirements of art. 6(8) is that a ruling received by the Österreichisches Ökologie-Institut, Calla and Terra Milieniu III stated that they were entitled to submit a statement regarding the procedure in question, however, this statement would not need to be taken into account.<sup>22</sup>

#### 10. Art. 6(9)

The communicants were not informed of the decision and for those that found information later, when they received information, deadlines for appeal had already passed. The decision was not published “promptly” to the potentially affected public outside of Hungary.

#### 11. Art. 6(10)

After the EIA procedure, the Hungarian government substantially changed the implementation timeline for the programme, as well as the ownership structure of the project. Both issues may have considerable effects on potential environmental impacts. It did so without informing participants in the EIA procedure, including the communicants, of these changes, and they were not notified of any public participation on this matter.

### Non-compliance with article 9

12. Art. 9(2) in conjunction with art. 2(5) and art. 3(9), and possibly 9(3) in conjunction with art. 2(5) and art. 3(9) – (lack to access for justice for environmental NGOs and for individual

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<sup>19</sup>OECD-NEA, Nuclear Operators’ Third Party Liability Amounts and Financial Security Limits (Last updated: February 2019); <https://www.oecd-nea.org/law/table-liability-coverage-limits.pdf>

<sup>20</sup>See **Annex II**, page 7 [Concerning Art. 6(8) (due account taken)]

<sup>21</sup>ACCC/C/2008/24 (Spain); ECE/MP.PP/C.1/2009/8/Add.1 paras 100f.

<sup>22</sup>See **Annex VIII**, Letter from the Baranya County Government Office, last page.



participants from potentially impacted countries in the procedure)

On 29 September 2016, the Baranya County Government Office published the environmental permit for the Paks II reactor in Hungarian, with a deadline for the right to appeal of 15 days after the notification would be removed from public notification on 15 October, i.e. the deadline for appeal was 30 October 2016.<sup>23</sup> In neighbouring countries, the permit was not published before January 2017 and only as unofficial translation to English. In the permit, the conclusion was drawn that countries outside of Hungary were not affected.<sup>24</sup> In response to letters by the Österreichisches Ökologie-Institut, Calla and Terra Mileniul III addressed to the Hungarian National Inspectorate for Environment and Nature, the responsible authorities responded with decisions,<sup>25</sup> in which they stated that these organisations had no standing to appeal, because they were not registered in Hungary as “client” to the procedure.

13. As mentioned before, the activity subject to the permitting procedure falls within the scope of art. 6 of the Convention. Hence, environmental organisations meeting the requirements of art. 2(5) must be granted access to a review procedure according to art. 9(2).<sup>26</sup> In the present case, the public concerned as defined in art. 2(5) includes environmental NGOs, as well as persons with a direct interest<sup>27</sup> far beyond Hungary’s borders. As concluded by the ACCC in earlier cases, nuclear power must be seen as a potentially “ultra-hazardous activity”<sup>28</sup>. As all communicants have also expressed their interest in the decision-making process by submitting statements on the project, they should be considered as “the public concerned” as set out in art. 2(5).<sup>29</sup> However, the Hungarian authorities were not ready to grant environmental

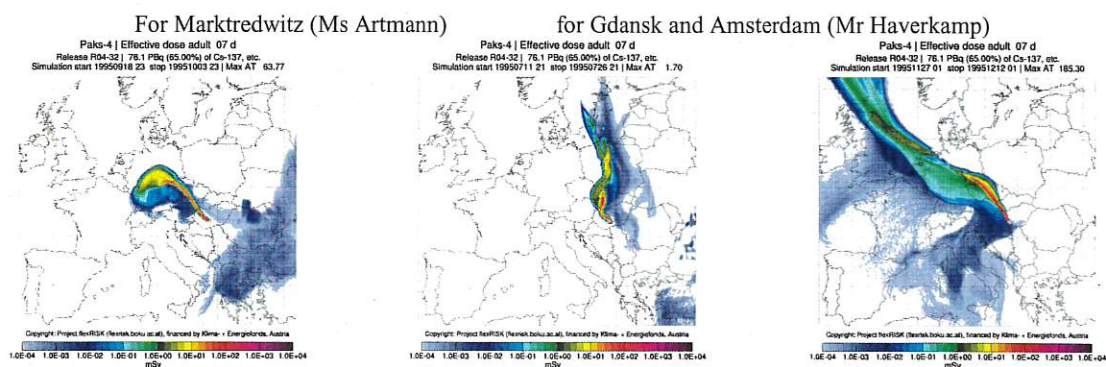
<sup>23</sup>See **Annex I**, page 127 and 128; for your convenience, **Annex III** only shows these decision pages.

<sup>24</sup>See **Annex I**, page 114 – 115

<sup>25</sup>See **Annex VIII**, letter from the Baranya County Government Office received by Terra Mileniul III, the Österreichisches Ökologie-Institut and Calla, the letter from the Pest County Government office received by Österreichisches Ökologie-Institut.

<sup>26</sup>See ACCC/2005/11 (Belgium); ECE/MP.PP/C.1/2006/4/Add.2, para. 26, 27.

<sup>27</sup>We do not have access to calculations on this new project, but calculations from the Austrian Meteorological Institute at the University of Vienna and the Institute for Safety and Risk Studies at the BOKU University in Vienna (<http://flexrisk.boku.ac.at/index.html>) show that the places where the two individual communicants (Brigitte Artmann and Jan Haverkamp) live could directly suffer from a severe accident with the Paks 4 reactor, which has a smaller radioactive inventory than the proposed reactors of Paks II. Similar information was included in the submissions from the Österreichisches Ökologie-Institut and Jan Haverkamp.



<sup>28</sup>See ACCC/C/2012/71 Czech Republic and later nuclear cases.

<sup>29</sup>ACCC/C/2009/43 (Armenia); ECE/MP.PP/2011/11/Add.1 para. 81; ACCC/C/2004/3 and ACCC/S/2004/1 (Ukraine); ECE/MP.PP/C.1/2005/2/Add.3, para 26.

organisations with a scope of activity in neighbouring countries nor individuals living in a distance of more than 30 km from the Paks site the status of a legal “client” or a remedy against the permitting decision.

14. One of the communicants is a commercial company (a cooperative (e.G.)) under German law, providing and developing renewable energy sources. This communicant has a direct interest in the decisions concerning the environmental licensing of the Paks II nuclear power plant, because false or erroneous information concerning alternatives under the zero-option negatively impact their business case, and because the project will undermine their statutory efforts to develop renewable energy sources in Europe – information that was submitted in the EIA process. The lack of access to justice for Greenpeace Energy e.G. therefore in our view also constitutes non-compliance with art. 9(2).
15. Because, according to the document addressed to the Österreichisches Ökologie-Institut, Calla and Terra Milieniul III, the right to appeal depended on the standing as a legal “client”,<sup>30</sup> the criteria for being a legal “client” must meet the requirements of art. 9(3) of the Convention. The criteria to be a legal “client” within the EIA procedure mentioned in the decisions from the Hungarian authorities involved, inter alia, that environmental protection is mentioned as activity area in the NGO’s statutes and that the impact area of the subject of the case (in this case Paks II) falls within the operation area of the environmental organization. Considering the extensive effects of nuclear power plants, and the Conventions approach that access to justice should be “the presumption, not the exception”<sup>31</sup>, these restrictions for access to a review procedure under art. 9(3) justice appear to be inadequate in the present case.
16. This restriction to the possibility to challenge the decision runs counter to the principle of non-discrimination laid down in art. 3 (9) of the Convention. The requirement to have Hungary within the scope of activity or, concerning individuals, reside within an even smaller area surrounding the site also indicates inconsistency with the Convention’s principle of “giving the public concerned wide access to justice”<sup>32</sup> and therefore non-compliance with art. 9(2).<sup>33</sup> The communicants were not provided with information on the exact requirements for the right to challenge the permitting decision.
17. Art. 9(4) – (fair and timely procedures, prohibitive costs)  
The Österreichisches Ökologie-Institut, Calla and Terra Milieniul III were also informed in a ruling in Hungarian language of the following requirements in case they wanted to file a complaint.<sup>34</sup>

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<sup>30</sup>See **Annex VIII**, letter from the Baranya County Government Office received by Terra Milieniul III, the Österreichisches Ökologie-Institut and Calla, the letter from the Pest County Government office received by the Österreichisches Ökologie-Institut.

<sup>31</sup>ACCC/2005/11 (Belgium); ECE/MP.PP/C.1/2006/4/Add.2, para. 36.

<sup>32</sup>ACCC/2005/11 (Belgium); ECE/MP.PP/C.1/2006/4/Add.2, para. 26; ACCC/C/2009/43 (Armenia); ECE/MP.PP/2011/11/Add.1 para. 81.

<sup>33</sup>See also ACCC/C/2009/43 (Armenia); ECE/MP.PP/2011/11/Add.1 para. 81.

<sup>34</sup>See **Annex VIII**, letter from the Baranya County Government Office received by Terra Milieniul III, the Österreichisches Ökologie-Institut and Calla, the letter from the Pest County Government office received by the Österreichisches Ökologie-Institut.

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- Payment of 30,000 HUF (around 100 EUR) to the bank account of the Baranya County Government Office (the relevant authority of first instance, which issued the environmental license).
  - Provision of a document translated into Hungarian and authenticated, which proves that the name and signature belongs to the person who is authorized to represent the organisation.
  - Provision of the statutes and court registration of the organisation in an official Hungarian translation.
  - The organisations were given 30 days to accomplish this, which is, given the fact that the ruling first needed to be translated from Hungarian, the relevant documentation has to be gathered, translated by a professional and recognised translator into Hungarian, and then submitted together with the documentation for appeal, too short. Apart from that, the requirement of official translation severely adds to costs: the cost of translation of the statutes of only the Ökologie-Institut from German into Hungarian would be over 800 EUR. The official translation of all material would far surpass 1000 EUR, total costs including the EUR 100 (HUF 30,000) court fee, without legal representation, would easily surpass 1500 EUR.
18. Because other communicants (e.g. Jan Haverkamp, Greenpeace Energy eG) did not receive any timely information about appeal terms, they also were not able to lodge an appeal in time.
19. When the communicants found out the difficulty of their situation, they decided to bundle their efforts and try to search local remedy by preparing a late appeal on the basis of the fact they had not been timely informed. However, in January 2019, the Curia – the Hungarian highest administrative court – released a decision in which it was made impossible to appeal when there would be a long time between a decision and the appeal, even in the case when the appellant was not properly informed about the decision.<sup>35</sup> With this, the communicant's possibility to appeal against the above-mentioned violations of environmental issues was blocked entirely.
20. Finally, it should be noted that, even if the communicants had been considered legal "clients", the appeal time of 6 weeks from the publication date would have simply been too short to prepare an appeal in Hungarian and seek and use Hungarian legal representation.<sup>36</sup>

## **VII. Use of domestic remedies**

It took some time before the communicants realised that the responsible Hungarian authorities were not going to inform them directly of their decision. The communicants presume this was on the grounds that they were not considered official "clients" in the procedure. The national authorities of potentially impacted countries under Espoo received the decision after the time for appeal had expired. Some of the communicants who live in countries that were participating in the transboundary procedure received this information only when (actively) contacting their national authorities for an update. Others did not receive any information, but only learned of the decision by coincidence. Four communicants, Calla,

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<sup>35</sup>See **Annex VI**, Supreme Court (Curia) No. 1/2019. KMJE, <https://kuria-birosag.hu/hu/print/joghat/12019-szamu-kmje-hatarozat>

<sup>36</sup>See **Annex III**, page 127 and 128 of Annex I



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Terra Mileniul III, the Österreichisches Ökologie-Institut and Brigitte Artmann, then contacted their national authorities and/or the responsible Hungarian authorities with a complaint that they were not informed about their possibilities to appeal. None of them received any practically satisfying response on that complaint.<sup>37</sup>

The informal English translation of the final decision of the Hungarian authorities is itself dated in the document properties on 21 December 2016<sup>38</sup>. This dates after the final appeal date of 30 October 2016. In Austria, the Federal States laid out the final decision in English language for notification to the public between 24 January until 21 February 2017.<sup>39</sup>

During 2017 and the start of 2018, the Hungarian NGOs Energiaklub and Greenpeace Hungary, both not communicants in this communication but official “clients” in the procedure, prepared an appeal. Their appeal in second instance was unsuccessful by their own fault: because of a recent change in administrative law, their legal representative submitted the appeal to a wrong authority, which in turn did not forward this appeal to the right authorities. With that, Energiaklub and Greenpeace Hungary lost their possibilities to appeal.

The communicants had waited for this procedure in order to intervene there.

When it became clear that this was no longer possible, the communicants sought advice on a direct appeal from their side, in spite of the fact that they were not considered official “clients” in the procedure. Because it was not possible to gain any clarity on this point, they decided after the summer of 2018 to prepare an appeal nevertheless.

When they were in the final stages of preparation of this appeal in the end of January 2019, our Hungarian legal advisor informed us that the Hungarian Supreme Court, the Curia, had taken a decision that changed the rules of operation *vis-à-vis* appeals where the complainant argues he could not keep prescribed time-limits because he was not properly informed.<sup>40</sup> We as communicants are not in the position to assess this judgement from the Hungarian text or its Google translation, but it was made clear to us that Hungarian legal remedy was for us *de facto* impossible.

For that reason, in the end no steps for local remedy were taken.

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<sup>37</sup>The only response received explained that they were not considered “clients”; see **Annex VIII**

<sup>38</sup>See the properties of the document in **Annex I** and as published on the original Hungarian website: [http://www.kormany.hu/download/2/cb/e0000/Paks\\_II\\_EIA\\_Decision\\_\(Environmental\\_Permit\)\\_EN.pdf](http://www.kormany.hu/download/2/cb/e0000/Paks_II_EIA_Decision_(Environmental_Permit)_EN.pdf)

<sup>39</sup>Publication of the Austrian Federal Agency for the Environment: “The Federal States laid out the translation of the environmental license from 24 January until and including 21 February for public notification.” (“*Die Bundesländer legten die Übersetzung der Umweltgenehmigung von 24. Jänner 2017 bis einschließlich 21. Februar 2017 zur öffentlichen Einsichtnahme auf.*”); [http://www.umweltbundesamt.at/umweltsituation/uvpsup/espooverfahren/espoo\\_ungarn/uvp\\_kkwpacksii/](http://www.umweltbundesamt.at/umweltsituation/uvpsup/espooverfahren/espoo_ungarn/uvp_kkwpacksii/)

<sup>40</sup>See **Annex VI**, Supreme Court (Curia) No. 1/2019. KMJE, <https://kuria-birosag.hu/hu/print/joghat/12019-szamu-kmje-hatarozat>

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## **VIII. Use of other international procedures**

The communicants plan, parallel to this communication to the Aarhus Convention Compliance Committee, to also inform the Implementation Committee of the Espoo Convention of certain shortcomings of the transboundary EIA procedure. These will, of course, cover different issues than this communication.

## **IX. Confidentiality**

The information contained in this communication as well as further correspondence is public, unless explicitly stated differently.

## **X. Supporting documentation (copies, not originals)**

**Annex I** Environmental permit – unofficial translation of the decision of the responsible authorities on the EIA

**Annex II** Extracts from the final environmental permit decision (where references are made to the communicants)

**Annex III** Extract from the environmental permit decision that defines the appeal procedure (page 128)

**Annex IV** Submission by Jan Haverkamp, commissioned by, among others, Greenpeace CEE, Vienna, Austria

**Annex V** Submission by the Ökologie-Institut Vienna

**Annex VI** Supreme Court (Curia) decision No. 1/2019, KMJE

**Annex VII** Response from MVM Paks II forwarded by the Bavarian Environmental Ministry to Brigitte Artmann


**Annex VIII** Letters from Hungarian authorities (English and Hungarian originals)

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**XI. Signature**

Date of the communication: **20 May 2019**

Signature [Robert Lechner, Director of Österreichisches Ökologie-Institut]:



ÖSTERREICHISCHES  
ÖKOLOGIE-INSTITUT  
1070 WIEN, SEIDENGASSE 13

**XII. Sending the communication**

Send the communication by **e-mail and by registered post** to the following address:

Secretary to the Aarhus Convention Compliance Committee  
United Nations Economic Commission for Europe  
Environment Division  
Palais des Nations  
CH-1211 Geneva 10, Switzerland

E-mail: [aarhus.compliance@unece.org](mailto:aarhus.compliance@unece.org)

Clearly indicate:

“Communication to the Aarhus Convention Compliance Committee”

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