

4 October 2019

Ms. Andrea Barad
Ministry of Agriculture
Hungary

Ms. Gabriele Mraz
Oesterreichisches Oekologie-Institut
Vienna, Austria

Mr. Jan Haverkamp
Amsterdam, the Netherlands

Dear Ms. Barad, dear Ms. Mraz, dear Mr. Haverkamp,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by Hungary with provisions of the Convention in connection with the permitting of the Paks II nuclear power plan (PRE/ACCC/C/2019/169)

As you may recall, at the open session on the preliminary admissibility of the above communication held during its sixty-fourth meeting (Geneva, 1-5 July 2019), the Compliance Committee agreed to send questions regarding the use of domestic remedies for the parties' reply in advance of the Committee's sixty-fifth meeting (Geneva, 4-8 November 2019).

I would be grateful to receive your replies to the enclosed questions on or before **1 November 2019**, copying the other party. Please keep your replies as brief and concise as possible.

Please do not hesitate to contact the secretariat if you have any questions regarding the above.

Yours sincerely,



Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Mission of Hungary to the United Nations Office and other international organizations in Geneva.

Enc: Questions from the Committee to the parties

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Questions to the communicants

1. Did any of the communicants file administrative or judicial review proceedings to challenge the permitting decision of 29 September 2016? If so, on what date was the proceeding filed and what is the status of the case, including any outcome?
2. Did Oesterreichisches Oekologie Institut submit the information requested by the Baranya County Government Office within the 30-day deadline stipulated by that entity's ruling of 22 March 2017?¹ If so, what was the outcome of its application?
3. Did any of the other communicants submit a fully completed application for client status either during the EIA procedure or since the 29 September 2016 permitting decision was taken? If so, what was the outcome of their application?
4. Please provide evidence to substantiate your claims that "Hungarian authorities were not ready to grant environmental organisations with a scope of activity in neighbouring countries nor individuals living in a distance of more than 30 km from the Paks site"² either:
 - (a) "the status of a legal client";
 - (b) "a remedy against the permitting decision".
5. Please comment on the statement of the Party concerned that the communicants did not use all remedies because they did not use the possibility of an application for an excuse pursuant to article 66(1) of Act CXL of 2004 on the General Rules for Administrative Proceedings and Services (the Ket).³
6. On what grounds was the administrative appeal of Energiaklub and Greenpeace Hungary against the permitting decision for the new reactors at the Paks NPP dismissed by the responsible authority?⁴
7. Regarding the court appeal brought by Energiaklub and Greenpeace Hungary against the permitting decision for the new reactors at the Paks NPP:
 - (a) On what date did Energiaklub and Greenpeace Hungary file their court appeal?
 - (b) On what date was Energiaklub and Greenpeace Hungary's court appeal rejected?
8. You claim that decision No. 1/2019, KMJE of January 2019 of the Curia has "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".⁵ What is the basis for your assertion that the Curia's judgment is applicable to a case in which the complainant alleges it was not notified in due time by the authority who took the challenged decision? Assuming that the Curia's judgment would indeed be relevant to the present case, what end date for filing an appeal does it set? Please provide references to the relevant part of the judgment or to subsequent caselaw of the Party concerned's courts to support your answers.

¹ Party's comments on preliminary admissibility, 28 June 2019, p. 7.

² Communication, p.12.

³ Party's comments on preliminary admissibility, 28 June 2019, pp. 4 and 7.

⁴ Communication, pp. 5 and 15.

⁵ Communication, p. 15.

Questions to the Party concerned

9. Please confirm whether the right to appeal the 29 September 2016 environmental permitting decision for the two new reactors at the Paks nuclear power plant (NPP) was limited to those having the status of “clients”. If the right of appeal was not only limited to “clients”, please indicate the criteria for standing to appeal the decision.
10. If the right to appeal the 29 September 2016 permitting decision was indeed limited to “clients”, would it have been possible for a member of the public to apply for client status after the permitting decision had been taken (in order to be entitled to challenge that permitting decision)? If so, what would have been the final date that a member of the public could have submitted an application for client status with respect to the 29 September 2016 permitting decision?
11. According to the environmental impact study, the impact area of the planned activity would affect the town of Paks, as well as Dunaszentbenedek, Úszód, Foktő and Gerjen.⁶ Please specify which of the following organizations could, in principle, have met the requirements of either article 15(1) or article 15(5) of the Ket⁷ (in conjunction with article 98(1) of Act LIII of 1995 on the general rules of environmental protection) to obtain “client” status with respect to the proposed activity:
 - (a) A Hungarian organization whose “operating area” includes the towns of Paks, Dunaszentbenedek, Úszód, Foktő and Gerjen;
 - (b) A Hungarian organization whose “operating area” includes all of Hungary;
 - (c) A Hungarian organization whose “operating area” covers another region of Hungary and not the towns of Paks, Dunaszentbenedek, Úszód, Foktő and Gerjen;
 - (d) A foreign organization whose “operating area” is outside of the Party concerned.
12. Once the deadline in article 66(4) of the Ket⁸ expired, were there any other legal mechanisms that members of the public could have potentially used to challenge the 29 September 2016 permitting decision? If so, please outline the relevant legal mechanisms, including who would have standing to use them. What would be the last date for members of the public to have used these mechanisms to challenge the 29 September 2016 decision? Would it in principle still be possible for any members of the public to seek to challenge the 29 September 2016 decision now? If so, please specify which legal mechanisms would still be open and who would have standing to use them.
13. Is decision No. 1/2019, KMJE of January 2019 of the Curia⁹ relevant to the issue of the date until when any members of the public (including those identified as clients in the procedure) would be entitled to challenge the permitting decision of 29 September 2016? Please provide reasons for your answer.

⁶ Communication, annex VIII, p. 22.

⁷ Party’s comments on preliminary admissibility, 28 June 2019, p. 3.

⁸ Party’s comments on preliminary admissibility, 28 June 2019, p. 4.

⁹ Communication, annex VI.