



I. Activities in relation with the Aarhus Convention

The Aarhus Convention was created in 1998 to grant the public rights regarding access to information, public participation and access to justice in environmental matters. Energiaklub has been working on the promotion of these principal rights, focusing on the issue of energy.

Energiaklub was established 20 years ago, and over the years we have gained the reputation as an independent and leading think&do organisation in Hungary, dealing with practical energy issues as well as climate and energy policy. During this period of time we have in numerous cases experienced the lack of transparency inherent in the energy sector's decision-making mechanisms and operational practices, and its extreme sensitivity to abuses. It has always been a difficult task to gather relevant pieces of information from the energy sector and play active part in the decision-making processes, which in a democracy should be evident. Therefore, it is our mission to work towards a transparent energy sector in Hungary, which is also in accordance with the objectives of the Convention.

In the followings the activities of Energiaklub in this field are presented, regarding nuclear energy (nuclear is selected as a theme, being the least transparent segment of energy in Hungary). The activities are described in accordance with the three pillars of the Aarhus Convention.

1. Access to information

The purpose of this pillar is to make environmental information available to the public, in order to be more aware of, protect and improve the environment for the benefit of the present and future generations.

Energiaklub first articulated the need of working explicitly for the higher level of freedom of information in 2003 – after the serious INES 3 incident in Paks Nuclear Power Plant –, when the public could gain no appropriate information on the event. Access to information about the incident – and about many issues since then – has been a challenging task but in some cases even impossible. It was practically evident to start asking for documents concerning the incident and the following remediation processes, which in fact served the above described mission as well.

Since then Energiaklub has requested a number of data and documents from either the Hungarian Atomic Energy Authority or the Paks Nuclear Power Plant. Our experience shows that when the request concerns “sensitive” issues, such as the incident or the planned expansion of Paks NPP, access to information becomes quite challenging.

Requested information regarding nuclear energy:

- In 2004 and 2005: documents of the INES 3 Paks incident from the Hungarian Atomic Energy Authority (HAEA). As it was the second biggest nuclear incident in Europe after Chernobyl, Energiaklub wanted to look into the documents concerning the incident and remediation. (The documents were not disclosed referring to commercial secrecy and know-how. Energiaklub sued HAEA. Litigations came to end in 2010 (!), resulting in disclosing about 70% of the documents ordered by the Court).
- In 2008: documents on the waste management strategy regarding injured spent fuel of the 2003 incident from the HAEA. Disclosure of the documents was denied referring to commercial secrecy. Litigation followed and the Court ruled that the documents are public data, so HAEA finally handed them over.
- In 2008: documents regarding the final storage of low and intermediate level radioactive waste from the Mining Authority. Disclosure of the documents was denied referring to commercial secrecy. Litigation followed and the Court ruled that the documents are public data.
- 2009: Documents of the Teller and Lévai projects (which are about the extension of Paks NPP by one or two reactors) from the Hungarian Power Company, called MVM. MVM refused to provide

the documents with reasons of commercial secrecy and pre-decision-making materials. Energiaklub launched a court case and on the first trial (half a year after our data request) MVM announced that they do not possess the data, it is Paks NPP whom Energiaklub should have asked for the documents.

- In 2010 Energiaklub asked for the Teller project documents from Paks NPP. Because of refusal a court case was launched, which is still progressing.
- 2010: documents and information on the Central Nuclear Financial Fund were requested from the HAEA. The information was fully provided.
- 2011: request for the documents of the Lévai project from the Paks NPP. No answer so far.

2. Public participation

Public participation in decision-making enhance the quality and the implementation of decisions, contribute to public awareness of environmental issues, give the public the opportunity to express its concerns and enable public authorities to take due account of such concerns.¹

There are three types of public participation according to the Convention: (1) in decisions on specific activities (such as projects which are subject to an environmental impact assessment), (2) concerning plans, programmes and policies relating to the environment, and (3) during the preparation of executive regulations and/or generally applicable legally binding normative instruments.

Energiaklub is active in all these fields regarding energy in general. As far as nuclear energy is concerned Energiaklub performed the following activities:

- 2006: Paks NPP, Plant Lifetime Extension, Environmental Impact Assessment (EIA). Energiaklub became a client and had a role in the entire Environmental Impact Assessment process. It was one of the first EIAs in Hungary with an interest for the whole country. Energiaklub expressed several worries and pointed out several deficiencies of the impact study. Together with EMLA (Environmental Management and Law Association) we also appealed to court against the issued environmental license as we found the EIA did not include every aspect it should have (mainly safety related things). Unfortunately our appeal was rejected.
- 2007: Bábaapáti Law and Intermediate Radioactive Waste Storage EIA: basically the same happened as with Paks EIA. Energiaklub was a client in the process, we analysed the impact study, presented our concerns, but they were rejected.
- 2010: participating in the evaluation of the planned Energy Strategy, where Energiaklub expressed – among other issues – that the expansion of Paks is not needed.

This last case is an excellent example of the relation between the first two pillars of the Aarhus Convention: access to information and public participation. In our case, in order to take part in relevant conversation and consultation on the need of the Paks expansion, Energiaklub would need the documents of the Teller and Lévai projects. It is only possible to refute the statements and particular arguments for expansion if it is public and known. However, with rejecting our requests, Energiaklub does not have the possibility to argue over the results, which creates a disadvantaged position when participating in the Energy Strategy formulation.

3. Access to justice

The Aarhus Convention ensures that any person whose request for information has been ignored, wrongfully refused or inadequately answered has access to a review procedure before a court of law or another independent body established by law.

As seen from our access to information cases, Energiaklub's requests were several times refused. In such cases Energiaklub turned to the court, exploiting the opportunity provided by the Aarhus Convention (and other national legislation).

¹ Cited from the Aarhus Convention



Below is the list of Energiaklub's litigations relating to nuclear energy:

- 2004: against HAEA, for refusing to disclose documents on the re-start of the 2nd reactor unit. This is the block next to which the serious incident happened in 2003. The HAEA gave permission for the re-start of the unit while the injured spent fuel rods were still not removed and stayed beside the reactor.
- 2005: against HAEA, for refusing to disclose documents on the remediation of the injured spent fuel. This and the previous case came to an end after 6 and 5 years, in August 2010. They were mainly successes, as the Court ruled that the requested documents were public information and that they had to be disclosed except from the ones which is declared as commercial secret by an independent expert. This way Energiaklub received approximately 70% of the documents.
- 2008: against HAEA for refusing to disclose documents on the waste management strategy regarding injured spent fuel of the 2003 incident. This court case ended very quickly, resulting in the disclosing of all the documents, as, by the verdict of the Court, they are public environmental information.
- 2008: against the Mining Authority for refusing to disclose documents regarding the final storage of low and intermediate level radioactive waste. This court case also ended very quickly, resulting in the disclosing of all the documents, as, by the verdict of the Court, they are public environmental information.
- 2010: against Paks Nuclear Power Plant for refusing to disclose the documents of the Teller project, which investigated the possibility of the expansion of Paks by one or two reactors. This litigation is still running.

There is an alternative to turning to court for access to justice, especially when it is not particularly about information request: it is appealing to the ombudsman. Hungary has a Parliamentary Commissioner (Ombudsman) of Future Generations, who is entitled to make resolutions on certain ambiguous cases. Energiaklub has two Aarhus related cases before the Ombudsman of Future Generations:

- one on the licensing and building of the low and intermediate level waste repository at Bataapáti
- the other on the parliamentary decision in 2009 concerning the expansion at Paks. The legality and reasonability of this decision is questioned.

Although these appeals were submitted in 2009 there are still no official resolutions available. However, they can be expected soon (Spring 2011).

Experiences so far

From our Aarhus cases regarding nuclear we could conclude that when it comes to a "sensitive" issue, access to information and also public participation becomes difficult.

- Answers for information requests usually come late, and often exceed deadlines defined by regulations, or even don't come at all. Repeated requests are not unusual in this field.
- Refusals are more common than in any other fields of energy. The main reason for refusals is commercial secrecy.
- Court cases take up years, except from those which are so obvious that even the Court does not need much time to decide. Note that in Hungary access to information cases should have priority before the court, meaning that trials have to be appointed not later than 90 days. This did not always happen with our nuclear cases.
- The defendants (Paks and HAEA) are sometimes playing on temporization, e.g. not preparing for trials and asking for more time, prolonging the procedure even to extremities (like the two cases on the 2003 incident, which lasted for 5 and 6 years).
- The court of first instance often doesn't dare to undertake the responsibility to decide against Paks – or so it seems –, that it even invents reasons, not used and mentioned by Paks, to refuse our appeal.



II. The practical implementation of the Aarhus Convention in the nuclear field – the national round table

As can be seen from our Aarhus cases, there are several problems which arise when it comes to the transparency of the nuclear sector. This situation has to be managed and definitely improved. There are two methods for this applied by Energiaklub. One is the above described practical cases: trying to modify the attitude of authorities and public companies towards information requests by submitting requests frequently, asking regularly for documents and data. As it has been not common in the past to do such things, authorities and companies were simply not used to this kind of democracy. Asking for public documents and turning to court in case of refusal, thus making transparency and publicity become more evident in their culture, is one method to pave the way for a more transparent future.

Operation of the round table

The other method applied by Energiaklub is being engaged in a professional work, trying to modify the legal environment to make it more exact and providing less space for refusals. This is the so called national round table on the practical implementation of the Aarhus Convention. This is the place where we discuss the emerging problems related to nuclear issues (nuclear is picked as a theme, being the least transparent segment of energy in Hungary). The work is carried out on two levels: there is a working group and the round table itself.

This working group gathers a pluralistic group of actors with 10 participants (NGOs, industry, authorities, Parliamentary Commissioners Office of Future Generations and of Data Protection and Freedom of Information) and focus on different nuclear issues. This approach enables the various stakeholders, through dialogue and exchange, to identify existing problems and possible ways for progress. The working group concentrates on the questions of access to information and participation (which is in line with the Aarhus Convention), analyzes Hungarian case studies and elaborates on solutions to existing problems within the subject. Case studies are mainly presented by Energiaklub, being the main Hungarian organization focusing on the issue of energy.

The products and papers of the working group are then introduced to a round table, to which a broader scale of stakeholders is invited, with approximately 50 participants. The round table discusses the materials of the working group and makes recommendations on amendments. Planned outcomes of the round table meeting are resolutions or even amendments to existing legislation, resulting in a clearer legal status.

Contents

The discussions are arranged around two topics: access to information and public participation, which are two pillars of The Aarhus Convention.

As regards access to information, the main debate is about commercial confidentiality, being the most common reason for refusing data requests. According to the Hungarian legislation (and Aarhus as well) the only case when information must be disclosed even if it contains commercial secrets is when it is “on emission” or “related to emission”. However, these terms are not defined. The working group is now elaborating on this issue, working out definitions and giving examples of information related to emissions, because we feel that if this expression is better defined in the legislation it results in a clearer situation. When the working group agrees on it and the round table approves, amendments to existing legislation can be suggested and brought about.



Also, relating to access to information, Energiaklub worked out a list of “good practices”, where the main emphasis is put on the cooperation of data requestors and the handlers of data. In many cases we have found that constructive cooperation could have resulted in better and faster results. For instance, when Energiaklub asked for the documents of the Teller project from MVM, it refused disclosure and only informed us on the first trial (half a year after our information request) that it does not have the documents, we should have asked it from Paks NPP.

The other field is public participation. At this topic the working group has not got far, discussions have not started, only some cases were presented, which will be the subject of further consultations.

There has been one round table so far, in May 2010, where the directions of work were presented by the members of the working group and a Modus Operandi was accepted (describing operating and voting procedures of the round table). The next round table is planned in March 2011.

28 January, 2011.