

Virginijus Sinkevičius
EU Commissioner for Environment
Directorate-General for Environment
European Commission
B-1049 Bruxelles/Brussels
Belgium



Date December 10th 2021

REQUEST FOR INTERNAL REVIEW

NLVOW Nederlandse Vereniging Omwonenden Windturbines
Greveling 8
9654 PT Annerveenschekanaal
Nederland

Dear Commissioner, Mr. Sinkevičius,

I am writing to you on behalf of **Nederlandse Vereniging Omwonenden Windturbines** (NLVOW) in order to submit a formal request for an internal review pursuant to Article 10 of Regulation (EC) 1367/2006, as amended by Regulation (EU) 2021/1767, on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (hereafter the “Aarhus Convention”).

It is the opinion of **NLVOW** that the European Union’s failure to comply with the provisions of the Aarhus Convention, as decided by the United Nations Economic Commission for Europe (UNECE) in October 2021, should be reviewed as a matter of urgency. The basis of this request is set out below.

LEGAL BASIS FOR REQUEST

NLVOW is entitled to submit this request for internal review on the grounds that our organisation fulfils the criteria set out in Article 11 of Regulation (EC) 1367/2006 (as amended by Regulation (EU) 2021/1767), (hereafter referred to as the “Aarhus Regulation”). NLVOW is an independent non-profit making legal entity registered in accordance with [Insert Member

State] law. Please see NLVOW's Memorandum and Articles of Association enclosed herewith (Annex 1). NLVOW was founded in 2013 with the aim of (see article 2 of the attachment 1 (Statutes) of Annex 1):

1. The purpose of the association is: to look after and defend the interests of local residents with respect to (plans for) wind energy projects in their vicinity
2. The association endeavors to achieve this aim, inter alia, by:
 - preparing and offering information to local residents about opportunities to defend their interests in wind energy projects in their vicinity;
 - preparing and offering information to politicians and administrators about the advantages and disadvantages for residents living near wind energy projects;
 - the dissemination of knowledge and fact-based information on wind energy projects to the general public through website(s), publications and social media;
 - concluding agreements with experts, in particular legal service providers, to assist local residents in proceedings and other activities;
 - organizing conferences and workshops on the social, medical, economic and technical aspects of wind energy;
 - and conducting legal proceedings and carrying out actions required in the in the broadest sense promotes the aims of the association

ADMINISTRATIVE OMISSION

Following the Meeting of the Parties 'Decision on non-compliance in International Law', Decision VII/8f (as amended), as adopted on 21st October 2021, NLVOW is of the opinion that the European Union's failure to comply with the provisions of the Aarhus Convention regarding the adoption of the National Energy and Climate Plans (NECPs) constitutes an *administrative omission* for the purposes of the Aarhus Regulation (as amended). Article 2 (1) of the Aarhus Regulation defines an administrative omission as follows:

'administrative omission' means any failure of a Union institution or body to adopt a non-legislative act which has legal and external effects, where such failure may contravene environmental law within the meaning of point (f) of Article 2(1).';

It is clear that the European Union's non-compliance and failure to act as set out in Decision VII/8f (as amended) has legal and external effects and contravenes environmental law as defined by Article 2(1)(f) of the Aarhus Regulation (as amended).

GROUNDS FOR SEEKING INTERNAL REVIEW

The primary ground for making the within request relates to the EU's ongoing non-compliance with international law.

In 2010, the UNECE, through its Aarhus Convention Compliance Committee (the "ACCC"), initiated a compliance investigation against the EU concerning the implementation of Directive (2009/28/EC) in the Republic of Ireland and the National Renewable Energy Action Plans (NREAPs). As a result of its findings during the foregoing investigation, the ACCC declared the EU to be non-compliant with international law. This resulted in the UNECE engaging in compliance proceedings against the EU over the course of the following decade. This investigation was entitled *Communication ACCC/C/2010/54* and its findings and recommendations were adopted on 2nd October 2012 (*cf.* https://unece.org/env/pp/cc/accc.c.2010.54_european-union).

In June 2014, a Meeting of the Parties (MoP) took place in Maastricht, Belgium (this was the 5th Meeting of the Parties of the Aarhus Convention). The Parties adopted Decision V/9g in relation to the ACCC's findings and recommendations noted in ACCC/C/2010/54. (*cf.* <https://unece.org/env/pp/cc/european-union-decision-v9g>). Pursuant to the ACCC's Decision V/9g of Non-Compliance in International Law, the MoP found the EU to be in breach of international law and declared that the EU was obliged to demonstrate the following [Emphasis added]:

(a) That it had adopted a proper regulatory framework and/or clear instructions for implementing Article 7 of the Convention with respect to the adoption of *National Renewable Energy Action Plans* (NREAPs);

(b) It would ensure that the arrangements for public participation in its Member States are **transparent and fair** and that within those arrangements the **necessary information is provided** to the public;

(c) It would ensure that the requirements of Article 6, paragraphs 3, 4 and 8, of the Convention are met, including **reasonable time frames**, allowing sufficient time for informing the public and for the public to prepare and participate effectively, allowing for **early public participation when all options are open**, and ensuring that **due account is taken of the outcome of the public participation**;

(d) It had adapted the manner in which it evaluates NREAPs accordingly.

In the intervening period between the 5th ACCC Meeting of the Parties (MoP) in 2014 and the 6th MoP in September 2017, the ACCC continued to investigate the EU over its continuing failure to comply with Decision V/9g as referred to above.

Thereafter, the ACCC engaged in further investigations during the period between September 2017 and October 2021, when the 7th MoP took place in Geneva from the 18th to 21 October 2021. During that period, the ACCC focused on the adoption of the *National Energy and Climate Plans* (NECPs) for the period 2021 – 2030. Following a detailed analysis, the ACCC concluded that the NECPs have been unlawfully adopted, constituting a repeat of the same failures in respect of compliance with the provisions of the Aarhus Convention which were inherent in the EU's adoption of the NREAPs. During the 7th MoP as referred to above, it was observed that the EU had failed to comply with all of the requirements set out in ACCC's Decision V/9g as adopted by the parties in 2014. In that regard, Decision VII/8f (as amended) was adopted on 21st October 2021 concerning the EU's said non-compliance. Accordingly, the NECPs were declared unlawful in international law (and hence EU law). In this regard, the ACCC concluded that:

“(a) The Party concerned has put in place a regulatory framework that meets the requirements of article 6 (3) of the Convention with respect to NECPs but has not yet demonstrated that it has adopted either a proper regulatory framework or clear instructions to ensure that the other requirements of article 7 are met in the adoption of NECPs, as required by the first three sentences of paragraph 3 of decision V/9g;

(b) While welcoming the fact that the Party concerned has carried out an assessment of public participation on each member State's NECP, albeit in brief, the Party

concerned has not yet met the requirements of the final sentence of paragraph 3 of decision V/9g.”¹

The ACCC further stated:

“The Committee recommends to the Meeting of the Parties that it reaffirm its decision V/9g and, in particular, request the Party concerned, as a matter of urgency:

(a) To provide the Committee with evidence that it has adopted a proper regulatory framework and/or clear instructions for implementing article 7 of the Convention with respect to the adoption of NECPs, and, in particular, to take the necessary legislative, regulatory or practical measures to:

(i) Ensure that the arrangements for public participation in its member States are transparent and fair and that, within those arrangements, the necessary information is provided to the public;

(ii) Ensure that the adopted regulatory framework and/or clear instructions ensure that the requirements of article 6 (4) and (8) of the Convention are met, including allowing for early public participation when all options are open, and ensuring that due account is taken of the outcome of the public participation;

(b) To adapt the manner in which it evaluates NECPs accordingly.”²

In light of the foregoing, it is evident that the EU’s acts and omissions are very much at odds with the requirement of strict observance with international law as enshrined in Art 3 (5) TEU (*ex Article 2 TEU*) and, therefore, constitute a breach of both international and EU law which the EU has to date failed to address and rectify.

The following documents are enclosed herewith (see **Annex 1**):

- The Applicant’s statutes of the organisation;
- The Applicant’s Annual reports for two years prior to this request;
- Evidence of the Applicant’s registration as a non-profit organisation in The Netherlands
- The Applicant’s technical background for making this request;

¹ https://unece.org/sites/default/files/2021-09/ECE.MP_PP_2021.51_ac.pdf, para 144.

² Ibid, para 145.

CONCLUSION

In light of the foregoing, NLVOW respectfully asks the Commission to do the following:

- Conduct an internal review of the European Union's ongoing non-compliance with international and EU law, and in particular Decision VII/8f (as amended), adopted on 21st October 2021;
- Remedy the situation in order to bring the European Union into compliance with international and EU law, and in accordance with Decision VII/8f (as amended), adopted on 21st October 2021;
- Inform the applicant herein about its decision in relation to the foregoing.

Thank you in advance for your kind consideration.

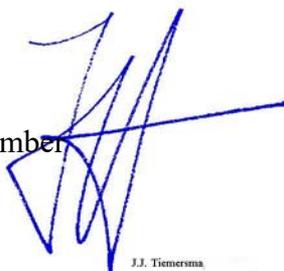
Yours sincerely,

For and on behalf of **Nederlandse Vereniging Omwonenden Windturbines (NLVOW)**

Hendrik R.A.L. Klein Kranenburg, Chairman of the Board

Commissioned

Jan J. Tiemersma, Board member



J.J. Tiemersma

Annex 1 added in 4 attachments