

ACCC/C/2014/104 (Netherlands)

Summary of the final findings of the Aarhus Convention Compliance Committee concerning the lack of public participation before the life-time / long time operation decisions concerning the Borssele nuclear power plant

Jan Haverkamp

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Introduction

The Borssele nuclear power plant (NPP) received at start-up an unlimited operation license. However, its first safety report was based on a design lifetime of 40 years. In the 1990s, the Dutch government under a motion from Parliament reduced the lifetime of the Borssele nuclear power plant to 2003. However, in the privatisation process of this power station, this date was shifted to 2013 and then in a covenant with the operator prolonged to 2033 with the possibility for the operator to receive compensation in case earlier closure would be decided, with the exception of closure because of safety arguments. A 2011 law enabled longer operation to 2033. License changes because of upgrades needed for longer operation as well as post-Fukushima adaptations were accepted in 2013. No EIA was made for any of these decisions on the argumentation that the initial operation license remained valid, that no significant physical changes were carried out and that there would be no negative influence for the environment. A public participation procedure before the 2013 license change only dealt with limited safety issues of the proposed physical changes.

After unsuccessful appeals by Greenpeace Netherlands and LAKA in the Dutch court system, Greenpeace launched a complaint to the Aarhus Convention Compliance Committee (ACCC) in 2014. The ACCC concluded its final findings on 4 October 2018 and sent them to the parties involved (the Netherlands as Party and Greenpeace as communicant) on 12 October 2018. With that they are legally valid. They will be submitted for confirmation to the 7th session of the Meeting of Parties in 2021.

The findings in short

- The ACCC came to the conclusion that the Netherlands are in non-compliance with the Convention because they did not carry out proper public participation as obliged under art. 6(10) of the Convention. (point 82)
- De ACCC concluded: *“The Committee considers that the permitted duration of an activity is clearly an operating condition for that activity, and an important one at that. Accordingly, any change to the permitted duration of an activity, be it a reduction or an extension, is a reconsideration or update of that activity’s operating conditions. It follows that any decision permitting the NPP to operate beyond 2014 amounted to an update of the operating conditions.”* (point 65)
- The ACCC *“considers it inconceivable that the operation of a nuclear power plant could be extended from 40 years to 60 years without the potential for significant environmental effects. The Committee accordingly concludes that it was “appropriate”, and thus required, to apply the provisions of article 6, paragraphs 2-9, to the 2013 decision amending the licence for the Borssele NPP to extend its design lifetime until 2033.”* (point 71)
This means that it can no longer be argued that nuclear life-time extensions or Long Term Operation has no environmental effects.
- The Dutch government could not have made the covenant with the operator in 2006, that included the obligation for compensation payments in case of closure earlier than 2033, without previously having carried out public participation concerning environmental issues.

That earlier closure is still possible because of nuclear safety is not sufficient. (point 76 – 78)

- The authorities “*must as a minimum provide the public concerned with access to the information listed in subparagraphs (a)-(f) of [art. 6(6)].*” The authorities should have made “*information on the environmental effects of such longer operation [...] available to the public concerned.*”

An attachment submitted to parliament in 2006 does not amount to access to all available information for a procedure carried out in 2012-2013, i.e. more than six years later. (point 85)

- The Netherlands must “*take the necessary legislative, regulatory and administrative measures to ensure that, when a public authority reconsiders or updates the duration of any nuclear-related activity within the scope of article 6 of the Convention, the provisions of paragraph 2 to 9 of article 6 will be applied.*” (Recommendations, point 89)

This means that for every coming decision, this decision needs to be informed by public participation that concerns also the environmental impacts of longer operation of the NPP.

Other important conclusions:

- The lack of public participation under art. 6 is an issue that stands independent from the obligations of the Netherlands under the Espoo Convention and hence should be tested on its own merits (independent from the obligation for an Environmental Impact Assessment (EIA). (point 63)
- Consultation of stakeholders before a parliamentary decision in closed advisory groups cannot be considered public participation meeting the requirements of the Convention. (point 80)
- “*Permitted duration of an activity is clearly an operating condition for that activity, and an important one at that. Accordingly, any change to the permitted duration of an activity, be it a reduction or an extension, is a reconsideration or update of that activity’s operating conditions*” [under art. 6(10)]. This is also valid for other activities, for instance coal fired power stations and others. (point 65)

General conclusions that result from these findings:

- All nuclear lifetime extensions, no matter on the basis of which decision procedure, need to be submitted to public participation, including concerning the environmental effects.
- Every nuclear lifetime extension is considered to have significant effects on the environment, also when it remains within earlier set licence conditions.
- Not only formal licensing procedures, but any decision that in reality determines a reconsideration or update of an activity’s operating conditions (and that includes things like covenants, which are basically gentlemen’s agreements with civil (not administrative) law binding conditions), are relevant decisions that need to fulfil the obligations under the Aarhus Convention.
- The NPP Borssele needs to be submitted to public participation concerning the environmental effects of lifetime extension at the earliest opportunity, which is the current license change procedure.
- Under the **Espoo Convention**, the following issues should be taken into consideration: the definition of which decision falls under the obligations of art. 6 of the Aarhus Convention; that nuclear life-time extensions are considered to have significant environmental effects; that these effects can occur irrespective of (the lack of) physical changes to the power plant; that in tiered decision procedures, public participation for an EIA has to start as early as possible when all options (including closure!) are still open.
- These findings are also important for **other activities, including the operation of coal power stations, of mining activities**, etc., for which life-time extension in whatever form also undeniably has environmental effects (for instance on the climate).