



**Answers by**

**THE NETHERLANDS**

to questions posed during the 50<sup>th</sup> meeting of the Aarhus Convention Compliance Committee on the Communication concerning compliance by the Netherlands in connection with decision-making on the extension of the design lifetime of the Borssele nuclear power plant (ACCC/C/2014/104)

## **1. How can the public take notice of any change in the operation of the Borssele NPP and how is the Safety Report kept up-to-date?**

1.1 The way in which the public can take notice of any change in the operation of the Borssele NPP is explained in detail in section D.1 of the Government's Statement of 3 February 2015.

1.2 The important parameters concerning safety and consequences to the environment are laid down in the Safety Report of the Borssele NPP. The Safety Report is a document that makes information from the underlying safety analyses accessible to the public. In this respect, it contains a summary and an outcome of the safety analyses with the purpose to inform the public. It is part of the application for a license and also of the license itself, and therefore subject to public participation.

1.3 The safety analyses underlying a Safety Report are very extensive. In the Netherlands, these safety analyses are available upon request by the public. Changes to the underlying safety analyses have to be reported and substantiated by the license holder, following which they are reviewed and reassessed by the Netherlands' competent authority. As stated above, the Safety Report is part of the license and contains the important parameters concerning safety and consequences to the environment. If a change of the underlying safety analyses would lead to a change to the Safety Report, an application for an amendment of the license is required. This application and the corresponding decision is subject to public participation.

1.4 Changes to the operation or to the operating limits and conditions of the Borssele NPP also have to be reported to the Netherlands' competent authority and substantiated by the license holder. These changes will also be reviewed and assessed by the competent authority. The same procedure as described above applies. If this would lead to a change to the Safety Report, an amendment of the license would be required, which would be subject to public participation.

1.5 Changes in the surroundings or the environment outside the premises of the Borssele NPP have to be taken into account by its license holder, in order to verify whether the installation continues to be in compliance with the safety requirements as laid down in legislation, regulations and licensing conditions. The Netherlands' competent authority will supervise this.

1.6 In addition to what is described above, the licensing conditions with regard to safety and the environment are also kept up-to-date by the mandatory 10-yearly periodic safety reviews. The license-holder of the Borssele NPP has conducted safety evaluations of its installation in 1993, 2003 and 2013 (in progress). These 10-yearly safety reviews are intended to assess the actual physical condition of the installation, and to review the design and operation of the installation in the light of state-of-the-art science and technology with respect to nuclear safety and radiation protection. Following each periodic safety review, measures were identified and, following the issuance of the required license with public participation, implemented.

1.7 The changes to the Safety Report in relation to the extension of the design lifetime of the Borssele NPP were deemed necessary to verify whether the Borssele NPP could operate safely until the end of 2033. This was substantiated by the license-holder. On the basis of this substantiation by the license-holder, the Dutch Government concluded that the Borssele NPP could operate safely until the end of 2033 within the relevant technical parameters, and that there were no changes to the installation of the Borssele NPP needed nor to its operation or to its operating limits and conditions. Hence, there were no changes in the environmental effects due to the extension of the design lifetime of the Borssele NPP. This was reviewed and verified by the Netherlands' competent authority and substantiated in the final decision, also in the context of the views expressed regarding environmental effects.

## **2. Has there been a screening before taking the decision not to conduct an environmental impact assessment for the extension of the design lifetime of the Borssele NPP? And was any formal decision taken?**

2.1 Before the Dutch Government took the decision not to conduct an environmental impact assessment (EIA) for the extension of the design lifetime of the Borssele NPP, there was a screening of the activities undertaken in connection with the extended design lifetime, including possible significant adverse environmental effects. This screening was communicated to the license-holder NV EPZ in a formal decision of 13 September 2011 (reference ETM/ED/11132793, as previously provided to the Committee), which indicated that no EIA had to be conducted for the extension of the design lifetime. The main argument was that the amendment to the Safety Report was not related to a modification of the installation of the Borssele NPP itself. There was no change of the previously licensed activity or an extension of the installation as such. Moreover, there was no change in the operating conditions and no extension of the operating period of the Borssele NPP, because it was licensed for an indefinite period. Therefore, the extension of the design lifetime did not involve any expansion or modification of the facility in the meaning of Column 1, under category 22.3, in Annex D of the Environmental Impact Assessment Decree.

2.2 The requested change involved the verification and formalisation of amendments to the Safety Report attached to the license in force. Therefore, there would be no change in the existing environmental effects – radiological or conventional – as already authorized. The screening decision was made public both at the occasion of the public notice of the draft license decision as well as on the occasion of the definite license decision. Apart from the fact that the screening decision was incorporated and extensively motivated in the license itself (paragraph 3.1, page 12), it was also mentioned in response to views expressed on this topic (paragraph 6.4.1. section a, page 32). Moreover, the screening decision could be challenged in court and it was. The Administrative Jurisdiction Division of the Council of State assessed this ground for appeal and rejected it (see ground 9 of the judgement).

## **3. Does the Government agree with the allegations made by Greenpeace that environmental aspects weren't included in the license and that views expressed with respect to environmental effects were not adequately handled?**

3.1 In general in the Netherlands, a license-holder of a nuclear installation has to demonstrate in any license application that the effects for the environment have been taken into account. This is a legal requirement, independent of the fact whether a separate EIA is necessary. Reference is made to Section 15b, paragraph 1<sup>1</sup>, of the Netherlands' Nuclear Energy Act, in which refusal grounds for a license are listed. These refusal grounds also include the protection of persons, animals, plants and goods.

3.2 Based on the application for the extension of the design lifetime for the Borssele NPP, it was concluded that there was no change to or extension of the installation. There was no change to the operating limits and conditions nor to the operating time of the Borssele NPP. For this reason, and in view of the fact that the initial license is valid for an indefinite period and has not expired, there are no more or less favourable environmental impacts to be expected of the decision to extend the design lifetime of the Borssele NPP than those already considered in previous licensing procedures. This was addressed in the final decision, in the context of the views expressed regarding environmental effects, in paragraph 6.4 of the final decision (see p. 32, and further, of the unofficial English translation of the final decision for the extension of the design lifetime). Therefore, the Government is of the opinion that the environmental aspects have been included in the license decision and the environmental effects have been properly addressed.

#### **4. Can you comment on the findings of the Committee in the Slovakia case ACCC/C/2009/41?**

4.1 In addition to the provision of public participation in compliance with the Convention in the case of the Borssele NPP, there are other significant differences with the case of the Mochovce NPP regarding the licensing procedures. Contrary to the Slovakia case (ACCC/C/2009/41) concerning the Mochovce NPP, the extension of the design lifetime of the Borssele NPP did not involve any physical change to or extension of the operation of the Borssele NPP, nor was it considered to have a potential significant effect on the environment.

4.2 In the case of Mochovce NPP, the Committee concluded that the three decisions taken with respect to the Mochovce NPP were closely related, one of the decisions permitting the change of construction of two new units, which were, until that time, not in operation. These decisions entailed a number of new conditions for the Mochovce NPP (point 54 of the report of the Compliance Committee<sup>2</sup>), thus implying a reconsideration or

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<sup>1</sup> Section 15b, paragraph 1, of the Nuclear Energy Act:

1. The licence can only be refused in the interests of:
  - a. the protection of persons, animals, plants and goods;
  - b. national security;
  - c. the storage and security of fissile materials and ores and the security of facilities as provided for in Article 15 (b);
  - d. the energy supply;
  - e. guaranteeing the payment of compensation owed to third parties for damage or injury to them;
  - f. compliance with international obligations.

<sup>2</sup> Findings and recommendations with regard to communication ACCC/C/2009/41 concerning compliance by Slovakia (adopted by the Compliance Committee on 17 December 2010), UN Doc. ECE/MP.PP/2011/11/Add.3.

an update of the operating conditions of the Mochovce NPP. The update of the Safety Report of the Borssele NPP however, did not entail reconsideration or updating of the operating conditions, as stated in Article 6, paragraph 10, of the Convention, because the operating limits and conditions and the technical parameters of the Borssele NPP did not change. With respect to the findings of the Committee concerning point 22 of Annex I of the Convention in the case of the Mochovce NPP, the Dutch Government would like to refer to paragraphs 40-42 of its Statement of 3 February 2015, where it is set out that the extension of the design lifetime of the Borssele NPP does not involve any physical change to or extension of an activity.

## **5. Was there public participation in relation to the amendment of the Nuclear Energy Act when the shut-down date was incorporated in Section 15a of the Act?**

5.1 As stated in paragraph 11 of the Statement of the Dutch Government of 3 February 2015, the ultimate date to shut down the Borssele NPP is 31 December 2033. This shut-down date has been incorporated in Section 15a of the Netherlands' Nuclear Energy Act since the first of July 2010. Compared to the license under the Netherlands' Nuclear Energy Act, which was issued for an indefinite period, this constitutes a restriction of the plant's operating time. Until the ultimate shut-down date, the license holder is required to operate the Borssele NPP safely.

5.2 The decision to shut down the Borssele NPP at the latest in 2033, was laid down for the first time in a covenant (*Convenant Kerncentrale Borssele*) in 2006. This covenant is a civil law agreement insofar as it contains civil rights and obligations. Before being concluded, the agreement and the shut-down date were the subject of debate with Parliament, which led to the renegotiation of the covenant and amendment of some parts of it. In the context of the debate, the Government commissioned, inter alia, an analysis of the consequences of ending or continuing the operation of the Borssele NPP after 2013. The analysis included environmental aspects of the continued operation of the Borssele NPP. The conclusion of this external study is that the environmental effects are limited or minimal. Views and comments expressed by organisations, including Greenpeace, were taken into account<sup>3</sup>. During the parliamentary debates it was also proposed to incorporate an important issue, such as the shut-down date of the Borssele NPP, in legislation. This ultimately resulted in the amendment of the Nuclear Energy Act in 2010.

## **6. Comments on the findings of the Espoo Implementation Committee in the Rivne case**

6.1 As stated in paragraph 29 of the clarifications and information regarding the planned extension of the design lifetime of the Borssele nuclear power plant, as provided to the Espoo Implementation Committee on 21 November 2014<sup>4</sup>, the case of the Borssele NPP differs considerably from the case of the Rivne NPP in Ukraine. The operating license of the Borssele NPP, issued in 1973 for an indefinite period, has not expired (contrary to the

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<sup>3</sup> Parliamentary Papers 2005-2006, 30 000, no. 18, 10 January 2006. An English translation of this document will be made available to the Committee as soon as possible.

<sup>4</sup> Appendix 1 to the Government's Statement of 3 February 2015.

expired license of the Rivne NPP). In addition, for the Borssele NPP, EIA documentation and conclusions of EIA procedures are available from 1994, 1996, 2004 and 2011. In the case of the Rivne NPP, an environmental impact assessment was never performed.

6.2 The findings of the Espoo Implementation Committee that an EIA always has to be conducted in case of the lifetime extension of a nuclear power plant – even if no physical changes to the installation or extension of the activities took place – are limited to the specific case of the Rivne NPP and were not endorsed by the Meeting of the Parties of the Espoo Convention<sup>5</sup>. The Meeting of the Parties amended the findings of the Implementation Committee by considering that if an activity needs upgrade works during its life cycle that might have significant adverse environmental impacts, this should be considered as a major change to the activity in question and be subject to an EIA. The Meeting of the Parties changed any general remarks on lifetime extension into remarks concerning the specific circumstances of the Ukrainian case.

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<sup>5</sup> Findings and recommendations further to a Committee initiative concerning Ukraine (EIA/IC/CI/4), UN Doc. ECE/MP.EIA/IC/2014/2, Annex.