

Secretary to the Aarhus Convention

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Conc.: **ACCC/C/2014/104 – Communication to the Aarhus Convention’s Compliance Committee**
Non-appliance with the Aarhus Convention by the Kingdom of the Netherlands in relation to
the plant life-time extension of the Borssele nuclear power plant.

Amsterdam, 17 March 2015

Dear Members of the Aarhus Commission Compliance Committee, dear Secretariat

Hereby I send you our reaction on the Statement of the Government of the Netherlands
concerning communication ACCC/C/2014/104 for consideration at next week's session of the
Compliance Committee.

With greetings,



Jan Haverkamp

NOTES CONCERNING THE POINT OF VIEW OF THE NETHERLANDS
ACCC/C/2014/104 on the lifetime extension of the Borssele nuclear power plant

Jan Haverkamp
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1. Concerning B. Request for deferment

The Dutch government has compared this case with the case ACCC/S/2004/01 and ACCC/C/2004/03, which are related to the closed submission to the Espoo Convention Implementation Committee (ECIC) EIA/IC/S/1 on the Danube-Black Sea Deep-Water Navigation Canal in the Ukrainian sector of the Danube Delta. We argue that this comparison is wrong because these are completely different cases. However, the case of ACCC/C/2014/104 has parallels with closed Espoo Convention Implementation Committee initiative on Ukraine (EIA/IC/CI/4) concerning the life-time extension of the Rivne nuclear power plant. The documentation on this case can be accessed on <http://www.unece.org/environmental-policy/treaties/environmental-impact-assessment/areas-of-work/review-of-compliance/committee-initiative/eiaicci4-ukraine.html>. It is in this procedure that the ECIC came to the conclusion that extension of the lifetime of a nuclear power station, even if no physical changes took place – the key argument of the *Raad van State* – is a change under the Espoo Convention for which an Environmental Impact Assessment has to be made. The ECIC finalised its findings in its 30st Meeting. The argumentation can be found in the Annex to the report of this meeting (from page 13):

http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/IC/ece.mp.eia.ic.2014.2.as_resubmitted.pdf

The 6th Session of the Meeting of Party of the Espoo Convention endorsed the findings of the ECIC on this case.

The Communicant wants to point out that its request for investigation to the ACCC does not concern compliance with the Espoo Convention, but compliance with the Aarhus Convention. Although the ongoing investigation by the ECIC into the lifetime extension of Borssele has in background and argumentation parallels with the investigation by the ACCC, both Committees have been asked to investigate different things. Greenpeace therefore requests the ACCC not to defer the case, but investigate it on its merits.

2. Concerning the background description in point 11 – lifetime extension

Although the ultimate shut-down date for Borssele of 31 December 2033 was the outcome of a political discussion in the period 1995-2005, there was already an earlier political decision to close the power station in 2013. Political pressure by the operator led to re-opening of that decision, leading then to the gentlemen's agreement in 2006. We are of the opinion that this information is relevant for the over-all picture, especially the conclusion that the lifetime of Borssele beyond 2013 is indeed a lifetime extension. This earlier political decision was linked to the in point 12 mentioned design lifetime of 40 years.

3. Concerning the background description point 13 – transboundary issues

The Dutch government has so far only involved Belgium in transboundary procedures on the basis of its views in the past. However, the accidents in Chernobyl and Fukushima have proven that impacts can reach much further than the 16 km between Borssele and the Belgian border, indeed can reach as far as hundreds or (in the case of Chernobyl) even thousands of kilometres. This experience should have changed the view of the Dutch government. Indeed, recent public participation processes for new nuclear power stations in Finland, Lithuania, Poland and Hungary included most of Europe. Austria has demanded and received public participation in EIA processes for plant lifetime extensions for power stations considerably further away than Borssele is from Belgium (e.g., Hungary, Slovakia, Romania, Czech Republic, Poland, Lithuania, Finland, UK).

4. Concerning the background description point 18 – bilateral consultation and public participation

The bilateral consultations between the Netherlands and Germany are no form of public participation, but consultations between authorities.

5. Concerning the background description point 20 – public participation and environment

None of the mentioned procedures included the potential **environmental impacts** of lifetime extension of the Borssele nuclear power plant. Public participation was limited to the assessment of safety margins. There was no assessment made of potential environmental impacts in comparison with reasonable alternatives (the zero option), nor of the effect of important changes in the environment since the start of operation, which could lead to a completely different assessment of potential impacts. Information as defined under art. 6(6) of the Convention was not made available to the public.

6. Concerning the background description point 26 – public participation and environment

The Dutch government mentions here that only when upgrading measures are needed after the periodic safety review (10EVA13), public participation will take place, and possibly (but not for certain) an EIA. This means that public participation will not take place when the operation of the power station is extended when no upgrades are deemed necessary. And even if it will take place, it is not certain that impacts on the environment will be included in the public participation procedure.

We want to emphasise once more that the Aarhus Convention is the Convention on Access to Information, **Public Participation** and Access to Justice **in Environmental Matters** and that it is of paramount importance that impacts on the environment are part of the public participation process. Public participation about the quality of the coffee in the canteen of a project cannot be considered public participation fulfilling the Convention.

7. Concerning point 41 - lifetime

The Dutch government states “*At the time of the original design and construction of the Borssele NPP, it was assumed that it would have a design lifetime of 40 years, i.e. until 2014.*”, and the government concedes that this was part of the license. This was not only the assumption of the government and the operator, over the years this has also been the

assumption of the public, the citizens. A longer operational lifetime than these 40 years is therefore seen from the point of view of the public as an extension of the project. As stated in our initial letter, adding 50% of the design lifetime to the project also increases the time the project is exposing the public to risks of natural disaster, malevolent attack and technical and human failure with 50% - and therefore increases the risk of environmental impacts.

8. Concerning point 50 to 52 – public participation and the environment

Indeed, the Aarhus Convention art. 6 does not prescribe an EIA. It prescribes in art. 6(6) public participation on environmental matters. However, in the by the Dutch government mentioned procedures, there was no sufficient *description of the significant effects of the proposed activity on the environment nor a description of the measures envisaged to prevent and/or reduce the effects, including emissions* as prescribed in art. 6(6).

The public expressed viewpoints concerning the environment, but was not able to do this on the basis of an assessment of potential impacts on the environment. The procedure was not open to include viewpoints on the environment, because it had already fixed *“that the extension of the design lifetime would not have any environmental impacts.”* There were no zero-options analysed, there was no systematic assessment of potential environmental impacts.

As the government states in point 53: the decision itself and the license conditions were not adapted – also not on the basis of any of the environmental concerns expressed by the public in the non-environmental public participation procedure.

9. Conclusion

The Dutch Government is trying to paint the picture that there was full public participation concerning potential environmental impacts and other environmental matters around the decisions, including the upcoming Periodic Safety Review decision. This is simply not true. If it had been true, Greenpeace would not have had to go to court to demand exactly this. If this had been true, the government and the court would not have argued that exactly this was unnecessary because no physical changes took place in the power station. By not providing the public the chance to participate in the procedures in a way that takes into account environmental matters, by not providing the public the in art. 6 prescribed information concerning the environment, by not doing so in an early stage when all options are open, by not taking viewpoints concerning environmental matters into account in the final decision, the Netherlands have in our view been in breach with article 6 of the Convention.