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**RESPONSE from the Communicant on the Government of the Netherlands opening statement during the public hearing on 8 October 2015, its final statement and answers to questions from the ACCC.**

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1. The Netherlands is trying to create in its opening statement for the public hearing of the ACCC on 8 October 2015 as well as in its answers to the questions of the ACCC the impression that the decision to give 20 years of life-time extension to the Borssele NPP was in fact a restriction of operation time. A closer look, however, shows that the operation time was earlier limited to 40 years, as laid down in the Safety Report of the Borssele NPP. As the Netherlands also confirm, when the reactor was started in 1973, the expected technical lifetime was 40 years. In 1993, the Dutch Government decided in accordance with a vote in the Dutch Parliament to close the Borssele NPP in 2003, after 30 years of operation. After the privatisation of the electricity sector in the Netherlands, the decision-making was reopened in 2002 and a political decision was taken to grant Borssele ten more years of operation, until 2013. Although these decisions did not lead to a limitation of the operation license, these were nevertheless decisions concerning the operation time of the reactor. Without the decision in 2012 regarding the Borssele NPP's licence and Safety Report, respectively the decision in 2002, the reactor would have had to close in 2013, respectively in 2003. The decision to grant another 20 years of life-time by changing the date for closure from 2013 to 2033 therefore has to be considered a decision under art. 6(1a) or at the minimum under art. 6(10) of the Aarhus Convention.

In its communication to the Parliament on 10 January 2006 regarding the 'Borssele covenant' (the gentlemen's agreement on the Borssele NPP), the Dutch Government acknowledged that "The initial intention, closure of the Borssele NPP, therefore constitutes the reference situation".<sup>1</sup>

The Netherlands therefore gives misleading information when it claims that the 2006 decision to allow 20 years more life-time was "a restriction of the operating time of the Borssele NPP and not [...] an extension".

2. The Netherlands is referring in its opening statement for the public hearing of the ACCC on

1 Document "Parliamentary Papers 2005-2006, 30 000, no. 18.pdf", page 3: "*Het oorspronkelijke voornemen, sluiting van de KCB, vormt dus de referentiesituatie.*"

8 October 2015 to discussions in the period 1995 until 2006, leaving out the crucial decision in 1993 to limit the operation time of the Borssele nuclear power station – initially to 2003. On the basis of this decision and the initially allowed extra 10 years in 2002, the public could logically assume that the power station would be soon phased out and the environmental impacts of its operation would cease latest in 2013; or, in case this would be changed, the public would get a right to public participation concerning environmental issues regarding such a decision.

3. The Netherlands is wrong to claim in its opening statement for the public hearing of the ACCC on 8 October 2015, as well as in its final statement from that same date, that from the update of the Safety Report no environmental impacts are to be expected because there was no change or extension of the installation as such. Every operation of a nuclear power station gives rise to probabilistic risks to incidents and accidents that can lead to the emission of radioactive substances into the environment. Because these risks are probabilistic, they cannot be predicted with certainty. There can be, for example, a chance of  $10E-06$  per reactor year that an accident will happen that causes a substantial amount of radioactive substances to be emitted into the environment. That means that the over-all chance for a nuclear reactor over its 40 years projected life-time for this accident scenario is  $40 * 10E-06$ . When it is authorised that the reactor will operate 20 years longer, the theoretical total chance that such an accident happens over the life-time of the reactor increases to  $60 * 10E-06$ , that is with 50% (!) compared to the probabilistic risks that the public was confronted with on basis of the initial operating permit that was granted in 1973 for the Borssele NPP. In reality the increase of risk to such an accident is likely to be more extensive, because ageing nuclear reactors face a larger probability of malfunction, exponentially growing with age. A severe accident with a substantial emission of radioactive substances is the most important environmental impact that a nuclear power station can have. Such a risk makes the need evident for any nuclear power plant project to undergo an environmental impact assessment, including public participation, before the starting of the project based on Article 6(1)(a) of the Aarhus Convention. Because this is the most important potential environmental impact, this should also be evident for a decision to prolong the operation time, enlarging the risk of a severe accident with more than 50%. Similarly we have already argued earlier that also the increased exposure to probabilistic risks related to human failure and malevolent attack (sabotage, terrorist attack, acts of war), the longer and thus increased need for uranium, as well as the increased production of radioactive waste result in new environmental impacts. Hence, the decision to extend the life-time falls in our view under art. 6(1a) of the Convention, or if not, most certainly under art. 6(10).

Different than claimed by the Netherlands in point 3.2 of their answers to questions from the ACCC, these environmental impacts related to life-time extension were not considered in previous licensing procedures, including the most recent one concerning the use of MOX.

4. The Netherlands claimed in its opening statement for the public hearing of the ACCC on 8 October 2015 that public participation procedures in the decision procedure to extend the life-time of Borssele included environmental aspects. However, the public did not receive “all information relevant to the decision-making” as defined under art. 6(6(a to f)) of the Convention in order to prepare itself for any participation, as usually is done in the form of an Environmental Impact Assessment. The information included in the Safety Report is limited and does not, as one example among many, contain an outline of main alternatives studied by the applicant (art. 6(6e)) or a description of the environmental impacts as described above under point 3 (art. 6(6a) and 6(6b)). Without implementation of art. 6(6), the opportunity to give input on environmental issues in procedures does not fulfil the obligation for public participation as defined in art. 6(1) and/or art. 6(10). In its communication to the Parliament from 10 January 2006, the Dutch Government claimed that it had assessed “impacts on the electricity supply, environmental impacts including radiation impacts and some additional effects like safety and risk, non-proliferation, spacial planning and employment”. This means that at least part of this information obviously was available to the government but was not systematically shared with the public nor systematically included in the public participation.
5. We once more want to stress that in none of the previous public participation procedures that did explicitly assess environmental issues (like the EIA for the use of MOX fuel) prolonged operation of the reactor beyond 2013 was included. The responsible authorities explicitly referred the analysis of impacts of the combination of MOX use and longer reactor life-time to the still to follow life-time extension decision (the LTO permit), which was, as we have argued before, not submitted to an environmental impact assessment or any other form of public participation concerning environmental impacts. It has to be noted that the entire procedure around the life-time extension did not address the combination of MOX use and life-time extension.
6. As we pointed out during the hearing on 8 October 2016 and as was confirmed by the Netherlands under point 1.7 of its answers on questions of the ACCC, the update of the Safety Report for the life-time extension made an amendment to the license necessary. This license update took place with the decision for life-time extension of 2012. Even though the Netherlands claims in point 1.5 of their answers to the questions of the ACCC that this should be subject to public participation, the public participation involved did not relate explicitly to environmental issues but only to technical safety issues and therefore did not constitute public participation as defined under art. 6(1) or art. 6(10) of the convention.
7. We want to stress that a review and verification by the Netherlands' competent authority as mentioned in point 1.7 of the Netherlands' answers to questions from the ACCC does not in

any way constitute or can replace public participation as required under art. 6(1) or art. 6(10) of the Convention.

8. In its answer to the questions of the ACCC under 1.6, the Netherlands confirms that environmental considerations should be taken also into account in the 10-yearly periodic safety review, the so-called 10EVA, which is the last decision before further operation until 2023 is allowed. The next 10EVA should cover an evaluation of the Borssele NPP over the years 2002-2012 and should have been available in 2013, according to the obligations laid down in the operating licence. However, there has not been public participation on environmental issues as part of this review, the review had not yet been finalised and the decision-taking regarding these safety issues has still not taken place today.
9. In its answers to the questions of the ACCC in point 6.1, the Netherlands falsely assumes that the Rivne NPP license was expired. There is quite a bit of confusion about this point, but the authorities had granted to the Rivne NPP in principle, as is the case for the Borssele NPP, an unlimited operation license, although Ukraine confusingly held that the decision on the life-time extension constituted a renewal of license. In order to put an end to the confusion regarding that issue, the Espoo Convention Implementation Committee argued that the decision regarding the license falls in any case – whether it would concern a re-approval of an existing license or the issuance of a new license – under the Espoo Convention, in case that without that decision the further operation of the reactor would not be possible / allowed. The same argumentation is to be applied to the decision concerning the life-time extension of Borssele NPP and leads in the same way to the conclusion that the obligation regarding public participation and environmental impact assessment apply to this decision: without the decision on life-time extension, in whatever form, continued operation of the Borssele NPP after 2013 would not have been possible / allowed. Furthermore, none of the mentioned EIA procedures that were carried out in the past regarding the Borssele NPP included an environmental assessment of the effects of a prolonged life-time of the Borssele NPP until 2033 (i.e. the decision to grant life-time extension until 2033). In point 6.2 of the answers from the Netherlands to questions of the ACCC, the Dutch Government holds that the findings of the Espoo Convention Implementation Committee in the Rivne case regarding the need of carrying out an EIA, even in case the life time extension does not imply physical changes, would be "limited to the specific case of the Rivne NPP". This reading of the Espoo Convention Implementation Committee findings is incorrect. It is, to the contrary of what the Dutch Government holds, clear that where the Espoo Convention Implementation Committee has stated that "an EIA *always* has to be conducted in case of the life-time extension of *a nuclear power plant* – even if no physical changes to the installation or extension of the activities took place" [emphasis added, JH], it concerns a general statement that cannot possibly be only valid for Rivne. Where a general reasoning is applied in one case, the principle of equality before the law requires that the

same reasoning is valid for and should be applied in all other similar cases under that law. Otherwise Ukraine could claim to have been discriminated against in the Rivne case. In an attempt to reach consensus, the 6<sup>th</sup> Meeting of Parties of the Espoo Convention removed explicit general formulations from the general propositions made by the Implementation Committee, but endorsed the (general) argumentation used by the Committee in its Findings in the Rivne case.

10. Where the Dutch Government tries to imply under point 5.2 of its Answers to questions of the ACCC that the Covenant concluded with regard to the decision to continue the exploitation of the Borssele NPP after 2013 was subject to a public participation procedure, it should be noted that this has not been the case. The views of Greenpeace on the Covenant and on a study on continued operation commissioned by the Dutch Government were sent by Greenpeace to the Minister of Housing, Spatial Planning and Environment and to the Dutch Parliament in 2005 on its own initiative. No public participation was organised by the Dutch authorities with regard to the Covenant or the amendment of the Dutch Nuclear Act in order to postpone the closing date of the Borssele NPP. The Dutch Parliament did invite specific stakeholders to give input, including Greenpeace, in order to get informed about the implications of the Covenant and the proposed change in law, but this participation only concerned specifically invited parties, it was no open public consultation procedure.
11. Concluding, we claim that the public participation, for as far as has been taking place regarding the Borssele NPP, does not fulfil the definition of public participation in environmental matters as laid down in Article 6(1) and Article 6(10) of the Convention and that the Netherlands therefore regarding the decision-making on life-time extension of the Borssele NPP failed to comply with Article 6(1) of the Convention. Alternatively, in case it would be concluded that life-time extension decisions do not fulfil the definition of a decision under Article 6(1), the Netherlands failed to comply with Article 6(10) of the Convention. Further, Greenpeace alleges that the Netherlands did not comply with Article 6(6) of the Convention by failing to provide the public with the information necessary for participation. By not fulfilling its obligations under Article 6(1), respectively Article 6(10) and Article 6(6), while allowing the operation of the Borssele NPP after 2013, the Netherlands also failed to comply with Article 6(4).