

The Aarhus Convention and lifetime extension of nuclear power plants

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Overview of presentation

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What is the Aarhus Convention?

- Full name: Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters
- As its full name suggests, three interlinking “pillars”.
- Adopted in 1998, in Danish city of Aarhus, and entered into force on 30 October 2001.
- Currently has 47 Parties from across the UNECE region, and open globally.
- Aarhus Convention Compliance Committee reviews compliance with the Convention’s requirements.
- All Espoo Parties, except Canada and Liechtenstein, are Parties to Aarhus, and thus bound by its requirements with respect to public participation on the lifetime extension of NPPs.

What are the requirements for public participation under article 6 of Aarhus Convention?

- Art. 6(2) - Identify the public concerned
- ↓
- Art. 6(2) - Timely, adequate and effective notice
- ↓
- Art. 6(3) & (4) - Reasonable time-frames when all options are open
- ↓
- Art. 6(6) - Access to all available information relevant to the decision-making
- ↓
- Art. 6(7) - Public entitled to comment/be heard
- ↓
- Art. 6(8) - Due account to be taken of public participation
- ↓
- Art. 6(9) - Prompt notice of decision
- ↓
- Art. 6(10) - If operating conditions of activity revised or updated, repeat as appropriate

Who has the right to participate under the Aarhus Convention?

Article 2(5) of the Aarhus Convention:

“The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making;

for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

How does the public participation requirements of the Aarhus Convention apply to lifetime extension of nuclear power plants?

- **Article 6 (10) of the Aarhus Convention:** “Each Party shall ensure that, when a public authority reconsiders or updates the operating conditions for an activity referred to in paragraph 1, the provisions of paragraphs 2 to 9 of this article are applied mutatis mutandis, and where appropriate.”
- “Nuclear power plants and other nuclear reactors” are an activity covered by paragraph 1 of article 6.
- Thus, when the operating conditions of a nuclear power plant are updated or reconsidered, the provisions of article 6(2)-(9) must be applied mutatis mutandis, and where appropriate.

What constitutes an “update” or “reconsideration” of the operating conditions of an activity under article 6(10)?

- Article 6(10) of the Convention applies to a reconsideration or update of the operating conditions for an activity subject to article 6 of the Convention, irrespective of:
 - whether the reconsideration or updating process is itself required to undergo an environmental impact assessment.
 - whether or not “physical works” will be carried out.
 - *See e.g. ACCC/C/2014/104.*

Is the permitted duration of an activity an “operating condition”?

- “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.”
- “Accordingly, under article 6, paragraph 10, of the Convention, the Party concerned was obliged to ensure that the provisions of article 6, paragraphs 2 to 9, were applied, mutatis mutandis, and where appropriate to that decision [to extend the lifetime of the NPP].”
- *See ACCC/C/2014/104, paras. 64 and 65.*

Key question: what is the “duration” of the existing NPP?

“...in practice, identifying the duration of the existing activity is not necessarily straightforward. Unless it is clearly understood what the authorized duration of the existing activity is, then it is not possible to determine whether the existing activity is being extended or not.”

“The Guidance should thus make clear how the authorized duration of the existing activity may be ascertained, for example:

- (a) The duration of the existing operating licence for the NPP, if the licence is timebound.
- (b) If the existing operating licence was time-limited, the duration of NPP operation upon which the full EIA for the existing NPP operation was based.
- (c) If the operating licence was not time-limited and no full EIA was carried out prior to authorization of the NPP operation, then the duration of the “design lifetime” or technical specifications of the NPP.”

See Observations of the ACCC on Espoo’s draft terms of reference on LTE, paras. 8-9.

What does “mutatis mutandis” in article 6(10) mean?

“The reference in paragraph 10 to “mutatis mutandis” simply means “with the necessary changes”.

In other words, when applying the provisions of paragraphs 2 to 9 of article 6 to a reconsideration or an update of the operating conditions for an article 6 activity, the public authority applies those paragraphs with the necessary changes”

See ACCC/C/2014/104, para. 70.

What does “as appropriate” in article 6(10) mean?

“The Committee considers that, except in case where a change to the permitted duration is for a minimum time and obviously would have insignificant or no effects on the environment, it is appropriate for extensions of duration to be subject to the provisions of article 6.

In this regard, the Committee 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 to 9, to the...decision amending the licence for the...plant to extend its design lifetime”

See ACCC/C/2014/104, para. 71.

Who is the “public concerned” for decision-making regarding NPPs?

- “In cases concerning ultra-hazardous activities, such as nuclear power plants, members of the public may be affected or likely to be affected by, or have an interest in, environmental decision-making within the scope of the Convention, even if the risk of an accident is very small.”
- “It is clear to the Committee that with respect to nuclear power plants, the possible adverse effects in case of an accident can reach far beyond State borders and over vast areas and regions. For decision-making that relates to complex and ultra-hazardous activities such as nuclear power plants, it is therefore important to secure public participation appropriate to that activity with respect to these areas and regions both within and beyond the State borders of the Party concerned.”
- *See ACCC/C/2013/91, para. 75.*

Under Aarhus, does it matter the legal form through which the lifetime of the NPP is extended?

“when examining whether a decision falls within the ambit...of the Convention, its label under the Party’s national law is not decisive, and it is necessary to examine the content of the document and its legal effects.”

See, eg, ACCC/C/2013/88, para. 124; ACCC/C/2008/27, para. 41; ACCC/C/2005/12, para. 65; ACCC/C/2005/11, para. 29.

“it would be important that any future guidance not take an overly formalistic approach to what constitutes a “decision”. The key point should be whether or not the lifetime of the existing NPP will in fact be extended”

Observations of the ACCC on the draft terms of reference, paras. 2 and 3.

What is the main “take home” from this presentation?

All Espoo Parties, except Canada and Liechtenstein, are bound by the Aarhus Convention’s requirements to ensure effective public participation in decision-making on the lifetime extension of NPPs.

Useful further references:

Findings of the Aarhus Convention Compliance Committee

- Available in English, French and Russian at:
<http://www.unece.org/env/pp/cc/com.html>

Maastricht Recommendations on Promoting Effective Public Participation in Environmental Matters

- Available in English, French and Russian at:
<https://www.unece.org/index.php?id=49142>

Aarhus Convention Implementation Guide

- Available in English, French, Russian and Chinese at:
<http://www.unece.org/index.php?id=35869>

**For further information on the Aarhus Convention,
please contact:**

Aarhus Convention website:

<http://www.unece.org/env/pp/welcome.html>

Aarhus Convention secretariat:

public.participation@unece.org

Thank you!