

**Update from the Netherlands pursuant to paragraph 36 (b) of the annex to decision I/7
with regard to the Committee's findings and recommendations on communication
ACCC/C/2014/104**

Introduction

1. The case concerns a communication submitted by Greenpeace alleging that the Netherlands, as the Party concerned, failed to provide for public participation as required by article 6 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention, hereinafter: 'the Convention') when granting the licence to extend the design lifetime (LTO licence) of the Borssele Nuclear Power Plant.
2. In its letter of 27 August 2019, the Committee invited the Netherlands to submit a first progress report to the Committee before 1 October 2019, stating the measures taken and results achieved in implementing the recommendation in paragraph 89 of the Committee's findings. The Netherlands submitted its first progress report on 30 September 2019 and its second progress report on 1 October 2020. The latter report also addressed the Committee's first progress review of 26 February 2020.
3. This update provides an overview of the current state of affairs with regard to the measures taken by the Netherlands, taking into account that information provided before 1 April 2021 will be included in the decision-making of the Committee in preparation for the Meeting of the Parties in October 2021. This update also addresses the communication to the Committee from Greenpeace and WISE, submitted by letter of 17 February 2021, in which they refer to the ruling of the Council of State (*Raad van State*) of 27 January 2021.

Update on the measures taken

4. As stated in the first and second progress reports, the Netherlands concludes that the provisions for public participation regarding covenants and legislation allow for timely public consultation in relation to nuclear activities and their duration, even if this precedes the licensing of nuclear activities.
5. As regards licences to review or amend the duration of nuclear activities, progress has been made on improving the existing public participation provisions in accordance with the Committee's findings by amending section 17 (4) of the Nuclear Energy Act. The internet consultation on this amendment started on 23 April 2020 and ended six weeks later, on 4 June 2020. Following the internet consultation, an assessment was carried out by the Ministry of Security and Justice. The amendment has now been approved by the Dutch Government and submitted to the Council of State for an advisory opinion. After the

Government has responded to the Council of State's advisory opinion, the amendment will be presented to parliament.

6. In addition, by amending the Nuclear Facilities, Fissile Material and Ores Decree, the Netherlands will ensure that the relevant information required by article 6 (6) of the Convention is always available to everyone, including during the period of public consultation. At the moment preparations are under way within government for initiating a public consultation on the amendment.
7. After being approved by the Dutch parliament, the amendment to the Nuclear Energy Act and the amendment to the Decree are not expected to enter into force until, at the earliest, mid-2022 and late 2021 respectively. This will be later than 1 October 2020, the official deadline set by the Committee for the measures to take effect.

Ruling of the Council of State on 27 January 2021

8. In response to the communication submitted by Greenpeace and WISE to the Committee by letter of 17 February 2021, the Government wishes to state the following.
9. The Committee's recommendations to the Netherlands as adopted on 4 October 2018 relate to the reconsideration or updating of the duration of a nuclear activity. In general, it is important to note that recommendations of the Committee are forward-looking, i.e. in this case they concern future decisions regarding the reconsideration or updating of the duration of a nuclear activity.
10. The letter from Greenpeace/WISE concerns the licensing decisions of 2016 and of 2018 with regard to the Borssele Nuclear Power Plant. (Although the letter actually refers to a licence change in 2015, this clearly means the 2016 decision.) The 2016 decision concerns the implementation of 11 measures that emerged from the third 10-year safety evaluation and the Complementary Safety margin Assessment (CSA), also known as the European robustness study or the stress test. The 2018 decision is of an administrative nature and concerns the attachment of a number of safety-related conditions to the operating licence for the Borssele Nuclear Power Plant. According to the Government, neither decision entails a reconsideration or updating of the duration of a nuclear activity as stated in the Convention and in the Committee's findings.
11. Greenpeace/WISE lodged appeals against both decisions with the Council of State. The question Greenpeace/WISE raised before the Council of State was whether or not an environmental impact assessment (EIA) should have been carried out before issuing the 2016 decision and the 2018 decision.¹ The Council of State's rulings of 2 May 2018 (ECLI:NL:RVS:2018:1448, regarding the 2016 decision) and 27 January 2021

¹ Please note that the 2016 decision was issued before the findings of the Committee.

(ECLI:NL:RVS:2021:174, regarding the 2018 decision) dismissed these appeals.

Greenpeace/WISE attached the Council of State's ruling of 27 January 2021 concerning the 2018 decision to their communication.

12. In both rulings the Council of State made clear that the decisions did not entail a reconsideration or updating of the duration of a nuclear activity nor that an EIA was required.
13. In their communication of 17 February 2021 Greenpeace/WISE also claim that the Council of State argued that there was no obligation for public participation on environmental matters under the Aarhus Convention. However, in both rulings, the Council of State did not make any such observation, but ruled instead that an EIA was not required in relation to these specific decisions. The Government would like to reiterate that it has already been established that the Convention does not require an EIA as part of public participation (see e.g. consideration 82 of findings ACCC/C/2008/24 and consideration 85 of findings ACCC/C/2014/104).
14. In fact, the drafts of both the 2016 decision and the 2018 decision were preceded by the public participation procedure on the basis of the General Administrative Law Act. Therefore, it was possible for anyone to participate as required by article 6 of the Convention and to submit views with regard to the respective draft decisions.
15. The Netherlands therefore firmly rejects the allegation by Greenpeace/WISE that the Netherlands has repeatedly taken decisions in 2015 and 2018 in non-compliance with the Convention.

Conclusion

16. The Government trusts that the Committee will include the information provided in this update in its report for the Meeting of Parties in October 2021.