

**Comments of the Netherlands on the draft report of the Aarhus Convention Compliance
Committee on the progress to implement its findings and recommendations on
communication ACCC/C/2014/104**

Introduction

1. The Government of the Netherlands has received on 2 July 2021 from the Committee its draft report to the seventh session of the Meeting of the Parties on the progress made by the Netherlands to implement its findings and recommendations on communication ACCC/C/2014/104.
2. The Government would like to use this opportunity to make clear that it is fully committed to implement the Aarhus Convention and that it is its intention to fully comply with the obligations resulting from the Convention.
3. In this document the Government provides the Committee with its comments on the draft report. The Government would also like to raise some questions relating to the issue of significant effects for the environment and would like to give additional clarification with regard to mandatory public participation when it reconsiders or updates the operating conditions of a license for a nuclear installation.

Sections 19 and 20 of the Nuclear Energy Act

4. Before providing comments on the draft report of the Committee, the Government would like to point out that with regard to reconsidering or updating the operating conditions for a license for a nuclear installation, public participation¹ is always mandatory on the basis of section 19 in conjunction with section 20 of the Nuclear Energy Act.² It makes no difference whether this reconsideration or update is done upon request or by the competent authority.
5. For those cases referred to in paragraph 4 to which article 6 (10) of the Convention is applicable, the information made available for public participation will include all the requirements of article 6 (6) of the Convention.

¹ Procedure according to Division 3.4 of the General Administrative Law Act (*Algemene wet bestuursrecht*, GALA). For an official translation, see Appendix 4 of the Statement of the Government of the Netherlands concerning communication ACCC/C/2014/104 of 3 February 2015.

² For an unofficial translation of sections 19 and 20 of the Dutch Nuclear Energy Act, see Annex I.

Comments on the draft report

Scope of consideration

6. With reference to paragraph 26 of the Committee's draft report, the Government recalls its update to the Committee of 29 March 2021, in which it has been set out that, although the changes to the license for the Borssele NPP in 2016 and 2018 did not amount to a decision to update or reconsider the duration of the nuclear facility, 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.³

Issue of significant consequences for the environment

7. In its draft report the Committee, while welcoming the proposed amendment of section 17(4) of the Nuclear Energy Act, considers that this alone will not be sufficient to fully address the recommendations in paragraph 89 of its findings on communication ACCC/C/2014/104.
8. As stated in paragraph 42 of the draft report, the Committee notes that the proposed amendment to the Nuclear Facilities, Fissile Material and Ores Decree (Nuclear Facilities Decree) would ensure that information required by article 6 of the Convention for the public participation procedure be disclosed by the applicant or public authority only with respect to changes to nuclear facilities "with significant consequences for the environment". The Committee stresses in paragraph 43 that such a threshold is not provided for by article 6(10) of the Convention. For that reason the proposed amendment is according to the Committee too narrow to ensure compliance with article 6(10) of the Convention.
9. If the Government's reading of the draft report is correct, the Committee is of the opinion that – as demonstrated by its findings in communication ACCC/C/2014/121 – the provisions of article 6 (2)-(9) of the Convention should be applied in case the reconsideration or update of the operating conditions of an activity referred to in article 6 (1) is capable of significantly changing the basic parameters of the activity, or will address significant environmental aspects of the activity not already covered by the permitting decision. This means, in the view of the Committee, that the fact that the change may or may not have significant consequences for the environment is irrelevant for assessing whether the provisions of article 6 (2)-(9) should be applied.

³ Update of the Government of the Netherlands concerning communication ACCC/C/2014/104 of 29 March 2021, para. 14.

10. However, in its findings in communication ACCC/C/2014/121 the Committee also notes that the reference to “where appropriate” in article 6 (10) indicates that certain reconsiderations or updating of operating conditions for an activity will not necessarily require the reapplication of all the paragraphs noted. It may be interpreted to allow Parties not to apply article 6 to reconsiderations or updating of operating conditions, if they deem it inappropriate.
11. Would it not follow from the combined findings, and from the object and purpose of the Convention, that not all reconsiderations or updates have to pass through public participation, but only those that may have significant effects for the environment, as is clearly the case in article 6 (1)(a) and (b) of the Convention, and also in article 6 (6)(b)? The Committee in its findings in the current communication (para. 71) held that “except in cases where a change to the permitted duration is for a minimal 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.” And in its findings in communication ACCC/C/2014/121 (para. 104) the Committee held that “the scope of what is to be considered ‘appropriate’ must be even more limited if the update of the operating conditions may itself have a significant effect on the environment”. According to the Government, it would not be in line with the object and purpose of the Convention if article 6 (10) requires public participation for reconsiderations or updates that as such may not have any significant effect on the environment. The Government would welcome the Committee to elaborate on this aspect of its draft report.
12. The interpretation followed by the Committee in its draft report seems to make the issue of the possibility of significant environmental effects with regard to article 6 (10) in principle completely redundant. In the Government’s view, the assessment of possible significance of the environmental effects has to follow a case-by-case approach, considering the categories of installations defined by Dutch law, the specificities of any given installation, and the extent of the reconsideration or the update of its license, also when it concerns a nuclear installation.
13. In this respect, the Government also likes to recall the additional information that has been submitted to the Committee on 27 May 2021, which sets out the content of the proposed amendments of the Nuclear Facilities Decree. The newly proposed section 11a contains the requirements for an application to amend, supplement or withdraw restrictions or conditions subject to which a permit has been granted, “if this may have significant consequences for the environment” and not “with significant consequences for the environment” as quoted by the Committee in its draft report (para. 42).
14. This means, in case of a reconsideration or update of the operating conditions for a license of a nuclear installation, that prior to decision-making the Netherlands’ competent authority always assesses if there might be potential significant effects for the environment. These

effects shall be taken into account in the decision-making, regardless whether these effects will actually occur.

Issue of addressing the information listed in article 6(6)(a)-(f) of the Convention

15. In its draft report the Committee states that the Government has not yet provided evidence of how the information disclosed would include at least the information listed in article 6(6)(a)-(f) of the Convention.
16. The Government recalls the additional information that has been submitted to the Committee on 27 May 2021, which provides a description of the content of the proposed amendments of the Nuclear Facilities Decree. The proposed amendments contain a new section 11a which will include all the requirements of article 6 (6) of the Convention. The amendment of section 15 of the Nuclear Facilities Decree does not have a direct relationship with the findings of the Committee, but demonstrates that participation is taken seriously by the Government, also when it comes to (explicitly) informing the local authorities involved of intended decisions.
17. As stated in the information provided on 27 May 2021, draft section 11a of the Nuclear Facilities Decree contains (further to section 11) the requirements for an application to amend, supplement or withdraw restrictions or conditions subject to which a license has been granted, if this may have significant consequences for the environment. The draft section 11a, subsection 1, includes the requirements of article 6 (6) of the Convention: a description of the site and the physical and technical characteristics of the proposed activity, including a forecast of the expected residues and emissions; a description of the significant environmental impacts of the proposed activity; a description of the measures envisaged to prevent or reduce the effects, including emissions; a non-technical summary of the foregoing; an outline of the main alternatives studied by the applicant; and the main reports and opinions issued.
18. Subsection 2 of draft section 11a of the Nuclear Facilities Decree contains a demarcation provision for the purpose of the information required by section 11 of the Nuclear Facilities Decree. Subsection 3 of draft section 11a contains similar provisions for *ex officio* amendments by the competent authority of conditions or restrictions attached to the license as referred to in section 19, subsection 1 of the Nuclear Energy Act. Pursuant to article 6 (10) of the Convention, these changes must also meet the requirements of article 6 (6) of the Convention, as set out in section 11a, subsection 1 for amendments of the restrictions and conditions upon request of the license holder (section 19, subsection 3 of the Nuclear Energy Act).

19. The Government recalls the fact that the proposed amendments to the Nuclear Facilities Decree are still in preparation. Since the proposed amendments are drafts that have not entered the legislative process yet, it is not possible to share the latest versions of these proposed amendments with the public at this stage.

Conclusion

20. The Government trusts that the Committee will include the information provided in these comments in its final report to the seventh session of the Meeting of the Parties.