

Compliance Committee to the Convention on
Access to Information, Public Participation
in Decision-making and Access to Justice
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision VII/8m
on compliance by the Netherlands with its
obligations under the Convention**

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I. Introduction

1. At its seventh session (Geneva, Switzerland, 18-21 October 2021), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision VII/8m on compliance by the Netherlands with its obligations under the Convention (see ECE/MP.PP/2021/2/Add.1).

II. Summary of follow-up

2. At its seventy-third meeting (Geneva, 13-16 December 2021), the Committee held an open session to provide guidance on preparing the plan of action that each Party subject to a decision or request of the Meeting of the Parties was requested to submit by 1 July 2022. Representatives of the Party concerned and the communicant of communications ACCC/C/2014/104 and ACCC/C/2014/124 took part in the open session at the seventy-third meeting.

3. On 8 February 2022, on the Committee's instructions, the secretariat sent an information note and a template for its plan of action to the Party concerned to assist it to prepare its plan of action.

4. At its seventy-fourth meeting (Geneva, 15-16 March 2022), the Committee held a further open session on the preparation of Parties' plans of action. The purpose of the session was to answer any specific questions from Parties regarding the format or content of their plan of action. A representative of the Party concerned took part in the open session.

5. On 22 April 2022, the Party concerned requested the Committee to provide it with advice on various questions on the application of article 6 (10) and paragraph 22 of Annex I to the Convention that had arisen in the course of its implementation of paragraph 3 (a) of decision VII/8m.

6. On 30 June 2022, the Party concerned submitted its plan of action, on time.

7. On 4 July 2022, the secretariat forwarded the Party concerned's plan of action to the communicant of communications ACCC/C/2014/104 and ACCC/C/2014/124 and registered observers, inviting their comments by 1 August 2022. No comments were received.

8. At its virtual meeting on 17 November 2022, the Committee reviewed the plan of action of the Party concerned.

9. On 3 December 2022, the secretariat wrote to the Party concerned to inform it that, having reviewed its plan of action, the Committee had concluded that the Netherlands' plan of action appeared to be only partially appropriate. The Committee therefore invited the Party concerned to attend an open session at its seventy-seventh meeting (Geneva, 13-16 December 2022), to discuss its plan of action.

10. On 8 December 2022, the secretariat wrote to the Party concerned, providing it with a brief summary of the Committee's concerns regarding its plan of action.

11. At its seventy-seventh meeting, the Committee held an open session to discuss the Party concerned's plan of action with the participation of representatives of the Party concerned, the communicant of communications ACCC/C/2014/104 and ACCC/C/2014/124 and the observer Irish Environmental Network.

12. On 7 March 2023, the Party concerned submitted a letter enclosing information that had been requested by the Committee at its seventy-seventh meeting regarding the implementation of paragraph 3 (b) of decision VII/8m.

13. On 13 March 2023, the secretariat wrote to the communicant of communications ACCC/C/2014/104 and ACCC/C/2014/124, and registered observers inviting their comments on the information provided by the Party concerned on 7 March 2023 by 20 March 2023. No comments were received.

14. On 13 March 2023, the Committee requested further clarifications from the Party concerned.
15. On 21 March 2023, the Party concerned replied to the Committee's request for clarifications.
16. On 13 June 2023, having considered the information and clarifications received from the Party concerned, the Committee informed the Party concerned that the information it had provided did not address the content of the recommendation in paragraph 3 (b) of decision VII/8m.
17. On 1 November 2023, the Party concerned submitted its first progress report on decision VII/8m, a month after the deadline of 1 October 2023 set by the Meeting of the Parties in paragraph 4 (b) of decision VII/8m.
18. On 2 November 2023, the secretariat forwarded the Party concerned's first progress report to the communicant of communications ACCC/C/2014/104 and ACCC/C/2014/124 and the registered observers, inviting their comments by 30 November 2023. No comments were received.
19. After taking into account the comments on its draft advice on paragraph 3 (a) of decision VII/8m received from the Party concerned, Czechia, Germany, the communicant of communications ACCC/C/2014/104 and ACCC/C/2014/124 and the observer Irish Environmental Network, the Committee finalized and adopted its advice through its electronic decision-making procedure on 28 November 2023. On the same date, the secretariat forwarded the Committee's advice to the Party concerned, Czechia, Germany, the communicant and registered observers.¹
20. At its eight-first meeting (Geneva, 12–15 December 2023), the Committee prepared its first progress review on decision VII/8m and adopted it through its electronic decision-making procedure on 19 February 2024. The Committee thereafter requested the secretariat to forward the first progress review to the Party concerned and the communicants of communications ACCC/C/2014/104 and ACCC/C/2014/124 and registered observers.

III. Considerations and evaluation by the Committee

21. In order to fulfil the requirements of paragraph 3 (a) and (b) of decision VII/8m, the Netherlands would need to provide the Committee with evidence that it has taken the necessary legislative, regulatory and administrative measures to ensure that:
- (a) When a public authority reconsiders or updates the duration of any nuclear-related activity within the scope of article 6 of the Convention, the provisions of article 6 (2)– (9) are applied;
 - (b) Public officials, including the judiciary, are under a legal and enforceable duty to ensure that documents relating to, or referring to, the imperative reasons of overriding public interest regarding a Natura 2000 site are considered to be environmental information within the meaning of article 2 (3) (b) of the Convention.

General observations

22. The Committee commends the Party concerned on its proactive and diligent engagement in the Committee's follow-up on both paragraph 3 (a) and (b) of decision VII/8m.
23. The Committee welcomes the Party concerned's first progress report, albeit noting it was submitted a month after the 1 October 2023 deadline. The Committee appreciates that the late submission may have been due, on this occasion, to the Party concerned awaiting the

¹ A chronology of the preparation of the Committee's advice on paragraph 3 (a) of decision VII/8m is provided in Part II of the Committee's advice, and therefore is not repeated in this progress review.

Committee's advice on paragraph 3 (a) of decision VII/8m, which was adopted on 28 November 2023. The Committee emphasizes that the upcoming deadline of 1 October 2024 for the Party concerned's final progress report on decision VII/8m was set by the Meeting of the Parties and is not a flexible deadline.

Paragraph 3 (a) of decision VII/8m

24. In its first progress report, the Party concerned summarizes the actions it has taken to date to implement paragraph 3 (a) of decision VII/8m (and the related recommendation in paragraph 89 of the Committee's findings on communication ACCC/C/2014/104). This has included an amendment to section 17 of the Nuclear Energy Act, in order to ensure that, for permits related to the revision or amendment of a duration of a nuclear activity, the uniform public participatory procedure in part 3.4 of the General Administrative Law Act will always apply. The amendment to the Nuclear Energy Act entered into force on 10 February 2022.

25. The Party concerned also refers to its proposed amendment to section 11a of the Nuclear Facilities, Fissile Material and Ores Decree (Nuclear Facilities Decree) that is intended to ensure that the requirements of article 6 (6) of the Convention are met.

26. In its progress report, the Party concerned states that, once it has received the Committee's advice and the scope of article 6 of the Convention has thereby been clarified, it proposes to take the following further steps to implement paragraph 3 (a) of decision VII/8m:

- (a) Preparing a draft decree to amend the Nuclear Facilities Decree and informing the Committee.
- (b) Submitting the draft decree for public consultation online.
- (c) Publishing the draft decree and submitting it to parliament for preliminary scrutiny, in accordance with the preliminary parliamentary scrutiny procedure under section 76 of the Nuclear Energy Act.
- (d) Requesting an advisory opinion from the Council of State (*Raad van State*), with any necessary adjustments made to the decree and the accompanying explanatory memorandum.
- (e) Publication and entry into force of the decree.

27. The Party concerned states that, on average it takes 18 months to amend a decree.

28. The Committee welcomes the overview of actions taken to date and proposed next steps, as outlined in the Party concerned's first progress report.

29. Regarding the statement by the Party concerned in its first progress report that, on average, it takes 18 months to amend a decree, the Committee urges the Party concerned to take the necessary steps to ensure that the amendment of section 11a of the Nuclear Facilities Decree is enacted in time to be taken into account by the Committee when preparing its report on decision VII/8m to the Meeting of the Parties.

30. As the Party concerned itself recalls, the Committee considered both the amendment to section 17 of the Nuclear Energy Act and a narrative description of the proposed amendment to section 11a of the Nuclear Facilities Decree in the Committee's report on the Party concerned's compliance to the Meeting of the Parties at its seventh session.²

31. With respect to the amendment to section 17 of the Nuclear Energy Act, the Committee in its report to the seventh session of the Meeting of the Parties welcomed the proposed amendment but found that "it will not alone be sufficient to fully address the recommendation in paragraph 89 of its findings on communication ACCC/C/2014/104."³

² ECE/MP.PP/2021/54, paras. 34-59. Available at: https://unece.org/sites/default/files/2022-04/ECE_MP.PP_2021_54_E.pdf

³ ECE/MP.PP/2021/54, para. 42.

32. Regarding the proposed amendment to section 11a of the Nuclear Facilities Decree, in its report to the seventh session of the Meeting of the Parties, the Committee held that “until the draft legislative text of the Nuclear Facilities Decree is put before it, the Committee is not in a position to fully assess the extent to which the legislation meets the requirements of the Convention”.⁴

33. The Committee reiterates both its above conclusions.

34. Noting the broad scope of the questions included in the Party concerned’s request for advice on 22 April 2022, the Committee considers it important to recall that paragraph 3 (a) of decision VII/8m solely concerns reconsiderations and updates to the duration of nuclear-related activities. Therefore, in reviewing the implementation of paragraph 3 (a) of decision VII/8m in its report to the eighth session of the Meeting of the Parties, the Committee will only examine the measures taken by the Party concerned to ensure that, when a public authority reconsiders or updates the duration of any nuclear-related activity within the scope of article 6 of the Convention, the provisions of article 6 (2)– (9) are applied.

35. Based on the foregoing, while welcoming the actions taken by the Party concerned so far, the Committee considers that the Party concerned has not yet fulfilled the requirements of paragraph 3 (a) of decision VII/8m.

Proposed post-2033 lifetime extension for Borssele nuclear power plant

36. In addition to reporting on the measures taken and proposed to implement paragraph 3 (a) of decision VII/8m, the Party concerned also reports that, in order to achieve a fully climate-neutral energy supply, it proposes to keep the Borssele nuclear power plant (NPP) open beyond its current licensed end date of 2033. It states that, in order to facilitate the NPP’s lifetime extension beyond 2033, it will be necessary to amend the Nuclear Energy Act, the 2006 Borssele NPP Covenant and the NPP’s licence for the release of nuclear energy (LTO licence).

37. The Party concerned reports that, in view of its obligations regarding transboundary public consultation under the Aarhus and Espoo Conventions, it has decided to undertake the EIA procedure in two steps. The first phase will be linked to the amendment of the Nuclear Energy Act, and for this a so-called “first phase project” EIA will be drawn up. The Party concerned reports that all members of the public, including residents outside the Netherlands, will have the opportunity to submit their views on the draft scoping report and the corresponding participation plan.

38. The Party concerned states that, for the post-2033 LTO licence, it will be necessary to first conduct research into whether measures are necessary, and if so which ones. It is therefore envisaged that a “second phase project” EIA will be conducted in due course, linked to the LTO licence. The Party concerned states that both EIAs (phase 1 and phase 2), the draft legislative amendment and the draft licence will be open for public participation in accordance with the Aarhus Convention.

39. The Committee takes note of the information regarding the proposed post-2033 lifetime extension for Borssele NPP. It welcomes the stated commitment by the Party concerned to provide for early and effective public participation in accordance with the Aarhus Convention with respect to both the phase 1 and phase 2 EIAs, the draft amendment to the Nuclear Energy Act and the draft LTO licence.

40. The Committee notes that a review of the extent to which the requirements of the Convention have been met in the context of the proposed post-2033 LTO licence is outside the scope of the Committee’s follow-up on paragraph 3 (a) of decision VII/8m. This does not preclude the Committee reviewing the compliance with the Convention of the decision-making on the post-2033 licence in a future case if put before it. The Committee also stands

⁴ ECE/MP.PP/2021/54, para. 48.

ready to provide advice to the Party concerned on any matters relating to the post-2033 LTO licence upon its request.

Paragraph 3 (b) of decision VII/8m

41. The Party concerned reports that, with the entry into force of its new Open Government Act (*Wet open overheid*, “*Woo*”), its definition of environmental information accords with article 2 (3) of the Convention. It states that the definition in the *Woo* does not explicitly include documents that relate, or refer, to imperative reasons of overriding public interest regarding a Natura 2000 site and that there are, as such, no legislative, regulatory or administrative measures in place to ensure that documents relating, or referring, to the imperative reasons of overriding public interest regarding a Natura 2000 site are considered to be environmental information.

42. The Party concerned reports therefore that to ensure follow-up of the Committee’s recommendation, it will amend the implementation instructions for the *Woo*, and specifically those regarding its definition of “environmental information”, to make clear that it includes documents relating, or referring, to the imperative reasons of overriding public interest regarding a Natura 2000 site.

43. The Party concerned reports that the proposed amendments to the implementation instructions are to be prepared in the winter 2023/2024 and that, as soon as they are ready for publication, it will submit a translated version of the relevant paragraphs to the Committee.

44. The Committee welcomes the efforts made by the Party concerned to make clear in the implementation instructions for the *Woo* that documents relating, or referring, to the imperative reasons of overriding public interest regarding a Natura 2000 site are to be considered as “environmental information”.

45. The Committee reminds the Party concerned that paragraph 3 (b) of decision VII/8m requires that public officials, including the judiciary, are under “a legal and enforceable duty” to ensure that documents relating to, or referring to, the imperative reasons are considered to be environmental information.

46. The Committee therefore invites the Party concerned to clarify the legal character of the implementation instructions of the *Woo*. If the inclusion of a statement in its implementation instructions, for example that “documents relating to, or referring to, the imperative reasons are to be considered to be environmental information”, thereby creates “a legal and enforceable duty” to ensure that such documents are indeed considered to be environmental information, then the Committee considers that, depending on the wording of the instruction itself, the Party concerned’s proposed measure may indeed fulfil the requirements of paragraph 3 (b) of decision VII/8m. However, if the implementation instructions do not impose such a “legal and enforceable duty”, the Committee cannot see how the Party concerned’s proposed measure will fulfil the requirements of paragraph 3 (b) of decision VII/8m.

47. The Committee accordingly invites the Party concerned:

- (a) To submit to the Committee the proposed text to be included in the *Woo* implementation instructions requiring that “documents relating to, or referring to, the imperative reasons be considered to be environmental information”;
- (b) To clarify the legal character of the *Woo* implementation instructions, and in particular that they will impose a legal and enforceable duty on public officials, including the judiciary, to ensure that documents relating to, or referring to, the imperative reasons are considered to be environmental information.

- (c) Should the legal character of the *Woo* implementation instructions not impose a legal and enforceable duty on public officials, to take such other legislative, regulatory or administrative measures as may be necessary so that public officials, including the judiciary, are under a legal and enforceable duty to ensure that documents relating to, or referring to, the imperative reasons are to be considered to be environmental information.

48. Based on the foregoing, while welcoming the efforts made by the Party concerned so far, the Committee considers that the Party concerned has not yet fulfilled the requirements of paragraph 3 (b) of decision VII/8m.

IV. Conclusions

49. The Committee welcomes the first progress report of the Netherlands, albeit submitted after the deadline set by the Meeting of the Parties in paragraph 4 (b) of decision VII/8m.

50. The Committee invites the Party concerned to provide, as soon as possible, and at the latest together with its final progress report, the text of any legislative, regulatory and other measure that it has by then taken to fulfil paragraphs 3 (a) and (b) of decision VII/8m.

51. The Committee reminds the Party concerned that all measures necessary to implement paragraphs 3 (a) and (b) of decision VII/8m must be completed, and reported upon, by no later than 1 October 2024, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of the decision.
