



Ministry of Foreign Affairs

Aarhus Convention Compliance Committee
Attn. Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division

P.O. Box 20061
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The Netherlands
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Via e-mail only

Our reference

MinBuZa-2019.630082

Date 30-09-2019
Re Ref. Communication ACCC/C/2014/104

Dear Ms Marshall,

Further to your letter of 27 August 2019 concerning the implementation by the Netherlands of the Aarhus Convention Compliance Committee's findings and recommendations on communication ACCC/2014/104 I have the honour to hereby provide the Committee with a first progress report on the measures the Netherlands has taken and the results achieved in implementing the recommendation in paragraph 89 of the Committee's findings.

Yours sincerely,

René Lefeber
Legal Advisor

Encl.:

- First progress report of the Netherlands with regard to the Committee's findings and recommendations concerning Communication ACCC/C/2014/104
- Translated letter of the State Secretary for Infrastructure and Watermanagement (Annex A)
- Translated Instructions for Covenants 2003 (Annex B)
- Translated Roadmap for Legislation Online Consultation Process (Annex C)

First progress report of the Netherlands with regard to the Committee's findings and recommendations on communication ACCC/C/2014/104

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Introduction

1. The Netherlands has received the letter of the Aarhus Convention Compliance Committee (hereinafter the Committee) of 27 August 2019 concerning the implementation by the Netherlands of the Committee's findings and recommendations on communication ACCC/C/2014/104 as adopted by the Committee on 4 October 2018.
2. 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 ('Borssele NPP').
3. In its letter of 27 August 2019, the Committee invited the Netherlands to submit a first progress report to the Committee before 1 October, stating the measures taken and results achieved in implementing the recommendation in paragraph 89 of the Committee's findings.

Recommendation paragraph 89

4. The recommendation in paragraph 89 of the Committee's findings on communication ACCC/C/2014/104 states that "the Netherlands takes the necessary legislative, regulatory and administrative measures 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 paragraphs 2 to 9 of article 6 are applied."

Overview of the measures taken

5. After receiving the findings and recommendations, the Netherlands studied whether measures, legal or otherwise, should and could be taken to improve public participation in future decisions on the duration of nuclear activities (operation and design lifetime). Particular emphasis was placed on decisions that are taken by covenant, through legislation or licensing.
6. Set out below is the outcome of that study and the subsequent measures taken by the Netherlands.

7. The Government also informed Parliament in a letter dated 24 April 2019¹ about the conclusions and proposed measures. On that occasion, Parliament was notified that the Government would inform the Committee about the progress made, as indeed is set out in the present Report.

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¹Parliamentary papers II, session year 2018-2019, 25 422, no. 253
(Please see annex A enclosed to this letter)

Covenants and legislation

8. The Government appreciates the Committee's finding that administrative bodies involved in directional agreements by covenant on the duration of nuclear activities must ensure that these agreements are submitted to public participation when these agreements limit the competent authority's choice with regard to licensing. This also applies to legislative amendments if these were made in connection with those agreements.

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Covenants

9. In the Netherlands, public participation in preparation for a covenant is set out in the Instructions for Covenants from 2003² (hereinafter: Instructions) and is based on the General Administrative Law Act (hereinafter: GALA).
10. The Instructions are binding and must be observed by all ministers and state secretaries, the units that fall under their authority and persons involved in drawing up the covenants (see Instruction 2). Instruction 10(2) of these Instructions stipulates that when preparing covenants, due consideration must be given whether to involve interested third-parties or advisory bodies, depending on the type of covenant and the nature of the ensuing requirements.
11. If it is decided that such involvement shall take place, the provisions of the GALA dealing with participation and advice apply accordingly to the conclusion of that covenant, pursuant to Section 3:1(2) of the GALA. That means, inter alia, that if interested third-parties or advisory bodies are involved in a covenant, the administrative body concerned may decide to declare the uniform public preparatory procedure (*UOV*) in part 3.4 of the GALA applicable to preparing and concluding the covenant. This procedure grants every member of the public the opportunity to present an opinion.
12. The Instructions for Covenants in conjunction with Section 3:1 (2) of the GALA provide the Netherlands with proper legislative and administrative measures to ensure public participation in covenants about nuclear activities and their duration.
13. In the context of its advisory role ensuing from Section 3 of the Nuclear Energy Act, the Authority for Nuclear Safety and Radiation Protection will pay particular attention to appropriate public participation in any future directional agreements (such as covenants) on the duration of nuclear activities.

² Vaststellingsregeling aanwijzingen voor convenanten 2003 (Rules on Instructions for covenants 2003)
<https://wetten.overheid.nl/BWBR0014609/2003-02-01> (Please see annex B enclosed to this letter)

Legislation

14. Online consultation³ is an important tool to facilitate public participation in directional agreements carried out by way of legislation. An online consultation process allows everyone to respond to new proposals for legislation and regulations and the process has therefore been included in the Roadmap for Legislation⁴ that contains procedures, requirements and models for civil servants involved in the legislative process.
15. When the Nuclear Energy Act was amended in 1 July 2010, online consultation was not yet available as a tool.
16. The Roadmap for Legislation has no formal status. Nonetheless the Government decided late November 2017 to make online consultation compulsory for all legislation unless it concerns purely technical amendments or the implementation of EU legislation. If the amendment of the Nuclear Energy Act, which was relevant in 2010 for the Borssele nuclear power plant, had taken place today, the online consultation process would have been part of the legislative procedure.
17. Online consultation can lead to proposed legislation being modified. The online consultation process is thus an effective way of implementing the obligation under the Aarhus Convention to provide public participation in directional agreements on nuclear activities, or the duration of nuclear activities, when these are made by law.

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Licences

18. In the Netherlands, public participation in the decisionmaking process on licences for nuclear activities is regulated by reference to the GALA in the Nuclear Energy Act and the legislation based on it. The main rule is that the uniform public preparatory procedure (part 3.4 GALA) is followed for Nuclear Energy Act licences. Within that context, the general public has the opportunity to present opinions about the draft licence.
19. The uniform public preparatory procedure as laid down in the GALA complies with the public participation requirements under the Aarhus Convention. Almost all licences for nuclear facilities are granted by a uniform public preparatory procedure. The procedure may only be dispensed with if the proposed licence amendment is not expected to have a different or greater environmental impact than is permitted under the existing licence, if there is no requirement to draw up an environmental impact assessment and if the amendment does not result in a facility that differs to the one previously granted a licence. Only in that case, based on Section 17 (4) of the Nuclear Energy Act, may the regular licensing

³ <https://www.internetconsultatie.nl/>

⁴ (Please see annex C enclosed to this letter)

procedure be followed pursuant to the GALA, for example in the exceptional situation that a licence amendment does not require a physical modification to the facility. The regular procedure does not allow for public participation beforehand, but stakeholders may file an objection or an appeal afterwards with an independent court.

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20. Although the uniform public preparatory procedure was followed based on the General Administrative Law Act (GALA), this was not required by law for the Long Term Operation licence in the case of the Borssele nuclear power plant. In the opinion of the competent authority, the environmental impact of this licence amendment – the review of the safety report proving that the technical safety of the nuclear power plant had been established until the end of 2033 – was not expected to be greater than or differ from that permitted under the existing licence. Due to the lack of physical changes to or expansion of the facility, there was no requirement to draw up an environmental impact assessment. Furthermore, the Long Term Operation licence did not result in a facility that differed to the one previously granted a licence. Based on Section 17(4) of the Nuclear Energy Act, such a licence could have been granted through the regular licensing procedure, therefore without application of the uniform public preparatory procedure and without public participation.
21. To ensure in law that in future the uniform public preparatory procedure is always followed for licences relating to a review or amendment of the duration of nuclear activities, the Dutch government initiated a legislative process to amend Section 17 of the Nuclear Energy Act.
22. In specific terms, this legislative amendment means that application of Section 17(4) i.e. the regular procedure, is excluded from all licence amendments that relate to the duration (operation or design lifetime) of a nuclear facility. For such licence amendments the uniform public preparatory procedure will therefore have to be followed at all times. This amendment is the Netherland's response to the recommendation made by the Committee.
23. Work on the legislative amendment has already commenced. As it concerns an amendment to an Act of Parliament, which requires – in addition to a decision by the Government and a recommendation from the Council of State – the involvement of the House of Representatives and the Senate, as well as an online consultation process, the legislative processing time until the time the bill enters into force is at least 1,5 years. The amended legislation is therefore not expected to enter into force before 2021.
24. As competent licensing authority, the Authority for Nuclear Safety and Radiation Protection (ANVS) will, in anticipation of the amendment's entry into force, work in accordance with the proposed amendment in its licensing practice. In the interim this is sufficient guarantee that the Committee's recommendation is met.

Conclusion

25. Based on the preceding information, the Netherlands concludes that the options for public participation for covenants and legislation – and therefore also if they precede the licensing of nuclear activities – have been properly provided for and do not require amendment. Where it concerns licences to review or amend the duration of nuclear activities, a start has now been made to improve the existing public participation options in accordance with the Committees findings by amending Section 17(4) of the Nuclear Energy Act.

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