

**PRIORITIES FOR
IMPLEMENTATION OF
THE AARHUS CONVENTION
in
THE NUCLEAR SECTOR**

**PUBLIC PARTICIPATION IN DECISION MAKING
IN THE NUCLEAR DOMAIN
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AWARENESS OF PROCEDURAL ISSUES GROWING

Over the last years, we have seen active discussions on the implementation of the Aarhus Convention in the nuclear sector. The necessity of this discourse became clear during the plenary sessions and in the Transparency Working Group of the European Nuclear Energy Forum. Because of an active policy of marginalisation of civil society in this platform, ANCCLI started with support of the European Commission and several international and national civil society organisations a parallel discourse on the implementation of the Aarhus Convention in the nuclear sector (ACN).

During a series of round tables, several shortcomings of the current situation were highlighted on the basis of concrete cases around nuclear construction projects, nuclear waste programmes and emergency response.

During these sessions, both procedural and content issues surfaced that need attention. And the discussions had their influence on the practice on the ground.

A few examples:

- The issue of standing – with relevant regulations in the Aarhus Convention art. 2(4) and 2(5), art. 4(1), art. 6(2), 6(5-7), art. 7 and art. 9(1), 9(2) and 9(3) – surfaced in cases where NGOs or individuals had been denied information because they were seen as not having an interest, were denied public participation, or where they had been denied standing in access to justice on similar grounds. We still see cases where the right of standing is questioned, like for instance at the moment in Slovakia, where Slovak nuclear regulator UJD openly questions in court the interest of Greenpeace when it executes its right to access for information or its right to participate or go to court in issues of public participation. But in general, such an attitude is now widely accepted as inadequate and wrong.
- The issue of transboundary access to information and public participation sees positive developments. Where Bulgaria in 2003 only invited Romanians to participate in the Belene EIA, the Hungarian government already notified all EU member states of its intention to build Paks II. That it forgot to notify Switzerland can probably be easily corrected. Nevertheless, the UK government recently did not notify anybody of its intended construction of the Hinkley Point C nuclear power station, even though a potential accident could impact anyone on the European continent. We therefore rightly see countries like Austria and Ireland, and hopefully more including Norway, Germany, the Netherlands, Belgium and Luxembourg, addressing the English government on that omission.
- The issue of early participation when all options are open (art. 6(4)) has been addressed in several cases, for instance the EIA for the Mochovce 3,4 project in the Slovak Republic, where the Aarhus Convention Compliance Committee concluded that three licenses for construction were given in breach with the Convention because this early participation did not take place. It is therefore easier to address now a similar case in Slovakia, where the EIA for radioactive waste treatment facilities in Jaslovské Bohunice is taking place after all facilities are already implemented.
- The issue of sufficient time for the public to give its input – The public was requested to give its input on hundreds or even thousands of pages of material in the EIA procedures on new nuclear build in the Czech Republic, Bulgaria, Romania, Slovakia and Lithuania in as little as three weeks or 30 days. The Polish government rightly increased such a period in its SEA for the Polish Nuclear Energy Programme to three months to give the public indeed “reasonable” time frames for its input as prescribed in art. 6(3) of the Convention.
- A debate has started about the format of “public hearings” or “public debates”, the form in which art. 6(5) of the Convention is mostly implemented. Project promoters and public authorities are supposed to receive here input from the public in the form of information, proposals, concerns and viewpoints. Reality is that these are mostly “public talkings”, in which

the promoters and/or responsible authorities claim to inform the public, answer their questions and react on their concerns – they do not seem to be willing to listen and take into due account. A recent example is the public debate in the EIA for the Temelin 3,4 project in the Czech Republic, which took place between 10:00 a.m until 03:40 the next morning – a marathon session in which the promoter supported by the public authority tried to tire the public into submission.

These meetings, however, should be part of the larger discourse to lead to an enhanced quality of the decisions. In that framework, they should focus on receiving input from the public and not be used as a propaganda tool for the project.

It seems that awareness of these procedural issues has grown and it is increasingly easy to demand proper procedures that indeed fulfil the criteria of the Aarhus Convention, or find sufficient interest to have them addressed in court or by the ACCC.

THE IMPORTANCE OF CONTENT UNDER THE CONVENTION

It could be argued that there is a logical development in the implementation of the Aarhus Convention, that first the procedures need to function properly before the focus can shift to the content. Only when it is clear how people can get access to information, it becomes important to know whether the information they get is indeed adequate for enhancing the quality of decisions. Only when it is clear how public participation takes form, there is time to look at the content and quality of the information that the procedures are offering and producing.

Especially in public participation procedures, we have seen many cases in which basic content issues were brought forward during the ACN round tables, without seeing any improvements on the ground.

- Alternatives: In all major nuclear EIAs and SEAs in the last decade, we have seen that the proposed activity is presented as an inevitability. No alternatives are worked out with which the potential environmental impacts of the project can be compared. It is therefore impossible to see if a zero-option (alternatives without the project) or adaptation of the project would be more justified than the project itself. This content issue flouts of course art. 6(4) of the Convention, which states that public participation has to take place in an early stage when all options are open. But it – even more important – removes the whole sense of public participation from the process: it can only be evaluated if a decision has been enhanced in quality, when its environmental impacts can be fully justified; that is, when justification arguments are backed up with all comparative data with reasonable alternatives, as well as an open discourse about their validation and valuation.
It can be argued that the project level should not deal with general policies – in the case of a nuclear power station, the choice of energy mix should be taken before the discussion about a concrete project takes place. However, in the first place the policies and strategies on which the choice for new nuclear projects has been based so far has never been fully open to public participation anywhere in Europe, so that it can not be argued that all options were open during the public discourse. For that, full SEAs should be executed on general energy policies, addressing a full set of alternative policies, including those without nuclear power (zero-option). These data could then be fed into the project EIA for further assessment. Secondly, even when an in principle choice has been made to include (new) nuclear power in the energy mix, there needs to be an opening to review that conclusion when arguments appear during the project level public participation that undermine the justification of the environmental impacts of such new projects. Short: also during the EIA a full set of alternative policy options should be presented and available for comparative analysis with the proposed project.
- Full nuclear chain analyses – In order to enable a true justification of environmental impacts of a nuclear project, all potential environmental impacts of all activities that inevitably are linked

with the project have to be taken into account. This includes, for example, greenhouse gas emissions, radioactive waste production and toxic waste production of the entire nuclear fuel chain – including mining, extraction, fuel production, spent nuclear fuel processing, decommissioning and radioactive waste management. Without such information it is impossible to judge whether there are no alternatives that might be over-all cleaner, cheaper and with less risk to health and environment. The current tendency of salami-techniques, in which steps in this chain are treated completely independently, is one that reduces public participation to a senseless bureaucratic exercise.

- Analysis of largest possible accidents and whether they can be managed – None of the so-far analysed nuclear projects under the Aarhus Convention has properly addressed the issue of the largest possible accidents. Accidents with nuclear installations and materials cannot be excluded – be it only because of potential technical or human failure, natural catastrophes, terrorist attacks, sabotage or acts of war, or a combination of those. So far, these accidents were completely excluded from public participation, or the source terms for emissions from such accidents proved to be far too low. For a full justification of the choice for a nuclear project, it is important to be aware of the potential impacts of such accidents and an answer on the question whether the consequences indeed can be managed.

I think that the round tables for the implementation of the Aarhus Convention in the nuclear sector have brought awareness of the necessity of good procedures among authorities. And they have inspired citizens to seek recourse in the case that procedures are inadequate. The issue of quality of content, however, has been often mentioned in submissions from the public, but both promoters and public authorities have so far been unwilling to take these into due account, as they are bound to do by art. 6(8) of the Convention. Because resulting access to justice has so far been overshadowed by issues of procedure, there is no proper jurisprudence about the level of content and its quality necessary for proper public participation. It would be good if all parties involved would start to pay more attention to this.

The Aarhus Convention is a powerful tool to prevent the mistakes of the past and help us perceive a more sustainable future. But its implementation is still in its initial phases. Only if all involved take the fundamental principles embodied in this Convention to heart – and implement them, we can bring the risk of more scars like Mayak, Windscale, Chernobyl, Fukushima back to acceptable proportions. By enhanced quality decisions, as the Convention wants to help create.