

Second progress report of 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.
3. To follow up on the first progress report of 30 September 2019 and referring to the Committee's first progress review of 26 February 2020 as well as on the outcome of the open session with the Committee on 11 March 2020, this second progress report to the Committee states the measures taken and results achieved in implementing the recommendation in paragraph 89 of the Committee's findings.

Recommendation in paragraph 89

4. The recommendation in paragraph 89 of the Committee's findings on communication ACCC/C/2014/104 states that the Netherlands should 'take 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 any measures, legal or otherwise, should and could be taken to improve public participation in future decisions on the duration of nuclear activities (operating or design lifetime). Particular emphasis was placed on decisions that are made by covenant or through legislation or licensing.
6. The current outcome of that study and the subsequent measures taken by the Netherlands are set out below.

7. The government also informed parliament on several occasions about the conclusions and proposed measures. Parliament was notified that the government had informed the Committee about the progress made.

Agreements and legislation subject to public participation

8. The Government appreciates the Committee's finding that administrative bodies involved in agreements on the duration of nuclear activities must ensure that these agreements are submitted for public participation if they limit the competent authority's choice with regard to licensing. This also applies to any legislative amendments made in connection with those agreements.
9. As stated in the first progress report, public participation when preparing a covenant is laid down in and must comply with the Instructions for Covenants and is based on the General Administrative Law Act. Requirements for public participation when preparing legislation are laid down in the Road Map for Legislation: Online Consultation Process. This is compulsory for all legislation unless it involves purely technical amendments or the implementation of EU legislation.
10. This means that, when drawing up covenants and legislation, public participation must be arranged in a way that gives the public the opportunity to participate at an early stage, when all options are open, according to article 6 (4) of the Convention, with regard to the preparation of decisions on nuclear activities and their duration.

Licences subject to public participation

Amendment of section 17 (4) of the Nuclear Energy Act

11. The first progress report informed the Committee about the amendment of section 17 (4) of the Nuclear Energy Act. This amendment provides that public participation is always mandatory in the case of licence changes relating to the duration (operating or design lifetime) of a nuclear facility.
12. On 27 February 2020, the Committee announced in its first progress review for the Netherlands that it considered the proposed amendment of section 17 (4) of the Nuclear Energy Act to be a positive step, but insufficient in itself to meet its recommendation. In this regard, the Committee asked the Netherlands to take measures to ensure that at the time of the consultation procedure everyone has access to all available environmental information of relevance to decisions on the duration of a nuclear activity. The Committee also elaborated on this point during the open session (audio conference) that was held on 11 March 2020 concerning the follow-up to the Committee's findings and recommendations.
13. The Netherlands concludes from paragraph 18 of the Committee's progress review that the Committee is of the opinion that it is not necessary to prescribe an environmental impact assessment for all cases where a public authority reconsiders or updates the duration of any nuclear-related activity.

14. The internet consultation on the bill started on 23 April 2020 and ended six weeks later, on 4 June 2020. The Netherlands informed the Committee of this by letter of 11 May 2020. During the internet consultation period, an assessment was carried out by the Dutch Advisory Board on Regulatory Burden. The response to the views submitted during the internet consultation and the response to the comments of the Advisory Board on Regulatory Burden will be included in the explanatory memorandum accompanying the legislative amendment. As soon as possible after this, the amendment will be submitted to the Dutch cabinet for a decision. If the cabinet approves the bill, it will be submitted to the Council of State for advice. After the government has responded to the Council of State's advisory opinion, the bill will be presented to parliament.
15. As stated in the first progress report, the Authority for Nuclear Safety and Radiation Protection (ANVS), as the competent licensing authority, will, in anticipation of the amendment's entry into force, bring its licensing practices into line with the proposed amendment. In the meantime, this provides a sufficient guarantee that the Committee's recommendation will be met.

Additional measures

16. The Netherlands takes the Committee's progress review seriously, including its request for additional measures to ensure that relevant decisions regarding nuclear facilities always meet the requirements of the Convention.
17. The Netherlands therefore intends to amend two articles (articles 11 and 15) of the Nuclear Facilities, Fissile Material and Ores Decree under the Nuclear Energy Act.
18. The intended amendment of the Nuclear Facilities, Fissile Material and Ores Decree will guarantee that, in the event of changes to the restrictions and conditions attached to a licence for nuclear facilities with significant consequences for the environment, the information required by article 6 (6) of the Convention must be submitted by the applicant or the competent authority. As a result, the relevant information for that decision will be available to everyone, including during the public consultation period. This amendment of the Nuclear Facilities, Fissile Material and Ores Decree is currently officially in preparation.

Meeting of the Parties

19. The measures taken and envisaged are considered to be in line with the Committee's recommendation. However, in the Netherlands the procedure for amending an act of parliament takes approximately two years and the amendment of a decree takes approximately one year.
20. After being approved by the government and 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, the beginning of 2022 and mid-2021 respectively. This is later than 1 October 2020, the official deadline set by the Committee for the measures to take effect. It is understood that the progress made by the Netherlands can still be reported until April 2021 and included in the Committee's report for the Meeting of the Parties in October 2021.

Conclusion

21. As stated in the first progress report, 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.
22. As regards licences to review or amend the duration of nuclear activities, a start has now 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.
23. Also, by amending articles 11 and 15 of 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.
24. Before April 2021, the Government will report to the Committee on its progress in implementing the measures taken, to enable the Committee to include this information in its report for the Meeting of Parties in October 2021.