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**Per e-mail:** fiona\_marshall@un.org

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## REACTION TO 'PROGRESS REPORT' NL

Re: **Greenpeace/KCB (MER)**

Dear Mrs. Marshall,

In reaction to the 'progress report' of the Netherlands, Stichting Greenpeace Nederland (hereafter: Greenpeace) submits the following observations.

1. The Netherlands suggest in their letter of 1 October 2019 that there would have been no opportunity to submit the decision regarding lifetime extension of the nuclear power plant Borssele (KCB) to public participation concerning the environment. This suggestion is incorrect. The Dutch Nuclear Safety Authority (ANVS) decided by decision of 4 December 2018 to change the KCB's permit to implement international guidelines regarding nuclear safety that were adopted as a result of nuclear disaster in Fukushima, Japan. The ANVS omitted to also submit at that occasion the decision to extent the exploitation of the KCB to public participation regarding the environmental effects of that extension, as ANVS should have done to fulfil its obligations under the Aarhus Convention.

### *Reaction to par. 7*

2. By letter of 24 April 2019 (Annex A to the Netherlands' letter of 1 October 2019) the secretary of State for Infrastructure and Water management informed the Dutch Parliament that 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". The secretary of State here suggests

that the only breach of the Aarhus Convention with regard to PPP on the lifetime extension of the nuclear power plant would lie in the fact that PPP is not mandatory with regard to the granting of an LTO permit.

3. From that reasoning, it is clear that the secretary of State and the Netherlands do not recognise that the ACCC concluded in its Findings that the lack of PPP *regarding the environment* with regard to the granting of the LTO permit for the KCB was contrary to the Netherlands' obligations under the Aarhus Convention. The secretary of State seems still not to acknowledge that the public participation regarding the LTO permit only concerned the technical aspects and the ageing of the KCB and not the environmental and health effects of prolonged exploitation of the KCB, including the extension of the period of exposure to nuclear radiation, taking into account all the changes in the surroundings of the KCB (population, other industries, evacuation). By adopting legislation requiring PPP for LTO licenses, will not solve the breach of the obligations under the Aarhus Convention when it is not clearly laid down by law that the PPP required will also concern the environmental effects of the lifetime extension.

*Reaction to par. 8*

4. The Instructions for Covenants from 2003 have never been applied regarding public participation on the Covenant Borssele. These instructions have plaid no role whatsoever with regard to the LTO licence for the KCB. Furthermore, the Instructions for Covenants does not require that the relevant environmental information regarding the environmental effects of LTO be published and that informed public participation *concerning the environment* shall be organised.

*Reaction to par. 11*

5. The Uniform Public Preparatory procedure in paragraph 3.4 of the General Administrative Law Act (GALA) does not require informed public participation *concerning the environment* based on published environmental information regarding the impact of the lifetime extension of a power plant.

*Reaction to par. 12*

6. The current legislation does not guarantee the assessment of the environmental impact of an LTO based on relevant information regarding the environmental effects.

*Reaction to par. 13*

7. The Netherlands state that in the context of its advisory role ensuing from Article 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, without recognising that no PPP with regard to environmental effects of the lifetime extension has taken place, not even in the context of the recent decision regarding the amendment of the KCB's license. Further, the Netherlands will not act in accordance with the Aarhus Convention in case PPP is organised without disclosing to the public the information regarding the assessment that was carried out with regard to the environmental impact of LTO and all the relevant information necessary for that assessment.

*Reaction to par. 15*

8. The Netherlands state that 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. But this obligation to carry out online consultation for new legislation would not have resolved the breach of the obligations under the Aarhus Convention, because online consultation does not resolve the problem that no environmental

information was made available for the public, including information relevant for the assessing of the environmental impact of the lifetime extension. The compulsory online consultation with regard to the amending of the Nuclear Energy Law would thus not have solved the breach that was discussed in the ACCC Finding's.

*Reaction to par. 18*

9. According to the Netherlands, public participation in the decision-making process on licences for nuclear activities is regulated by reference to the GALA in the Nuclear Energy Act and the legislation based on it. Within that context, the public would have the opportunity to present opinions about the draft licence.
10. With this statement, the Netherlands deny the fact that public participation regarding the LTO license was only organised with regard to the aging of the nuclear installations of the power plant. However, most of the reports regarding the future safety of the plant were never disclosed during PPP and were only made available to Greenpeace during the appeals proceedings before the administrative court (Raad van State). There was no informed PPP concerning the environment possible, as no information on the environmental impact of the lifetime extension was made available. That omission still has not been repaired. The information is still not available and PPP on the environmental impact has still not been organised.

*Reaction to par. 19*

11. The Netherlands state that the Findings of the ACCC should lead to the amendment of Article 17(4) of the Nuclear Energy Act, as this provision states that no PPP is to be held, if the proposed licence amendment is not expected to have a different or greater environmental impact than is permitted under the existing licence. The Netherlands do not seem to recognise that a longer exploitation of a nuclear power plant will always lead to longer exposition and thus to a greater environmental impact. The current Article 17(4) thus applies and should lead to informed PPP concerning the environment.

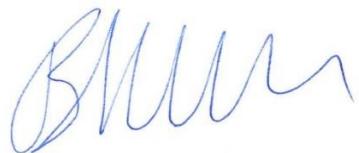
*Reaction to par. 20*

12. The Netherlands here state incorrectly with regard to the LTO license that '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' completely ignoring the fact that longer exposition in itself is an environmental impact that should be assessed as was the basis of the ACCC's Findings and its conclusion that the Netherlands have acted in breach of the Aarhus Convention.

*Conclusion*

The progress report makes clear that the assessment of the environmental impact of lifetime extension was, in breach with the Findings of the ACCC, not made the subject of PPP at the occasion of the amending of the KCB's license by decision of 4 December 2018. It also makes clear that the Netherlands still do not acknowledge that LTO has an environmental impact that should be assessed and be subject to PPP concerning the environment.

Yours sincerely,



Bondine Kloostra