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Nuclear transparency – the Aarhus and Espoo Conventions and nuclear power, by Jan Haverkamp. Since the Aarhus and the Espoo Conventions became valid, they have played a crucial role in increasing transparency in the nuclear industry. What has 20 years of Espoo and Aarhus brought?

Urenco is back in business with Russia – despite of war in Ukraine, International NGOs reject uranium deliveries from Russia to Almelo, Last week, the Dutch nuclear authority ANVS authorized the transport of up to six shipments of fissile enriched uranium from Russia to Urenco in Almelo.

Will nuclear energy make a comeback in Germany? Germany phased out nuclear energy nearly a year ago, The last reactor was shut down in March 2023. But even with the multi-billion euro problem of how to store radioactive waste, some politicians are calling for new nuclear plants to be built.

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Nuclear transparency – the Aarhus and Espoo Conventions and nuclear power

By Jan Haverkamp, Wise Nederland

In the 1990s, around and after the enormous changes set by the collapse of the Soviet Union, European countries formulated new rules for transparency around environmental issues under the umbrella of the United Nations Economic Cooperation in Europe (UNECE). First, the obligations of environmental impact assessment and especially transboundary cooperation were formulated along already existing EU law-lines in the Espoo Convention of 1991. During the "Environment for Europe" process in the 1990s, the Aarhus Convention then formulated rights and obligations on access to information, public participation and access to justice in environmental matters in 1998.
As Conventions come, both have a compliance mechanism to oversee that signatory countries indeed fulfil their obligations. The Espoo Convention has its Implementation Committee (IC) and Aarhus the Aarhus Convention Compliance Committee (ACCC).

Since those Conventions became valid, they have played a crucial role in increasing transparency in the nuclear industry. What has 20 years of Espoo and Aarhus brought?

Where

The two conventions initially covered the UNECE region, which includes besides all EU countries all countries in the Balkan, Eastern Europe and Central Asia, except for Russia. Espoo has been signed, but not ratified, by Russia as well. Canada is a party to Espoo. The US has signed neither of the conventions. Belarus is currently stepping out of Aarhus, after the Meeting of Parties found that it was structurally non-compliant because of harassment of environmental NGOs. Both, the Espoo and Aarhus Convention are also actively opening up for countries outside the UNECE, with Guinee Bissau recently accessing to the Aarhus Convention.

In Latin America, a similar agreement like the Aarhus Convention has been established in the form of the Escazu Agreement.
The jurisprudence under the Espoo and Aarhus Convention is globally seen as an important indication of best practice, also outside the signatory states.

Access to information

Nuclear activities are now, especially because of the Aarhus Convention, commonly understood to be activities that always are related to the environment. That means that under the Aarhus Convention, all information related to nuclear activities falls under the access to information rights for citizens and NGOs, and exemptions have to follow the strict criteria under art. 4(4) of the Convention. These exemptions furthermore have to be interpreted in a restrictive way, that means that any refusal of information on one of these grounds needs to be argued, and only with very strong arguments may be applied. There are many cases, where the ACCC has corrected countries that tried to withhold nuclear information from the public, and increasingly national courts are following these obligations with great care. For instance, attempts from Slovakia to make all information related to nuclear energy confidential by putting it under national security, and later under its postal secrecy act were halted by complaints to the ACCC. Basically, all information – environmental, about emissions, waste, but also economic, safety information and other information – related to nuclear installations should be accessible to the public. Because this considers not only obligations from countries to provide information, but also rights from citizens to get information, in cases where

national legislation is not entirely clear or misinterpreted, citizens can directly refer to their rights under the Convention. In practice this means for me, that if I notice I cannot get access to some kind of information, say, a document about radioactive emissions from the IAEA that is in the possession of national nuclear authorities, I first look whether they can withhold that on the basis of Aarhus. If not, I will then look under what national legislation I have to request this, and I will sue the authority on the basis of national law and the Aarhus Convention when they do not release the information – so far always successfully. Because in many countries, the Aarhus Convention access to information rights have been implemented as special cases within general access to information legislation, it is mostly necessary and sufficient to refer to the fact that you request "environmental information" as defined under the Aarhus Convention.

Important conclusions from the ACCC include that authorities may, for instance, not withhold complete documents if only a limited amount of information falls under one of the exemptions from art. 4(4), but has to give access to the document and blacken or edit out, with argumentation, parts that indeed are confidential. They cannot withhold environment related reports from outside consultancies that they have in their hands on the argument of confidentiality or outside information. Also, authorities have to give access to information in digital form if it exists in that way and cannot force citizens or NGOs to come to certain locations to only see the documentation, unless one of the art. 4(4) exemptions is valid for the information.

A nice example was a document leaked in Russia that looked coming from the "for authorities only" IAEA Unified System for Information Exchange in Incidents and Emergencies (USIE) website on measurements of Ruthenium-106 in the atmosphere in 2017. It was not clear whether this leaked document had possibly been tampered with, and WISE asked access to the IAEA to the original document. The IAEA did not respond, so WISE asked access to the Dutch national nuclear regulator ANVS for a copy. The ANVS refused and WISE went to court, lost and brought the issue for the highest administrative court, the Council of State. The Council of State concluded that the ANVS, under the Aarhus Convention, had to take a more pro-active stance and explicitly request the IAEA to remove confidentiality from the data.

Public participation

Aarhus prescribes in art. 6 (specific activities), 7 (plans, programmes and policies) and 8 (regulations and laws) public participation on environmental matters in decision procedures. The Espoo Convention furthermore prescribes that the public in potentially affected countries has to be given equivalent access to public participation procedures and consultations as the public in the country of origin of the project. The Espoo Convention has been extended with the Kiev Protocol that prescribes a Strategic Environmental Assessment for plans and programme, including public participation in the procedure.

- *plans and programmes*

For plans and programmes, the rules for public participation are not as strict as for concrete projects. There is no prescribed format, but there is an obligation to give the public a chance to express its views and viewpoints have to be taken "into due account", that means it has to be argued how they have been taken into account, and if not, why. This is still solid enough to be able to influence the development of plans and programmes. Nuclear examples include general energy policies or specific nuclear energy policies. But also, the by Euratom prescribed 10-year updates of the national programmes on nuclear waste.

- *new projects*

Virtually all new nuclear projects have to undergo a form of public participation in which environmental issues are also assessed and play a role in the decision.

The Espoo Convention prescribes for that an environmental impact assessment (EIA) procedure and adopted in 2017 Good Practice Recommendations on the Application of the Convention to Nuclear Energy-related Activities. The Aarhus Convention prescribes public participation when all options are still open (including not carrying out the project).

It is important to notice that this obligation includes explicitly public participation on environmental matters. During the preparation of the project for a new nuclear reactor for the production of radioactive medicines in the Netherlands, the Pallas project, environmental matters played a role in the local (municipal!) site definition, but the environmental impact assessment (EIA) only came available in the procedure for the nuclear safety license by the national nuclear regulator ANVS. The ANVS has no competence on environmental issues, but still, under Aarhus, has to take views from the public on the EIA into account while issuing its construction and operation license. It cannot simply refer to the fact that environmental issues were already dealt with in the siting license given by the municipality, but without EIA and public participation on the EIA report. This case is currently subject to a court appeal at the administrative court in the Netherlands, in which WISE asks the court to dismiss the construction and operation license issued by the ANVS on the basis that public participation on environmental issues was not taken into account.

- *lifetime extensions and periodic safety reviews*

The environment changes over time. Nuclear power stations were initially technically designed and built for an operational time of 30 or 40 years. Even in case they had undergone public participation on the environment, or even an EIA at their construction (most nuclear power stations build in the 1970s and 1980s did not!), the circumstances have changed so much that current potential impacts of the installation will be very different after the expiration of this technical lifetime. Think of changes in how many people live around it, how much economic activity there is around it, how much areas of natural importance can be found around it. For that reason, environmental NGOs demanded a new EIA procedure, including public participation on environmental matters, at the time nuclear plants were allowed to operate longer than their initially foreseen technical lifetime. They based themselves on the obligations under Espoo and Aarhus that significant changes in activities also must be decided upon with public participation. Nuclear operators and nuclear countries strongly objected to such a practice, because they saw it as a potential barrier against longer operation. Under the Espoo Convention, a decade long process resulted in the Guidance on the applicability of the Convention to the lifetime extension of nuclear power plants. The ACCC concluded in reaction to several complaints from NGOs on specific nuclear lifetime extensions that any form of prolonging operation of beyond initially foreseen periods of “ultra-hazardous activities” like nuclear power stations constituted a change, “and an important one for that”. It stated that this is not only the case when initial licenses expire and need to be prolonged, but also when a nuclear power station has an unlimited operational license, and that a reasonable period is not only related to formal permits. It, for instance, found that the by the Convention on Nuclear Safety (CNS) and Euratom prescribed 10-yearly periodic safety review was a moment where public participation on environmental matters Under art. 6(10) of the Convention needs to take place.[1]

1 See paragraphs 63 and 64 of the ACCC 2021 Report on general issues of compliance to the 7th MoP of the Aarhus Convention - https://unece.org/sites/default/files/2021-10/ECE.MP .PP .2021.45 ac.pdf

Access to justice

The Aarhus Convention gives citizens and environmental NGOs the right to bring issues around access to information and public participation on environmental matters to court. But also, general issues around environmental decisions. This is not always a clear given. In Poland, for instance, it is impossible to bring a lack of public participation around plans and programmes to court. Also, the European Union for a long-time blocked access of NGOs to the European Court.

If your rights on access to information or public participation under the Aarhus Convention are broken, you must be able to bring them to court and this should not be extremely difficult – for instance in the form of very high legal fees, the obligation to be represented by an expensive lawyer, or by complex forms of NGO registration. In the case national courts cannot help you in restoring your rights, you can forward the complaint to the ACCC for consideration. But be aware that you first have had to exhaust the possibilities at the courts in your own country.

WISE has used this route several times – sometimes with success, sometimes with only limited success, and still have, for instance, a complaint running in which a license update of the Borssele NPP was not accompanied by public participation on environmental issues. Going the whole way to the ACCC is costing a lot of time – first through the local court system, then to Geneva – this can easily take five years or more. The threat of being willing to go that entire way does, however, sometimes help to focus courts on the need to take the rights and obligations under Aarhus seriously.

A communication to the IC of the Espoo Convention can be sent always, but the IC has less possibilities to change the situation on the ground, because its findings need to be accepted (preferably in consensus!) by the Meeting of Parties of the Espoo Convention. For that reason, we have found it more effective to not only rely on the Espoo Convention, but rather on the rights and obligations under the Aarhus Convention.

Other Aarhus rights

Next to access to information and public participation, the Aarhus Convention gives you a few more important rights.

- *Facilitation to get your rights*

Art. 3(2) of the Aarhus Convention obliges authorities to help you get your rights under Aarhus. For that reason, the Dutch Council of State, for instance, obliged the Dutch nuclear regulator ANVS under art. 3(2) to pro-actively contact the IAEA to see if confidentiality on Ru-106 measurement data could be lifted. We convinced the regional authorities in the Pomeranian Region in Northern Poland with art. 3(2) to bring us into contact with the regional geologist to give us access to geological data of the foreseen site for a new nuclear power plant.

- *Promotion of Aarhus principles in international cooperation*

Art. 3(7) obliges authorities to promote the principles of the Aarhus Convention in international cooperation and international organisations. We have made that operational in our demand for access to Ru-106 measurement data at the IAEA.

- *No harassment of environmental defenders*

Art. 3(9) forbids harassment of citizens in their attempts to operate their rights under the Aarhus Convention. This has not only given protection to Belarussian NGO members in the past, but also could be used to argue against disproportional police violence against climate activists in Western democracies. The Aarhus Convention has established the position of a Special Rapporteur on Environmental Defenders, who can react fast on urgent threats against environmental activists.

Compliance

The Espoo Convention's Implementation Committee (IC) oversees whether signatory states (Parties to the Convention) fulfil their

obligations and consists of civil servants representing signatory countries. It gives (Party-)independent conclusions about whether or not a country has been compliant with the rules of the Convention. Parties (states) can complain about other Parties, Parties can ask advice about compliance issues, but the IC can also start investigations on its own initiative, including in reaction to communications from the public. The IC works on then behind closed doors to come to its findings. That means you are not participating during hearings or sessions. Using this mechanism, several complaints by NGOs from the Ukraine, followed by the Netherlands, the Czech Republic, Bulgaria, France and others resulted in a discussion to what extent nuclear life-time extensions had to be submitted to a (transboundary) environmental impact assessment. A decade long process resulted in the Guidance on the applicability of the Convention to the lifetime extension of nuclear power plants. On that basis, the IC has reached the conclusion that Ukraine, Bulgaria and the Czech Republic did not comply with the Convention when failing to carry out an EIA during lifetime extension procedures, and is still working on the French case. And Slovenia and Finland decided on their own to carry out an EIA for nuclear lifetime extension projects.

The Aarhus Convention Compliance Committee (ACCC) has a wider mandate. Because the Aarhus Convention does not only address obligations of states, but also rights of citizens, citizens can directly turn to the ACCC when their rights are broken. However, more strictly than the compliance mechanism under the Espoo Convention, the ACCC requires that you first have tried to solve the problems you are facing within the national court system. Only when you have "exhausted local remedies", you can ask the ACCC to assess whether or not a country has been non-compliant with Aarhus. Still, this can be a powerful tool. This way, for example, established that also citizens from Germany could participate in the public participation procedures around the Hinkley Point C nuclear power station in the UK.

Support

If your anti-nuclear organisation wants to use its rights under Espoo and Aarhus and needs support with that, you can contact Jan Haverkamp, WISE Nederland, jan@wisenederland.nl

Urenco is back in business with Russia – despite of war in Ukraine: International NGOs reject uranium deliveries from Russia to Almelo

Ecodefense Russia, Stichting Laka / Laka Foundation Netherlands, Aktionsbündnis Münsterland gegen Atomanlagen Germany, Bündnis AtomkraftgegnerInnen im Emsland (AgiEl) Germany

Last week, the Dutch nuclear authority ANVS authorized the transport of up to six shipments of fissile enriched uranium from Russia to Urenco in Almelo. Urenco wants to enrich the uranium for French state-owned nuclear company EDF. Two years ago, when the Russian war on Ukraine started, Urenco claimed to stop all contracts with Russia. An alliance of international NGOs from Netherlands, Russia and Germany criticizes this and further nuclear deals with Russia and

the missing sanctions and ban on nuclear materials.
Urenco was caught because the nuclear authority ANVS issued transport licenses from Russia. "But given the many shipments and permits, it is quite possible that Urenco never actually stopped enriching uranium from Russia," said Dirk Bannink, from Laka Foundation. "Because those 24 empty containers coming from JSC Siberian Chemical Plant at Seversk, for which a permit was issued at the same time, I guess that's also not for charity."
There is no direct contract between Urenco and Russian nuclear companies, but it is the same effect – no matter if Urenco deals with Rosatom or Urenco deals with EDF and EDF with Rosatom: „The war is ongoing and Urenco is back to business as usual – no matter that the Russian nuclear authority and state-owned company Rosatom is involved in the occupation of the nuclear power plant Zaporizha and weapon development. That's a slap in the face of all Ukranians and contradicts government policy of Netherlands, Germany and Great Britain," tells Vladimir Slivyak, Right *Livelihood Laureate,* from Russian NGO Ecodefense. Urenco is a trinational concern, Netherlands and British parts are state-owned, German part belongs to RWE and E.on.

„It is dishonest, that Urenco is enriching Russian uranium and leaving responsibility to EDF, which contracted Urenco for the enrichment job. Nobody forced Urenco to make the deal with EDF, it is generally known, that EDF is holding on to uranium deals with Russia," says Jens Dütting from the German NGO Aktionsbündnis Münsterland gegen Atomanlagen (Action Alliance Münsterland against nuclear facilities). „Since the war started, we are documenting and publishing uranium shipments from Russia to a EDF-subsidiary in Lingen, also through the Rotterdam harbour."

French state-owned EDF is involved in every known deal with Russia

The NGOs point out that there is a large French dependence on the Russian nuclear industry. There are not only many imports of uranium from Russia to France and French nuclear fuel production in Lingen/Germany, but also JSC Siberian Chemical Plant at Seversk, Russia (JSC TENEX) is the only facility, able to convert reprocessed uranium from the French reprocessing facility in La Hague to uranium hexafluorid (UF_6), a step necessary for enrichment. Furthermore EDF founded a joint venture with Rosatom, to manufacture nuclear fuel elements for soviet nuclear reactors in Czech republic, Bulgaria, Slovakia or Ukraine. Alexander Vent from Lingen and member of NGO Atomkraftgegner_innen im Emsland (Anti-nuclear activists in Emsland) asks: "Is there really a independence from Russia if the nuclear fuel is produced in Germany in future, but with Russian uranium, Russian licences, Russian experts and new contracts with russia, without this business would not be possible?"

Source: https://www.laka.org/info/urenco/2024-02-22-press-release-Urenco-EDF-rosatom.pdf

Will nuclear energy make a comeback in Germany?

Germany phased out nuclear energy nearly a year ago. The last reactor was shut down in March 2023. But even with the multi-billion euro problem of how to store radioactive waste, some politicians are calling for new nuclear plants to be built. Since the shut down last year, the political parties CDU and CSU have changed their position on nuclear power again. Now many in the party are calling for new reactors to be built. CDU

leader Friedrich Merz has said that shutting down the last reactors was a "black day for Germany." The parties also say that old reactors should be reconnected to the grid. Merz says that the country should restart the last three power plants that were shut down — citing climate protection, as well as rising oil and gas prices. Those proposals have not found much enthusiasm among German energy companies. Environment Minister Steffi Lemke is not surprised. "The energy companies made adjustments a long time ago, and they still reject nuclear power in Germany today. Nuclear power is a high-risk technology whose radioactive waste will continue to be toxic for thousands of years and will be an issue for many generations."

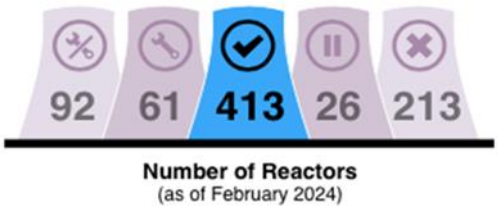
Storing nuclear waste

In Germany, the question of where to store dangerous nuclear waste is still unresolved. It's long been stored in temporary facilities near nuclear power plants. But that's not a long-term solution. The authorities have to look for suitable sites, make selections and commission test drillings. Local communities, who don't want nuclear waste buried anywhere near them, often resist. And figuring out costs and timelines is difficult. "I can't estimate any of this at the moment," says Dagmar Dehmer of the government's nuclear waste disposal agency. "We have to look at several regions. Drilling costs millions. The evaluation alone costs about five million euros." The agency estimates that a storage facility could be ready in 2046. Some experts estimate the total costs at around €5.5 billion ($6 bn). So, will nuclear energy come back to life in Germany? Environment Minister Lemke believes economic viability will decide. "No power company would build a nuclear plant in Germany, because the costs would be far too high. Nuclear power plants can only be built with massive public and hidden subsidies, including partial exemption from insurance requirements."

Source: https://www.dw.com/en/will-nuclear-energy-make-a-comeback-in-germany/a-68098059

NUCLEAR NEWS

World Nuclear Power Status



Compared to the latest edition of Nuclear Monitor 912, the number of operating reactors has changed from 412 to 413.
In India Kakrapar-4 was connected to grid.
In China the construction of Zhanzhou-3 has started.