



INTERNATIONAL CASE-LAW IN NUCLEAR MATTERS

Brief overview on the international and European case-law regarding access to information and public participation regarding nuclear power plants

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1. Introduction

Nuclear cases have consistently raised significant compliance and implementation challenges with regards to two UNECE multilateral agreements, namely the Aarhus Convention and the Espoo Convention. Furthermore, while these two Conventions establish independent and differing obligations on the Parties, the precise interactions and all potentials for synergies have to date not been fully clarified by the bodies set up to assist Parties with compliance, namely the Aarhus Convention Compliance Committee (ACCC) and the Espoo Implementation Committee (Espoo IC). Recent ECJ case-law on the matter adds an additional approach to the issue of environmental impact assessments.

This paper will give an overview of the existing case-law regarding nuclear activities with respect to different practical issues in the areas of public participation, access to environmental information, and access to justice. It also focuses on the reoccurring issue of lifetime extensions of nuclear power plants (LTE). Without any claim to be exhaustive, similar approaches of the three legal frameworks Aarhus, Espoo, and Environmental Impact Assessment (EIA) Directive shall be highlighted.

2. The “public concerned”

Relevant cases: ACCC/C/2010/50 (Czech Republic), ACCC/C/2012/71 (Czech Republic)

The public participation provisions in article 6 of the Aarhus Convention mostly refer to the “public concerned”, i.e., a subset of the public at large. The members of the public concerned are defined in article 2 (5) of the Aarhus Convention on the basis of the criteria “**affected or likely to be affected** by” or “**having an interest in**” the environmental decision-making. Similarly, the EIA Directive 2011/92/EU grants participatory rights within EIA procedures to the public concerned. **Non-governmental organisations** promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.

In a Czech case, the ACCC noted that, although it is narrower than the definition of “the public”, the definition of “the public concerned” under the Convention is still very broad. Members of the public have an interest in the decision-making if their property and other related rights or interests relating to the environment may be impaired by the proposed activity. Environmental NGOs are not required to prove that they have a legal interest in order to be considered as a member of the public concerned.

The question of whether a member of the public is affected by a project depends on the **nature and size of the activity**, which especially concerns nuclear power plants. According to the ACCC, particular attention must be paid at the stage of identifying the public concerned in the case of decision-making on **ultra-hazardous activities** like an NPP, given the fact that they are activities of wide public concern.

Tenants who do not own, but holding or possess land or buildings for a certain time (usually renters), may also be affected by a project or activity. This is especially the case if they have been or will be tenants for a long period of time. Although the relationship of tenants to an object is always intermediated, they may be affected by the proposed activity. Hence, they should generally be considered to fall within the definition of the public concerned and therefore have the same rights.

The ACCC found that a legal system fails to provide for effective public participation during the whole decision-making process if a **restrictive interpretation of “the public concerned”** is applied during the phases of the decision-making to permit activities subject to article 6 that come after the EIA

procedure,. This, inter alia, leads to **non-compliance with article 6 (3) of the Aarhus Convention**. Members of the public concerned, including NGOs, must therefore be allowed to effectively participate and submit comments throughout the decision-making procedure subject to article 6.

3. Early public participation at an early stage

Relevant cases: ACCC/C/2009/41 (Slovakia), ACCC/C/2009/44 (Belarus), ACCC/C/2010/51 (Romania), ACCC/C/2012/71 (Czech Republic), ACCC/C/2014/104 (Netherlands), ECJ C-411/17 (Belgium), EIA/IC/CI/5 (UK)

According to Article 6 (4) Aarhus Convention and, similarly, to the EIA Directive, public participation must take place at an early stage, **when all options are open**, and participation can still be effective. The Espoo Convention also addresses in its Preamble the need to consider environmental factors at an early stage in the decision-making process.

At the time when public participation is provided for, the authority must be neither formally nor informally prevented from fully turning down an application on substantive or procedural grounds. According to the Espoo IC, Parties are obliged to refrain from carrying out works until the transboundary environmental impact assessment procedure is finalized.

In a case regarding the Slovakian NPP Mochovce, the ACCC stressed that public participation should be provided at an early stage of a procedure. Therefore, a merely formal possibility, de jure, to turn down an application at the stage of the operation permit when the installation is already constructed, is not enough to meet the criteria. In the relevant Mochovce case, many decisions could no longer be challenged by the public once the construction was carried out. For these reasons, the Party concerned had failed to comply with article 6 (4) Aarhus Convention as it had not provided for public participation at the stage of the construction permit.

Regarding the Belarusian NPP Ostrovets, the ACCC found that since the decision to permit the proposed activity in the Ostrovets area had already been taken without public involvement, providing for such involvement at a following stage could under no circumstances be considered as meeting the requirement of providing for “early public participation when all options are open”, established under article 6 (4).

According to the ECJ, the competent authority must **take effects on the environment into account at the earliest possible stage** in all the technical planning and decision-making processes. This makes it possible to prevent the creation of pollution or nuisances at source rather than counteracting their effects subsequently. An EIA, according to the Directive, must therefore be carried out as soon as it is possible to identify and assess all potential effects of the project on the environment.

4. Major change or update of operating conditions

Relevant cases: ACCC/C/2009/41 (Slovakia), ACCC/C/2014/104 (Netherlands), ECJ C-411/17 (Belgium), EIA/IC/CI/4 (Ukraine)

According to Article 6 (10) Aarhus Convention, the provisions regarding public participation must be applied *mutatis mutandis* and where appropriate if operating conditions of nuclear power plants are changed or updated, whereas in the framework of the Espoo Convention, major changes in activities are treated in the same way as “new” activities. According to Annex I (24) of the EIA Directive, any change to or extension of a project listed in the Annex (such as nuclear reactors) must be subject to an EIA.

4.1. Update or change in operating conditions

As the **permitted duration of an NPP is clearly an operating condition**, it falls under article 6 (10) of the Aarhus Convention if the operating period is not only extended for a minimal period of time. The application of article 6 is even more appropriate if the update in the operating conditions itself might have a significant effect on the environment. In a Dutch case concerning the NPP Borssele the ACCC thus considered that it is appropriate for extensions of duration to be subject to public participation according to article 6 Aarhus Convention, except for cases in which a change to the permitted duration concerns a minimal amount of time and would obviously have insignificant or no effects on the environment.

The requirement of providing for public participation early in the procedure also applies to decision-making processes to reconsider or update old permits or to change or extend activities according to article 6 (10) Aarhus Convention. Although within the Aarhus framework, states have certain discretion to design the decision-making procedures covered by article 6 (10) Aarhus Convention, they are not entitled to entirely exclude public participation.

4.2. LTE as subject to environmental assessments

The Espoo IC reached a consensus that the **extension of the lifetime** of an NPP, even in absence of any works, was a **major change to an activity** and thus subject to the Convention. In its final findings in a Ukrainian case, the Committee agreed that the extension of the lifetime of an NPP originally designed to operate for 30 years for a further 20 years represents an activity that would require a comprehensive EIA of its effects according to the Espoo Convention. Therefore, the extension of the lifetime of the NPP, subject to the proceedings, after the initial license has expired, must be considered a proposed activity under article 1 (v) Espoo Convention, and is consequently subject to the provisions of the Convention.

In case of an extension to the operating period of an NPP, a re-evaluation should have been conducted after having properly and comprehensively assessed the environmental impact, including any transboundary impact, of the activity subject to extension through the license renewal. According to the Espoo IC, the decision to authorize a proposed activity only for a limited period of time meant that any subsequent decision to extend that limited period of time is another final decision.

In a Belgian case, the ECJ stressed that measures have the effect of extending, “by a **significant period of 10 years**”, the operating period of an NPP **combined with major renovation works** necessary due to the ageing of those power stations. The ECJ therefore found these measures comparable, in terms of the risk of environmental effects, to when those power stations were first put into service.

According to the Espoo Convention as well as the EIA Directive, an environmental impact assessment is required, regardless of whether an activity originally had been subject to such an EIA or not. It does not depend on whether the relevant Convention or Directive had already been in place at the time the power plant was originally permitted.

If a lifetime extension of an NPP is granted for a certain period of time, it is also likely to undermine the **conservation objectives for near-by protected sites** according to the EU Habitats Directive, especially in conjunction with the scale of the work involved.

5. Notification and information of the public

Relevant cases: ACCC/C/2009/44 (Belarus), ACCC/C/2010/50 (Czech Republic), ACCC/C/2012/71 (Czech Republic), ACCC/C/2013/92 (Germany), ACCC/C/2014/104 (Netherlands), EIA/IC/S/3 (Armenia), EIA/IC/CI/4 (Ukraine), EIA/S/CI/4 (Belarus)

5.1. Information of the public concerned

According to article 6 (2) Aarhus Convention, the public concerned shall be informed, either by public notice or individually as appropriate, **early in an environmental decision-making procedure**, and in an adequate, timely and effective manner. Article 6 (2) EIA Directive also lays down that the public must be informed “early in the environmental decision-making procedures [...] and, at the latest, as soon as information can reasonably be provided”.

The ACCC noted that publishing the notice on the **internet** as well as in the **national and local printed media** is sufficient. However, it is not sufficient if the authority fails to give a hint that the full EIA report, next to the preliminary EIA report, is also online. Likewise, a notice on the Ministry’s web page would not in itself be enough in order to ensure effective notification, as it is not reasonable to expect members of the public to proactively check that website on a regular basis. The ACCC also referred to the Maastricht Recommendations, which provide that public notice should also be placed in “the newspaper(s) corresponding to the geographical scope of the potential effects of the proposed activity and which **reaches the majority of the public who may be affected** by or interested in the proposed activity”.

The requirement of informing the public “in an effective manner” means that public authorities should seek to provide a means of informing the public which ensures that all those who could potentially be concerned have a **reasonable chance to learn about proposed activities**. It therefore might be insufficient to rely on the affected territorial self-governing units using locally specific ways of informing the public.

According to the ACCC, in the case of decision-making on ultra-hazardous activities like an NPP, being activities invariably of wide public concern, particular attention is necessary at the stage of selecting the means of notification in order to ensure that all those who could potentially be concerned have a reasonable chance to learn about the proposed activities and their possibilities to participate.

5.2. Notification of affected states

According to the ACCC, states must ensure that when selecting means of notifying the public under article 6 (2), public authorities are required to select such means and to ensure effective notification of the public concerned, bearing in mind the nature of the proposed activity, and including, in the case of proposed activities with potential transboundary impacts, the **public concerned outside the territory of the Party** concerned. Furthermore, when conducting transboundary procedures in cooperation with the authorities of affected countries, the competent public authorities must make the necessary efforts to notify the affected public in an effective manner.

According to article 3 Espoo Convention, a state of origin must notify any Party which it considers may be an affected Party as early as possible and no later than when informing its own public about that proposed activity. The Espoo IC considers **e-mail to be a widely used, commonly acceptable** and rapid means of communication and information exchange, including in public international relations, and acknowledged the legal validity of electronic means of communication for the purposes of notifying.

Especially in the absence of diplomatic relations, the designation of an **intermediary** as well as the use of new technologies and innovative approaches for communication (such as automated e-mail functions and videoconferences) is recommended to solve the difficulties in communication.

According to article 3 (3) Espoo Convention, affected Parties must respond to the Party of origin within the time specified in the notification, acknowledging receipt of the notification. They must indicate whether they intend to participate in the EIA procedure. In case of a notification through an intermediary, the intermediary must inform the Parties of the contents of the response in a timely manner, which might also be done by e-mail. In this case, the fulfilment of the conditions set out in article 3 (3) Espoo Convention is to be established from the correspondence between the affected Parties and the intermediary. Any miscommunications between the Party of origin and the intermediary do not impact on the application of the provisions of the Convention. The Party of origin retains responsibility for any actions or omissions of the intermediary in the process of notification.

5.3. Responsible Party

The obligation to ensure that the **requirements of article 6 Aarhus Convention** are met – whether in a domestic or a transboundary context – always rests with the **Party of origin**, i.e. the state where the project or activity is to be carried out. In a case regarding the British NPP Hinkley, the ACCC thus found that Germany did not fail to comply with article 6 Aarhus Convention as there was no transboundary procedure under the Espoo Convention or EIA Directive within which the German authorities were required to carry out tasks under a joint responsibility.

In the absence of notification, in particular regarding nuclear power plants, when a potentially affected Party considers that a significant adverse transboundary impact of a proposed activity cannot be excluded and **expresses the wish to be notified**, the Party of origin should apply the Espoo Convention. It is at minimum good practice to offer Parties that have indicated their wish to be notified an opportunity to receive a notification in line with the general provisions.

Parties to the Aarhus Convention are not necessarily required to always use all of the rights and competences that they have under international or national law with respect to a decision-making procedure in another country. However, the Aarhus Convention requires a level of effort appropriate to the actions open to it in the particular context. In the case of a formal notification from another country, when deciding whether to enter into a transboundary procedure under applicable international or EU regimes, a Party to the Aarhus Convention must take into account a **strong interest of its own public** in the outcome of the decision-making subject to the EIA procedure – even without a clear request from its public, when deciding whether to enter into the transboundary procedure.

5.4. Relevant documents

Article 6 (6) Aarhus Convention lists the relevant documents to be made available within a public participation procedure. A similar list can be found in article 6 (2) EIA Directive or in article 3 Espoo Convention concerning notifications of other states. In this regard, the ACCC stated that the **EIA report** is a crucial document containing important details about a proposed project and the possibility to examine the full report is vital.

Although an **analysis on the consequences of ending or continuing the operation** of an NPP after the end of the original operating period is highly relevant to any decision-making to grant a lifetime extension of that plant beyond its lifetime, it is not necessary to give the public concerned access to *all* internally available information relevant to a decision-making procedure carried out if the information is more than six years old.

According to article 6 (8) Aarhus Convention, each Party shall ensure that in the **decision, due account is taken of the outcome of the public participation**. Article 8 EIA Directive lays down that the results of consultations and the information gathered must be taken into consideration in the development consent procedure. According to the ACCC, a format which summarizes groups and responds to the comments received from the public and is useful example of how to deal with comments received from the public.

The Espoo Convention also requires Parties of origin to provide the **final EIA documentation** to the affected public in another state. A lack of clarity about the proposed activity referred to in the notification may lead to non-compliance with the Espoo Convention. A notification must also include a suggestion for a time frame within which the EIA procedure is to be carried out. Affected Parties must be informed of the availability of a final EIA report. The **description of locational alternatives** must be included in the EIA documentation, especially required if an activity is planned near a city. The EIA documentation must provide sufficient information about the **reasons and considerations explaining the selection of a site** over the alternative locations to be taken into account in the final decision.

6. Organisational aspects of public participation

Relevant cases: ACCC/C/2009/44 (Belarus), ACCC/C/2012/71 (Czech Republic)

6.1. Submission of statements

Procedures for public participation shall allow the public to **submit, in writing** or – as appropriate – at a **public hearing or inquiry** with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity (see article 6 (7) Aarhus Convention and article 6 (5) EIA Directive). The ACCC found making the developers rather than the relevant public authorities responsible for organising public participation, including the collection of comments, does not comply with this provision.

In a Czech case, the ACCC found a hearing in Cseske Budejovice regarding the NPP Temelín, which lasted from 10 am until 3 am the next day, not sufficient to comply with article 6 (3) if it were the last possibility for the public concerned in Germany to participate in the permitting procedure. Concerning the timing and duration of the hearing, the ACCC found that organising a hearing in such a manner was not acceptable as the public cannot be expected to participate effectively if its opportunity to be heard comes only after it has been already sitting in the hearing for more than a full working day. The ACCC furthermore noted, however, that the time frame for submitting written comments should extend to a reasonable time beyond the date of any public hearing in order that the public concerned has the possibility to submit comments in the light of what it has learnt at the hearing.

The ACCC considered limiting the number of questions as an acceptable means for organising a hearing, as further questions could be submitted in line with article 4. Such rules to be applied during a hearing must, however, be known and understood by the participants in advance.

Article 3 (2) Aarhus Convention obliging Parties to “**assist and provide guidance to the public** [...] in facilitating participation in decision-making” also applies to decision-making procedures outside the territory of a Party where its authorities are not competent to take decisions. The ACCC noted that, in the case of decision-making on ultra-hazardous activities like a NPP, the obligation to take efforts to facilitate the public’s participation in decision-making must be given particular weight.

6.2. Reasonable timeframes

According to article 6 (6) EIA Directive, reasonable timeframes for the different phases shall be provided, allowing **sufficient time for informing the public** and for the public concerned to prepare and participate effectively in environmental decision-making. This also requires that public participation procedures include **reasonable timeframes for the different phases**. Article 4 (2) Espoo Convention requires the concerned Parties to arrange for distribution of the documentation to the authorities and the public of the affected Party in the areas likely to be affected and for the submission of comments within a reasonable time before the final decision is taken on the proposed activity.

Article 6 (3) of the Aarhus Convention, in conjunction with Article 7 thereof, on public participation regarding concerning plans programmes and policies requires that members of the public must have sufficient time to get acquainted with the relevant drafts and to submit comments thereon.

Regarding the Romanian 2007 Energy Strategy, the ACCC found that 11 days were not sufficient. A period of 60 days, however, to comment on the EIA documentation and 43 days to comment on the EIA expert report were sufficient to meet the requirements of article 6 (3).

7. Multitier decision-making process

Relevant cases: ACCC/C/2012/71 (Czech Republic), ECJ C-411/17 (Belgium), EIA/S/CI/4 (Belarus)

According to the Maastricht Recommendations, if a particular tier of the decision-making process has no public participation, then the next stage that does have public participation should provide the opportunity for the public to also participate regarding the options decided at that earlier tier. Similarly, a multi-stage decision-making procedure that provides for public participation on certain options at an early stage, but leaves other options to be considered at a later stage without public participation, would not be compatible with the Convention. Thus, according to the ACCC, if the permitting procedure were to continue and the public concerned was not provided with the opportunity to participate effectively in that stage, the Party concerned would be in non-compliance with article 6 (4). Likewise, if the public authorities were provided with any further information relevant to the decision-making than that made available to the public concerned, this would amount to non-compliance with article 6 (6) Aarhus Convention.

According to article 6 Espoo Convention, **the final decision on a proposed activity must take due account of the outcome of an EIA**, including the EIA documentation, as well as the **comments received within a transboundary procedure**. Parties of origin must furthermore provide the final decision on the proposed activity to the affected Parties along with the reasons and considerations on which it was based. If a Party splits the final decision on the NPP into one part on the location and another part on permitting the construction on this location, article 6 applies to both of these decisions as part of the final permitting decision.

Measures and upgrading work inextricably linked to a decision, e.g. on the extension of an NPP's lifetime, together constitute a single project as defined in article 1 EIA Directive. This is not changed by the fact that the implementation of those measures requires the adoption of subsequent acts or decisions.

In some national legal frameworks, one stage is a **principal decision** and another an **implementing decision** which cannot extend beyond the parameters set by the principal decision. In this case, the possible environmental effects of the project must, according to the EIA Directive, be identified and assessed at the time of the procedure relating to the principal decision. Therefore, if the essential characteristics of the project should no longer be a matter of debate or reconsideration, the EIA or

nature impact assessment according to the Habitats Directive should extend to work inextricably linked to the measures at issue in the main proceedings. This can only be applicable if both the work and its potential effects on the environment were sufficiently identifiable at that stage of the consent procedure.

8. Transboundary impact

Relevant cases: ACCC/C/2012/71 (Czech Republic), ACCC/C/2013/91 (UK), ACCC/C/2013/92 (Germany), ECJ C-411/17 (Belgium), EIA/IC/CI/4 (Ukraine), EIA/IC/S/4 (Belarus), EIA/IC/CI/5 (UK)

Article 7 EIA Directive defines that a transboundary procedure is necessary where a Member State is aware that a project is likely to have significant effects on the environment in another Member State or where a Member State likely to be significantly affected requests it. According to Article 3 Espoo Convention, for a proposed activity listed in Appendix I that is likely to cause a significant adverse transboundary impact, the Party of origin must notify any Party which it considers may be an affected Party about that proposed activity.

8.1. Precautionary principle

Early and appropriately wide notification plays an essential role in the transboundary procedure according to the Espoo Convention. The precautionary approach and the principle of prevention and the Convention's objective of enhancing international cooperation in assessing environmental impact, in particular in a transboundary context, must be taken into account. While the Espoo Convention's primary aim is to "**prevent, reduce and control significant adverse transboundary environmental impact** from proposed activities", even a low likelihood of such an impact should trigger the obligation to notify affected Parties in accordance with article 3. This means that notification is necessary unless a significant adverse transboundary impact can be excluded.

Although the likelihood of a major accident, an accident beyond design basis or a disaster occurring for nuclear activities might be very low, the likelihood of a significant adverse transboundary environmental impact can be very high, if the accident occurs. Consequently, when assessing which Parties are likely to be affected by a proposed nuclear activity, for the purpose of notification, the Party of origin should make the most careful consideration on the basis of the precautionary principle and available scientific evidence.

8.2. Likelihood of transboundary impacts

The Espoo IC found that "**notification is necessary unless a significant transboundary impact can be excluded**". Thus, in absence of a transboundary EIA documentation arguing to the contrary, a Party cannot exclude the significant transboundary impact of a proposed activity.

A procedure regulated in article 3 (7) Espoo Convention for the case the Parties cannot agree whether there is likely to be a significant adverse transboundary impact does not substitute the obligations of a party of origin. In the principle of prevention, parties of origin should be "exceptionally prospective and inclusive" and ensure that all parties potentially affected by an accident – however uncertain – are notified as well as take into account the worst-case scenario.

According to the ECJ, projects covered by Annex I EIA Directive, present an **inherent risk of significant effects on the environment** and therefore a (transboundary) EIA is indispensable in those cases.

According to article 2 (4) EIA Directive, Member States may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in this Directive. This exemption, however,

may only be applied without prejudice to article 7 if a project is likely to have significant effects on the environment in another Member State

9. Access to Justice

Relevant cases: ACCC/C/2009/44 (Belarus), ACCC/C/2010/50 (Czech Republic), ACCC/C/2013/89 (Slovakia), ACCC/C/2013/106 (Czech Republic)

The core provisions regarding access to justice can be found in article 9 Aarhus Convention. Regarding EIA procedures, article 11 EIA Directive requires that members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to public participation.

Article 9 (1) Aarhus Convention requires that any person who considers that his or her request for information under article 4 has been ignored, wrongfully refused, inadequately answered, or otherwise not dealt with, has access to a review procedure. According to the ACCC, qualifying redress procedures as being of economic nature, and therefore subject to rules for commercial disputes, may well lead to limiting effective access to justice as required under article 9 (1).

In a Czech case the ACCC found the state to be in non-compliance, arguing that NGOs fulfilling the requirements of article 2 (5) Aarhus Convention have the right to access review procedures regarding any procedures subject to the requirements of article 6. In this regard, they have standing to seek the review of not only the procedural but also the substantive legality of those decisions according to article 9 (2) of the Convention.

Even if it is not immediately possible to challenge the binding EIA statement itself, a Party can be compliant with article 9 (2) given that the EIA statement are fully reviewable within an appeal against any subsequent decision. If a Supreme Court takes a decision annulling the contested Nuclear Authority decision, the public concerned must be granted standing in the proceedings.

According to the ACCC, it is implicit from the wording of that provision that in a review procedure within the scope of article 9 Aarhus Convention the courts are required to consider any application for injunctive relief.

10. Access to Environmental Information

Relevant cases: ACCC/C/2009/44 (Belarus), ACCC/C/2010/51 (Romania), ACCC/C/2013/89 (Slovakia)

10.1. General provisions

The relevant provision on environmental information can be found in article 4 Aarhus Convention. Public authorities must respond to a request for environmental information by making such information available to the public.

The EIA Directive refers the provisions of EU Directive 2003/4/EC on public access to environmental information. It provides that additional information relevant for an EIA decision which only becomes available after the time the public concerned was informed must also be made available.

Where requested, the relevant information includes copies of the actual documentation unless the information is already publicly available in another form. This requires that the whole documentation is available close to the place of residence of the person requesting information, or entirely in electronic form, if this person lives in another town or city.

A Romanian case resulted in non-compliance with article 4 (1) in conjunction with (2) and (7) Aarhus Convention, because the relevant authorities did not respond at all to two out of three information requests submitted by the communicant in relation to the decision-making process regarding the proposed construction of a new NPP. With respect to the communicant's third information request, Romania failed to ensure that the requested information regarding the possible locations for the NPP was made available to the public, and did not adequately justify its refusal to disclose the requested information. This again led to non-compliance with article 4 (1) and (4).

10.2. Refusal of information

Article 4 (3) and (4) lay down exceptional reasons to refuse a request for environmental information. These include if the public authority addressed does not hold the information requested, the request is manifestly unreasonable or formulated in too general or concerns material in the course of completion. A request for information may also be refused if the disclosure would adversely affect the confidentiality of the proceedings (where such confidentiality is provided for under national law), international relations, national defence or public security; or, the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest and others.

The Party concerned must provide a legal framework which requires that the exemptions on disclosure in of nuclear-related information are to be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information relates to emissions into the environment. It pointed out that the Nuclear Act required public authorities to take into account the public interest in *withholding* the information whereas the Convention requires authorities to do the opposite, i.e., to take into account the public interest in *disclosure*. An approach where whole categories of environmental information are unconditionally declared as confidential and for which no release is possible is incompatible with article 6 (6), in conjunction with article 4 (4).

Requiring a certified electronic signature every time a request is filed by electronic mail would seriously limit access to information under article 4.

11.Outlook

Some case-law might be more general whereas other decisions provide specific examples. Although the regulatory frameworks of the Espoo Convention, the Aarhus Convention and the EU Directives might differ from each other, general conclusions can be drawn in various areas. This concerns, inter alia, the definition of likelihood of transboundary impacts, notification and information procedures or the crucial question of when an EIA must be conducted.

What general conclusions will be reached within the Espoo ad hoc workgroup on lifetime extensions on Nuclear power plants will hopefully be decided by June 2020. Until then and before the meeting of the Parties (MoP) to the Espoo Convention takes a decision on the matter, open LTE cases before the Espoo IC will remain pending. What additional conclusions will be drawn from ECJ and ACCC side in the meantime must be awaited.

12. Informative Sources

- ÖKOBÜRO Casebook Nuclear Advocacy
https://www.oekobuero.at/files/334/br_6_6_casebook_nuclear_advocacy_okoburo.pdf
- ÖKOBÜRO Position Paper on Environmental Impact Assessment on Lifetime Extensions of Nuclear Power Plants
https://www.oekobuero.at/files/409/oekobuero_paper_on_eia_for_npp_lte.pdf
- Aarhus Convention
<https://www.unece.org/env/pp/treatytext.html>
- Aarhus cases; Findings of the Aarhus Convention Compliance Committee (ACCC)
<https://www.unece.org/env/pp/cc/com.html>
- Decisions of the Meeting of the Parties (MoP) to the Aarhus Convention
<https://www.unece.org/env/pp/ccdocuments.html>
- Espoo Convention
https://www.unece.org/env/eia/about/eia_text.html
- Documents for meetings and events concerning the Espoo Convention
<https://www.unece.org/environmental-policy/conventions/environmental-assessment/meetings-and-events.html#/>
- Ad hoc working group on the applicability of the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) to the lifetime extension of nuclear power plants; Update on the progress in drafting guidance
http://www.unece.org/fileadmin/DAM/env/eia/documents/WG2.8_Nov2019/Informal_docs/ece.mp.eia.wg.2.2019.INF.6_LTE_of_NPP_Update.pdf
- Good Practice Recommendations on the Application of the Espoo Convention to Nuclear Energy-related Activities
<https://www.unece.org/index.php?id=47760>
- Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (EIA Directive)
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02011L0092-20140515>
- Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters prepared under the Aarhus Convention
https://www.unece.org/fileadmin/DAM/env/pp/Publications/2015/1514364_E_web.pdf
- Background note on the application of the Espoo Convention to nuclear energy-related activities
<https://www.unece.org/fileadmin/DAM/env/documents/2011/eia/ece.mp.eia.2011.5.e.pdf>

13. List of relevant cases

Case number	State concerned	NPP	Date	Relevant articles
Aarhus Convention				
ACCC/C/2009/41	Slovakia	Mochovce	17 Dec 2010	6 (4) and (10)
ACCC/C/2009/44	Belarus	Ostrovets	28 Jan 2011	4, 6
ACCC/C/2010/50	Czech Republic	-	29 Jun 2012	6, 9
ACCC/C/2010/51	Romania	Cernavoda	29 Mar 2014	4, 7
ACCC/C/2012/71	Czech Republic	Temelín	13 Sep 2016	6
ACCC/C/2013/89	Slovakia	Mochovce	9 Jun 2017	4 (4), 6 (4), 9 (2)
ACCC/C/2013/91	UK	Hinkley	19 Jun 2017	6 (2)
ACCC/C/2013/92	Germany	Hinkley	18 Jan 2017	3, 4, 6
ACCC/C/2014/102	Belarus	Ostrovets	18 Jun 2017	3 (8)
ACCC/C/2014/104	Netherlands	Borssele	21 Jan 2019	6
ACCC/C/2013/106	Czech Republic	Temelín	28 Aug 2019	6, 9
Espoo Convention				
EIA/IC/S/3	Armenia	Metsamor	Feb 2019	3 (5) and (8), 4 (2), 5, 6
SEA/IC/INFO/2	Armenia	Metsamor	Apr 2017	SEA Protocol
EIA/IC/CI/4	Ukraine	Rivne	Feb 2017	2 (2) and (3), 4 (1), 3, 6
EIA/IC/S/4	Belarus	Ostrovets	Jun 2014/ Feb 2019	2 (6), 3 (8), 4 (2), 5 (1), 6 (1) and (2)
EIA/IC/CI/5	UK	Hinkley	Feb 2017	2 (4), 3 (1)
EIA/IC/INFO/26	Spain	Santa Maria de Garoña	Dec 2018	3, 5
EIA Directive				
C-411/17	Belgium	Doel	Jul 2019	2, 4, 6, 7

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