

## **The Implementation Commission of the Convention on Environmental Impact Assessment in a Transboundary Context**

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Conc.: Information concerning non-appliance of the Espoo Convention by the Kingdom of the Netherlands in relation to the plant life-time extension of the Borssele nuclear power plant.

Amsterdam, 6 May 2014

Dear Ms Kolar Planinšič,

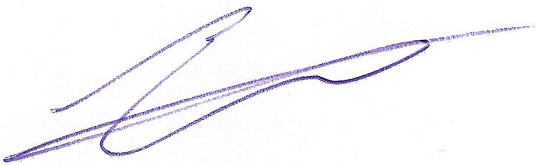
Stichting Greenpeace Netherlands (“Greenpeace”) seated in Amsterdam, the Netherlands, would like to inform the Espoo Convention Implementation Commission of a case of non-appliance with the Espoo Convention by the Kingdom of the Netherlands in relation to the plant life-time extension of the Borssele nuclear power plant.

1. The Borssele nuclear power station reached its design life-time of 40 years in 2013. In order to allow a period of operation until the closing date set in Dutch law at 31 December 2033, the owner asked for an authorisation to adapt the safety report to an operation period of 60 years. The Dutch nuclear regulator carried out a review of the modified safety report, resulting in a positive decision. This decision was not preceded by an environmental impact assessment (EIA). A 2006 concluded gentlemen's agreement between the Dutch government and the utilities to grant Borssele a life-time of up to 60 years, partly resulting in the closing date set in law, was also not submitted to an EIA.
2. The Dutch nuclear regulator is in the process of finalising a 10 year periodic safety review. Also this decision is not foreseen to be preceded by an EIA.
3. Because the decision involves a change of the initial project (with a design life-time of 40 years) which can have potentially severe effects on the environment with potential transboundary consequences, under art. 2(2) of the Convention an EIA should have been carried out and potentially affected parties notified as defined under art. 2(3).

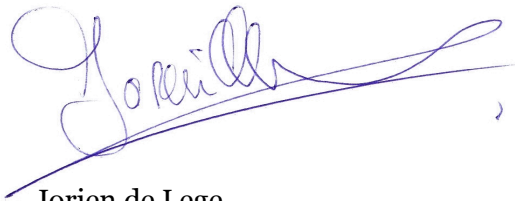
4. Greenpeace has sought legal recourse against this omission, which was finally rejected on February 19 2014 by the highest Administrative Court of the Netherlands (Raad van State). The appeal was rejected on the grounds that the life time extension did not necessitate any works in the nuclear power plant. With this, Greenpeace has exhausted legal procedures in the Netherlands (see Annex 1).
5. Among the significant effects that are irreversibly attached to the decision to allow a further 20 years of operation of the Borssele nuclear power plant after its design life-time of 40 years are:
  - An increasing risk of malfunction by ageing components and increased compatibility problems from the introduction of new replacement components, potentially escalating in a severe accident with emissions of radioactive substances into the environment;
  - an increase of the time of exposure to potential terrorist attack, sabotage or acts of war with 50%;
  - an increase of the time of exposure to extreme natural events with 50% that could alone or in combination with human failure or malevolent human acts lead to emissions of radioactive substances into the environment;
  - an increase in risk of a nuclear accident because of the planned use of the more dangerous MOX-fuel. Increased risk means in this case an increased chance because of the larger complexity of reactor management and higher burn-up rate of MOX, times an increased impact because of the spread of more plutonium from the MOX fuel. MOX use was accepted for Borssele after an EIA including public participation in 2010, but plant lifetime extension – and thus the extended exposure to risk from this use – was not part of that decision;
  - an increased use of uranium and therefore increased environmental impacts from uranium mining, processing and fuel production;
  - an increased production of radioactive waste;
  - the production of more toxic and higher level radioactive waste from the planned use of MOX-fuel.
6. The case of the nuclear power plant Borssele is similar to a case that was brought to the attention of the Commission regarding the plant life time extension of the Rivne nuclear power station in Ukraine, in which case the Commission concluded in its twenty-third and twenty-fifth sessions, that the extension of the life-time of a nuclear power plant, even in absence of any works, was to be considered as a major change to an activity and consequently subject to the provisions of the Convention.
7. The Ministry of Economy of the Netherlands justified the lack of EIA with the argument that no material changes took place in the power station before the life-time extension was granted with reference to European case law.
8. A complaint to the European Commission (DG ENV) by a German citizen who felt her rights on public participation under the Aarhus Convention and public consultation under art. 2(2) and art. 2(6) of the Espoo Convention were infringed, received a similar response from the European Commission dismissing her complaint on the basis “of the absence of any works or interventions involving alterations to the physical aspect of the site” (see Annex 2).

We therefore ask the Commission to take the initiative to start an investigation under art. 6 of the Commission's structure and functions into a potential breach of the Convention by the Kingdom of the Netherlands in this case.

Yours sincerely,



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