

# Aarhus Convention & Nuclear



The Aarhus Convention in the Nuclear Sector -  
Experience of the Joint Project Group



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# The Joint Project Group

## About us

The Joint Project is an ongoing co-operation of NGOs and research institutions on safe and sustainable energy issues with a focus on antinuclear activities in Central and Eastern Europe funded by the Austrian Life Ministry (<http://www.lebensministerium.at/en>).

Each year a main topic of particular relevance for the anti-nuclear/sustainable energy work in Europe and some additional anti-nuclear topics are identified. The members work on these topics within

- **one transnational joint project**  
which is co-ordinated by the Austrian Institute of Ecology, an Austrian research organization. The national projects are coordinated by EPSD - the Environmental partnership on sustainable development. EPSD is an international organization dedicated to mobilizing and empowering people to improve their environment, their local communities and societies.
- **national projects**  
which are coordinated by EPSD - the Environmental partnership on sustainable development.

More information about our activities can be found under:

- <http://www.joint-project.org/>

## Members of the Working group

The joint working group consists of members from Austria, Bulgaria, Czech Republic, Hungary, Slovakia and Romania. Current members of the Joint Project are:

- Za matku Zem (SK) <http://www.zmz.sk>
- Calla (CZ) <http://www.calla.cz>
- South Bohemian mothers (CZ) <http://www.jihoceskematky.cz>
- Energiaklub (HU) <http://www.energiaklub.hu>
- Za Zemiata (BG) <http://www.zazemiata.org>
- Foundation for Environment and Agriculture – agroecofund (BG)
- Bluelink (BG) <http://www.bluelink.net>
- Terra Mileniul III (RO) <http://www.terraiii.ngo.ro>
- Environmental partnership on sustainable development  
<http://www.environmentalpartnership.org>
- Austrian Institute of Ecology (AT) <http://www.ecology.at/>

# **This brochure – the Joint Project 2010/2011 on Aarhus and nuclear**

The main topic of the transnational Joint Project 2010/2011 is the use of the rights provided by the **Aarhus Convention in the field of nuclear energy**.

This brochure describes the experience the Joint Project NGOs made in using the rights the Aarhus Convention provides in the nuclear sector:

- Cases are described
  - in which the JP-NGOs applied for information on environmental issues in the nuclear sector,
  - with the experience of the JP-NGOs on public participation and access to justice
- including reactions of the competent authorities/companies to these requests
- and the success of these actions.
- Actions are described which were taken when the right to access to information/public participation was violated

## **The reasons we show these examples are to**

- share experience about Aarhus in the nuclear field with others
- give examples on how to use the Aarhus Convention in the nuclear sector
- show good practice examples of companies/ministries in context with Aarhus and nuclear
- to unmask bad practice in context with Aarhus and nuclear of companies and ministries

Apart from that, this brochure also provides information about

- The Aarhus Convention in general
- Cooperative practices to avoid court cases
- Experience gathered in the Aarhus round tables

## **Acknowledgements**

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# The Aarhus Convention - An Introduction

The **UNECE** Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, commonly known as Aarhus Convention, was signed in 1998 in Denmark.

It grants the public rights regarding access to information, public participation and access to justice in environmental matters (national and transboundary). The Convention came into force in **2001** and has been signed by **44 countries** so far (Aug. 2010), including all EU-member states.<sup>1</sup>

The rights bestowed by the Aarhus Convention are valid for legal and natural persons as well as groups thereof. It therefore includes among others all **citizens and NGOs** of the European Union. The possibilities of these persons to advocate for environmental issues have improved considerably due to the Convention.

The AC was transposed into **EC law** through the Directives 2003/4/EC (access to information) and 2003/35/EC (participation). Directive 2003/624/EC (access to justice) is still under discussion – but both adopted Directives contain already some provisions on access to justice.<sup>2</sup>

The Aarhus Convention is subject to a **Compliance review mechanism** which is unique in international environmental law: Members of the public can communicate concerns about a Party's compliance to the Aarhus Convention Compliance Committee (ACCC), what means that any violation of obligations under the Aarhus Convention by a member-state of the AC can be brought to the attention of the Committee. This can concern specific issues like the denial of information or the refusal to participate in decision making) as well as general issues. The ACCC consists of international legal experts who evaluate the incoming complaints.

However, the ACCC cannot issue binding decisions, but rather make recommendations to the full Meeting of Parties (MoP).

The MoP adopts the findings of the ACCC and makes them legally binding. In addition the ACCC interpretations are a means of legal interpretation in accordance with international law. The ACCC and MoP decisions contain "recommendations" on what measures a country should take to come into compliance with the Convention (e.g. changing certain legislation). There are also strict deadlines and reporting requirements. The country concerned has to report to both the ACCC and the MoP. The ACCC assesses whether the measures are sufficient and reports this to the next MoP. This "compliance mechanism" of the Aarhus Convention ensures that parties concerned are under serious pressure to fulfil the conditions set by the ACCC and the MoP.

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<sup>1</sup> Current status of ratification: <http://www.unece.org/env/pp/ratification.htm>

<sup>2</sup> [http://ec.europa.eu/energy/nuclear/governance\\_en.htm](http://ec.europa.eu/energy/nuclear/governance_en.htm)

Only the MoP can take hard measures like cautions, declarations of non-compliance and the suspension of the country's participation in the treaty.

Until now the MoP issued cautions only against Ukraine and Turkmenistan, whereas other parties solved the compliance problems before. However, the strength of the compliance mechanism is not to bring a legal verdict against a country, but to alter the situation in a country in a non confrontational way. Though, in EU countries a breach of the Convention could also be breach of the EU treaty since the EU is a party to the Convention as well.

A procedure at the ACCC last approximately 1.5 years, but it differs from case to case. After the ACCC issued its findings and recommendations the MoP decides about it. The MoP meets every three to four years only. The compliance mechanism is not a short term remedy. It is rather for solving problems in the long run. NGOs bringing cases need to have a clear picture and strategy what changes they want to bring to a country in the next years. Further information on the compliance procedure and how to submit cases can be found under the Convention's website <http://www.unece.org/env/pp/Implemintro.htm> and a publication of the European Eco Forum (see footnote<sup>3</sup>).

## Aarhus in the nuclear sector

Nuclear energy use and everything connected to it traditionally follows its own rules and laws. Here are some examples for the special status of nuclear power: Nuclear Liability Convention, national nuclear regulatory bodies, nuclear has its own UN body (IAEA), nuclear is exempt from the Environmental Liability Directive. While the majority of matters of 27 EU member states is based on the EU Treaty, nuclear has its own legal basis: Next to the revised EU Treaty, the non-revised EURATOM Treaty continues to serve the promotion of nuclear energy.

While the EU as such and the EU member states individually ratified the Aarhus Convention, EURATOM did not and does not intend to. All directive and other legal regulations based on the EURATOM Treaty do not fall under the Aarhus Convention.

Here are some examples on the special role of nuclear power:

- ***EU nuclear safety directive as well as the currently drafted directive on nuclear waste.*** All action taken by EU member states needs to provide for access to information and public participation in decision taking. E.g. the preparation of the national spent fuel disposal plan on national level. In this context, a certain level of legal uncertainty arises concerning responses or recommendations the EU Commission might send to the respective member state about how Aarhus is or is not applicable. In general, the EU Commission (DG TREN) points out its readiness to conform with the Aarhus Convention.
- The nuclear field of course has a wide interest and possibility to claim "national security" or preventing information from getting into terrorists hands, also keeping in mind non-proliferation concerns. As a reason for not providing information on safety which is often closely linked to the design of

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<sup>3</sup> **More information:**

European Eco Forum (2010): Aarhus Convention Compliance Committee: How can you protect your environmental rights? Guide for NGOs and practitioners  
[http://doku.cac.at/eco\\_forum\\_accc\\_briefing\\_february\\_2010.pdf](http://doku.cac.at/eco_forum_accc_briefing_february_2010.pdf)

nuclear facilities, "**business confidentiality**" is often put forward. The public interest of disclosure of environmental information and sensitive nuclear matters have to be outweighed against each other from case to case. Guidelines for interpretation would be useful. In mid term practice and court verdicts will provide some guidance on the actual scope of the Convention and nuclear restrictions.

## **The rights of the Aarhus Convention: Three pillars**

The rights bestowed by the Aarhus Convention are divided into three pillars:

### **Pillar 1: Access to information**

This pillar foresees authorities (and private institutions which are in charge of public tasks on environment protection) to make available environmental information to the public on request.

The competent authority needs to send requested information within a month. The request for information can only be declined under special circumstances (like confidentiality). However, a refusal can be challenged.

Further more, an active dissemination of environmental information by the ministries should be enhanced by Pillar 1 of the Aarhus Convention.

### **Pillar 2: Public participation**

According to Pillar 2 of the Aarhus Convention the public has the right to participate in certain environmental decision making processes.

The affected public has to be informed in a timely manner at a stage where all options are still open. The public has to be provided with all information relevant to the decision making process.

There are three types of public participation according to the Convention:

- (1) in decisions on specific activities (such as projects which are subject to an environmental impact assessment)
- (2) concerning plans, programmes and policies relating to the environment, and
- (3) during the preparation of executive regulations and/or generally applicable legally binding normative instruments

Public participation in decision-making enhances the quality and the implementation of decisions, contributes to public awareness of environmental issues, gives the public the opportunity to express its concerns and enables public authorities to take due account of such concerns.<sup>4</sup>

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<sup>4</sup> [http://www.participate.org/archive/convention/off\\_ninth\\_rep\\_text.htm](http://www.participate.org/archive/convention/off_ninth_rep_text.htm)

### **Pillar 3: Access to justice**

The Aarhus Convention ensures that any person whose request for environmental information has been ignored, wrongfully refused or inadequately answered has access to a review procedure before a court of law or another independent body established by law.

If the regulations on public participation are infringed, members of the public concerned (e.g. NGOs, concerned people) also have access to justice.

Finally the Convention provides for access to justice against any breach of environmental law by public authorities or private persons. This right is not granted to everyone, but at least NGOs should have this right.

# Aarhus in the nuclear sector

## Experience of the Joint Project NGOs

### Hungary – Energiaklub

#### Experience with Aarhus pillar 1: Access to information

Energiaklub first articulated the need of working explicitly for the higher level of freedom of information in **2003** – after the **serious INES 3 incident in Paks Nuclear Power Plant**<sup>5</sup> –, when the public could gain no appropriate information on the event.

Access to information about the incident – and about many issues since then – has been a challenging task in some cases even impossible. It was practically evident to start asking for documents concerning the incident and the following remediation processes, which in fact served the above described mission as well.

Since then Energiaklub has requested a number of data and documents from either the Hungarian Atomic Energy Authority or the Paks Nuclear Power Plant. Their experience shows that when the request concerns “sensitive” issues, such as the incident or the planned expansion of Paks NPP, access to information becomes quite demanding.

Requested information regarding nuclear energy by Energiaklub:

#### Information on the INES 3 incident in Paks

- **In 2004 and 2005:** Documents of the INES 3 Paks incident from the Hungarian Atomic Energy Authority (HAEA).

As it was the second biggest nuclear incident in Europe after Chernobyl, Energiaklub wanted to look into the documents concerning the incident and remediation. (The documents were not disclosed referring to commercial secrecy and know-how. Energiaklub sued HAEA. Litigations came to end in 2010 (!), resulting in disclosing about 70% of the documents ordered by the Court).

- **In 2008:** Documents on the waste management strategy regarding injured spent fuel of the 2003 incident from the HAEA.

Disclosure of the documents was denied referring to commercial secrecy. Litigation followed and the Court ruled that the documents are public data, so HAEA finally handed them over.

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<sup>5</sup> More information under: <http://www.ecology.at/nni/index.php?p=site&s=212>

## Information on other topics on nuclear energy in Hungary

- **2008:** Documents regarding the final storage of low and intermediate level radioactive waste from the Mining Authority.

Disclosure of the documents was denied referring to commercial secrecy. Litigation followed and the Court ruled that the documents are public data.

- **2009:** Documents of the Teller and Lévai projects (which are about the extension of Paks NPP by one or two reactors) from the Hungarian Power Company, called MVM.

MVM refused to provide the documents with reasons of commercial secrecy and pre-decision-making materials. Energiaklub launched a court case and on the first trial (half a year after our data request). MVM announced that they did not possess the data and that it was Paks NPP whom Energiaklub should have asked for the documents.

- **2010:** Energiaklub asked for the Teller project documents from Paks NPP.

Because of refusal a court case was launched, which is still progressing.

- **2010:** Documents and information on the Central Nuclear Financial Fund were requested from the HAEA (Hungarian Atomic Energy Authority).

The information was fully provided.

- **2011:** Request for the documents of the Lévai project (project about expansion of Paks NPP named after its author) from the Paks NPP.

No answer so far.

## Experience with Aarhus pillar 2: Public Participation

Energiaklub is active in all fields of pillar 2 of the Aarhus Convention regarding energy in general.

As far as nuclear energy is concerned Energiaklub performed the following activities:

- **2006:** Paks NPP, Plant Lifetime Extension, Environmental Impact Assessment (EIA)

Energiaklub became a client and had a role in the entire Environmental Impact Assessment process. It was one of the first EIAs in Hungary with an interest for the whole country. Energiaklub expressed several worries and pointed out several deficiencies of the impact study. Together with EMLA (Environmental Management and Law Association) we also appealed to court against the issued environmental license as we found the EIA did not include every aspect it should have (mainly safety related issues). Unfortunately the appeal was rejected.

- **2007:** Bábaapáti Law and Intermediate Radioactive Waste Storage EIA

Basically the same happened as with Paks EIA. Energiaklub was a client in the process, EK analysed the impact study, presented their concerns, but the concerns were rejected.

- **2010:** Participation in the evaluation of the planned Energy Strategy, where Energiaklub expressed – among other issues – that the expansion of Paks was not needed.

This last case is an excellent example of the relation between the first two pillars of the Aarhus Convention: access to information and public participation. In order to take part in relevant conversation and consultation on the need of the Paks expansion, Energiaklub would need the documents of the Teller and Lévai projects. It is only possible to refute the statements and particular arguments for expansion if it is public and known. However, with rejecting their requests, Energiaklub does not have the possibility to question the results, which creates a disadvantaged position when participating in the Energy Strategy preparation.

### **Experience with Aarhus pillar 3: Access to justice**

As seen from their access to information cases, Energiaklub's requests were refused several times. In such cases Energiaklub turned to the court, making use of the opportunities provided by the Aarhus Convention.

Below is the list of Energiaklub's litigations relating to nuclear energy:

- **2004:** Against HAEA, for refusing to disclose documents on the re-start of the 2nd reactor unit.

This is the unit next to the one the serious incident happened in 2003. The HAEA gave permission for the re-start of the unit while the injured spent fuel rods were still not removed and stayed next to the reactor.

- **2005:** Against HAEA, for refusing to disclose documents on the remediation of the injured spent fuel.

This and the previous case came to an end after 6 and 5 years, in August 2010. They were mainly successes, as the Court ruled that the requested documents were public information and that they had to be disclosed except from the ones which were declared as commercial secret by an independent expert. This way Energiaklub received approximately 70% of the documents.

- **2008:** Against HAEA for refusing to disclose documents on the waste management strategy regarding injured spent fuel of the 2003 incident.

This court case ended very quickly, resulting in the disclosing of all the documents, as, by the verdict of the Court, they are public environmental information.

- **2008:** Against the Mining Authority for refusing to disclose documents regarding the final storage of low and intermediate level radioactive waste.

This court case also ended very quickly, resulting in the disclosure of all the documents, as, by the verdict of the Court, they are public environmental information.

- **2010:** Against Paks Nuclear Power Plant for refusing to disclose the documents of the Teller project

The Teller project investigated the possibility of the expansion of Paks NPP by one or two reactors. This litigation is still ongoing.

## **Alternative to turning to court**

There is an alternative to turning to court for access to justice, especially when it is not particularly about information request: it is appealing to the Ombudsman. Hungary has a Parliamentary Commissioner (Ombudsman) of Future Generations, who is entitled to make resolutions on certain ambiguous cases. Energiaklub has two Aarhus related cases before the Ombudsman of Future Generations:

- One on the licensing and building of the low and intermediate level waste repository at Bataapáti
- The other on the parliamentary decision in 2009 concerning the expansion at Paks. The legality and reasonability of this decision is questioned.

Although these appeals were submitted in 2009 there are still no official resolutions available. However, they can be expected soon (Spring 2011).

## **Résumé on experience Aarhus and nuclear**

From their Aarhus cases concerning nuclear energy Energiaklub concludes that when it comes to a "sensitive" issue, access to information and also public participation becomes difficult.

- Answers for information requests usually come late, and often exceed deadlines defined by regulations, or even don't come at all. The necessity of repeated requests is not unusual in this field.
- Refusals are more common than in any other fields of energy. The main reason for refusals is commercial secrecy.
- Court cases take up years, except from those which are so obvious that even the Court does not need much time to decide. Note that in Hungary access to information cases should have priority before the court, meaning that trials have to be appointed not later than 90 days. This did not always happen with the nuclear cases.
- The defendants of court cases of Energiaklub (Paks and HAEA) are sometimes playing on temporization, e.g. not preparing for trials and asking for more time, prolonging the procedure even to extremities (like the two cases on the 2003 incident, which lasted for 5 and 6 years).

## **Bulgaria: Za Zemiata and FEA**

### **Foundation for Environment and Agriculture (FEA)**

- Together with Ecoglasnost and Greenpeace the Foundation for Environment and Agriculture (FEA) filed a court case against the EIA statement on NPP Belene. FEA sent a request to the Ministry of the Environment about the license of the reactors.
- FEA asked questions to the Ministry of Energy and Trade about the incidents at units 5 and 6 of the NPP Kozloduy.
- FEA is preparing a question to the MEET and the Energy Committee in the Parliament about the EIA of the Research Reactor of the Bulgarian Academy of Science – FEA will organize protests if the EIA is concluded without a public hearing.

### **Za Zemiata**

Za Zemiata has used the rights provided by the Aarhus Convention (pillar 1) to

- file questions about the health status of the people living in the uranium mining zones
- file questions about data measuring the radioactivity of water and soil in the uranium mining zones  
The request showed, that the Ministry of Health does not have this data because there is no funding available to conduct such investigations. So the impacts on the health of the people in the surroundings are unknown.
- try to receive a copy of the contract between Rosatom and the Bulgarian National electric company and all the documentation provided by Rosatom on the NPP Belene
- try to receive information about the EIA - whether the authorities consider a new EIA necessary if the parameters of the reactors planned are changed

Result:

The information provided by the Bulgarian authorities was very little. The information concerning Belene NPP is usually rejected on basis of commercial confidentiality – or claiming that the “negotiations are not completed yet”. In some cases Za Zemiata continues with filing a court appeal.

Za Zemiata has filed several requests for information concerning nuclear power in November 2010. The information requested was necessary for an anti-nuclear campaign.

## **1) Information on the NPP contract between NEC and Atomstrojexport**

Sent: 04.11.2010 to Ministry of Economy and Energy  
Answer: 18.11.2010 Ministry not responsible, forwarded request to NEC

Background: This request tried to find out about the contract between the Bulgarian National Electric Company and Atomstrojexport, the company selected to construct the NPP Belene. According to media reports, the contract between these two companies had expired on September 30th 2010 and was prolonged for another 6 months.

The Bulgarian NGO Za Zemiata requested information about the contract which was prolonged and the new price of Belene NPP. Za Zemiata submitted the request to the Bulgarian Ministry of Economy and Energy, who forwarded it 2 weeks later to the National Electric Company (NEC). One month later Za Zemiata was informed by NEC, that National Electric Company is a commercial company and does not need to conform with the Aarhus Convention on Access to Information - although NEC is 100% state-owned.

Za Zemiata consulted the case with the Access to Information Programme ([http://www.aip-bg.org/index\\_eng.htm](http://www.aip-bg.org/index_eng.htm)) and was advised to file a new request to the Ministry of economy and energy

## **2) Permits issued for NPP Belene**

Sent: 02.12.2010 ZZ sent the request to the Nuclear Regulator Agency (NRA)  
Answer: 11.12.2010

The NRA made the access to information possible and ZZ received copies of all documentation requested.

Until 2010 NRA has issued 3 permissions in connection with Belene NPP. The permissions are issued to NEC.

- permission for the choice of site for the NPP
- permission for the design of unit 1 of Belene NPP
- permission for the design of unit 2 of Belene NPP

So far the permission for constructing and operation of Belene NPP is still not issued and it is in the stage of investigating the technical project.

## **3) EIA decision NPP Belene**

Sent: 17.11.2010 To Ministry of the Environment  
Answer: 01.12.2010 The Ministry provided a copy of the requested document on time.

## **4) Information on the capacity of NPP Belene**

Sent: 17.11.2010 to Ministry of Economy and Energy  
Answer: 02.12.2010 (the answer was somehow stuck in the post office)

The answer of the Ministry was that the requested information was available on the web-site of NEC and Belene NPP – [www.nek.bg](http://www.nek.bg); [www.belene-npp.com](http://www.belene-npp.com)  
All cases will be followed up.

## **Romania: Terra Mileniul III**

The Aarhus convention hasn't been used much by TERRA until recently, primarily given the fact most information has been requested under national legislation regarding access to information.

Here are a couple of cases in which TERRA used the Aarhus Convention:

### **EIA of Cernavoda II**

During the EIA process for Cernavoda NPP reactor 2 – TERRA had access to the EIA report and took part in the consultations. Some of their comments were included in the final version, together with their answers. The result was not satisfactory for Terra III, as answers have been eluded.

TERRA's comments regarding the EIA report were mainly that it was not comprehensive and lacked information such as:

- alternatives to the current project
  - impact on public health as a consequence of increased tritium concentration
  - statistics related to public health between 1996 (when the first reactor was commissioned) to date, in order to see whether tritium concentration had an impact on the population's health level
  - costs related to ensuring cooling water
  - scenarios/alternatives related to decreasing the level of terrorist attacks
- Some of the answers received were incomplete, others not. I.e. NuclearElectrica admits that there have been no public health monitoring activities so far (with regards to tritium concentrations), but is convinced that the population's health is not affected given the increase in the demographic index.

Further more, TERRA received answers that the issues related to "external costs" – cooling water, should not be highlighted in an EIA report. Obviously, the information regarding terror attacks on nuclear facilities is classified.

### **EIA Belene NPP**

A second case in which TERRA indirectly used the provisions of Aarhus Convention was during the EIA procedure related to Belene NPP in Bulgaria (2006). TERRA formulated a request for information (to the Romanian Ministry of Environment, which would then forward it to the Bulgarian Ministry of Environment) regarding the type of reactor that would be used and specifically requested that the EIA process be suspended until this information is known.

TERRA has not used the access to justice step - the NGOs focusses its activities on "soft" measures instead: information campaigns and closer relations with the communities.

## **Use of Aarhus Convention in nuclear work 2010/2011**

Terra III will use the Aarhus Convention...

...to request information on the feasibility study and on the EIA report regarding the Low and Intermediate Level Waste Repository in Saligny

...to request public consultation with the local population on uranium mining. During previous projects, TERRA has travelled to 3 different communities for uranium mining life-consequences; Inhabitants are usually told only the convenient part of the story, f.e. regarding job-creation, also, in 2008, when the exploration had already begun in Saligny. Over 80% of the population had not been informed about the plans for a final repository in their community.

... TERRA has identified some highly radioactive areas (according to Geiger-Mueller counter) on the campus of the Romanian Physics Faculty. TERRA will request information regarding radioactivity levels and safety in the area. TERRA will also request "authorized" measurements of the radioactivity levels in the area and request information regarding the conditions under which the site was "conditionally released from the authorization regime" - this results from CNCAN's annual report for 2007, and the conditionality refers to the interdiction to practice agriculture or to build residences on the site.

## **Slovak Republic**

### **Nuclear power plant Mochovce 34**

In 1986 four reactors for a NPP located in the Slovak town Mochovce, close to the Austrian and Hungarian boarder, were permitted. Two reactors were finalized and construction started in 1989 (Mochovce 1 and 2), whereas the construction of reactors 3 and 4 were halted after 70 % of civil constructions and 30 % of the equipment were done. The four permitted reactors are a VVER 440/V213, a Soviet Generation II reactor, designed in the period 1970 -1980.

A few years ago the Slovak Republic decided to extend the existing NPP by completing Mochovce reactors 3 and 4. The operator of the NPP is the Italian/Slovak consortium ENEL/SE. SE standards for Slovenske Elektrarne. The operator is responsible for the extension.

Even though the operator made clear that the intention is to build a "Generation III" reactor, The Slovak authorities did not conduct an EIA. The EU Commission did inquire, but shared this view. NGO had a different view.

The SR gave in and conducted a "voluntary EIA", which in NGO view did not fulfil the EU EIA directive nor the Aarhus Convention. Therefore Global 2000/Friends of the Earth and Slovak NGO submitted a complaint to the Aarhus Convention Compliance Committee in 2009. The case was then discussed in front of the Committee with the Communicant (NGO) and the Party (Slovak Republic).

In 2008 the Slovak Republic carried out three permitting procedures with regard to the NPP Mochovce without having conducted public participation. The Slovak Republic argued that the 1986 permits were still valid and therefore neither the Aarhus Convention nor the EIA directive was applicable. However, the Compliance Committee found respective decisions significantly changed the 1986 permits and therefore the Convention is applicable.

For all the documents referred to in this short overview, go to: <http://www.unece.org/env/pp/compliance/Compliance%20Committee/41TableSlovakia.htm>

The most important are:

1. Communication (the complaint submitted by the NGO)
2. and the Finding (the final statement of the ACCC on the case).

Right now the issue at hand is, whether and how this decision is implemented. The EU Commission points out, that it is not bound by ACCC findings, however, the EU environmental law might also not have been implemented properly in this case, which would be a breach of the EIA directive. In March 2011 the Commission announced to follow up the case of Mochovce 34.

## **Czech Republic**

### **Questions to the Nuclear Regulator SUJB**

The Czech environmental organization Calla in Ceske Budejovice filed questions to the Czech Nuclear Regulator SUJB. For easier reading the answers are put directly next to the questions.

Questions arrived at SUJB on March 22 2011, the answer letter was dated April 4 2011.

#### **SUJB replied:**

Concerning the information request of the association Calla, which we received on March 22 2011 asking for information on the preparation of a new nuclear capacity in the Czech Republic, we can provide you with the following information within the legally stipulated time:

- a) Calla: How and in which time frame will the licence for the nuclear reactor at the Temelin site be granted? Will this process be broader, both in technical and in formal terms, than the granting of the licence for individual activities in line with § 13 of law 18/1997 Coll.?

SUJB: SUJB will assess the permit application for siting and probably also the next phases of the permitting procedure for the new nuclear capacity at the Temelin site, according to the law No. 18/1997 Coll. (Atomic Bill) for the period of permit application, in particular the provisions § 9, § 13 to § 16 and annexes to this law and its implementing laws. It is not possible to predict the time frame for the start of the permitting process, which starts with the siting process according to paragraph 9.1 a) of the Atomic Act, because the dates for filing the application are fully in the hands of the applicant, which was not handed in yet.

- b) Are there considerations to take over licences granted by regulators abroad, e.g. NRC for the AP-1000 reactor?

SUJB: The Atomic Act does not allow to take over the licencing process conducted and issued by a regulator of another state, i.e. that the licensing process will be performed completely according to the Czech legislation. Part of assessing the permit application will among other criteria also consist of assessing the licence which had been issued for the new nuclear plant in the country of origin, as well as assessing the other regulators' statements on the subject, the authority SUJB will discuss issues on a case to case basis with the other regulators.

- c) Will the investor or technology supplier partly contribute in granting the licence? If so, in which form, to which amount and who will receive the money for this?

SUJB: When we leave out the applicant's general tax duty towards the state budget, then the investor did not make any financial contribution to the licensing activities so far.

- d) Please list the laws, implementing legislation, norms, safety standards or international recommendations, which will be applied when granting a license for the technology for the new nuclear power plant.

SUJB: Concerning an overview over laws and implementing laws, we recommend visiting our website, where the section Legislation lists all relevant legal regulations. An overview over the norms and safety standard will be made available depending on choosing the concrete nuclear plant and its country of origin.

- e) In which phase of licensing the new nuclear capacity the public participation will be conducted?

SUJB: The assessment of a new nuclear capacity according to the Atomic Act foresees only the licence applicant as participant in the licensing process. The public takes part in assessing this capacity in the frame work of other legal provisions (EIA, building permit process).

# Cooperative Practices to avoid court cases

## Aim

In the following section cooperative practices **for applicants and data processors** of Aarhus Convention related data requests are described. These practices can help both parties involved to get a satisfactory result and avoid court cases.

The good practice examples have been produced by the Hungarian NGO **Energiaklub** which is a member of the Joint Project group

## Suggestions for good practices

Before applying statutes or resorting to actual legal action there are several options that enable data controllers and applicants to cooperate and facilitate unhindered access to information. Our suggestions for best practices:

1. It is very important that applicants **specify the requested data as precisely as possible**. This, however, is not always possible as, due to the asymmetry of information, applicants often have no knowledge of the type and number of documents prepared for a certain case. In such cases the nature and content of the requested information should be outlined in detail. It can also be useful to specify why the applicant needs the information in question, even though providing this reason is not a requirement.
2. Providing the requested cluster of data/documents/information cannot always be done within the timeframe laid out in legislation (15 days in Hungary). With adequate reason, however, the **data processor can request extra time** (e.g. if the amount of data to be made available is too large, especially if it is not an already prepared cluster of data but information to be collected from several sources; or if the trade secret classification should be verified). This makes it clear for the applicant that the data processor wishes to make the data available, but in order to provide accurate and quality answers (the exact and full group of data requested), it needs time. This, within certain limits, can be a compromise acceptable for both parties.
3. In the event that the applicant **requests a too large** amount and/or cluster of documents the data processor may **offer to provide personal review** and consultation, as it is possible that the applicant does not need every single piece of information (e.g. detailed technical descriptions). This can happen in cases when the request is made for all documents in connection with a certain case as opposed to concrete data. In such cases it is sufficient to make the selected materials available, saving time, money and sweat.

4. In some cases the data processor is not processing its own data but that of its client. Such occurrence is when a company submits certain data, information, **documents** that were **classified as trade secret** by the client (i.e. the company) to an authority. Based on the above described scenario, the data processing authority may decide to **make the data available** despite the classification because such classification by the client cannot be considered a fact. In the event that the authority does not want to take a position, it can **request the opinion of an expert** (e.g. a lawyer employed by the authority, an independent expert or, in some cases, the data protection commissioner).
5. The client can help the data processor to great extent by **not stamping an entire cluster of documents as "trade secret"** but selecting and marking in advance the specific parts classified as such, and by providing detailed reason for this classification and information on the potential negative market/economic/financial effects of making such information public. In case the client does not do so by itself, the authority can request it at the start of proceedings. This is not only advantageous for the data processor and the applicant because it facilitates data requests, but also for the clients as they can avoid their trade secrets being revealed with adequate reasoning.
6. In the event that the applicant turns to the **wrong data processor** with the request it is best if this is **revealed as soon as possible**. It is helpful if the approached data processor names the relevant authority – if they know which authority it is. If the data processor denies the request with reference to trade secret and later tells the applicant in court that it is not the relevant data processor, it is a sign of lack of good faith and will to cooperate.
7. Dialogue, **consultation between the data processor and the applicant can be useful in a lot of cases**. This method can be more effective than automatic refusal for straightening out misunderstandings or questionable cases, but also for sharing information that may not exist in writing. The applicant should also consider – especially when requesting a large quantity of information or information of the more sensitive kind – initiating consultation for the success of the data request. The applicant can, in the course of the consultation process, inform the data processor what is needed and why. Thus the data processor will not only see a formal request but can become familiar with the intent of the applicant. The data processor can take position based on this intent and can decide on the quantity of information to make available, and can initiate further dialogue. This can prevent a lengthy court procedure that is not in the interest of either party but is possibly more adverse for the applicant due to the time loss that can amount to years. As the court may order the data processor to make available the data that could have been obtained by the applicant through dialogue, consultation has great potential to facilitate a win-win situation. If communication between the two parties is difficult or unfruitful the involvement of an independent middle-man, a so-called mediator can provide a solution in facilitating the successful data request.

8. The above points show that a positive approach on both the data processor's and the applicant's part is one of the most essential elements of a successful data request. **Good intention and understanding is necessary on both sides:** the applicant's aim is not to hassle the data processor or to go to court, but to get to know information – but in order to do that the applicant should also make compromises sometimes (e.g. about deadlines) and actively cooperate with the data processor.
9. **Resorting to legal action should be the last step.** The Energiaklub's data requesting philosophy shows that our requests for data are not *l'art pour l'art*, that is, our goal is not to bring the issues to court. It is also important that in sensitive, ambiguous legal situations the applicant has the opportunity to turn to the data protection commissioner. It should be mentioned, however, that In Hungary, according to section 1 of paragraph 27 of the act on data protection, "Anybody may turn to the commissioner for data protection if in his or her opinion he or she suffered infringement of the law in relation to exercising his or her rights relating to the management of his or her personal data or his or her access to data of public interest, or if he or she considers that there is an imminent danger of such infringement, except where a court procedure is underway with respect to the case concerned.". It is at the discretion of the applicant to decide whether to choose legal proceedings first and then turn to the commissioner, or the other way around, or only use one of the methods.

# Aarhus Round Tables

## Hungary

As can be seen from the Aarhus cases of Energiaklub, there are several problems which arise when it comes to the transparency of the nuclear sector. This situation definitely needs to be improved.

There are two methods for this applied by Energiaklub. One is the above described practical cases:

- trying to modify the attitude of authorities and public companies towards information requests by submitting requests frequently, asking regularly for documents and data. This was not common in the past and therefore authorities and companies are simply not used to this kind of applied democracy. Asking for public documents and turning to court in case of refusal, thus making transparency and publicity become more evident in their culture is one method to pave the way for a more transparent future.
- The other method applied by Energiaklub is trying to modify the legal environment to make it more exact and providing less space for refusals - this is done via Aarhus and nuclear round table discussions.

Energiaklub takes part in the European process of reviewing the 10 years history of the Aarhus Convention in the field of nuclear issues. The work is carried out on two levels: there is a working group and the round table itself. As a part of this project, Energiaklub takes part in the Hungarian round table, as well as the working group of the round table.

### **The working group on Aarhus and nuclear**

This working group gathers a pluralistic group of actors with 10 participants (NGOs, industry, authorities, Parliamentary Commissioners, Office of Future Generations and of Data Protection and Freedom of Information) and focuses on different nuclear issues.

This approach enables the various stakeholders, through dialogue and exchange,

- to identify existing problems and
- possible ways for progress.

The working group

- concentrates on the questions of access to information and participation (which is in line with the Aarhus Convention),
- analyzes Hungarian case studies and
- elaborates on solutions to existing problems within the subject.

Case studies are mainly presented by Energiaklub, being the main Hungarian organization focusing on the issue of energy. The products and papers of the

working group are then introduced to a round table, to which a broader scale of stakeholders is invited, with approximately 50 participants.

## **Aarhus Round Table**

The round table discusses the materials of the working group and makes recommendations on amendments. Planned outcomes of the round table meeting are resolutions or even amendments to existing legislation, resulting in a clearer legal status.

There has been one round table so far, in May 2010, where the directions of work were presented by the members of the working group and a modus operandi was accepted (describing operating and voting procedures of the round table). The next round table is planned to take place in March 2011.

The discussions are arranged around two topics:

- access to information and
- public participation,

which are two pillars of the Aarhus Convention.

### **Access on information: Working out definitions**

As regards access to information, the main debate is about commercial confidentiality, being the most common reason for refusing data requests. According to the Hungarian legislation (and Aarhus as well) the only case when information must be disclosed even if it contains commercial secrets is when it "concerns emission" or "is related to emission". However, these terms are not defined. The working group is now elaborating on this issue, working out definitions and giving examples of information related to emissions, because if this expression is better defined in the legislation it should result in a clearer situation. When the working group agrees on it and the round table approves, amendments to existing legislation can be suggested and brought about.

### **Access on information: Good practices**

Also, relating to access to information, Energiaklub worked out a list of "good practices", where the main emphasis is put on the cooperation of data requestors and the handlers of data (see page 21). In many cases EK has found that constructive cooperation could have resulted in better and faster results.

### **Public participation**

The other field is public participation. At this topic the working group has not got far, discussions have not started, only some cases were presented, which will be the subject of further consultations.

## **Bulgaria**

In total three 3 round tables "Aarhus and nuclear" as part of the initiative "European round tables on Aarhus" are planned until June.

The first round table on Aarhus and nuclear took place on October 18th 2010.

FEA organized the First round table on 18.10.2010.

The second round table is proposed to be in February 2011 and the third one in June.

**Program** of the first round table in Bulgaria - basic themes:

- Strategy for managing spent fuel and radioactive waste - Simeon Yordanov, Ministry of Economy, Energy and Tourism
- Principles and mechanisms of implementation of the Aarhus convention - Neli Ilieva, Ministry of Environment and Waters
- The Aarhus convention and it's implementation in Bulgaria - Kiril Terziiski, Alexander Kodjabashev / lawyers
- Present and future challenges - Georgi Gyoshev, State enterprise 'Radioactive waste'
- The mechanism of control of nuclear fuel and nuclear waste - Nuclear Regulatory Agency
- Aarhus convention and the Bulgarian energy sector - Prof. Plamen Tzvetanov
- The ANCCLI/EC "Aarhus and Nuclear" European initiative: stakeholder dialogue on the practical implementation of the Aarhus convention in the nuclear field - Serge Gadbois, ANCCLI
- The necessary steps for Bulgaria in accesses to information and public participation in the preparation of radioactive waste policy (What is needed to prevent court cases) - Jan Haverkamp, Greenpeace
- NGO experience from cases concerning Aarhus convention - Petar Penchev, Ecoglasnost
- Nuclear waste management strategy and access to information - Petko Kovachev, Green Policy Institute

## **Romania**

No round table has taken place.

## FAQ

Here is a list of questions the members of the Joint Project asked Thomas Alge von OEKOBUERO/European Ecoforum<sup>6</sup>,

### ***How is "Affected public" defined in the Aarhus Convention?***

Definition: Those who COULD be affected, not only those who are effectively affected. This gives the authorities a wide range of interpretation, with nuclear power the range is even wider since its potential impact goes far further compared to regular industrial installations.

### ***EIA Directive vs. Aarhus***

The Aarhus Convention refers to the public, whereas the Espoo Convention refers to countries. This is sometimes a problem in interstate consultation. For example the case could occur where the public of country A wants to participate in foreign consultation procedure of country B, but the home country A refused to participate. In the case the public could be blocked from participating in the procedure in country B. This could be a breach of the Aarhus Convention, but would in theory be in line with the Espoo Convention and the EIA directive.

However, the EIA directive should be interpreted in regard to Aarhus – but when a country doesn't participate in the EIA it is much more difficult to participate for single persons.

### ***Right to information: Getting safety reports of nuclear power plants***

Often NGOs do not get safety reports because of matters of confidentiality. In order to get them the public impact of disclosure has to outweigh confidentiality – here a lot of room for interpretation is possible. At the end courts and practice will decide. This could be possible cases for the Compliance Committee to interpret in future.

### ***Getting Contracts/Trade agreements/data about cost***

Contracts and trade agreements can only be requested under Pillar 1 of the Aarhus Convention if there is environmental information in it – for example contract about radioactive waste contract. If the contract itself is confidential you can get an extract of the environmental issues. You can either ask directly at the company for that, but normally you ask at the competent ministry.

The same is true if you ask information about budget etc. You have to make the link to environmental issues – i.e. you can argue that you ask about costs to know if it is expensive enough to be safe.

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<sup>6</sup> <http://www.oekobuero.at>; <http://www.eco-forum.org/>, thomas.alge@oekobuero.at

# Useful Links

## Links to Joint Project members

Za Matku Zem (SK) - <http://www.zmz.sk/>  
Hnuti Duha (CZ) - <http://www.hnutiduha.cz/>  
Calla (CZ) - <http://www.calla.cz>  
South Bohemian Mothers (CZ) - <http://www.jihoceskematky.cz/en/>  
Za Zemiata (BG) - <http://www.zazemiata.org>  
Agroecofund (BG)  
Terra Mileniul III (RO)- <http://www.terraiii.ngo.ro/>  
Energy Club (HU) - <http://www.energiaklub.hu/en/>  
Environmental Partnership for sustainable development - <http://www.environmentalpartnership.org/>  
Austrian Institute of Ecology (AT) - <http://www.ecology.at>

## Links about Aarhus:

- <http://www.justiceandenvironment.org>  
Justice & Environment (J&E) is a European Network of Environmental Law Organisations, working in Europe and consisting of organisations from different countries dealing with environmental law solely or as one of their activities.  
J&E aims for better legislation and implementation of environmental law on the national and European Union (EU) stage to protect the environment, people and nature. J&E does this by enhancing the enforcement of EU legislation through the use of European law and exchange of information on the national, cross-border and wider European level.  
J&E was established informally in 2003 and subsequently incorporated in September 2004. J&E currently has six members and six associate members. Full members of J&E are:
  - Austria – [OEKOBUERO](#)
  - Czech Republic – [Environmental Law Service \(EPS\)](#)
  - Estonia – [Estonian Environmental Law Center \(EELC\)](#)
  - Hungary – [Environmental Management and Law Association \(EMLA\)](#)
  - Slovakia – [VIA IURIS](#)
  - Slovenia – [Legal-information Centre for NGOs \(PIC\)](#)
- <http://www.participate.org>  
The Public Participation Campaign (PPC) is an environmental NGOs campaign to promote the existence of the Aarhus Convention, to involve environmental citizens organisations and general public in using the Convention to exercise our citizens right for access to information, participation in decision-making and access to justice on environmental matters and to be involved in implementation of the Aarhus Convention at the pan-European region.  
Over the years, the PPC has organised NGO conferences, workshops and strategic meetings and has maintained a web site and email discussion groups. The PARTICIPATE newsletter has been published since 1997. A number of useful publications were produced aim to keep citizens and NGOs

updated and contribute to an exchange of information. Participation in the official process has been backed up by position papers and declarations.

- <http://www.eco-forum.org/>

European Eco-Forums work on Compliance

One of the main objectives of the project "Making the Aarhus Convention Work for Civil Society" is to follow the implementation of the Aarhus Convention in different countries and assist NGOs to use their rights under the Convention. To do so we have established three "focal points" within the European ECO Forum Network. These "focal points" are NGOs who work on legal issues related to the Aarhus Convention on regional, national and/or international levels. Under this project, their work includes helping NGOs based in countries that have ratified the Aarhus Convention to effectively use the rights and possibilities of the Convention by:

- giving **individual advice and support** in respect of complaints by NGOs,
- providing continuous information on the activities of the **Aarhus Convention Compliance Committee (ACCC)**,
- and organizing **training workshops** on the Aarhus Convention Compliance mechanism (held in Geneva, during ACCC meetings ).

European Eco Forum (2010): Aarhus Convention Compliance Committee: How can you protect your environmental rights? Guide for NGOs and practitioners

[http://doku.cac.at/eco\\_forum\\_accc\\_briefing\\_february\\_2010.pdf](http://doku.cac.at/eco_forum_accc_briefing_february_2010.pdf)

Organisations designated as legal focal points are:

- **Region of Eastern Europe and Central Asia (EECCA):**  
Resource & Analysis Center "Society and Environment" in Ukraine  
Contact: Mr. Andriy Andrusevych (Russian, English)  
Tel/Fax: +380 (32) 242 22 84  
email: [andriy.andrusevych@rac.org.ua](mailto:andriy.andrusevych@rac.org.ua)
- **Western, Central and South Eastern Europe:**  
OEKOBUEO – Coordination Office of Austrian Environmental Organisations  
Contact: Mr. Thomas ALGE (German, English)  
Tel +43 1 524 93 77  
Fax +43 1 524 93 77/20  
email: [thomas.alge@oekobuero.at](mailto:thomas.alge@oekobuero.at)  
Website: [www.oekobuero.at](http://www.oekobuero.at)
- <http://www.oekobuero.at>
  - Coordinating organization of certain Austrian NGOs – the OEKOBUEO has a legal department that deals with Aarhus Convention
  - <http://www.oekobuero.at/start.asp?b=1413>
    - Publication gathered by the Austrian OEKOBUEO about Aarhus Convention Compliance Committee
    - For example case overview of the cases in the ACCC
- [http://www.aip-bg.org/index\\_eng.htm](http://www.aip-bg.org/index_eng.htm)  
Access to information programme

Fourteen years already Access to Information Programme Foundation has been perseveringly following its mission to assist the exercise of the right to information. Since its establishment in 1996, AIP has been running a permanent campaign for improving the access to information situation in Bulgaria and has been actively participating in international networks and initiatives related to the right to information.

- <http://www.aarhus-konvention.de>
  - German overview of the Aarhus Convention of the UfU (Unabhängiges Institut für Umweltfragen)
- [http://www.ancli.fr/www/fr/accueil/nos\\_actions/aarhus\\_convention\\_nucleaire.aspx](http://www.ancli.fr/www/fr/accueil/nos_actions/aarhus_convention_nucleaire.aspx) (in French)
- Partizipation in Österreich, Aarhus-Konvention: <http://www.partizipation.at/>
- Seite der UNECE über Information/Partizipation über Umweltfragen für die Bevölkerung: <http://aarhusclearinghouse.unece.org/>
- <http://unece.org/env/pp/compliance/Pubcom1109.doc>  
UNECE Guide for the public on how to apply at the Aarhus Convention Compliance Committee
- <http://unece.org/env/pp/compliance/manualv8.doc>  
UNECE Guidance Document on Aarhus Convention Compliance Mechanism

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