

To

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**Open letter of protest from European NGOs to the Polish government
against running the EIA public consultation for the first nuclear power
plant during summer holidays**

Brussels, August 9, 2023

We, 28 European civil society organizations from 11 countries in the field of environmental protection, are protesting the insufficient public consultation period provided by the Polish authorities to prepare and submit statements on the environmental impacts of the planned nuclear power plant in the Pomerania region which lasts from July 20 to August 18, 2023.

This approach is violating several legal obligations: The Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters which Poland ratified in 2002. Clearly, the consultation period of 22 working days during the summer holiday period is insufficient and violates article 6(3) of the Aarhus Convention and article 6(6) of the EIA directive.

In addition, we need to point out that the public outside of Poland was not provided with information on the valuable species, marine and forest environment, because those parts of the EIA report were missing in the Espoo procedures with EU countries.

Please find below more information on 1. Legal Background and 2. Nature and species protection at risk and the supporting organizations.

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1. Legal background on Environmental Impact Assessment for the first nuclear power plant in Poland

On July 19, the Polish Espoo authority GDOŚ announced the opening of the public consultation period on the EIA report regarding Poland's first NPP which is open until 18 August. The case documentation is available from 20 July 2023 to 18 August 2023 at the Department of Environmental Impact Assessment of the General Directorate for Environmental Protection and its website.

Poland ratified the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters already in 2002. According to article 1 of the Aarhus Convention, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

Article 6 of the Convention states the Parties obligations to provide the opportunity for public participation with regards to decisions on specific activities. According to article 6(1)(a) and Annex I of the convention, the provisions of article 6 are applicable to decisions regarding nuclear power plants. Article 6(3) of the Convention states that “*the public participation procedures shall include reasonable timeframes for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.*” The provision aims to guarantee effective participation, explicitly highlighting the need to allow the public adequate time to prepare for their participation. It also refers to the different phases of participation, meaning providing information, allowing for preparation and participation. Thus, each phase during a public participation procedure must include reasonable time frames considering the fundamental requirements of public participation. The requirement to provide “reasonable time frames” in article 6(3) also must consider the nature, complexity and size of the proposed activity.¹ A timeframe which may be reasonable for a small simple project with local impact thus may well not be reasonable in case of a major complex project.² Another issue to consider is the time of the year where the consultation is held – holiday times can influence what constitutes a “reasonable timeframe”.³

The period of time envisaged by the Polish GDOŚ for the public participation process, including all phases of participation (information, preparation, participation) stretches over 22 working days starting from the publishing of the case documentation. Even in absolute terms, this period is short given the complexity of the issue and the time required to acquaint oneself with the necessary documents regarding a NPP, which is an especially complex project. Furthermore, no specific time periods for inspection and participation were given, which is admittedly not necessary with regards to the wording of the Convention, but certainly seems appropriate. For comparison, the ACCC considered a period of six weeks each for information and public consultation appropriate.⁴

¹ UNECE, Aarhus Convention Implementation Guide, 143.

² ECE/MP.PP/2008/5, para. 60.

³ UNECE, Aarhus Convention Implementation Guide, 144.

⁴ ECE/MP.PP/C.1/2009/4/Add.1, para. 44.

Moreover, the consultation period falls into the summer holiday period. Due to absences, it might be difficult for organizations to provide something as simple as a director's signature, let alone prepare a statement on a complex EIA procedure – the first in Poland. For example, the ACCC held that a period of 20 days for the public to prepare and participate effectively cannot be considered reasonable, especially if such period includes public holidays.⁵

This situation was also aggravated by the fact that the GDOŚ had never clearly indicated when the consultation process will take place after many years of announcing it - so the opening of the participation period during the summer holiday time came as a surprise especially as GDOŚ officials had previously indicated otherwise.

This situation was also aggravated by the fact that the GDOŚ had never clearly indicated when the consultation process will take place after many years of announcing the EIA process. The opening of the participation period during the summer holiday time came as a complete surprise to almost all those members of the regular public, organizations and experts being interested in the procedure as such, especially as GDOŚ officials had previously indicated to them otherwise.

The European Union is a member to the Aarhus Convention, which is also mentioned in the recitals of the EIA directive (2011/92/EU). Before it was amended by the Public Participation Directive (2003/35/EC) to implement the Aarhus Convention, the EIA Directive required the establishment of *"time limits for the various stages of the procedure in order to ensure that a decision is taken within a reasonable period"*, while after the amendment article 6(6) requires that *"reasonable time-frames 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 subject to the provisions of this Article."* Since the EIA directive was specifically amended to implement the Aarhus Convention, it makes sense to hold participation requirements to the same standards.

To us, it is thus obvious that a consultation period of 22 working days during the summer holiday period is insufficient and violates article 6(3) of the Aarhus Convention and article 6(6) of the EIA directive.

Although the consultations in line with the Espoo Convention with the interested States, including bilateral discussions, have already been conducted, their potential for nature protection and implementing the principles of a veritable public participation at the early stage of undertaking were significantly limited. The Polish side submitted translations into the respective national languages only of some of the parts of the EIA report, while excluding topics of high interest to the European environmental organizations such as the nature and species protection.

While the Espoo Convention does not address language specifically, it must be ensured that the public can participate effectively. This is only the case if the provided information can be understood by those participating.⁶ Especially in the case of an environmental impact assessment, the target group for public participation will include members of the public interested in the environment, such as environmental NGOs. Thus, if environmental aspects are excluded from translation, it is very likely that environmental NGOs are limited in their participation rights. As a minimum, the non-technical summary and those parts of the EIA

⁵ ECE/MP.PP/C.1/2009/8/Add.1, para. 92.

⁶ ECE/MP.EIA/8, para 58.

documentation that are necessary to provide an equal participation opportunity to the public of the affected Party must be translated.⁷

2. Nature and species protection at risk

Polish NGOs reported that nature areas have not been assessed properly. This includes two nature reserves which were identified as possibly affected areas. For those the Polish authorities underreported species, as a ‘Shadow report’ prepared by Polish NGOs showed.

The impacts of the planned NPP are severe: A total area of 700 hectares is slated to be logged for the direct area of the NPP, of which ca. 300 ha will be permanently cleared. The rest should be re-forested; clearly decades-old trees cannot be compensated with newly planted ones. Additionally, hundreds of hectares of forests would be permanently logged for the necessary accompanying infrastructure, including approx. 100 ha for new railway lines.

The EIA documents also do not present alternatives, which could be another type of reactor – now only the AP1000 is under consideration – or other electricity supply options which have a higher reliability compared to the most recent AP1000, which took 30 years and 35 billion USD to be completed.

Under the Aarhus Convention the affected public has the right to be consulted; not only the Polish public, but also the public in the entire EU have the right to information and participation on the entire range of impacts on the environment. This has to be taken into account even during the domestic public consultation stage for a given planned undertaking.

Link to EIA announcement: <https://www.gov.pl/web/gdos/udzial-spoleczenstwa-w-sprawie-pierwszej-w-polsce-elektrowni-jadrowej>

For download: <http://www.joint-project.org/index.htm>

Supporting organizations as of August 9, 2023:

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Hanka i Tomek Trybusiewicz

Stowarzyszenie Obrony Naturalnych Obszarów Nadmorskich Bałtyckie SOS, Poland

Angelika Claußen, IPPNW Germany

Michal Daniška, Chceme zdravú krajinu, Slovakia

⁷ Matthias Sauer, Chair of the Implementation Committee of the Convention on Environmental Impact Assessment in a Transboundary Context, letter to the Government of Belgium, 16 March 2010.

Jan Haverkamp, WISE International, Netherlands

Christiana Mauro, Protect the Future/Védegylet Association, Hungary

Nadja Zeleznik, Nuclear Transparency Watch

Foundation for Environment and Agriculture, Bulgaria
Albena Simeonova

Vladimir Slivyak, Ecodefense, Russia
The Right Livelihood Award laureate

Monika Wittingerová, Jihočeské matky, Czechia

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