

Aarhus Convention and Nuclear Round Table on Radioactive Waste Management 13-15 January 2021

SUMMARY OF DISCUSSION

FINAL ROUND TABLE Improving existing arrangements on information and public participation in the field of RWM in Europe: the way forward

Chair

- **Gilles Heriard-Dubreuil, NTW**

Speakers

- **Jan Haverkamp**
- **Jonas Ebbesson**
- **Zuzana Petrovicova**
- **Nina Cromnier**
- **Jakop Dalunde**
- **Valéry Detilleux**
- **Astrid Goebel**

The following questions have been raised in the discussion after the Final Round Table:

- The extent to which the Aarhus Convention applies to information on fissile material (such as plutonium) that are not yet declared as nuclear waste.
- The risk that the Covid-19 situation would jeopardize the application of the Aarhus Convention.
- The extent to which intellectual private property rights can impede the Aarhus Convention practical implementation.
- The public participation in the elaboration of the EU Directives.
- The transparency of the EU debates in the context of Energy Transition and the Taxonomy.
- The Current progress on the access of the public to R&D on RWM.

A first point of debate was regarding the extent to which the Aarhus Convention applies to information on fissile material (such as plutonium) that are not yet declared as nuclear waste, but for which no industrial reuse pathway is developed by a convention member state. Connected to this is also the question of whether or not fissile materials (such as in the UK or France), as of military use, are subject to Aarhus provisions.

- As regards fissile material, it was stated that, to the extent that they are declared as nuclear waste, the Aarhus Convention is fully applicable. Even if certain material would not be classified as nuclear waste, there are still entries into the Convention

where the provisions for public participation also apply. As regards public participation, if there are national requirements about environmental impact assessment, then the party concerned should ensure public participation no matter how the material is qualified. There is also another entry if the decision making concerning the material and management of those waste may have an impact on the environment, then the Convention may also be triggered. In that sense, it wouldn't depend on the classification, but of course there are clear requirements with respect to nuclear activities and radioactive nuclear waste. There are no such possibilities of excluding activities from being subject to the convention just by naming or declaring them military or so. It may matter with respect to access to information in the context of military activities of course.

The question on whether the Covid-19 situation would impede or jeopardize the application of the Aarhus Convention was also raised.

- The Aarhus Convention Compliance Committee (ACCC) adopted a statement concerning the application of the Aarhus Convention during the Covid 19 pandemic and also the economic recovery phase (it's available on the Committee's website). The Convention doesn't allow in any way for reducing the rights in the Convention: the parties concerned are even more under the duty to ensure that there are provisions to deal with participation even if you change some rules and some procedures. It may mean that the process may take some more time for that reason in some cases. The key message is that the Convention applies in full, there is no way to reduce it. The parties may find other ways, but they can't avoid the duties.

Whether the existence of intellectual private property rights would to some extent prevail on the Aarhus Convention obligations to give the public access to information was a question raised by the participants.

- The ACCC looked at intellectual property rights in some cases. Generally speaking, private entities can be subject to the AC if they act as public authorities, if they have public responsibilities and functions in relation to the environment (e.g., energy companies). Intellectual property rights are not about making things public or not, but whether or not to commercialize it in the economic sense. One thing is that one can request from the public authority to look at some information. Another thing is to use this information, e.g., for the purpose of engagement in environmental issues. It's a completely different thing that one is not allowed to publish use for commercial purpose information without the consent of the owner.
- The legislation as such is (at least the Swedish situation) that the public organisations are required to submit information. When somebody is asking information to an authority, release of information is done on a case-by-case basis, providing information on specific issues while releasing information as much as possible. But the accessibility of data of private entities is a tricky question. There is always some data that would not be made available due to the competitive situation of the companies.
- How to deal with the property right is really a regulatory issue and country specific. There is no joint message from the implementers regarding how to deal with property rights on data and information. This question is important, and for instance it is a matter of particular attention in the German debate right now.

Is public participation also requested in the elaboration of the EU Directives and in the regulatory framework regarding RWM?

- The way the directives are proposed is the following. The Commission proposes the legislative text, it is discussed and agreed by the Council (the Member States). The competent regulatory authority “needs to inform the public in the field of its competence”. “The information should be made available to the public in accordance with the national legislation and the national obligations”. The dispositions are relatively open. There are in the different Member States different needs for the level of transparency, and within the MS probably not everybody is interested in the same depth of information.

The need for Social Sciences and Citizens Science in the context of Radioactive Waste Management was expressed as a particular concern by the participants. It was underlined that the on-going EURATOM R&D framework (Horizon 2020) offers little opportunities for involving SS & CS in the complex evaluation of the feasibility of RWM options as well as in the appraisal of long-term safety which involves complex societal and institutional challenges. The question was raised to what extent the operators do include social sciences in the common European R&D agenda of the Implementing Geological Disposal Technological Platform (IGD-TP):

- Whereas IGD-TP recognizes the implementation of the disposal programme is a social issue. IGD-TP focuses on RD&D issues and on key topics where it’s needed to have joint coordination. In the working group for establishing the Strategic Research Agenda (SRA) of IGD-TP, there were discussions on social issues, but finally the decision was not to take it as a key topic because it was felt that those social issues are quite country and programme specific. This doesn’t mean that IGD-TP is not ready to support joint programmes as in EURAD, but they’ve not taken it up for their networking. The SRA doesn’t intend to be comprehensive.

The question of the transparency of the EU debates in the context of Energy Transition and the Taxonomy also appeared as a concern. Under particular attention was the existence of windows of opportunity for the public to enter discussion on the role of Nuclear Energy for the Green Deal and the taxonomy issue. The debate on the taxonomy currently on-going is very sensitive and it involves parties with divergent views on the potential role of Nuclear Energy in the European Energy Transition. Whereas pending challenges such as Radioactive Waste Management and the potential highly damaging consequences of severe Nuclear Accidents are invoked to dismiss the application of Nuclear Power to enter the Taxonomy, there are now voices suggesting nuclear power to be viewed as a sustainable investment, in conjunction with the use of the nuclear power to produce hydrogen. A real challenge here is to ensure transparent and fair debates around those questions, whereas biased or incomplete or even false information circulates in many cases impeding the capacity of both the MEPs and the Public to form a reliable view on the stakes of this debate. NTW is intending to contribute to the fairness and transparency of this debate. A series of online workshops will be organised in 2021 (starting on April 14th, 2021) by NTW in cooperation with MEPs in order to promote nuclear transparency in the context of the European Energy Transition debate.

Current progress on public access to EURATOM R&D on RWM raised a high interest, in due agreement with the Aarhus Convention perspective to improve public decision making. In this particular case (the EURAD Platform) regarding the inclusion of civil society. Neither difficulties of involving the public into these highly technical debates, nor the challenges in

establishing the conditions of mutual trust between experts and the public should be underestimated. This makes all the more interesting the recent progress achieved by the SITEX Network involving both institutional and civil society experts. As stated by the SITEX representative: *When interacting with civil society members, one can think at first that they will try to impose their views and that the authorities are obliged to follow some of their opinions. This is not what is interaction with civil society. Interacting with civil society is about having a dialogue, understanding different points of view and getting a larger perspective. This is the dialogue, explaining and expressing different points of view, that increases safety. When one understands that, he/she is convinced of the added value of including CS. Some organisations still have to understand that.* This would advocate for a new thinking of the IAEA Safety Culture definition (INSAG 4) in order to comprise Civil Society as an asset for Safety Assessment, as an important part of safety culture, to have a questioning attitude, to be open minded. The interaction with civil society enters this scope.