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# Aarhus Convention and Nuclear Energy

Prof. Dr. Thomas Schomerus

**Symposium**

**Fukushima Nuclear Power Plant Accident - Law and  
Policy**

**Hitotsubashi University**

**Tokyo, 24-25 September 2016**



# Agenda

**Aarhus Convention – an overview**

**Nuclear Activities and the three pillars of the Aarhus Convention**

**The role of the Espoo-Convention**

**Conclusions**



AARHUS CONVENTION  
for our environment

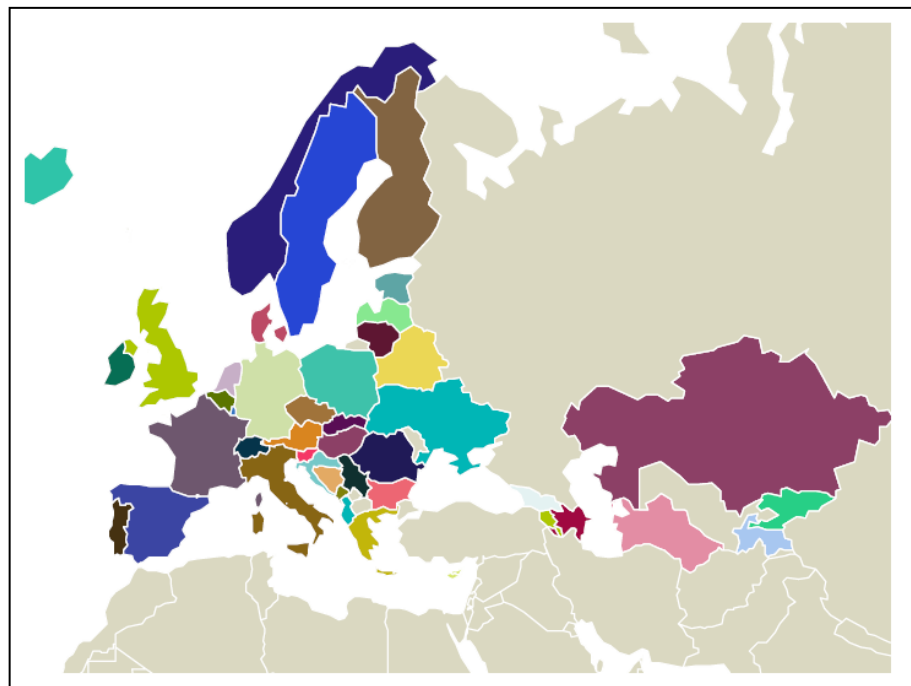


## The Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was adopted on 25<sup>th</sup> June 1998 and entered into force 30<sup>th</sup> October 2001.

- Origin: Art. 10, 17 & 19 Rio Declaration
- 47 parties, including EU
- „Environmental Democracy“ – linking environmental & human rights
- Interactions between the “Public”, “Public Concerned” and “Public Authorities”
- Convention Bodies, such as
  - Meeting of the Parties
  - Working Group
  - Task Forces
  - Compliance Committee (ACCC)
- Open to non-ECE countries:

Art. 19 (3) AC:


Any other State, ..., that is a Member of the United Nations may accede to the Convention upon approval by the Meeting of the Parties.



<http://www.unece.org/env/pp/aarhus/map.html>



## In the EU, the implementation of the Aarhus Convention consists of three pillars and three levels.

	<b>I</b> <b>Access to Environmental Information</b>	<b>II</b> <b>Public Participation in Decision-Making</b>	<b>III</b> <b>Access to Justice in Environmental Matters</b>
<b>UNECE (Aarhus-Convention)-Level</b>	Art. 4, 5, also 6	Art. 6 - 8	Art. 9, also 4 (7)
<b>EU-Level</b>	Directive 2003/4/EC (Env. Information Dir.)	Dir. 2003/35 EC (Publ. Participation Directive)	Dir. 2003/35 EC (not fully implemented)
<b>National (German) Level</b>	Environmental Information Act Freedom of Information Act	EIA-Act Federal Immission Control Act et al.	Act on Standing in Env. Matters (UmweltrechtsbehelfsG)



## Regarding the first pillar, information on nuclear issues falls under the definition of environmental information.

- Public authorities must
  - possess and update environmental information (Art. 5 (1) a AC)
  - obligation to collect information (Art. 5 (1) b AC)
- **Passive obligation:** information must be given to the public upon request (Art. 4 (1) AC)
  - No interest to be stated
  - Generally, in the form requested
  - Within one month
  - Free of charge or at a reasonable charge
- **Active obligation:** dissemination of env. information
  - Available in electronic form

Art. 5 (1) (c) AC: In the event of **any imminent threat to human health or the environment**, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is **disseminated immediately and without delay** to members of the public who may be affected.

- Information within **public participation procedure** (Art. 6 (2), (6), 7 & 8 AC)

Art. 2 (3) AC:

(b) Factors, such as substances, energy, noise and **radiation**, and activities or measures, including administrative measures,...

(c) The **state of human health and safety**, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in subparagraph (b) above;

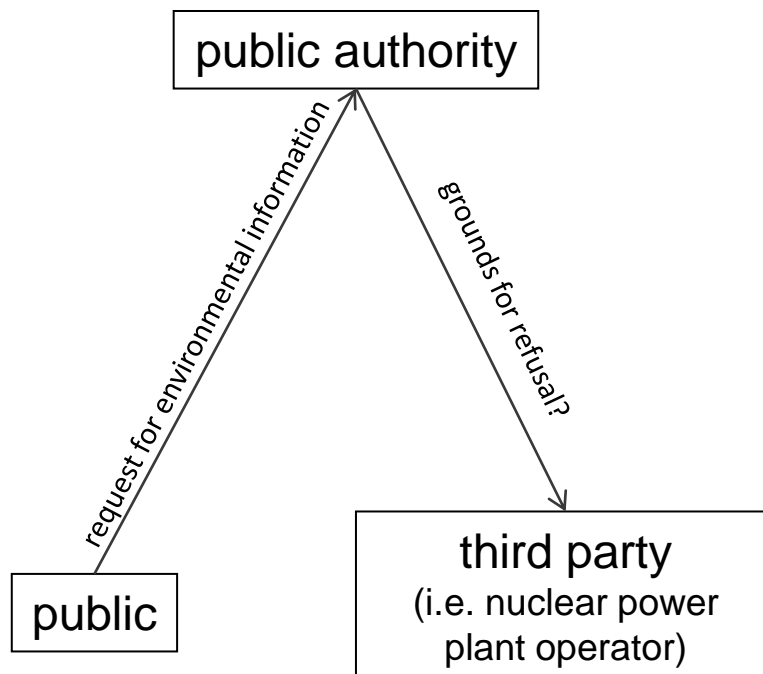
**Pollution Release and Transfer Register Protocol**

**Review procedures,**  
Art. 4 (7) & 9 AC



## Disclosure of information is limited by grounds for refusal.

- Disclosure shall not adversely affect, inter alia
  - International relations, national defence or public security
  - **Confidentiality of commercial and industrial information**
  - **Intellectual property rights**
  - Confidentiality of personal data and/or files relating to a natural person
  - Interests of a third party which has supplied the information voluntarily
- However,
  - Grounds for refusal shall be interpreted in a **restrictive way**
  - **Public interest** on disclosure must be taken into account
  - Information on **emissions** shall be disclosed



Art. 4 (4) AC:

The aforementioned grounds for refusal shall be **interpreted in a restrictive way**, taking into account the **public interest** served by disclosure and taking into account whether the information requested relates to **emissions into the environment**.



**In the German Brunsbüttel-case from 2008, administrative courts decided that public interest for disclosing information on a severe incident in a nuclear power plant may prevail over operator's interest in confidentiality of such information.**

- **447 incidents** since installation in 1977
- Incident of 2001: **Oxyhydrogen-explosion**
- Operator **denied access** to information requested by environmental association to be disclosed by competent ministry
- Federal Administration Court: **in-camera procedure** (BVerwGE 130, 236-252)
- **Public interest test**: weighing up between confidentiality of information and public interest on disclosure
- As part of German nuclear power phase-out, nuclear power plant was taken **out of service in 2007**.

Brunsbüttel NPP



[https://de.wikipedia.org/wiki/Kernkraftwerk\\_Brunsb%C3%BCttel](https://de.wikipedia.org/wiki/Kernkraftwerk_Brunsb%C3%BCttel)



## Several complaints regarding access to information were dealt with by the Aarhus Convention Compliance Committee (ACCC).

- **Compliance by Belarus – Minsk Nuclear Power Station (ACCC/C/2009/44)**
  - **restricting access** to full version of **EIA Report** to the premises of the Directorate of the NPP in Minsk only, and by not allowing any copies to be made (**Art. 4 (1) AC**)
  - **not duly informing** the public that, in addition to the publicly available 100-page EIA report, there was a full, more than 1,000 pages long, version of the EIA Report (**Art. 6 (6) AC**)
  - **not informing** the public in due time of the possibility of examining the full EIA Report (**Art. 6 (2) AC**)
  
- **Compliance by Romania – construction of new NPP (ACCC/C/2010/51)**
  - **not responding** at all to two of the three **information requests** submitted by the communicant in relation to the decision-making process regarding the proposed construction of a new NPP (**Art. 4 (1) AC**)
  - **not ensuring** that the requested information regarding the possible locations for the NPP was made available to the public, and by not adequately justifying its **refusal** to disclose the requested information under one of the grounds set out in Art. 4 (4) AC (**Art. 4 (3), (4) & (7) AC**)
  - **not providing sufficient time** for the public to become acquainted with the draft 2007 Energy Strategy and to submit comments (**Art. 4 (3) AC**)
  
- **Compliance by Hungary – allegations regarding extension of Paks NPP, so-called “Teller-Project” (ACCC/C/2014/105)**
  - **delaying** access to information and material in the course of completion (**Art. 4 (2) & (3) c AC**)
  - **not publishing** the facts and analyses of facts considered relevant and important for framing major environmental policy proposals (**Art. 5 (7) AC**)

Source: UNECE, Aarhus Convention: Application to Nuclear Activities, OECD NEA Law Committee, Paris, 24 March 2016 (Presentation)



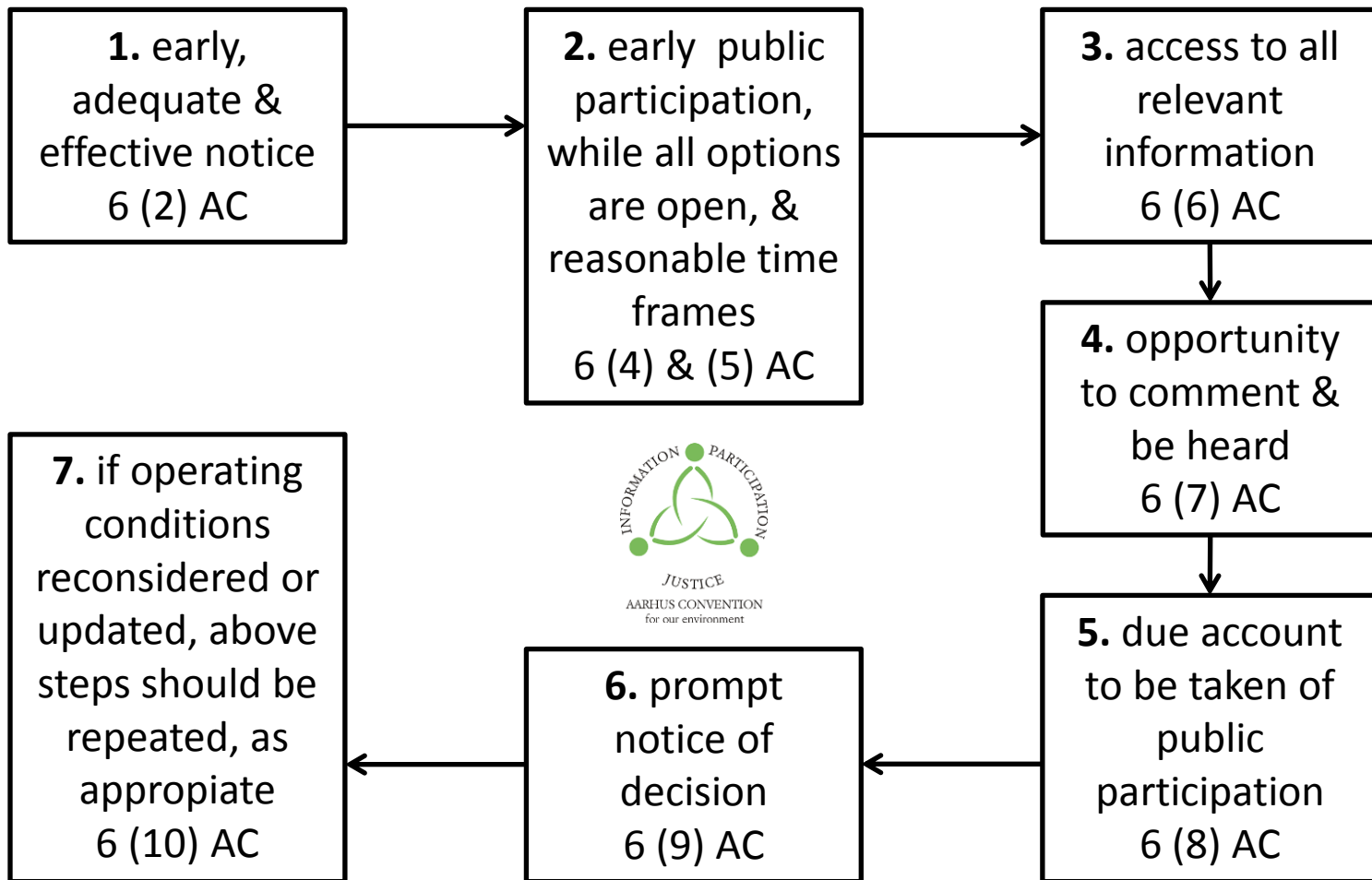


## The second pillar of the Aarhus Convention on public participation in decision-making is closely connected to Environmental Impact Assessment (EIA) and Strategic Environmental Assessment (SEA).

- **Public participation in decisions on specific activities (Art. 6 (1) a & annex 1 AC)**
  - **NPPs, including dismantling or decommissioning** (except research installations which do not exceed 1 kW continuous thermal load)
  - **reprocessing of irradiated nuclear fuel;**
  - **production or enrichment of nuclear fuel; processing of irradiated nuclear fuel or high-level radioactive waste; final disposal** of irradiated nuclear fuel; solely for the final disposal of radioactive waste; solely for the **storage** (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.
  - **any activity** where public participation is provided for under an EIA in accordance with national legislation
  - **any change to or extension of** activities beyond criteria/thresholds set out in annex 1
- **Activities not listed in annex I which may have a significant effect on the environment**
- **Plans, programmes & policies relating to the environment (Art. 7 AC)**
  - **appropriate practical and/or other provisions** for the public to participate within a **transparent and fair framework**
- **Executive regulations and law that may have a significant effect on the environment (Art. 8 AC)**
  - public participation at an **appropriate stage, and while options are still open**
- See also the UNECE-**“Maastricht Recommendations** on Promoting Effective Public Participation in Decision-making in Environmental Matters” and the **“Almaty Guidelines”**



## Effective public participation depends on exact compliance with the seven steps of Art. 6 Aarhus Convention.





## Allegations were made regarding public participation under Art. 6 Aarhus Convention, especially concerning transboundary public participation.

### ➤ Proposed construction of two reactors at Hinkley Point, UK:

- Allegation against Germany: German public should have been given participation in transboundary EIA-procedure – Art. 3 (9) AC (ACCC/C/2013/92)
- Comparable allegation against UK (ACCC/C/2013/91)
- Still pending

### ➤ Temelin NPP in Czech Republic (ACCC/C/2012/71)

- Allegations: members of public in Germany could not participate in decision-making procedure in the same way as members of the public from Czech Republic
- Still pending

Hinkley Point (planned)



Temelin



[http://static.independent.co.uk/s3fs-public/styles/article\\_large/public/thumbnaails/image/2016/03/07/22/11-hinkley-point-pa.jpg](http://static.independent.co.uk/s3fs-public/styles/article_large/public/thumbnaails/image/2016/03/07/22/11-hinkley-point-pa.jpg)

<https://www.cez.cz/de/kraftwerke-und-umwelt/kernkraftwerke/temelin/der-uberlegte-fertigbau-vom-kkw-temelin/grundinformationen.html>



**The Aarhus Convention's third pillar constitutes access to justice. Parties must provide access to a review procedure before a court of law or another independent and impartial body established by law.**

- **Refusals to provide requested information (Art. 9 (1) AC)**
  - free of charge or inexpensive
- **Public concerned may challenge legality of any decision, acts or omissions related to decision-making (Art. 9 (2) AC)**
  - having a sufficient interest or, alternatively,
  - maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition
- **Acts or omissions by private persons or public authorities which contravene national law relating to the environment (Art. 9 (3) AC)**
  - only “where they meet the criteria, if any, laid down in its national law,…”
- **Example: allegation regarding Mochovce NPP, Slovakia (ACCC/C/2013/89 )**
  - subsequent to Slovak Brown Bear decision by the Court of Justice of the European Union (C-240/09), Slovakia granted **standing to the public concerned** in environmental proceedings included such falling under the **Nuclear Act**
  - ECJ, **Slovak Brown Bear decision**: national courts must interpret their national law in accordance with the objectives of Art. 9 (3) AC and provide effective judicial protection of the rights conferred by Union law, so as to enable an organisation to challenge a decision taken following administrative proceedings liable to be contrary to Union law.

**Art. 9 (2) subpara 3 AC:** What constitutes a **sufficient interest** and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the **interest of any non-governmental organization** meeting the requirements referred to in article 2, paragraph 5, **shall be deemed sufficient** for the purpose of subparagraph (a) above.



[https://upload.wikimedia.org/wikipedia/commons/1/1e/Braunb%C3%A4r\\_B%C3%A4renrefugium\\_von\\_Kuterev\\_o.\\_Kroatien.JPG](https://upload.wikimedia.org/wikipedia/commons/1/1e/Braunb%C3%A4r_B%C3%A4renrefugium_von_Kuterev_o._Kroatien.JPG)



## The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) complements the Aarhus-Convention and also applies to nuclear energy-related projects.

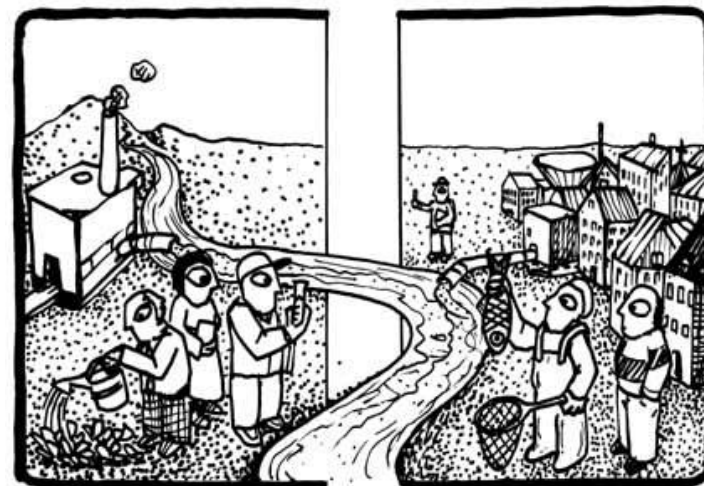
- Signed in Espoo, Finland, 1991, entered into force 1997
- 44 states plus EU
- UN ECE, 2015: Good practice recommendations on the application of the Convention to nuclear energy-related activities
  - Environmental impact assessment documentation, i.e. description of the potential significant impacts of major accidents
  - Public participation
  - Consultations
  - Examination of the information gathered and final decision
  - Post-project analysis

[http://www.unece.org/fileadmin/DAM/env/documents/2015/EIA/WG/ECE\\_MP.EIA\\_WG.2\\_2015\\_3\\_E\\_.pdf](http://www.unece.org/fileadmin/DAM/env/documents/2015/EIA/WG/ECE_MP.EIA_WG.2_2015_3_E_.pdf)

### Article 2

#### GENERAL PROVISIONS

1. The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities.



<http://www.unece.org:8080/fileadmin/DAM/env/ea/guidance/transp.html>



## Conclusions

- All three pillars of the Aarhus Convention apply to **all nuclear activities**, and deal from the planning over construction and operation to the final depositing of nuclear waste on three levels.
- In the event of any major **incident or accident in connection with nuclear activities**, all information which could enable the public to take measures to prevent or mitigate harm arising from such a threat and which is held by a public authority must be disseminated immediately and without delay to those members of the public who may be affected.
- The UNECE provides excellent **support** through convention bodies such as Working Groups, Task Forces or the Compliance Committee, as well as through the Aarhus Clearinghouse, the Good Practice online database and the jurisprudence database, making the Aarhus Convention an assertive international treaty.
- Several **cases and findings of the Compliance Committee** deal with nuclear activities.
- The Aarhus Convention is **open to non-ECE countries**. More parties, including states such as Russia or Japan, would strengthen the convention's assertiveness.





## Selection of Sources

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- **Jan Haverkamp/Greenpeace**, Priorities for Implementation of the Aarhus Convention in the Nuclear Sector, 2013 ([https://www.unece.org/fileadmin/DAM/env/pp/ppdm/4th\\_PPDM/Jan\\_Haverkamp\\_Greenpeace.pdf](https://www.unece.org/fileadmin/DAM/env/pp/ppdm/4th_PPDM/Jan_Haverkamp_Greenpeace.pdf))
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- **UNECE**, The Aarhus Convention - An Implementation Guide, second edition, 2014 ([http://www.unece.org/env/pp/implementation\\_guide.html](http://www.unece.org/env/pp/implementation_guide.html))



# Thank you for your attention!

**Leuphana University Lüneburg**

Prof. Dr. iur. Thomas Schomerus

Judge, Higher Administration Court, Lower Saxony

Scharnhorststr. 1

21335 Lüneburg

Germany



0049-4131.677-1344

[schomerus@leuphana.de](mailto:schomerus@leuphana.de)

» <http://www.leuphana.de/professuren/energie-und-umweltrecht.html>