

# Legal Framework for Nuclear Energy in Belarus: Aarhus and Espoo Perspectives

by **Andriy Andrusevych,**  
**Resource & Analysis Center “Society and Environment”**

*Vienna, November 2009*



Ресурсно-аналітичний центр  
“Суспільство і довкілля”

Resource & Analysis Center  
“Society and Environment”



# Structure (issues covered)

- (1) Belarus legal framework on nuclear issues
- (2) Conformity with Aarhus (legislation)
- (3) Conformity with Espoo (legislation)
- (4) Some facts: Aarhus and Espoo violations
- (5) Response by NGOs to NPP project
- (6-7) Our role & contacts

# 1. Belarus legal framework on nuclear issues – key elements (a)



## Policy and planning decisions:

- **Energy Security Strategy** (September 17, 2007)
- Directive No.3 of the President of Belarus “**Economy and Saving – Key Factors for Economic Security of the State**” (June 14, 2007)
- Decree of the President of Belarus No.565 “**On Some Measures to Construct Nuclear Power Plant**” (November 12, 2007)
- Decision of the Security Council No.1 “**On the Development of Nuclear Energy in the Republic of Belarus**” (January 31, 2008)

# 1. Belarus legal framework on nuclear issues – key elements (b)



Specific nuclear legislation:

- **Law on the Use of Nuclear Energy** (July 30, 2008)
- **Regulation on the procedures for discussion of the issues in the area of the use of nuclear energy with participation of citizens associations, other organizations and citizens** (May 4, 2009)
- **Numerous technical documents** (e.g, codes of established practices)

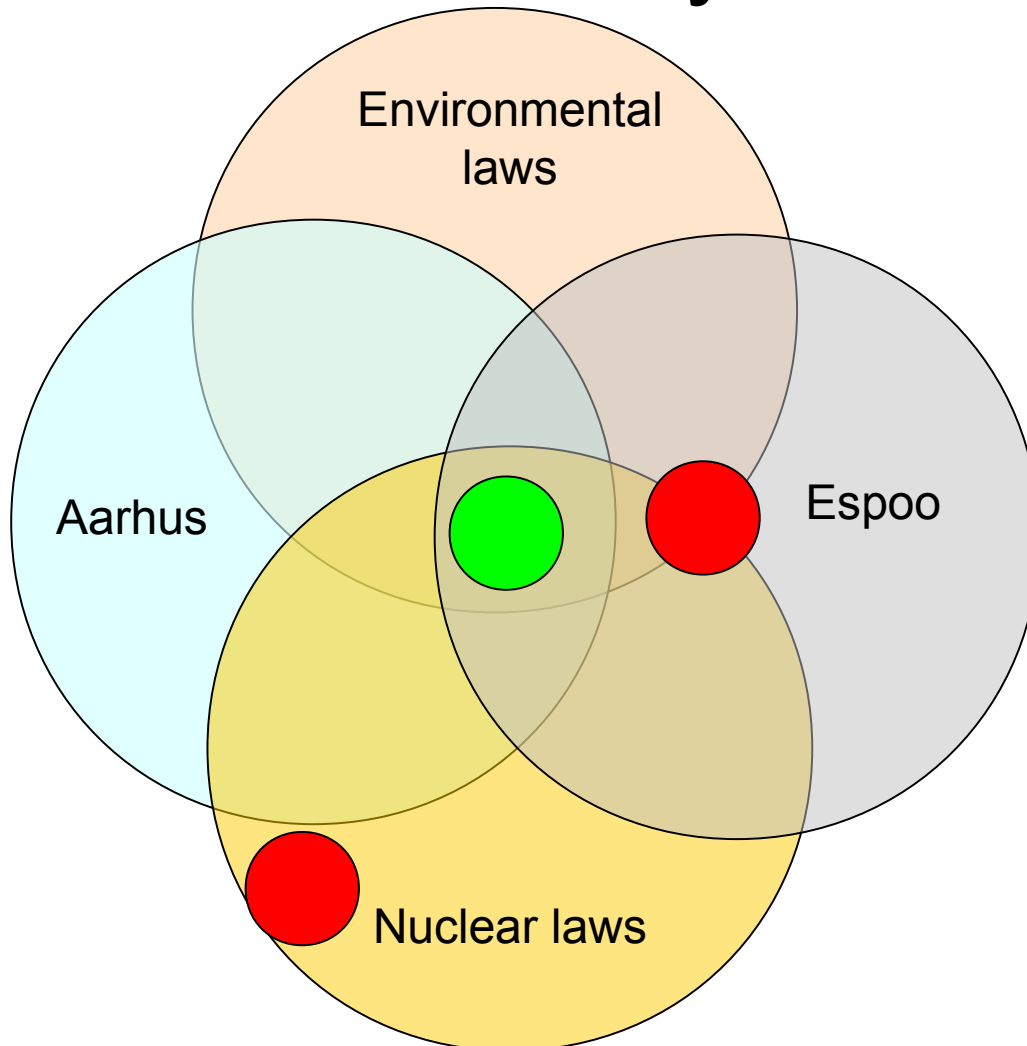


# 1. Belarus legal framework on nuclear issues – key elements (c)

## EIA and public participation legislation:

- The Law of the Republic of Belarus on **State Environmental Expertiza** (June 18, 1993)
- Instructions on the **Procedures for State Environmental Expertiza** (May 11, 2001)
- Instructions on the **Procedures for Environmental Impact Assessment of the Planned Economic and Other Activities in the Republic of Belarus** and the **List of Types and Objects of Economic and Other Activities Which Are Subject to Compulsory EIA** (June 17, 2005)

# 1. Belarus legal framework on nuclear issues – key elements (d)



## 2. Lack of conformity with Aarhus (legislation) (a)



### Legal basis

- **Regulation on the procedures for discussion of the issues in the area of the use of nuclear energy with participation of citizens associations, other organizations and citizens**
- **The Law on State Environmental Expertiza**
- **Instructions on the Procedures for State Environmental Expertiza**
- **Instructions on the Procedures for Environmental Impact Assessment of the Planned Economic and Other Activities in the Republic of Belarus and the List of Types and Objects of Economic and Other Activities Which Are Subject to Compulsory EIA**

## 2. Lack of conformity with Aarhus (legislation) (b)



- ***Requirements on public notice (Article 6(2) of the Convention)***
  - *Locational criteria for “public concerned”*
  - *Commencement v. Full informing about planned decision*



## 2. Lack of conformity with Aarhus (legislation) (c)



- ***Requirements on reasonable timeframes (Article 6(3) of the Convention)***
  - public consultations shall not be held, **as a rule**, earlier than **30** days after the public notice
  - **during** that period [30 days] the developer should distribute the environmental impact statement
  - public consultations shall not exceed, as a rule, **one month**
  - no obligation is imposed to make EIS available **at the time of public notice is made**

## 2. Lack of conformity with Aarhus (legislation) (d)



- *Requirements on due account to be taken of the outcomes of public participation (Article 6(8) of the Convention)*
  - Records of public consultations shall be included into OVOS (EIA) report, which is not a decision at all
  - SER and OVOS – what they are

## 2. Lack of conformity with Aarhus (legislation) (e)



- *Requirements on communicating final decision (Article 6(9) of the Convention)*
  - *PP only in OVOS process, which is not decision-making*
  - *Various internal contradictions*
  - *SER conclusions do need to be communicated to the public*

# 3. Lack of conformity with Espoo (legislation) (a)



## Legal basis

- **Regulation on the procedures for discussion of the issues in the area of the use of nuclear energy with participation of citizens associations, other organizations and citizens**
- **The Law on State Environmental Expertiza**
- **Instructions on the Procedures for State Environmental Expertiza**
- **Instructions on the Procedures for Environmental Impact Assessment of the Planned Economic and Other Activities in the Republic of Belarus and the List of Types and Objects of Economic and Other Activities Which Are Subject to Compulsory EIA**

# 3. Lack of conformity with Espoo (legislation) (b)



## Applicability of the Espoo Convention

- **Article 2, paragraph 2** requires parties to “take the necessary legal, administrative or other measures to implement the provisions of this Convention, including, *with respect to proposed activities listed in Appendix I that are likely to cause significant adverse transboundary impact*, the establishment of an environmental impact assessment procedure that permits public participation and preparation of the environmental impact assessment documentation described in Appendix II”.
- Nuclear power plants are listed in Appendix I (para.2) and are considered to likely cause significant adverse transboundary impact.
- The Convention was applied to several nuclear power plant projects, including four nuclear reactors in Finland (*Olkiluoto 3, Olkiluoto 4, Loviisa 3* and *Fennovoima*), Denmark and Sweden (Barsebaeck nuclear power plant).

# 3. Lack of conformity with Espoo (legislation) (c)



- The Regulation was not timely adopted
- Regulation is not an **adequate legal measure**
  - The Regulation incorporates Espoo procedures into a stage where state authorities play little, if any, role
  - The *Regulation* is unclear about roles and responsibilities of actors involved
  - The *Regulation* contradicts Espoo by obliging the developer to conduct EIA on the basis of EIA Report
  - The *Regulation* obliges the developer to notify affected parties by providing information “in accordance with national legislation”
  - The *Regulation* limits the timing for consultations for one month
  - The *Regulation* does not require communication of the final decision

# 4. Belarus NPP – some facts and violations to date (a)



## Aarhus related:

- *Decision to introduce nuclear energy*
- *EIA and public participation*
  - **Distribution of notification** to the public about commencement of public consultations: Internet + local newspaper
  - Content of **notification** to the public
  - PP when important **options** (alternatives) are out
  - Brief EIA – as a key document for understanding of the project by general public – cannot ensure effective public participation as required by Article 6(4)
  - Public hearings (Oct 9, 2009): can they qualify for a “public hearing”
  - Access to EIA documents
- Some activities take place already

# 4. Belarus NPP – some facts and violations to date (b)



Espoo related:

- Obligation to conduct EIA (**alternatives**) (Art.2(2) + Art. 3(3) + Appendix II)
- Environmental impact assessment procedure that permits **public participation** (Art.2(2))
- Obligation to **notify** (Art. 2(4) + Art. 3(1))
- Obligation to introduce **necessary legislation** (Art. 2(2))



# 5. Belarus NPP – international response by NGOs



- Persecution and threats issue
- Information about non-compliance submitted to the Espoo Implementation Committee (Ukrainian NGO, July 1, 2009)
- Amicus Curiae Memo sent under a pending case in relation to Belarus (European ECO-Forum/OEKOBUEURO, Oct 8, 2009)
- Amicus Joinder sent by Belarus NGOs (Nov 24, 2009)



# 6. Our role

- **Resource & Analysis Center “Society and Environment”** - non-profit organization focusing on environmental policy research, capacity building and implementation of innovative initiatives in Ukraine and regionally (Eastern Europe, Caucasus and Central Asia).
- Our two work programs are *European Integration Processes* and *Human Rights & Environment*.
- Focus areas:
  - environmental dimension of the European Neighborhood Policy (ENP);
  - adaption of national environmental legislation to EU legislation;
  - national environmental policies research;
  - assessment of national environmental case-law and practice;
  - compliance with multilateral environmental agreements

# 7. European ECO Forum Legal Focal point for EECCA region



- Aarhus Convention Compliance Committee
  - Monitoring case law
  - Helping NGOs to submit and defend cases
- Other compliance mechanisms
  - Espoo Implementation Committee
  - Water & Health Protocol Compliance Committee



# Contacts

Andriy Andrusevych,  
Governing Board member, co-founder

[andriy.andrusevych@rac.org.ua](mailto:andriy.andrusevych@rac.org.ua)

[www.rac.org.ua](http://www.rac.org.ua)

Thank you!