

Ukraine Nuclear Safety Upgrade Programme: loan conditions not met

21 January 2016

Despite ongoing pressure from civil society and the international community, the Ukrainian government continues to disregard the legal conditions attached to the financial support it receives from the European Bank of Reconstruction and Development (EBRD) and Euratom for its nuclear safety upgrade program.

In December 2015 the Ukrainian nuclear regulator decided in favour of extending the lifetime of yet another nuclear unit, South Ukraine 2. This decision was made by Ukraine's nuclear regulator, which is lacking independence; it was made in spite of delays in implementing the upgrades of the highest importance for the safety and without adequate public consultations, including transboundary consultations, before the decision. Furthermore, the Ukrainian government has postponed the deadline for the implementation of the entire safety upgrade program without informing the donors. Such blatant disregard to the set conditions seriously questions the ability of both financial institutions to positively impact developments in Ukraine's nuclear power sector.

The European Bank for Reconstruction and Development (EBRD) is providing a €300 million loan for Ukraine's nuclear safety upgrade program in order to bring all of its 15 operating nuclear reactors in line with both local regulations and international standards. The program, scheduled for completion by the end of 2017, will cost €1.45 billion in total, of which EURATOM will contribute another €300 million. In 2015, EURATOM disbursed the first tranche of €100 million. EBRD disbursement schedules are „not in public domain“.

The loan conditions in the environmental and nuclear safety areas, according to the guarantee agreement and loan agreement stipulate the following:

- The state nuclear regulator should have the legal authority to fulfil its mandate with special attention to safety. This should include the right of the regulator to check the licensee's compliance with safety standards and licences requirements via inspections;

- Energoatom should ensure that international requirements and international law are maintained in accordance with international agreements, in particular the Espoo and Aarhus Convention (Environmental and Social Action Plan, 1.10);
- The Ukrainian government ensures the end of the implementation of the project “Complex safety upgrade program at Ukrainian nuclear power plants” is 31 December 2017 unless another date is approved by the lender;

CEE Bankwatch Network and its Ukrainian member group the National Ecological Center of Ukraine (NECU) have been actively monitoring the development of Ukraine’s nuclear safety upgrade program including the country’s plans and decisions on reactors’ lifetime extensions. With regards to the loan conditions, both financial institutions have received from CEE Bankwatch Network and NECU information and evidence regarding the following aspects of the loan conditionalities:

1. Lack of independence of the State Nuclear Regulatory Inspectorate of Ukraine (SNRIU):

Since January 2015, SNRIU has been prohibited from carrying out inspections in nuclear power plants on its own initiative. This moratorium¹ seriously limits the regulator’s powers and dangerously impacts its ability to control nuclear and radiation safety and security in the country. Such restrictions on the regulator's independence are against the loan conditions, and NECU and CEE Bankwatch Network brought the issue to the Bank’s attention. In his reply dated 6.3.2015 the EBRD's Director of the Nuclear safety department, V.Novak confirmed: *“...we share your concerns ... as you rightly noted it seriously contravenes the conditions of the loan agreement...”*.

2. Violation of the Espoo convention:

The Ukrainian government is continuously breaching the Espoo convention on environmental impact assessment in a transboundary context. The Ukrainian government has already extended the lifetime of four nuclear units, Rivne 1 and 2 and South Ukraine 1 and 2, without informing potentially affected countries prior to these decisions. Moreover, Ukraine has denied the applicability of the Espoo Convention when approached through official diplomatic channels by the governments of Austria, Hungary, Romania and Slovakia. In this communication, applying Art.3.7 of the Espoo Convention, the four neighbouring countries have requested an

¹ By the law of Ukraine “On amendment and termination of some laws of Ukraine” from 28.12.2014

exchange of information on Ukraine's nuclear program, expressing their interest in taking part in transboundary consultations in line with the Espoo convention.

The approach of the Ukrainian government disregards the decision and recommendations of the Espoo Convention Compliance Committee² following the re-licensing of nuclear units Rivne 1 and 2, as well as the repeatedly stated position of the European Commission³: „*The Commission is of opinion that any decision by Ukraine to extend the life-span of any of its nuclear power plants will require assessment under conventions mentioned above (Espoo and Aarhus) whether or not it involves any physical works*”. It is also a violation of conditions set by the EBRD Environmental and Social Action Plan which is part of the Loan Agreement between Energoatom and the EBRD.

3. Postponed implementation of safety upgrade measures:

A decree by Ukraine's government passed in September 2015 moves the deadline for the full implementation of the safety upgrade program from 2017 to 2020. At a press briefing on October 20, 2015, Mr Grygoriy Plachkov, a deputy director of NAEK Energoatom said that the postponement of the project implementation is currently being negotiated with the EBRD, suggesting that the Ukrainian government made a decision to postpone the implementation of the project without prior approval by the two donors, the EBRD and EURATOM. However, in its reply to NECU's request, the EBRD management admitted that as of 26.11. 2015 the bank “*has not received any official request from Energoatom in regard to changing the completion schedule of the Project*”. The bank's management was not able to respond to the question on the reasons for such postponement.

Postponement of the deadline for the whole Project led to postponement of the implementation deadlines for the upgrade measures with the highest priority for safety. Postponement delayed implementation of such measures for the South Ukraine unit 2 by 1–2 years and the reactor will operate beyond its design period without them, as illustrated by the regulator's inspection report from October 23, 2015. The current situation now brings together the worst of both worlds: The safety measures are not implemented, while the reactors' lifetimes are extended.

² http://www.unece.org/fileadmin/DAM/env/documents/2014/EIA/IC/ece.mp.eia.ic.2014.2.as_resubmitted.pdf

³ Letter dated 2.6.2015 from Marco Buti, Director General for Economic and Financial Affairs to CEE Bankwatch Network

In our view, this situation illustrates that the bank has not enough control/leverage over its client Energoatom and the Ukrainian government as the loan guarantor to ensure timely implementation of the safety upgrade programme. The €300 million EBRD loan was supposed to “bring the country’s operating nuclear reactors in line both with international standards and local regulations”⁴ but is far from doing so.

Recommendations

- The EBRD should suspend the loan proceedings for the Ukraine safety upgrade program until:
 1. the independence of the Ukrainian State Nuclear Regulator is ensured by lifting the moratorium on independent inspections;
 2. Ukraine adopts EIA legislation according to the EU EIA Directive and ensures that the decision-making process on lifetime extension is amended to take into full consideration the results of EIAs for each nuclear unit to be extended, including the results of respective transboundary consultations with all potentially affected countries;
 3. all safety measures are in place prior to decision-making on life-time extension;
- The EBRD should require an explanation from the Ukrainian government regarding the postponement the project’s implementation deadline without prior agreement as set in the guarantee agreement. This postponement should be reconsidered with the involvement of the donors and nuclear safety specialists. The justification for the final decision on the matter should be made available to public;
- The EBRD should make available to the public the monitoring reports of the loan conditionality in order to ensure transparent decision-making and public participation;

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