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Federal Government concludes highly disputed agreement with Electrabel about extending the operation of the Doel 1 and 2 nuclear installations until 2025

The Act of 28 June 2015 amending the Act of 31 January 2003 ordaining the progressive exit from nuclear energy for industrial electricity production with a view to ensuring supply security in the energy field (Belgian Official Journal 6 July 2015) foresaw a possible extension of the operation of the Belgian nuclear power plants.

With regard to the Doel 1 and 2 nuclear power plants, a possible extension was provided for in this law until 15 February and 1 December 2025, respectively. Article 4, § 3 of the law in question did provide that this deadline would only apply if the Federal State could conclude an agreement with Electrabel about the method for calculating the annual fee (often called the "nuclear annuity" or "tax") and the indemnification if one of the parties should fail to fulfil its obligations, and this by 30 November 2015 at the latest. If such an agreement could not be concluded (or not within the allotted time), Doel 1 and Doel 2 would obligatorily be closed early by Royal Decree by 31 March 2016.

The Federal Government announced in a press release that at the very last moment, namely on 30 November 2015, it proved possible to reach the aforementioned agreement with Electrabel and so the Doel 1 and Doel 2 nuclear power plants can remain open until 2025.

Various environmental NGO's including Greenpeace and several actors from the energy sector have already criticised the decision of the Federal Government and indicated that they are looking into possibilities for taking legal action.

A potentially important argument in such legal actions could be that, within the framework of the adoption of the law and the aforementioned decision-making process, no public consultation was organised and no project environmental impact assessment was drawn up, as a result of which the aforementioned law, agreement and the decision of the Federal Government to keep the nuclear power plants running might be in violation of the European project EIA Directive and the Flemish law which transposed it, possibly read together with the constitutional principle of equality and non-discrimination. This legislation concerns the public order.

"Nuclear power plants and other nuclear reactors, including the dismantlement or decommissioning of such power stations or reactors" are included in annex I of the Project EIA Directive 2011/92/EUR and also decision-making relating to the extension of operations of such power stations or reactors presumes in principle the obligatory drafting of a project EIA, with the possibility for public involvement. The Council of State legislation department also pointed this out in a critical opinion during the legislative procedure.

The period of six months for possibly challenging the Act of 28 June 2015 before the Constitutional Court is still running. Other conceivable possibilities for action are proceedings before the civil judge, against this agreement and before the Council of State Administrative Jurisdiction department, against the decision (which might be able to be split off from the agreement) of the Federal Government to extend the service life of the nuclear power plants before the Council of State, Administrative Jurisdiction department.

For more information on this topic, you can consult Kristof Hectors and Gwen Bevers (authors).

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