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Extension of nuclear power plants Doel 1 & 2: The Constitutional Court submits preliminary questions to the Court of Justice

The Act of 28 June 2015 organising the gradual exit from nuclear energy for industrial electricity production with a view to ensuring energy supply security, foresaw a possible extension of the operation of Belgium's nuclear power plants.

Specifically with regard to the power plants Doel 1 and 2, this law provided for a possible extension to 15 February and 1 December 2025, respectively (on this also see our newsflash of 3 December 2015).

The non-profit associations "*Inter-Environnement Wallonie*" and "*Bond Beter Leefmilieu Vlaanderen*" have filed a demand for annulment against this law to the Constitutional Court.

An important argument in this demand for annulment is that, within the framework of the adoption of the law and the aforementioned decision-making, no public consultation was organised and no draft environmental impact assessment was prepared. As a result, the aforementioned law is potentially in conflict with the principle of equality and non-discrimination and the right to a healthy environment, and related European conventions, including the Espoo Convention (on environmental impact assessment in a transboundary context) and the Aarhus Convention (on access to information, public participation in decision-making and access to justice in environmental matters).

In an interesting decision of 22 June 2017 the Constitutional Court ruled that a Member State of the European Union remains free to determine the structure of its own energy supply. Nevertheless, this state cannot be exempted from compliance with the environmental obligations deriving from the law of the European Union, such as the EIA duty and the related consultation. In order to get clear about the scope of these obligations, the Court has now submitted several preliminary questions to the European Court of Justice on the application of the Espoo Convention, the Aarhus Convention, the European EIA Directive and the Habitats Directive, as well as on the possible enforcement of the consequences of the challenged act in case of conflict with (one of) these legal rules.

For more information on this subject, you can consult Kristof Hectors (unit head) and Barbara Bastiaensen (author).

De Burburestraat, 6-8 bus 5 2000 Antwerpen
Regentschapsstraat 58, bus 8 B-1000 Brussel
t. +32 3 260 98 60 f. +32 3 260 98 61 info@schoups.be www.schoups.be