



Aarhus Convention Compliance Committee
Attn. Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee

**Legal Affairs Department
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Via e-mail only

Date 6 April 2017
Re Ref. Communication ACCC/C/2014/104
Borssele nuclear power plant

Ref.
MinBuZa-2017.548539

Encl. 2

Dear Ms Marshall,

Further to your letter of 29 March 2017, in which the Aarhus Convention Compliance Committee invites the Netherlands to explain on what legal basis, if any, EPZ had a right, prior to the 2006 covenant, to compensation if the Borssele Nuclear Power Plant (Borssele NPP) was closed and to provide the relevant text of the license, agreement or legal provision, together with an English translation thereof, establishing such a right to compensation, I have the honour to inform you as follows.

EPZ is a commercial producer of electricity that since 1973, following the establishment of the Borssele NPP, has all necessary licenses under the Netherlands' Nuclear Energy Act. The operating license for the Borssele NPP was issued for an indefinite period of time. There was no lawful justification for the withdrawal of that license at the time. In addition, EPZ had no obligation under private law to close the Borssele NPP prematurely. This is why, prior to the 2006 covenant, EPZ did not cooperate to close the Borssele NPP voluntarily or to voluntarily enter into an agreement with the State to this effect.

Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention) aims to protect every natural or legal person against State interference with his/her possessions. State interference can consist of expropriation measures, but it can also consist of more or less drastic regulation of property or its use. Application of Article 1 of Protocol No. 1 to the European Convention may lead to State interference with property being legally acceptable only in combination with compensation measures.

A forced premature closure of the Borssele NPP by withdrawing or limiting its license or compelled closure by law prior to the 2006 covenant without compensation for damages, would have been in violation of Article 1 of Protocol No. 1 to the European Convention. This would in fact constitute an expropriation of EPZ's possessions. Even when this would not have been considered to be expropriation, but mere regulation, some form of compensation would have been inevitable.

For background details, I refer to the enclosed English translation of parts of the Memorandum on *The Operating Lifetime of Borssele Nuclear Power Plant* (title, introduction and section 4 on legal aspects). This Memorandum was attached to the letter of the State Secretary for Housing, Spatial Planning and the Environment of 29 April 2005 (House of Representatives 2004-2005, 30 000, no. 5). A translation of that letter was sent to the Committee on 19 February 2016.

Date
6 April 2017

I hope that this reply will enable the Compliance Committee to finalise its draft findings.

Yours sincerely,

i.a.


René Lefeber
Deputy Legal Adviser