

**ANSWER TO THE COMPLIANCE COMMITTEE WITH RESPECT TO THE COMMUNICATION SUBMITTED ON BEHALF OF 'NABU' ON 11 MARCH 2017 CONCERNING BELGIUM TO BE CONSIDERED FOR PRELIMINARY ADMISSIBILITY AT THE 58<sup>TH</sup> MEETING OF THE COMPLIANCE COMMITTEE (BUDVA, 10-13 SEPTEMBER 2017)**

Belgium would like to thank the Compliance Committee for giving it the opportunity to deliver preliminary comments on the communication lodged by NABU regarding the prolongation of the lifetime of the nuclear reactor of Tihange 1.

Further to a preliminary assessment of the communication, the Belgian government is of the opinion that the communication on behalf of the German association 'Nabu' is inadmissible.

Under Belgian law there are several remedies available to challenge the absence of an EIA procedure and/or public participation on the decision to modify the date of deactivation of the production of electricity in the Belgian nuclear power plant Tihange I, by the Law of 18 December 2013, such as a procedure before the Constitutional Court and/or proceedings before the ordinary courts. The communicant has not exhausted any of these available domestic remedies. We also note that the communicant has not filed a complaint to the European Commission.

The Belgian government also emphasizes that there was sufficient reporting on the so-called 'extension of lifetime' of the nuclear power plant Tihange during 2012-2013, so that the communicant cannot state that he was not aware, or at least that he should not have been aware, of this 'lifetime extension' (see, for example: <https://www.wiseinternational.org/nuclear-monitor/753/belgium-confirms-nuclear-phase-out-2025-extends-lifetime-tihange-1>; <http://www.reuters.com/article/us-europe-nuclear-extensions-factbox/factbox-european-nuclear-plant-life-extensions-idUSTRE5A430M20091105>; <http://www.nucnet.org/all-the-news/2013/10/18/agreement-reached-on-conditions-for-tihange-1-extension>).

The Belgian government wishes to point out that a similar case is currently pending before the Constitutional Court with respect to the decision of the Belgian government to modify the date of deactivation of the production of electricity in the Belgian nuclear power plants Doel 1 and Doel 2 by the Law of 28 January 2015. In its preliminary judgement of 22 June 2017, the Constitutional Court questioned the Court of Justice of the European Union on the interpretation of, *inter alia*, the Aarhus Convention. As a result, the Court of Justice of the European Union has now the opportunity to clarify some provisions of the Aarhus Convention. Thereafter the Belgian Constitutional Court shall assess whether the Kingdom of Belgium has acted in accordance with the Aarhus Convention as interpreted by the Court of Justice of the European Union.

Given this pending procedure, the Belgian State respectfully requests the Compliance Committee to suspend its investigation and await the final outcome of the legal proceedings with the Court of Justice of the European Union before taking any recommendation.

Finally the Belgian State reserves the right to make a subsequent statement as to the inadmissibility of the communication.