



1.7.2021

## NOTICE TO MEMBERS

**Subject: Petition No 0956/2016 by H. E. (German) on behalf of the action group ‘DreiländerRegion gegen Tihange’ (Three Countries Region against Tihange) on the Tihange 2 Nuclear Power Station**

**Petition No 0156/2018, by Christel Schlebusch (German), on the safety of the Tihange 2 Nuclear Power Station**

### 1. Summary of petition 0956/2016

The petition concerns the restarting of the Belgian Tihange 2 nuclear power station, which was approved by the Belgian Federal Nuclear Supervision Agency (FANC) in November 2015. The representatives of Aachen city and region (Germany) and of numerous districts, towns and local authorities in the Netherlands, Luxembourg, Germany and Belgium, are seriously concerned about the safety of the nuclear power station. They maintain that international experts have severe doubts about its safety. In the event of an incident, more than 8 million people within a radius of 100 km would be affected. The petitioners are calling on the Commission to provide them with all information it holds on the Tihange 2 nuclear power station, to demand all the information to which it is entitled from the Kingdom of Belgium and others, and to examine whether the Kingdom of Belgium, in its conduct in connection with the nuclear reactor, has contravened or is contravening rules of the European Treaties. The petition urges the European Parliament to support the action group’s demands in every way possible.

### Summary of petition 0156/2018

The petitioner is concerned about the safety of the Tihange 2 Nuclear Power Station and about the fact that only the relevant country decides about shutting down a Nuclear Power Station despite of the fact that there is a European Nuclear Energy Agency. In the case of an incident, the radiation would not stop at the national border. In the opinion of the petitioner, the number of people at risk may be much higher in neighbouring countries than in the country where the Nuclear Power Station is located.

## 2. Admissibility

Petition 0956/2016 declared admissible on 10 January 2017.

Petition 0156/2018 declared admissible on 12 April 2018.

Information requested from Commission under Rule 216(6) (new Rule 227(6)).

## 3. Commission reply, received on 30 August 2017

### *a) Preliminary remarks*

Before the restart of the reactor in question, the Belgian regulator FANC had carried out an assessment of the causes and consequences of the reported defects and the outcome has been considered satisfactory; no elements were found preventing the restart. These conclusions are available on FANC's website<sup>1</sup>. In line with the EU nuclear safety legislation, Belgium has an obligation to ensure that licence holders regularly assess and improve reactor safety, under the supervision of the national competent regulatory authority. The Commission services are monitoring, through close contacts with Belgian authorities, including FANC, the application of the relevant EU nuclear safety regulatory framework. However, nuclear safety of nuclear installations remains under national responsibility.

It is correct, as the petitioners state, that pursuant to Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) environmental policy shall aim at a high level of protection and shall – *inter alia* – be based on the precautionary and prevention principles. The petitioners' main concern is however related to the protection of populations and the environment against ionising radiations. Therefore, the Euratom Treaty and Euratom law constitute the relevant legal context (as it is more specific) for the assessment of the petition, rather than the general provision of Article 191(2) TFEU.

### *b) The documents which the Commission has already shared*

On 25 July 2016, Commissioner Arias Cañete personally met a delegation of 80 municipalities from Germany, Luxembourg and the Netherlands about the restart of the Tihange 2 nuclear power plants. The delegation requested access to documents in possession of the Commission. The Commission agreed to disclose numerous documents in its possession.

As a follow-up, on 18 October 2016, a meeting took place in Brussels between the Commission services (DG ENER, Directorate D) and German representatives from the Ministry of Environment, Energy, Food and Forests of the Bundesland Rheinland-Pfalz. At the end of that meeting a number of documents were communicated to the attendees. More specifically, the Commission shared with the participants 2 reports prepared by experts from the Joint Research Centre (JRC) and a library of public documents issued by the Belgian Federal Nuclear Supervision Agency (FANC).

### *c) The information requested from Belgium*

Following the Commission's request, FANC has consented, towards the end of November

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<sup>1</sup> <https://afcn.fgov.be/fr/dossiers-dinformation/centrales-nucleaires-en-belgique/actualite/indications-de-defaults-dans-les>

2016, to the circulation of the technical documents from the international workshop organised in their premises in January 2016, with the proviso that the references to persons or their personal data shall be redacted pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>1</sup>. These documents were sent to the above mentioned municipalities on 15 March 2017.

FANC has been working in a transparent manner, with the support of international experts. This is in line with the 19 December 2016 joint nuclear safety inspections agreement reached between Belgian and German authorities. It is worth recalling that the Belgian authorities have reached similar joint inspection agreements with the Dutch and French regulators.

In this context, FANC has explained that Electrabel, the Belgian subsidiary of Engie, has formulated an objection in accordance with Regulation (EC) No 1049/2001 with regard to the granting of access to certain documents. The Commission sent a request to Engie Electrabel on 25 April 2017 in order to be able to share their documents as well. Indeed, as regards documents originating from a third party, the Commission is obliged, pursuant to Article 4(4) of Regulation (EC) No 1049/2001, to consult the third party before granting access to these documents. The consultations are now closed and these new documents will also be shared.

*d) The alleged breach of primary and secondary law*

As regards the alleged breach of Articles 30 and 33 of the Euratom Treaty, the Commission holds that there is no evidence substantiating this claim, as Belgium has long ago laid down the appropriate national provisions to ensure compliance with the basic standards in the areas of nuclear safety and radiation protection and communicated them to the Commission.

Pursuant to Article 33 of the Euratom Treaty, Member States shall communicate to the Commission draft provisions ensuring compliance with the basic safety standards which have been established under the Euratom Treaty, notably by Council Directives 96/29/Euratom and Council Directive 2013/59/Euratom. The Commission assesses, on the basis of Article 33 (3) and (4), draft national provisions notified by Member States intended to transpose the different Euratom Directives.

In particular, in the EU, high levels of nuclear safety and radiation protection have to be ensured in accordance with the provisions of Council Directive 2009/71/Euratom (the "Nuclear Safety Directive") and of Council Directive 96/29/Euratom ("Basic Safety Standards Directive") respectively. The Commission investigated the transposition of these Directives in all Member States, including Belgium and concluded that these Directives had been transposed into national law<sup>2</sup>. FANC has completed its safety assessment of the reactors in November 2015 and confirmed that all the safety concerns that were at the origin of the short-term and mid-term requirements have been solved in a satisfactory manner<sup>3</sup>. FANC

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<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

<sup>2</sup> An infringement procedure under the Basic Safety Standards Directive was closed on 21 December 2001. Another infringement procedure against Belgium under the Nuclear Safety Directive was closed on 27 February 2012. The transposition measures adopted by Belgium under both Directives are available on the following websites: <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:31996L0029> and <http://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32009L0071>.

<sup>3</sup> See the press release in French and Dutch: <https://afcn.fgov.be/fr/dossiers-dinformation/centrales-nucleaires-en-belgique/actualite/indications-de-defauts-dans-les>.

concluded that the new 2015 safety case reports provide an adequate demonstration of the structural integrity of the Doel 3 and Tihange 2 reactor pressure vessels up to 40 years of operation.

The Nuclear Safety Directive and the Basic Safety Standards Directive have been amended and further strengthened respectively by Council Directive 2014/87/Euratom of 8 July 2014 and by Council Directive 2013/59/Euratom. The revised Nuclear Safety Directive has to be transposed into national law by 15 August 2017 while the revised Basic Safety Standards Directive is due to be transposed by 6 February 2018.

Once the transposition deadline expires, the Commission will thoroughly monitor the transposition and implementation of the provisions of both Directives, including the compliance with reference levels for existing and emergency exposure situations as provided for in the revised Basic Safety Standards Directive of 2013 and also the effective independence of the competent regulatory authority from undue influence as laid down in the amended Nuclear Safety Directive, as referred to by the petitioners.

The petitioners claim, on p. 58 of Annex II, that the Basic Safety Directive should be applied in an anticipatory manner, before the transposition deadline has expired. Yet the case-law which is cited merely requires Member States to refrain, during the transposition period, from adopting measures liable seriously to compromise the result prescribed by the Directive at issue. This obligation is not a sufficient basis for anticipatory action by the Commission.

Belgium, in pursuance to the obligation emanating from Article 37 of the Euratom Treaty (hereafter "Article 37"), provided the Commission on 3 September 1981 with general data relating to the original plan for the disposal of radioactive waste from Unit 2 of the Tihange nuclear power station. Subsequently, the Commission, having consulted the group of experts set up under the terms of Article 37, delivered its opinion on the said general data on 14 December 1981 on whether or not the plan for the disposal of radioactive waste (*Plan zur Ableitung radioaktiver Stoffe*) was likely to involve radiological consequences in another Member State<sup>1</sup>.

Having regard to the fact that since the delivery of the Commission's opinion in 1981, the numerical values of the regulatory discharge limits for airborne and liquid radioactive effluents that were imposed on the Tihange 2 reactor have not been modified in the sense of an increase of the said limits, the obligation to submit general data for a modified plan, as per section 5(a) of the Commission Recommendation 2010/635/Euratom on the application of Article 37, is not applicable. Equally, bearing in mind that the potential consequences of unplanned releases of radioactive effluents that may follow the reference accident(s) evaluated in the original general data have not amplified, the obligation to submit general data for a modified plan is likewise not applicable. Finally, the fact that the Belgian authorities have decided to grant Tihange 2 a license to resume operations is unrelated to the above. The license to resume operations can thus not, in this particular case, be considered a new plan or a modification to an existing plan pursuant to Article 37.

Hence, from the Commission's point of view, the Article 37 opinion it delivered in 1981 remains valid and the Belgian authorities have, as far as Tihange 2 is concerned, correctly

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<sup>1</sup> See 1982 Report from the Commission to the Council and to Parliament, Application of Article 37 of the Euratom Treaty, COM(82) 455 final, available at: <http://aei.pitt.edu/13057/1/13057.pdf>.

discharged themselves from the obligation emanating from Article 37 of the Euratom Treaty and the secondary law based on the latter.

## Conclusion

In light of the above, the Commission will provide the municipalities which have so requested with all the relevant information in its possession.

The Commission considers that the information included in the petition does not require, in principle, any additional action to be taken in the present case regarding the application of the Euratom Treaty and Euratom secondary law.

## **4. Commission reply (REV), received on 30 July 2018**

### Petitions 0956/2016 and 0156/2018

The Commission would like to reiterate that, in line with the division of responsibilities under EU law, the decision to operate a nuclear power plant remains with the Member State, which is also responsible for ensuring its safe operation.

Nevertheless, the Commission services carefully monitor the nuclear safety related matters regarding nuclear power plants in the EU, including Tihange 2. In particular, the Commission and ENSREG<sup>1</sup> recently organised the first topical peer review exercise under the amended Nuclear Safety Directive<sup>2</sup> on the topic of 'Ageing management of Nuclear Power Plants' in which Belgium fully participates. The topical peer review workshop took place in Luxembourg from 14 to 18 May 2018, and was attended by around 140 experts every day. It included a peer review of the national reports by experts from other Member States in order to identify good practices as well as areas for improvement. The results of the peer review process on 'Ageing management of Nuclear Power Plants' will be published on the ENSREG Website in the second half of October 2018. As part of the efforts to share information about the peer review process and engage with the civil society groups, ENSREG organised a public event on 3 May 2018, giving the public the opportunity to express their views and ask questions.

The Commission's role is to ensure the timely and effective transposition and implementation of the existing, and recently enhanced, EU nuclear safety legal framework<sup>3</sup>. To this end, the Commission can take legal action against Member States failing to comply with the new requirements. In this regard, the Commission issued, on 7 June 2018, a reasoned opinion urging Belgium to adopt all measures necessary to ensure the full transposition of the 2014 amending Nuclear Safety Directive. Belgium is given two months to reply to the reasoned opinion, as well as to adopt and communicate all measures necessary to ensure full and correct transposition of the Directive, failing which the Commission may refer the case to the Court of Justice of the European Union (CJEU)<sup>4</sup>.

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<sup>1</sup> European Nuclear Safety Regulators Group, [www.ensreg.eu](http://www.ensreg.eu)

<sup>2</sup> Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172, 2.7.2009, p. 18), as amended by Council Directive 2014/87/Euratom (OJ L 219, 25.7.2014, p. 42).

<sup>3</sup> cf. footnote 1

<sup>4</sup> Further information is provided on the European Commission Press Release website available at [http://europa.eu/rapid/press-release\\_MEMO-18-3986\\_EN.htm](http://europa.eu/rapid/press-release_MEMO-18-3986_EN.htm).

Finally, the Commission recalls that the more general issue of the extent to which Member States have to comply with EU law in the nuclear sector is currently at stake before the CJEU in Case C-411/17,<sup>1</sup> which regards the Belgian Law of 28 June 2015 amending the date on which the industrial production of electricity at Doel 1 and Doel 2 power stations is to end.

**5. Commission reply (REV I), received on 30 November 2018**

Petitions 0956/2016 and 0156/2018

The results of the peer review process on 'Ageing management of Nuclear Power Plants' were published on the ENSREG Website<sup>2</sup> on the 29 October 2018. As part of the efforts to share information about the peer review process and to engage with the civil society groups, ENSREG has organised a second public meeting on 22 November in Brussels to present the results of the peer review.

**6. Commission reply (REV II), received on 12 February 2020**

Petitions 0956/2016 and 0156/2018

Belgium has completed the transposition of the amended Nuclear Safety Directive<sup>3</sup>. The Commission is now checking the conformity of the Belgian transposition, i.e. whether all the requirements of the Directive have been transposed correctly.

Moreover, the first topical peer review exercise under the amended Nuclear Safety Directive<sup>4</sup>, to which Belgium fully participated, was organised by the Commission and the European Nuclear Safety Regulators Group (ENSREG), and addressed the topic of 'Ageing management of Nuclear Power Plants'. The final report presenting the results of the peer review was published on the ENSREG website in October 2018<sup>5</sup> and presented at a public meeting in November 2018 in Brussels.

As a follow-up, ENSREG prepared a template for the National Action Plan setting out how the challenges of the topical peer review are to be implemented. Based on this template, the participating countries prepared their National Action Plans (NACPs) on the implementation of their country-specific findings, for submission by the end of September 2019. Belgium's NACP has been published, together with the other Member States' NACPs, on the ENSREG website<sup>6</sup>.

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<sup>1</sup> *Inter-Environnement Wallonie et Bond Beter Leefmilieu Vlaanderen*, in OJ 11.9.2017, C 300, p. 2.

<sup>2</sup> <http://www.ensreg.eu/eu-level-reports>

<sup>3</sup> Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations, *OJ L 219, 25.7.2014, p. 42–52*.

<sup>4</sup> Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations (OJ L 172, 2.7.2009, p. 18), as amended by Council Directive 2014/87/Euratom (OJ L 219, 25.7.2014, p. 42).

<sup>5</sup> <http://www.ensreg.eu/eu-level-reports>

<sup>6</sup> [www.ensreg.eu/tpr-national-action-plans/EU-Member-States](http://www.ensreg.eu/tpr-national-action-plans/EU-Member-States)



Finally, the topic of ageing and long-term operation of nuclear power plants in Europe was discussed at the meeting of the European Nuclear Energy Forum (ENEF) in April 2019 in Prague<sup>1</sup>.

## 7. Commission reply (REV IV), received on 1 July 2021

### Petitions 0956/2016 and 0156/2018

#### The Commission's observations

1) First of all, the Commission would like to update the Committee on Petitions on the status of checks carried out by the Commission with respect to the transposition of the Euratom directives by Belgium:

- transposition of the amended Nuclear Safety Directive<sup>2</sup> has been completed and the Commission is in the process of checking its conformity, i.e. whether all the requirements of the Directive have been transposed correctly. The exchanges with Belgian authorities are currently taking place within the framework of the EU Pilot procedure, in which the Commission has been requesting and receiving clarifications from the Belgian authorities;
- Member States had the obligation to submit to the Commission their national reports on the implementation of the Nuclear Safety Directive by 22 July 2020. The reports are now publicly available on the Europa website and the report submitted by Belgium can be consulted at the following link:  
[https://ec.europa.eu/energy/sites/default/files/documents/2.\\_be\\_2nd\\_2020\\_report\\_a-nsd.pdf](https://ec.europa.eu/energy/sites/default/files/documents/2._be_2nd_2020_report_a-nsd.pdf);
- Belgium has also declared complete transposition of the Basic Standards Directive<sup>3</sup>. The Commission is currently analysing the notified transposition measures in order to ascertain whether the transposition is indeed complete.

2) As regards the technical aspects relevant for the safety of the Tihange 2 nuclear power plant, the Commission would like to draw attention to the following recent developments:

- in September 2020 the Belgian Federal Agency for Nuclear Control (FANC) published a report presenting the conclusion of the implementation of the stress-tests action plan in the nuclear power plants of Doel and Tihange from 2011 to 2020. The report is available at the following link: <https://afcn.fgov.be/fr/system/files/best-2020.pdf>;
- on 3 September 2020 the Court of First Instance in Brussels ruled in favour of a 2015 decision by FANC to allow Tihange unit 2 to restart following the discovery of

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<sup>1</sup> The conclusions can be consulted at: [https://ec.europa.eu/info/events/14th-european-nuclear-energy-forum-2019-apr-29\\_en](https://ec.europa.eu/info/events/14th-european-nuclear-energy-forum-2019-apr-29_en)

<sup>2</sup> Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations, OJ L 172, 2.7.2009, p. 18, as amended by Council Directive 2014/87/Euratom, OJ L 219, 25.7.2014, p. 42.

<sup>3</sup> Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom, OJ L 13, 17.1.2014, p. 1–73.

hydrogen flakes in the reactor vessel. The court has examined, *inter alia*, the issue of disclosure of documentation by FANC<sup>1</sup>;

- according to the information provided by FANC on its website on 5 January 2021, the hydrogen microbubbles in the walls of the Tihange 2 reactor vessel have not evolved in time and no new indications have emerged. This is clear from a follow-up inspection carried out during the planned revision of Tihange 2. More information is available on the FANC website: <https://afcn.fgov.be/fr/actualites/microbulles-dhydrogene-dans-la-cuve-du-reacteur-de-tihange-2-pas-devolution>;
- moreover, no follow-up actions were required in relation to the results of the topical peer review exercise<sup>2</sup> under the amended Nuclear Safety Directive, to which Belgium fully participated, as non-destructive examination of the reactor pressure vessel was already required at Tihange 2 every 3 years at the time of the review.

### Conclusion

The Commission is not in possession nor aware of any further documentation that could be obtained from FANC in addition to the documentation already shared by FANC with the public and the petitioner, and the updated information provided by the petitioner.

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<sup>1</sup> <https://www.world-nuclear-news.org/Articles/Court-backs-Tihange-2-restart-decision>

<sup>2</sup> <http://www.ensreg.eu/eu-level-reports>