

Belgian statement on the draft ‘Decision IX/4g on compliance by Belgium with its obligations under the Convention in respect of the lifetime extension of unit 1 of Tihange nuclear power plant’

Thank you, Mr./Madam Chair.

First of all, Belgium would like to reiterate, as we already did in March 2023, that it fully commits to the application of the Convention ahead of any future decision-making regarding Tihange nuclear power plant. Therefore Belgium endorses the recommendations b, c and d.

Regarding the first recommendation, however, Belgium doesn't support the findings that a non-compliance took place, for the reasons mentioned in the statements that have been introduced in the Committee's procedure thus far, especially in the information introduced on behalf of the Belgian government on 26 July 2021, 14 July 2022 and 20 September 2022.

As indicated, we consider that the Guidance on the applicability of the Convention to the lifetime extension of nuclear power plants cannot be applied retroactively to the Belgian case that was initiated by the Implementation Committee before its adoption by the Parties in 2020.

Furthermore, we consider that there were reasonable grounds to believe that the Convention would not be applicable to the so-called lifetime extension of nuclear power plants. The necessity for the Belgian Constitutional Court to commence prejudicial proceedings before the Court of Justice of the European Union regarding the application of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment to the lifetime extension of Doel 1 and 2 indicates that there was reasonable ground to believe that the Directive might not be applicable. The Constitutional Court furthermore stated in its decision of 22 June 2017 (no. 82/2017), in which the prejudicial questions were formulated, that the application of the Convention on the so-called lifetime extension of nuclear power plants was legally disputed (§ B.26.2). Similarly, as indicated in our statement of 27 October 2016, the Belgian Council of State gave a (non binding) advice on the draft legislation of 2003, 2013 and 2015 concerning the so-called lifetime of Belgium's nuclear power plants. For the first time in the second advice on the draft legislation of 2015 (which was the fourth advice on the matter) did the Council of State raise the applicability of the Convention. This further indicates that there were reasonable grounds to believe that the Convention would not be applicable to the so-called lifetime extension of nuclear power plants.

Insofar as the draft findings and recommendations by the Implementation Committee apply to the Royal Decree of 27 September 2015 and the decision of FANC of 30 September 2015 concerning the LTO-action plan for Tihange 1, we refer to our arguments expressed before, that this Royal Decree and the FANC Decision of 30 September 2015 is not automatically invalidated by the Decision of the Council of State of 29 June 2021. Any non-compliance with the Convention at the level of the Law of 18 December 2013, which Belgium disputes, would not in and of itself affect the Royal Decree of 27 September 2015 and the FANC decision of 30 September 2015 concerning the LTO-action plan for Tihange 1.

Regarding the likelihood of a significant adverse transboundary impact of the LTO works for Tihange 1, we would like to emphasize again that an environmental impact screening note was drafted in accordance with the Belgian nuclear legislation. This screening note did not allow to conclude that significant adverse transboundary impacts were likely. As already indicated, we consider that the

Guidance of 2020 cannot be applied retroactively. Therefore, the view that lifetime extensions have impacts similar to those of a new nuclear plant could not be applied at the time of the environmental impact screening note.

Furthermore, we respectfully submit that so-called lifetime extensions do not have impacts similar to those of a new nuclear plant. Under Belgian nuclear regulations, nuclear plants were initially authorized for an indefinite period. It is only with the adoption of the Law of 31 January 2003 on the gradual phasing out of the use of nuclear energy for the industrial electricity production on the Belgian territory that a limitation in time of such industrial production was introduced, even without interfering with the duration of the previous authorizations granted. The corollary of such indefinite duration of the said authorizations, was and is that a safety assessment of each nuclear power plant shall be made in Belgium every ten years (see Article 14 of the Royal Decree of 30 November 2011 holding safety provisions for nuclear installations). The assessment allows to evaluate the technical and other operation requirements in light of the state of the nuclear power plant concerned. The scope of works to be carried out within the context of the assessment may give rise to an environmental impact assessment. However, given that the so-called lifetime extension of Tihange I gave only rise to an extension of 10 years, whereas the initial authorization of the Tihange I nuclear unit was granted for an indefinite period of time, the so-called lifetime extension of Tihange I cannot have the same effects as its initial authorization for operation.

We do not agree that the conclusions of the environmental impact screening note that was drafted in accordance with the Belgian nuclear legislation do not hold true and that significant adverse transboundary effects had to be considered to be likely at the time of the lifetime extension.

Hence, Belgium wants to reiterate that revoking the Law of 18 December 2013 on the basis of an alleged infringement of the Convention in order to replace it with a new law that has been subjected to a transboundary environmental impact assessment would not only impact the legal certainty for the operator of the nuclear power plant, but also the security of supply. This security was the objective of the lifetime extension, as explained in the statement of 14 November 2016. The security of supply remains a main concern for the Belgian government.

Revoking the lifetime extension due to an alleged infringement of the Convention might create a high risk of supply insecurity. The real impact of shutting down a nuclear reactor became clear during the winter of 2018, during which multiple reactors were out of service. This context needs to be taken into account when considering the absence of an initiative to begin a transboundary procedure in the sense of the Convention regarding Tihange 1.

As regards recommendation a, Belgium does not share the findings of the Implementation Committee. However, in the spirit of multilateralism, Belgium resigns itself to the decision of the Meeting of the Parties, but kindly requests to incorporate this statement in the summary record of this meeting.

Thank you, Mr./Madam Chair.