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Court of Justice of the European Union

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Judgment in Case C-411/17

Inter- Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen
ASBL v Conseil des ministres

The Belgian law extending the operating life of nuclear power stations Doel 1 and Doel 2 was adopted without the required environmental assessments being carried out first

It is not however excluded that the effects of the law on extension may provisionally be maintained where there is a genuine and serious threat of an interruption to electricity supply

In 2003, the Belgian legislature adopted a timetable for the phasing out of the production of electricity by nuclear energy. No new nuclear power stations were to be built, and the power stations in operation were to be gradually taken out of service after operating for 40 years, that is to say between 2015 and 2025. On that basis, the Doel 1 power station located on the Escaut river (near Antwerp and the Netherlands border) ceased production of electricity in mid-February 2015 and the Doel 2 power station, located in the same place, was also to cease production of electricity in the same year.

At the end of 2015, however, the Belgian legislature extended the operating life of the industrial production of electricity at the Doel 1 nuclear power station for an additional ten years (until 15 February 2025) and also postponed the date of cessation of the industrial production of electricity at the Doel 2 station by almost ten years (to 1 December 2025). Those measures were accompanied by major works on the two power stations intended to modernise them and ensure compliance with safety standards, for a sum of €700 million.

The two Belgian associations, Inter-Environnement Wallonie and Bond Beter Leefmilieu Vlaanderen, whose objective is the protection of the environment and living conditions, brought an action before the Cour Constitutionnelle (Constitutional Court, Belgium) for the annulment of that law in so far as the extension was adopted without an environmental assessment and without a procedure allowing for public participation. They rely on the Espoo Convention on environmental impact assessment in a transboundary context,¹ the Aarhus Convention on public participation in environmental matters,² the EIA Directive,³ the Habitats Directive,⁴ and the Birds Directive⁵ (Doel is adjacent to several European conservation sites for the protection of nature and birds). The Cour Constitutionnelle (Constitutional Court, Belgium) asked the Court of Justice to interpret those conventions and directives for the purpose of establishing whether, in essence, the adoption of a law extending the duration of the industrial production of electricity by power stations required environmental impact assessments.

In today's judgment, the Court holds, first, that the major works on the Doel 1 and Doel 2 power stations intended to modernise them and ensure compliance with up-to-date safety standards were

¹ Convention on environmental impact assessment in a transboundary context, 1991 (OJ 1992 C 104, p. 7).

² Convention on access to information, public participation in decision-making and access to justice in environmental matters, 1998 (OJ 2005 L 124, p. 4), adopted by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124 p. 1).

³ 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 (OJ 2012, L 26, p. 1)

⁴ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992, L 206, p.7) as amended by Council Directive 2013/17/EU of 13 May 2013 (OJ 2013, L 158, p. 193).

⁵ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010, L20, p.7) as last amended by Council Directive 2013/17/EU, of 13 May 2013 adapting certain directives in the field of environment, by reason of the accession of the Republic of Croatia (OJ 2013, L 158, p. 193).

such as to affect the physical reality of the sites concerned. Furthermore, while it is true that those works were not referred to in the Law of 28 June 2015 but in an agreement of 30 November 2015 concluded between the Belgian State and the company Electrobél, which is the owner and operator of the nuclear power stations, they were nevertheless closely connected with the measures adopted by the Belgian legislature. The Court considers in particular that the Belgian legislature necessarily knew of the nature and the technical and financial feasibility of the works and investments required by the extension to the duration of the industrial production of electricity. According to the Court, those measures and the modernisation works which are intrinsically linked with them are therefore, taken together, subject to the findings of fact by the Cour Constitutionnelle (Constitutional Court, Belgium), part of the same 'project' within the meaning of the EIA Directive.

As regards, next, the likelihood of significant effects on the environment, **the Court considers that the project must be regarded as being of a comparable scale, in terms of risks of environmental impact, to the initial commissioning of those power stations.** Consequently, **it is mandatory for such a project to be the subject of an environmental impact assessment provided for by the EIA directive.** Moreover, since the Doel 1 and Doel 2 stations are situated near the Belgian-Netherlands border, such a project must also be subject to the transboundary assessment procedure laid down by that directive. That assessment must take place before the adoption of the law extending the operating life of the power stations at issue, irrespective of the fact that, for one of them, the issuing of an administrative authorisation is necessary for it to be put into operation again.

Furthermore, the EIA directive permits such a project to be exempted from an environmental impact assessment only if the Member State establishes that the risk to the security of electricity supply is reasonably likely, and that the project is so urgent in nature as to justify the lack of such an assessment, and provided that the obligations laid down by that directive⁶ are complied with, which does not appear to be so in the present case.

The Habitats Directive must also be interpreted as meaning that measures such as those at issue, together with the works to modernise and bring into compliance with up-to-date safety standards, are a project that must be subject to an appropriate assessment of its impact on the protected sites concerned. If that assessment is negative, and there are no alternative solutions, that directive only allows the project to be executed if it is justified by the need to ensure, at all times, the security of supply of electricity in that Member State. If the project is likely to affect a site hosting a priority natural habitat type or a priority species, only the need to prevent a genuine and serious threat of interruption to the supply of electricity in the Member State concerned may constitute a public safety reason capable of justifying its execution, which it is for the Cour Constitutionnelle (Constitutional Court, Belgium) to verify.

As regards the possibility for the Cour Constitutionnelle (Constitutional Court, Belgium) to decide to maintain the effects of the law adopted in breach of the assessment obligations laid down in the EIA and Habitats directives, the Court points out, first of all, that EU law does not preclude those assessments being carried out for the purpose of regularisation whilst the project is being executed or even after it has been completed, on the two-fold condition that, first, the national rules permitting that regularisation do not provide the beneficiary the opportunity of circumventing EU law rules or of dispensing with applying them and, second, that the assessments thus carried out cover not only the future impact of that project on the environment but also take into account all the environmental impacts arising since the execution of the project.

The Court holds, next, that a national court may – if the national law so permits – exceptionally maintain the effects of such measures, if that maintenance is justified by overriding considerations relating to the need to exclude a genuine and serious threat of interruption to the electricity supply in the Member State concerned, which cannot be addressed by other means or alternatives, inter alia in the context of the internal market. That maintenance may only last for the amount of time strictly necessary in order to remedy that illegality.

⁶ Article 2(4), second subparagraph, points a) to (c), and Article 7 of the EIA Directive.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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