	Position du service juridique :							SJ -> DG
	Prop. décision de la Commission :							DG -> SJ
	Prop. des chefs de cabinet :	MDC260(ex228)	MD260(ex228)	AMC258(ex226)	AM258(ex226)	MDC258(ex226)	MD258(ex226)	
24/08/2016:Classement:	Prop. du service responsable :						Etat des consultations :	Etat des co
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						nières décisions) :	Historique des décisions (6 demières décisions) :	Historique
					3/D/002	AP(2014)03893/D/003 ption:CHAP(2014)0389	13/02/2015:Plainte - Envoi lettre:CHAP(2014)03893/D/003 10/12/2014:Plainte - Accusé de réception:CHAP(2014)03893/D/002	13/02/2015:
		évén.):	at membre (2 dem.	Correspondance avec l'état membre (2 dem. évén.):			Origine plainte (2 dem.):	Origine pla
the other parts of the project. Under these conditions, the Commission services do not consider opportune to pursue the infringement and propose closure of the case. A pre-closure letter has been sent on 8/8/2016 to the complainant; the associated services and the LS have been consulted by on 24/8/2016 (ARES (2016)5255856) and have given their approval on XXX.	the other parts of the project. Under the infringement and propose closure of the services and the LS have been consulted.	ΤN					sion :	Décision : Dépot décision : Réf.Aff. D.Arrêt
ently and respecting the basic principles of equal treatment and non-discrimination most	committed in writing to tender transpare						(ex226):	Saisine 258 (ex226):
directly awarding the implementation of the Paks II NPP to a Russian entity. A letter of formal notice has been sent on 20/11/20/ The associated services had been consulted on 9/11/20/15 by Ares(20/15)4966089 and had agreed. Following the answer of the +U authorities of 21/01/20/16 several technical meetings have been held and documentation provided. After assessment, the Commission services consider the claim that the contract could be awarded directly to the contractor for technical reasons (at.	tirectly awarding the implementation of the associated services had been consequently authorities of 21/01/2016 several technomission services consider the claim or the charactery and the charactery are charactery and the			Décision : Dépot décision : Réf.Aff : D.Arrêt :	Décision Dépot dé Réf. Aff. : D.Arrêt :			Décision : Envoi : Réponse :
at HU had not respected its obligations under Directive 2004/17/EC and the TFEU by	The Commission services concluded the			Saisine 260 (ex228):	Saisi	8 (ex226):	Avis motivé complémentaire 258 (ex226) :	Avis motivo
The direct award can also not be justified through a reference to the Euratom Treaty. The compliance of the project with Art. 103 and 41 of the Euratom Treaty does not include a compliance with public procurement rules under the TFEU.	The direct award can also not be justifie and 41 of the Euratom Treaty does not be and the Euratom Treaty does not be concerned.			Décision : Envoi : Réponse :	Décisi Envoi Répor			Décision : Envoi : Réponse :
exclusive competence of the EU under Art. 207 TFEU.	addition, the conclusion of an IGA open other economic operator falls within the			Avis motivé ex228 :	Avis		Avis motivé 258 (ex226) :	Avis motive
procurement procedure does not fulfil this requirement. b) the IGA is also not concluded in conformity with the Treaty for the following reasons: Any public procurement has to respect the basic principles of transparency, equal treatment and non-discrimination. A direct award does not respect these principles. In	procurement procedure does not fulfil the b) the IGA is also not concluded in confibasic principles of transparency, equal to			Décision : Envoi : Réponse :	Décisic Envoi Répon			Décision : Envoi : Réponse :
ferent procedural rules. The exemption presupposes that some procedural rules have be of award through a dedicated agreement without having followed any kind of specific	 a) a direct award does not constitute dif applied by the contracting entity. A direct 		mentaire 260 (ex22	Mise en demeure complémentaire 260 (ex228) :	Mise	ire 258 (ex226):	Mise en demeure complémentaire 258 (ex226) :	Mise en de
project is not excertible that Directive 2004/17/EC applies. The project to a Russian entity HU has not applied the provisions of the directive. The project is not exempted according to Art. 22 point a) Directive 2004/17/EC.	under both PP directives has in the mes By directly awarding the implementation Commission services consider that the			sion:	Décision : Envoi : Réponse :			Décision : Envoi : Réponse :
The award of contracts for the refurbishment and construction of the Paks NPP is subject to the rules of the Public Procurement	The award of contracts for the refurbish		228) :	Mise en demeure 260 (ex228):	Mise		neure 258 (ex226):	Mise en demeure
III. CONTACTS/CORRESPONDENCE WITH THE MEMBER STATE On 13/2/2014, HU notified the IGA to the COM under Art. 22 point a) of Directive 2004/17/EC and Art. 15 point a) of Directive 2014/18/EC. Those articles provide that the Directives shall not apply to the award of contracts governed by different procedural rules and awarded pursuant to an international agreement concluded in conformity with the Treaty for the joint implementation of exploitation of a project. HU maintains that the IGA is excluded from the public procurement directives and a direct award as oreseen in the IGA is compatible with EU law. On the Public Procurement aspects of the case, the COM services met the HU authorities twice in 2014. On 25/6/2015 a series questions were addressed to HU via 'EU Pilot' (7718/15/GROW). Additional meetings were held and HU replied officially on 29/9/2015.	III. CONTACTS/CORRESPONDENCE V On 13/2/2014, HU notified the IGA to the 2004/18/EC. Those articles provide that rules and awarded pursuant to an intermediation of a project. HU maintains the oreseen in the IGA is compatible with E On the Public Procurement aspects of the questions were addressed to HU via 'EL 2/9/2015. III I FGAL ASSESSMENT		e existing reactors of to apply correctly.	ty Hungary has faile	ext to build new reacent to a Russian enti	entation of the proje vernmental Agreems ules.	By directly awarding the implementation of the project to build new reactors and refurbish the existing reactors of the Paks Nucleal Power Plant through an Intergovernmental Agreement to a Russian entity Hungary has failed to apply correctly the applicable European Public Procurement rules.	By directly Power Plar European I
Contract); (2) support for the operation and maintenance of the Paks II nuclear power plant (O&M Support Contract); (3) nuclear fuel supply (NFSC Contract). The implementation of the project has not started yet. Preparatory works will start in 2017. The project is supposed to be completed by 2026.	Contractl); (2) support for the operation and multiple supply (NFSC Contract). The implemental project is supposed to be completed by 2026.	N					ь.	Fait Incriminé :
ation, Kosatom is appointed to ensure the implementation of the agreement. Art. 5 of the gitte works, supply and services to be provided. Soon strend in December 2014 or (1) posingering programment and construction (EDC)	of the IGA, State Atomic Energy Corpor IGA lists the related obligations, outlining		aire : N	Financement communautaire :	۷	père -> ; dossiers fi	Stade : Mauvaise application - Directives Procedures en relation : dossier père -> ; dossiers fils	Stade : Ma Procédures
Paks nuclear power plant (Paks NPP), including the design and construction of two new power units. The Parties also cooperate supporting modernization, reconstruction and decommissioning of the operating power units in several spheres. According to Ar	Paks nuclear power plant (Paks NPP), i supporting modernization, reconstruction					04L0017; Directive:3	Bases juridiques : Directive:32004L0017; Directive:32004L0018	Bases jurid
On 14/1/2014, the Government of Hungary (HU) signed an Intergovernmental Agreement (IGA) with the Government of the Russian Federation on cooperation in peaceful use of nuclear energy. Russian Federation on cooperation in peaceful use of nuclear energy. On 28/3/2014, HU and Russia signed an IGA on the extension of a state credit to Hungary for financing the construction of the nuclear power plant Paks II. The value of the project related to the designing, construction, commissioning of two new power units 12.5 billion EUR. According to Article 1 of the IGA, the Parties shall cooperate in maintaining and developing the capacity of the state of the IGA.	On 14/1/2014, the Government of Hung Russian Federation on cooperation in per On 28/3/2014, HU and Russia signed an ruclear power plant Paks II. The value or is 12.5 billion EUR. According to Article		ar Power Plant and	nt of the Paks Nucle	e - The refurbishme	s új reaktorok építés	A Paksi Atomerőmű felújítása és új reaktorok építése - The refurbishment of the Paks Nuclear Power Plant and construction of new reactors	A Paksi Atoreactors
Jr.Rs.: Eq./r. Resp. Int: VRL Resp. Ext. Resp. Ex	Etat du dossier au 24/08/2016 L FACTS		OW/G/02	Service responsable : GROW/G/02 X/00	7X/00; SJUR/X/00	HONGRIE SGENIX/00: COMP	2015/4232 Plainte HONGRIE Sen Services associés : ENER/X/00: SGEN/X/00: COMP/X/00: SJUR/X/00	2015/4232 Services as

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	b	96):	19/11/2015:E/2015/8129 ;C(2015)8164:Mise en demeure 258(ex226):	:E/2015/8129 ;C(2015)8164	19/11/2019
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Tana dia to hake aban dahadika by di tenditore (kinto leo refetebado / ana hare gran sion approve arrene.	Ser Frederick				Ret.Aff.: D.Arrêt:
Infingement and propose closure of the case. A pre-closure letter has been sent on 8/8/2016 to the complainant, the associated services and the I S have been consulted by an 2/8/2016 (ARES (2)118)525-856) and have given their approval on XXX	infringer			sion :	Dépot décision :
ed in writing to tender transparently and respecting the basic principles of equal treatment and non-discrimination most of the project. Indee those conditions the Commission services do not consider conocting to pursue the	committ			(ex226):	Saisine 258
sion services consider the claim that the contract could be awarded directly to the contractor for technical reasons (art. of Directive 200/117/EC) instituted for the core parts of the project. To reach a satisfactory debat solution. Humany has	Commis	D.Arrêt:			Nepoliae .
The associated services had been consulted on 9/11/2015 by Ares(2015)4966089 and had agreed. Following the answer of the HU authorities of 21/01/2016 several technical meetings have been held and documentation provided. After assessment, the	The ass	Dépot décision :			Envoi :
mmission services concluded that HU had not respected its obligations under Directive 2004/17/EC and the TFEU by warding the implementation of the Paks II NPP to a Russian entity. A letter of formal notice has been sent on 20/11/201	The Cor	Décision		Avis motive complementaire 258 (ex226):	Pácision :
N. CONCLUSION/PROPOSAL	IV. CON	Spining 260 (av228)		namelia name name	Aui main
of the Euratom Treaty does not include a compliance with public procurement rules under the TFEU.	and 41 o	Envoi Rénonse	Z m c		Envoi :
onomic operator rais winin the excusive competence or the Euratom Treaty. The compliance of the project with Art. 103 ≘1 award can also not be justified through a reference to the Euratom Treaty. The compliance of the project with Art. 103	he dire	Décision			Dácision :
the conclusion of an IGA opening the market to a specific economic operator from a third country, while closing it to an	addition	Avis motivé ex228 :	>	Avis motivé 258 (ex226) :	Avis motive
nciples of transparency, equal treatment and non-discrimination. A direct award does not respect these principles. In	basic pri	Réponse :	70 17		Réponse :
procurement procedure does not fulfil this requirement.	procurer	Décision :			Décision :
ct award does not constitute different procedural rules. The exemption presupposes that some procedural rules have be any the contracting entity. A direct award through a dedicated agreement without having followed any kind of specific	a) a dire	Mise en demeure complémentaire 260 (ex228):		Mise en demeure complémentaire 258 (ex226) :	Mise en de
By directly awarding the implementation of the project to a Russian entity HU has not applied the provisions of the directive. The Commission services consider that the project is not exempted according to Art. 22 point a) Directive 2004/17/EC.	By direc Commis	Envoi : Réponse :		Envoi : 20/11/2015:SG(2015)D/13441;C(2015)8164 Réponse : 26/01/2016:Ares(2016)420832	Envoi : 20/ Réponse :
s 2004/17/EC. It falls within its material scope and exceeds the threshold for itsapplication. HU having notified the proje th PP directives has in the meantime specified that Directive 2004/17/EC applies.	Directive under bo	Décision :		9/11/2015:E/2015/8129 ;C(Décision :
rd of contracts for the refurbishment and construction of the Paks NPP is subject to the rules of the Public Procurement	The awa	Mise en demeure 260 (ex228):	~	Mise en demeure 258 (ex226):	Mise en de
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on of a project. HU maintains that the IGA is excluded from the public procurement directives and a direct award as	1				
On 13/2/2014, HU notified the IGA to the COM under Art. 22 point a) of Directive 2004/17/EC and Art. 15 point a) of Directive 2004/18/EC. Those articles provide that the Directives shall not apply to the award of contracts governed by different procedural rules and awarded pursuant to an international agreement concluded in conformity with the Treaty for the joint implementation o		By directly awarding the implementation of the project to build new reactors and refurbish the existing reactors of the Paks Nuclear Power Plant through an Intergovernmental Agreement to a Russian entity Hungary has failed to apply correctly the applicable European Public Procurement rules.	n of the project to build new n ntal Agreement to a Russian	awarding the implementation t through an Intergovernment bublic Procurement rules.	By directly Power Plar European I
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Contract); (2) support for the operation and maintenance of the Paks II nuclear power plain (O&M Support Contract); (3) nuclear fuel supply (NFSC Contract). The implementation of the project has not started yet. Preparatory works will start in 2017. The project is supposed to be completed by 2026.	Contract fuel supproject is				
the related obligations, outlining the works, supply and services to be provided. slementing Agreements have been signed in December 2014 on (1) engineering, procurement and construction (EPC).	Three In		>; dossiers fils ->	Procédures en relation : dossier père -> ; dossiers fils ->	Procédures
A, State Atomic Energy Corporation, Rosatom is appointed to ensure the implementation of the agreement. Art. 5 of the		Financement communautaire : N		Stade: Mauvaise application - Directives	Stade : Ma
tear power plant (Paks NPP), including the design and construction of two new power units. The Parties also cooperate or modernization, for one plant (Paks NPP), including the design and construction of the operation for the power units in several subjects. According to Art	Paks nu		7; Directive:32004L0018	Bases juridiques : Directive:32004L0017; Directive:32004L0018	Bases jurid
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