

Legislation on the Financing of Decommissioning

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Introduction

- ▶ EU Members States with old Nuclear face a tsunami of financial risks to standby their ailing nuclear companies and to ensure safe decommissioning and final storage
- ▶ Any system change towards sustainable energy requests
 - Clear legal and economic rules on financial risks and responsibilities before co-sharing of responsibilities with the companies
 - Open information policies with full involvement of national and EU parliament and stakeholders (German KFK Commission model could be of help)
 - Open access to the full subsidy schemes involved including pairing with other aid scrutiny for the companies involved
 - Clear priority access and dispatch for and progressive national RES targets and policies (Renewables come first approach)
 - Constitutional convention process to start on phasing out of Nuclear
 - In parallel to BREXIT pathway

A small bouquet to Jo: 1991 – EP conference on EURATOM



Jo Leinen, Minister of Environment in the Saarland, explained on the basis of a practical example, the Cattenom case, why he is in favour of Treaty revision, and in which direction the revision advocated by the Bundesrat should go.

Both the Government of Luxembourg and that of the Saarland have been intervening for 15 years against the planning of the Cattenom nuclear plant with the sole result that in the near future Block 4 (the last one) will be connected to the grid. This shows clearly that the right of neighbours to oppose such projects is very weakly developed.

Quote from: Report to the STOA Panel by Susanne Oberhauser, March 1991)

The success of the Saarland and Luxembourg in 1988

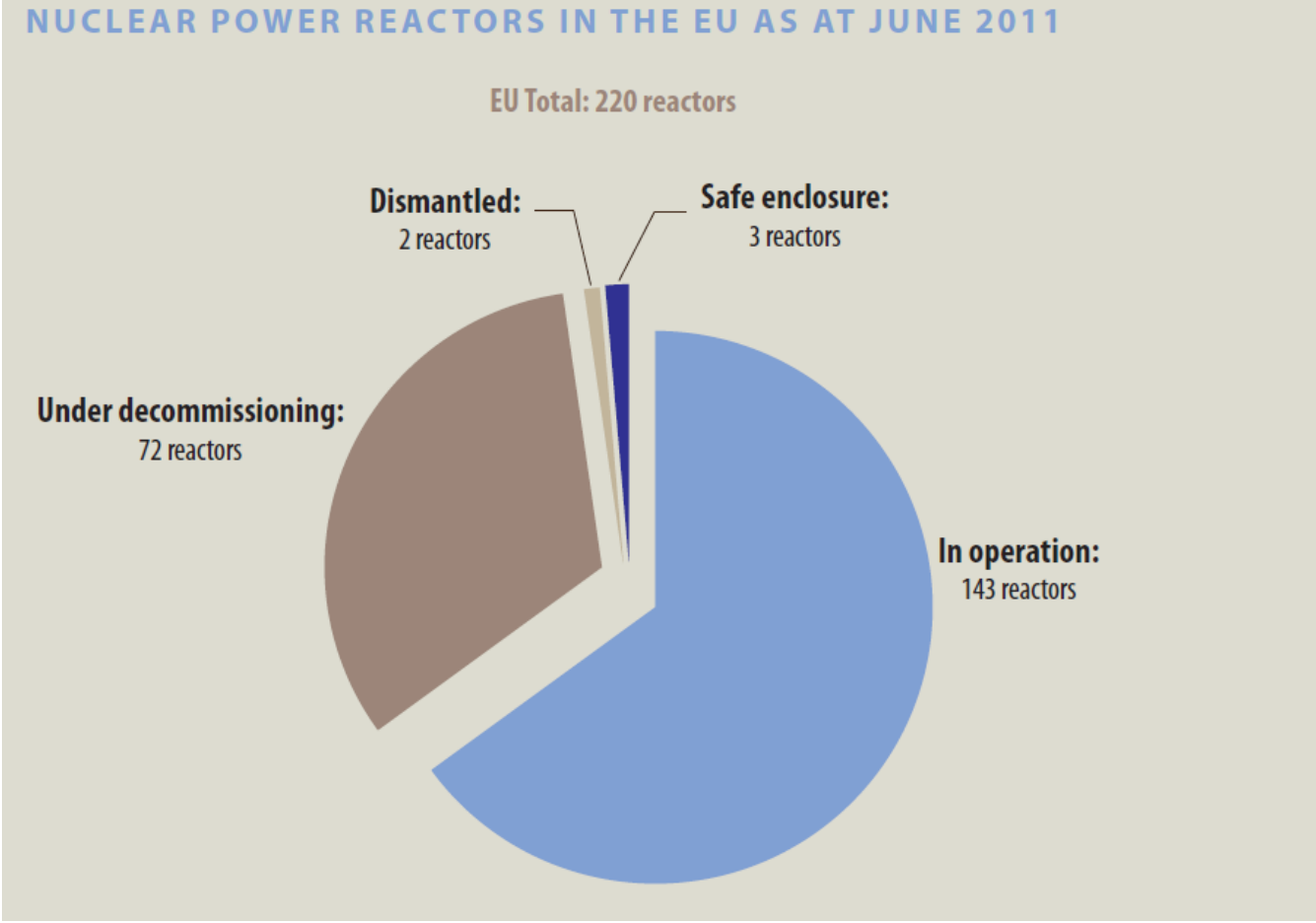
- ▶ ECJ Case 187/87: The Court of Justice for the very first time issued a EURATOM judgment based on (former) Art.150 stated that the consultation procedure with neighbours under Art. 37 EURATOM had not been respected.
- ▶ Preliminary questions submitted by Administrative Court, Strasbourg,
- ▶ Art. 37,38 EURATOM: Obligation of MS to inform Commission if any plan under EURATOM is liable to result in radioactive contamination of water, soil or air in another MS

Just a reminder

- ▶ The 'polluter pays principle' -the 1992 United Nations Conference on Environment and Development, which established that: 'National Authorities should endeavor to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment'.
- ▶ This principle is part of the EU legal framework (see Article 191(2) of the Treaty on the Functioning of the European Union).

A graph on the dismantling task (Source EU Court of Auditors, IAEA) - roughly 200 reactors ahead?

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EU Commission estimate towards 2025

- ▶ Approx. 50 reactors in EU to shut down by 2025
- ▶ Council, Commission and EP: “Separated management of decommissioning funds is essential to secure both the availability of funds to pay for decommissioning and radioactive waste management and in order to prevent market distortion!

EURATOM

- ▶ Keeps silent on construction and on decommissioning of Nuclear power Plants and thus financing for decommissioning
- ▶ Various council regulations on decommissioning do exist, but are partly based on the specific “catch basin” Article for events, where no necessary legal power has been provided for by EURATOM:
 - Art. 203 EURATOM: “If action by the Community should prove necessary to attain one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, take the appropriate „

A European Decommissioning Blueprint? Central Europe



Nuclear power plant	Reactor unit (and type)	Start of commercial operation	Theoretical closure date (as per design)	Actual closure date (in line with agreement)	End of decommissioning (current forecast)
Kozloduy (Bulgaria)	Unit 1 (VVER 440 / 230)	1974	2004	2002	2035
	Unit 2 (VVER 440 / 230)	1975	2005	2002	2035
	Unit 3 (VVER 440 / 230)	1981	2011	2006	2035
	Unit 4 (VVER 440 / 230)	1982	2011	2006	2035
Ignalina (Lithuania)	Unit 1 (RBMK 1500)	1984	2013	2004	2029
	Unit 2 (RBMK 1500)	1987	2017	2009	2029
Bohunice V1 (Slovakia)	Unit 1 (VVER 440 / 230)	1980	2008	2006	2025
	Unit 2 (VVER 440 / 230)	1981	2010	2008	2025

Decommissioning of NPP in Central and Eastern Europe



- ▶ Apparently in order to increase nuclear safety, Bulgaria, Lithuania and Slovakia committed under EU accession negotiations to the early closure and subsequent decommissioning of eight non-upgradeable nuclear reactors.
- ▶ EU provided financial assistance to the three country-programmes (already 2 850 million euro overall for the 1999-2013 period)
- ▶ 2012 the EU Court of Auditors: Bulgaria, Lithuania and Slovakia have closed the reactors in line with their commitment, and important milestones have been achieved in decommissioning, the main process is still ahead and its finalisation faces a significant funding shortfall(around 2,5 billion euro)

Art. 203 EURATOM as breeding ground for a EU wide decommissioning financing regulation?

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- ▶ 203 EURATOM used in way of Council Regulation for the securing of financing of decommissioning of Central and Eastern European Nuclear Power plants which had already been destined for closure during the accession period of the –former- candidate countries.
- ▶ Legal foundation of these Council regulations questionable in view of the scope of EURATOM. Article 203: bases for legislative action when “necessary to attain one of the objectives of the Community and this Treaty” . NO EURATOM objective on dismantling or decommissioning , no objective of the treaty neither of the EURATOM Community.
 - Q. Can one interpret “Community” with the “European Union”? No, since different legislative procedure foreseen in the Eu treaties .

Council (EURATOM) Regulations for decommissioning - examples

- ▶ COUNCIL REGULATION (EURATOM) No 1368/2013 of 13 December 2013 on Union support for the nuclear decommissioning assistance programmes in Bulgaria and Slovakia, and repealing Regulations (Euratom) No 549/2007 and (Euratom) No 647/2010
 - Legal bases: Art 203 Euratom

- ▶ COUNCIL REGULATION (EURATOM) No 1369/2013 of 13 December 2013 on Union support for the nuclear decommissioning assistance programme in Lithuania, and repealing Regulation (EC) No 1990/2006
 - Legal bases: 2003 Act of Accession, and in particular Article 56 thereof and Protocol No 4 thereto

Interesting lessons from Protocol No 4 on Ignalina

- ▶ 8. Public aid from national, Community and international sources:
 - ▶ for the environmental upgrading in line with the acquis and modernisation measures of the Lithuanian Thermal Power Plant in Elektrenai as the key replacement for the production capacity of the two Ignalina Nuclear Power Plant reactors; and for the decommissioning of the Ignalina Nuclear Power Plant shall be compatible with the internal market as defined in the EC Treaty.
- ▶ 9. Public aid from national, Community and international sources in support of Lithuania's efforts to address the consequences of the closure and of the decommissioning of the Ignalina Nuclear Power Plant may, on a case by case basis, be considered to be compatible – under the EC Treaty – with the internal market, in particular public aid provided for enhancing the security of energy supply.

The legal dilemma no clarity and no rule in any decommissioning regulations and decisions so far

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- ▶ The Council regulation on Ingnalina is based on accession treaty and not on Art. 203 EURATOM
- ▶ But why not e.g . for Slovakia in view of PROTOCOL No 9 ON UNIT 1 AND UNIT 2 OF THE BOHUNICE V1 NUCLEAR POWER PLANT IN SLOVAKIA ?
- ▶ And why is it an EURATOM Council Regulation in any case when the money could rather and properly come from the EU general multiannual budget and not from EURATOM budget?

Dilemma

- ▶ EURATOM does not provide any direct legal bases for legislative action for financing of decommissioning.
- ▶ Established rule of general interpretation render it impossible to extend the EURATOM competencies beyond the limit given by its founders
- ▶ No way to interpret a new competence into EURATOM
- ▶ All recommendation on the structure and availability of decommissioning funds must be based on the EU treaties

A EU pathway for all dismantling and decommissioning in the EU or a strict national approach?

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- ▶ The EURATOM treaty does not give clear ground for action nor financing of a specific EU wide decommissioning programme
- ▶ But the EU treaties would open the way for such a programme
- ▶ As much as EURATOM does not constitute a Common European Interest apart from the strict objectives under EURATOM there maybe within the Union and its treaty a progressive pathway forward to establish a specific decommissioning and finance programme on EU level for all Member States' tasks to dismantle old nuclear power stations.
- ▶ The principle should remain that a MS who decide to go nuclear in the past should firstly be called in for organising and financing the dismantling pathway

Current legal basis for environmental policies

- ▶ Article 3(3) TEU defines the objectives of the EU:
- ▶ The Union shall work for sustainable development of Europe based on balanced economic growth and price stability (...) and a high level of protection and improvement of the quality of the environment
- ▶ Art. 191 TFEU : defines objectives and principles of EU environmental policy + Art.194 for EU energy policy)
- ▶ Transboundary effects in third countries: international treaties/agreements

The EU Commission is acknowledging missing money



- ▶ Study under way:
- ▶ NUCLEAR DECOMMISSIONING ASSISTANCE PROGRAMME – ASSESSMENT OF THE ROBUSTNESS OF THE FINANCING PLANTS CONSIDERING THE ECONOMIC-FINANCIAL-BUDGETARY SITUATION IN EACH CONCERNED MEMBER STATE AND OF THE RELEVANCE AND FEASIBILITY OF THE DETAILED DECOMMISSIONING PLANS

The patchwork of Decommissioning in the EU- Germany



- ▶ Germany acknowledged in a societal and open approach serious shortcomings in “Rückstellungspraxis” of the Nuclear Power companies who are responsible under the German nuclear law to dismantle, decommission and to transfer in long-term storage and to provide financing for this.
 - The nuclear power plants in Germany are to be decommissioned by the end of 2022 and dismantled
- ▶ According to the Atomic Energy Act, the operators of nuclear power plants must bear all the costs of dismantling the nuclear power plants and disposing of radioactive waste.
 - The relevant energy utilities are required by law to form reserves to enable them to cope with the high costs involved. On 31 December 2014, the energy utilities had built up reserves of approx. €38.3bn.

Germany and Decommissioning

- ▶ 2014/2015 The Federal Government intensive talks with hard pressed energy utilities about the reserves. In preparation for these talks, the Federal Government commissioned “a comprehensive [study into the legal aspects \(only in German\)](#).”
- ▶ 2015, “Act on Continued Liability for Nuclear Decommissioning and Disposal Costs”.
- ▶ “Commission for the review of the financing of the nuclear phase out” (Kommission zur Überprüfung der Finanzierung des Kernenergieausstiegs (KFK)).

Germany after the KfK- Commission

- ▶ German government decided on to take off nuclear power plant operators responsibility for storing radioactive waste, and give it into the hands of the state-for generations to come.
 - Germany's four nuclear power station operators – RWE, E.ON, EnBW and Vattenfall – will have to pay a basic amount of a total of 17.4 billion euros into a state-administered fund to finance interim and final storage of nuclear waste, according to the draft legislation.
 - They will also pay an additional “risk surcharge” of 35.5 percent – or 6.2 billion euros – to cover the eventuality that costs could exceed current projections, and that the return on capital in the fund could be lower than expected.
- ▶ Draft law „Errichtung eines Fonds zur Finanzierung der kerntechnischen Entsorgung (Entsorgungsfondsgesetz – EntsorgFondsG)“

The wide gap or the missing money- France

- ▶ EDF: « La mission formule une troisième alerte, qui concerne la faisabilité financière du démantèlement : le coût du démantèlement risque d'être supérieur aux prévisions.
- ▶ Les exploitants européens provisionnent généralement entre 900 millions et 1,3 milliard d'euros par réacteur à démanteler quand EDF ne provisionne que 350 millions environ par tranche.
- ▶du fait d'un coût qui pourrait être supérieur aux prévisions, les sommes déjà provisionnées et celles qui devront l'être seraient insuffisantes pour couvrir tous les frais induits par les opérations de démantèlement. »
- ▶ Source: Assemblée Nationale Rapport d'information par la mission relative à la faisabilité technique et financière du démantèlement des installations nucléaires de base, 2017

The principle and the understatement- France

- ▶ France: EDF is legally responsible to have an estimate for the global costs of dismantling operation and needs to reserve funds, estimated by EDF
- ▶ « L'estimation des provisions nécessaires et la composition des actifs dédiés constituent dès lors un point très sensible dans la faisabilité du démantèlement. »
- ▶ « Mais la méthode d'estimation du coût par EDF, qui ne prend pas en compte les spécificités de chaque réacteur, pourrait conduire à une appréciation incorrecte de la facture réelle du démantèlement. »
- ▶ Assemblée Nationale, 2017

Fessenheim – the devil may care or “die Rechnung bitte” ?

- ▶ January 2017: France foresees a mechanism of compensation for Fessenheim in case of premature shut down – calculated to be paid until 2041.
- ▶ « Mécanisme d’indemnisation du groupe d’électricité et de ses partenaires allemands et suisses pour l’arrêt de la centrale du Haut-Rhin.
- ▶ L’indemnisation sera constituée d’une part fixe de 490 millions d’euros versés d’ici à 2021 (coûts de reconversion du personnel, démantèlement...) et d’une part variable pour compenser d’éventuels manques à gagner jusqu’en 2041. » (Le monde)
- ▶ EU Commission started pre-investigation into notification of state aid.

The rescue aid issues – who does the link?



- ▶ In April 2016 Paris notified the EU Commission of AREVA restructuring plan to save the national champion
- ▶ Decision in January 2017: "The European Commission has concluded that French plans to grant a capital injection of 4.5 billion euros (\$4.75 billion) to Areva are in line with EU state aid rules,"
 - The Commission added that other regulatory decisions were still needed, including a greenlight by the EU on the buyout of Areva's reactor business by EDF, the French state-owned electricity supplier.
- ▶ A chain of mismanagement and investments (TVO, Canadian uranium.....)

Learning from the Convention process

in 2003?

- ▶ "We wish to make the following recommendations to the Convention in relation to the Euratom Treaty:
- ▶ The Convention has already achieved consensus on the following points:
- ▶ There should be a single constitution treaty. The Union should have a single legal personality and a single institutional structure.
- ▶ Therefore it is necessary to repeal the Euratom Treaty.
- ▶ We argue here that it is now appropriate -to abolish the 'special economic zone' that the Euratom created, and to respect the principles of fair competition and the creation of a level playing field for different energy sources, thereby ceasing to give nuclear energy undue advantages over its rivals.
- ▶ We offer an analysis of the present functions of Euratom and make proposals concerning their transposition into the Part Two of the Constitution (see Praesidium preliminary draft Constitutional Treaty (CONV 369/02)), while proposing that others be simply repealed."
- ▶ • Convention Members: Marie Nagy, Renee Wagner, Neil MacCormick **Contribution to the Convention; THE EUROPEAN CONVENTION -THE SECRETARIAT -Brussels, 18 February 2003-, CONV 563/03 - Contribution 250**

Thank you very much
for your attention.

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