

Pathway towards a Reform EURATOM

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BBH law firm

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- ▶ 1991 Liaison office of Hamburg and Schleswig-Holstein to the European Commission in Brussels
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1. Introduction
2. EURATOM at a glance
3. Reform attempts in 2002/2004
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5. The formal reform process – Overview
6. The structure of the preparatory reform work - Overview



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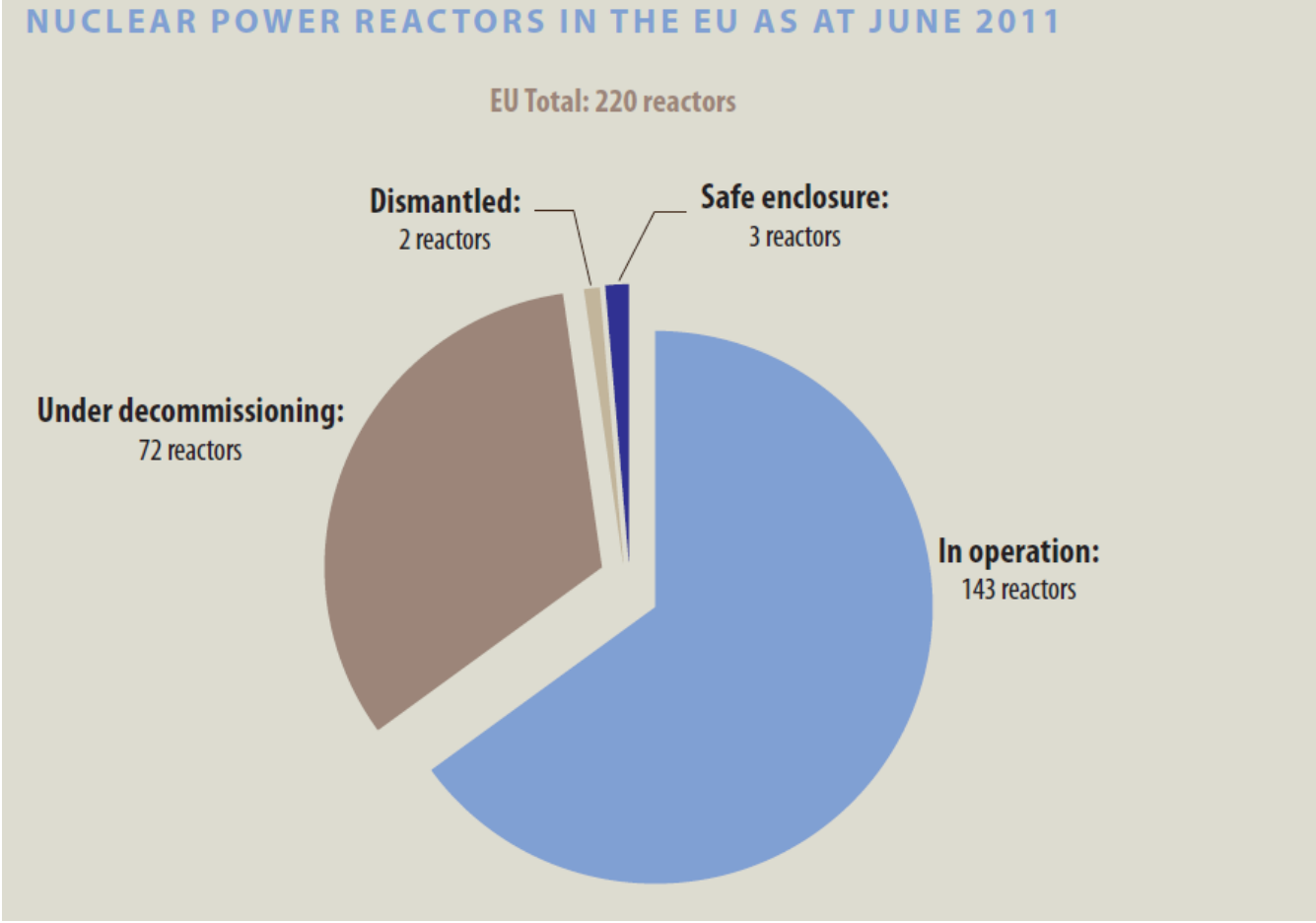


Introduction

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

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EURATOM overview

- ▶ Founded by the Treaties of Rome of 1957 --creating a European market for nuclear power.
- ▶ Euratom is legally independent from the EU, shares the same EU institutions.
- ▶ Its membership :all EU Member States plus Switzerland (Associated State since 2014).
- ▶ Euratom -cooperation agreements with eight other countries: US, Japan, Canada, Australia, Kazakhstan, Ukraine, Uzbekistan and South Africa.

The EURATOM tasks and objectives

- ▶ Promote research on nuclear energy (Art. 2 (a)) and “...creating the conditions necessary for the speedy establishment and growth of nuclear industries”(Art. 1 Para 2).
- ▶ Establish uniform safety standards and ensure that they are applied.
- ▶ Ensure the regular supply of ores and nuclear fuels.
 - BUT: European Supply Agency never played an important role.
- ▶ Ensure that nuclear materials are not diverted to purposes other than those for which they are intended.
- ▶ Ensure free movement of capital for investment in nuclear energy and free movement of employment for specialists in the sector. Establish joint undertakings

The promotion trap

- ▶ The EURATOM Treaty, with its requirement for the Community to create the '*conditions necessary for the speedy establishment and growth of nuclear industries*' contradicts the requirement for equal treatment of electricity generators.
 - Furthermore, it creates advantages for the nuclear industry such as EURATOM Loans and a specific nuclear R&D program and has been used by the European Commission to justify their lack of action to tackle the questions of market distortion created by state aids to the nuclear industry.
 - Since the liberalisation of the energy markets, there must be no more special provisions concerning nuclear reactors as an energy source, outside the Competition framework of the EC Treaty.

Non Proliferation

- ▶ It is one of the objectives of EURATOM but EURATOM played a very limited role e.g. in the Non Proliferation Treaty setting.
 - EURATOM/ the EU is not signatory member, rather coordinates effort for its members in this field. Its member countries was highly engaged in discussion in the early goes to ensure indefinite extension the NPA in its Review Conference in April-May 1995
 - After 2000, EURATOM and the EU “suddenly ‘gone into neutral’”. Paradoxically, the Union seems to have gone back to an earlier stage that was dominated by specific joint declarations based on the lowest common denominator. The lack of any search for a European policy and a dynamic consensus that produces new initiatives is particularly striking.”
 - (The European Union and the non-proliferation of nuclear weapons, Camille Grand,2000)

The Stigma

- ▶ Euratom Treaty is carrying the stigma of an undemocratic, outdated alien in the world of the liberalized energy market, hindering the development of an open sustainable energy market in Europe.
- ▶ The organisation of nuclear power on the basis of the Euratom Treaty and the Member States' own national legislation leads to the behaviour of a closed shop policy and mentality- with disturbing consequences for a democratic society in Europe.
- ▶ Fouquet D (2005) *"The Legal Perspective: the EURATOM Treaty and the new Constitution"* presentation to Energy Intelligence for Europe conference, 23 September, Copenhagen 2003, <http://www.energyintelligenceforEurope.dk>

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Reform attempts in 2002/2003

- ▶ Initiatives for a complete overhaul of the Euratom Treaty in the beginning, but from the majority of interest it was used to revitalize the nuclear interest in Europe.
 - Neither the Presidium of the Convention to the Treaty, nor the Secretariat, nor the majority of the European Commission were willing or agreed on the necessity to abolish or at least reform the Euratom Treaty.
 - Source: D. Fouquet, in: The Euratom Treaty and Future Energy Options: Conditions for a Level Playing Field in the Energy Sector, CONFERENCE REPORT, September 23rd 2005, at the Danish Parliament Building, Christiansborg.

We missed a chance under the Constitution for Europe - IGC 2002/2003

- ▶ September 2002, the Secretariat of the Convention sent a discussion paper to its Praesidium for information concerning the beginning of the “simplification procedure”. Some Member States did not want to see the occasion used to reopen discussion on matters that were firmly established: EURATOM was in this respect a particularly sensitive point. In March 2003, the Praesidium published a paper ‘Suggested approach for the EURATOM Treaty’. This approach explicitly does not think it “appropriate” to become involved in an operation “to amend the EURATOM Treaty substantially”.
- ▶ The Praesidium favored the amendment of the EURATOM Treaty, allowing it to continue to exist independently.

Who remembers – the sunset clause?

- ▶ In 2000 European Parliament passed a resolution that included a call for the EURATOM Treaty to be abandoned by 2007.
- ▶ If this proposal were adopted it would have enabled the Convention and subsequent IGC to acknowledge that the fundamental reform of EURATOM was necessary, but allow more time for the process of assessing which parts of the Treaty should remain and in what framework.
- ▶ Was not adopted under IGC.

EURATOM Reform declaration

- ▶ "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."
- ▶ *Official statement by 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.*

2004 and the Declaration of 2007

- ▶ Declaration No. 54 annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007; reads as follows (Consolidated Version of the Treaty on the Functioning of the European Union, 26.10.2012 Official Journal of the European Union, C 326/47):
 - “Germany, Ireland, Hungary, Austria and Sweden note that the core provisions of the Treaty establishing the European Atomic Energy Community have not been substantially amended since its entry into force and need to be brought up to date. They therefore support the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible.”
- ▶ Brexit may be the right moment to rekindle this initiative.
- ▶ In 2004, the German government outlined the following:
 - “The purpose of the EURATOM Treaty as adopted against the historical background of the 1950s, namely the promotion of nuclear energy in the European Atomic Energy Community, does not automatically oblige member states to promote the use and development of nuclear energy as a commercial energy source within their territories. It is rather for each member state to decide whether and to what extent it wishes to use nuclear energy, as the technology advances.

http://www.auswaertigesamt.de/EN/Aussenpolitik/GlobaleFragen/Klima/InternationaleOrganisationen_node.html (no longer accessible, last accessed in 2016)

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The new Article 106 a EURATOM – after Lisbon

- ▶ With Article 3 of Protocol Nr. 2 of the Treaty of Lisbon of 13. Dezember 2007 the following Article was added to EURATOM
- ▶ Chapter 1
- ▶ Application of certain provisions of the Treaty on European Union and of the Treaty on the Functioning of the European Union: Article 106a
 - 1. Article 7, Articles 13 to 19, Article 48(2) to (5), and Articles 49 and 50 of the Treaty on European Union, and Article 15, Articles 223 to 236, Articles 237 to 244, Article 245, Articles 246 to 270, Article 272, 273 and 274, Articles 277 to 281, Articles 285 to 304, Articles 310 to 320, Articles 322 to 325 and Articles 336, 342 and 344 of the Treaty on the Functioning of the European Union, and the Protocol on Transitional Provisions, shall apply to this Treaty.
 - 2. Within the framework of this Treaty, the references to the Union, to the 'Treaty on European Union', to the 'Treaty on the Functioning of the European Union' or to the 'Treaties' in the provisions referred to in paragraph 1 and those in the protocols annexed both to those Treaties and to this Treaty shall be taken, respectively, as references to the European Atomic Energy Community and to this Treaty.
 - 3. The provisions of the Treaty on European Union and of the Treaty on the Functioning of the European Union shall not derogate from the provisions of this Treaty.

PM Theresa May an Donald Tusk an President Tusk- 29. 3. 2017

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- ▶ “...Today, therefore, I am writing to give effect to the democratic decision of the people of the United Kingdom. I hereby notify the European Council in accordance with Article 50(2) of the Treaty on European Union of the United Kingdom's intention to withdraw from the European Union. In addition, in accordance with the same Article 50(2) as applied by Article 106a of the Treaty Establishing the European Atomic Energy Community, I hereby notify the European Council of the United Kingdom's intention to withdraw from the European Atomic Energy Community. References in this letter to the European Union should therefore be taken to include a reference to the European Atomic Energy Community...”

The EU Commission and leaving EURATOM –

- ▶ “..According to Article 50 of the Treaty on European Union, any Member State may decide to withdraw from the European Union in accordance with its own constitutional requirements. This Article also applies to the European Atomic Energy Community (Article 106a Euratom Treaty). The EU and EURATOM share the same institutions, the same budget and staff, and are designed to function together with the same number of Member States. Hence, there appears to be no ‘à la carte’ withdrawal only from the Euratom Treaty.....”
 - E-8740/2010 6 December 2010; Answer given by Commissioner Oettinger on behalf of the Commission/ to E-8740/2010, Parliamentary questions 26 October 2010 - Question for written answer to the Commission/Rule 117, Franz Obermayr (NI).

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EURATOM Reform: The formality: Intergovernmental Conference or Ordinary Revision Procedure

- ▶ Conferences of representatives of the governments member states convene to discuss and agree treaty changes. These meetings are also known as 'intergovernmental conferences' (IGCs).
- ▶ Since the Lisbon Treaty in 2009, it is now called the 'ordinary revision procedure' (an also newly introduced simplified revision procedure is not applicable for EURATOM reform process)
 - <http://www.consilium.europa.eu/en/documents-publications/intergovernmental-conferences/>

Ordinary revision procedure /IGC

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- ▶ A Member State, the Commission or **the European Parliament** (the latter also in view of EURATOM – see Art. 106 a EURATOM) can submit a proposal for Treaty change to the Council which, in turn, presents it to the European Council. National parliaments are notified. If financial matters are involved – EIB is integrated as well.
- ▶ If a majority of MS in the European Council are in favour of examining a proposal for treaty change, the president of the European Council convenes a 'convention'. The European Parliament and the Commission are consulted beforehand.
- ▶ Convention: representatives of national parliaments, heads of state or government, MEPs and the European Commission, discusses the draft treaty changes. Its recommendations adopted by consensus, then go to the IGC.
- ▶ The IGC, convened by the President of the European Council, decides treaty changes only unanimously.

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EURATOM and what it not does : e.g. Decommissioning

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- ▶ Keeps quiet on decommissioning of Nuclear power Plants
- ▶ Council regulations on Decommissioning do exist- for Eastern Europe - but are based on the specific bilateral agreement itself or –interestingly and in one case only- on the EURATOM Article for events, no necessary 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 measures

Decommissioning Eastern Europe Regulations- Examples of Difference

- ▶ **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**
 - “THE COUNCIL OF THE EUROPEAN UNION,
 - Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof....”

- ▶ **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**
 - “THE COUNCIL OF THE EUROPEAN UNION,
 - Having regard to the 2003 Act of Accession, and in particular Article 56 thereof and Protocol No 4 thereto,....”

The tasks



- ▶ To sieve through EURATOM !
- ▶ Easy is to decide :
 - That all promotional aspects have to go, complete new preamble with highest emission protection and non – proliferation, strictest supervision and strictest liability as guidance
 - That EURATOM R&D support is to be moved to the general Treaties provisions and to full scrutiny of the European Parliament
 - That full co-decision procedure is established as strict principle with a sunset clause for full review of secondary legislation in order to achieve a greater role of the EP
- ▶ More difficult to decide:
 - How to enlarge competencies /introduce new competences and which ones and how to align current secondary legislation?



The objectives of EURATOM - and what we need especially

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- ▶ Radiation Protection and Non Proliferation Regime enforced
- ▶ Liability Regime towards a full European liability scheme under EURATOM , in view of the new energy market evolved this should attract acceptance
- ▶ Enforced and real European Nuclear Security Inspectorate and Authority -covering the nuclear power plants and concerning temporary as well as final storage under a unified regulatory framework.
 - In this field we need to formulate a good balance of power and cooperation mechanism between European and national nuclear supervision, with a lot of leeway for national regulation but on a very strict level and with Obligation to supervise and control on EU level - in strict transparency

The objectives of EURATOM - and what we need especially (II)

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- ▶ Encouragement and clear rules for a joined, obligatory supervision of Nuclear power plants within a certain radius to neighbouring country/countries
- ▶ Strict alliance of EURATOM with ESPOO and Aarhus rules
- ▶ Strict rules on fullest Life cycle responsibility of owners or former owners of NPP- Polluter pays Principle established



Step by Step – a strong preparation for the EURATOM IGC

- ▶ EP needs to provide overview, to review piece for piece all major legislation etc. under the key EURATOM articles . An evaluation needs to be met then if, transparency, control, sanctions etc. are fully established in the respective piece of legislation , communications, opinion etc. and an identification of weakness and how to improve in which format
- ▶ Take the Nuclear Safety Directive and its obvious deficits vis-à-vis ESPOO and Aarhus
- ▶ Waste Directive and Radiation protection Directive for population

How the pathway could look like -

EURATOM Article (<i>used as base for secondary legislation</i>)		Directive/Regulation/etc.	Transparency, Control sanction established	Necessary in Euratom or Transfer under clarification to EU Treaty	Reform needs for EURATOM Treaty	Reform needs for secondary legislation	Sunset provision for reform of secondary
Articles 31 and 32 (Consequence Art. 33 for MS's enforcement and following definitions under Art. 30))		<p><u>Council Directive 2009/71/Euratom</u> of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations</p> <p>amended by:</p> <p><u>Council Directive 2014/87/Euratom</u> of 8 July 2014 amending <u>Directive 2009/71/Euratom</u> establishing a Community framework for the nuclear safety of nuclear installations</p>	not fully	yes	Not fully aligned with ESPOO Aarhus: overlapping to the detriment of clear application of Aarhus and ESPOO. Art. 34 needs clear link to right of neighbouring and third States for involvement and respect of ESPOO and Aarhus	yes	2020

Thank you very much
for your attention.

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