



The Greens | European Free Alliance
in the European Parliament



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LEGAL OPINION

Pathways to a Euratom Reform **Short legal evaluation and strategy approach for the Green Group in the European Parliament**

on behalf of

European Parliament - The Greens/EFA Group, 60 Rue Wiertz, 1040 Brüssel

created by

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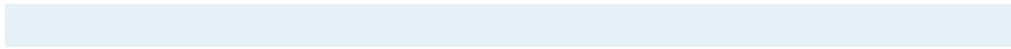


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Inhalt





Introduction

The following evaluation aims to give an outline and overview for a coherent reform of the EURATOM treaty within a liberalised energy market, increasingly supplied with renewable energies and constantly improved balancing and demand side management applications.

The aim is to provide the Members of the European Parliament and other stakeholders with a pathway towards EURATOM treaty amending convention process with its objective to reform EURATOM. This study will give a first outline of reform needs in order to engage with a broader alliance to push for a dedicated EURATOM reform procedure.

Especially if the reform will push towards a clear energy market- and competition - fairness- driven approach, increased safety standards, full life cycle responsibility of the industry, full democratisation of the institutional and decision making process, clear new fund models for the enormous dismantling and safe storage tasks when it comes to old nuclear power plants to be integrated in the new EURATOM Treaty , it might be possible to reach a cross border alliance within the different political groups in the European and in national parliaments but also between Member States with different views on civil use of nuclear power.

Background

A. The monolith stagnation

In view of the liberalised energy market principles, the current EURATOM treaty contains to a vast extend outdated provisions, starting with the concept and Leit-motif of the promotion of the civil use of nuclear power. Already in view of the end of the European Coal and Steel treaty in the promotion of nuclear over any other source of energy transformation in parallel to the liberalised energy market creates a constant obstacle to fair and open competition. Singled out nuclear research programmes, separated from the overall energy research budget and programming procedure with restricted right of the European Parliament in deciding on the priorities of research in nuclear adds to the unsound structure. The overall deficit of the EURATOM treaty under clear accountability and democratic involvement of the European parliament in co-decision are the most important failures of Europe in maintaining Euratom in the way it is still structured at present.



The EURATOM Treaty “as one of the founding Treaties of the current EU is an anomaly”¹ as it has not been reformed by the any Intergovernmental conferences for Treaty reforms in the European Community- now the European Union and remains as a stand-alone treaty established to support a particular technology only– in this case nuclear power

B. The clash with economy

Europe needs to ensure that there is no longer any specific promotion of nuclear power and related singled out budget for research in nuclear power, apart from the overall EU budget for Research and Development, EU funding to Research should only be legacy oriented and concentrate on dismantling of nuclear power plants, waste handling, final storage and safe disposal. No provisions for research are necessary under EURATOM but can all be handled with the provisions under the TFEU. The Reform process concentrating on critical issues where a European level high standard regulation should be ensured can also correct the somehow still born quality from the past: As C. Max Vassanelli outlined back in 1969:” The Member States, while desiring the benefits of a nuclear community, have not been prepared to discard the political need for certain quantities of independent action and control over the functioning of Euratom”.² For the crucial topics concerning non-proliferation, nuclear safety, radiation protection, dismantling, waste management, cross border cooperation in safety and civil protection, the need for a new, strong European liability regime and the responsibility of the Union on the international level with overall high standards will need a strong European approach in legislation and enforcement control.

Important elements in view of nuclear technology and its use and risks have never been directly introduced into the Treaty. There is no full life-cycle responsibility approach established. It was the European Court of Justice who “added «in 2002 the responsibility of EURATOM for nuclear safety and not “only” for radiation protection. As much as this decision in principle opened the way to a better security level in the European Union it cemented the exclusion of the European Parliament and thus civil society at large to discuss in an involved way and the Parliament to co-decide on directives and regulations for the setting of uniform policies and instruments in the EU, in applying Euratom as legal bases..

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² C. Max Vassanelli, Euratom: Critical Review of Selected Regulatory Functions, 52 Marq. L. Rev. 355 (1969).

Available at: <http://scholarship.law.marquette.edu/mulr/vol52/iss3/2>



C. The crippled democracy

The Euratom Treaty has a clear democratic deficit,³ as was often underlined especially by the European Parliament.

The European Parliament is mentioned in the Treaty, but has under the text of the EURATOM Treaty no decision rights, not even on the research programme.

UP until the conventional process for the Treaty on European Union, signed in Maastricht on 7 February 1992, which led to slight modifications of the EURATOM Treaty, it was the Social and Economic Committee which needed to be informed regularly, not the Parliament⁴.

It is rather more of a “gentleman’s agreement” under better governance principles that the Commission informs the Parliament as part of an internal agreement. And the Council and the Commission may take into account the Parliament’s opinion.

“The Treaty continues in its original form. It was politically impossible to amend it or adapt it to the needs of our time. The Member States objected any move to reform the Treaty.”

The European Parliament always acknowledged a certain “dilemma”: The Member States are split over nuclear energy. With the UK leaving the Union after its BREXIT decision, Member States which have no nuclear power plants or are phasing out nuclear power will be in the majority.

On the other hand: a mere dissolution of the treaty would put an end to the remaining cooperation. It would confirm the already predominant national approach without a regulated European agenda for safety and thus it would end the established regime of safeguards.

This is the more problematic and dangerous from a security point of view, since from the original number of six EURATOM founding Member States several enlargement processes increased the number of its members to the same number as Union members, due not least to the view of the Commission, held since the so-called Merger Treaty of that a sovereign state which wanted to become member of the European Union needed to access all treaties. This created the problematic obligation also on non-nuclear Member States such as especially Austria and Ireland to become member of EURATOM in order to be accepted as member of the Union, respectively the Community as it was called at the time of Austria’s accession. Especially the accession of the Central and Eastern European Member States and the unification of Germany added problems with nuclear power plants from the same design than

³ See MEP Ralf Linkohr in his presentation at the time of the 50th anniversary of EURATOM; see MEPs Rebecca Harms, Jo Leinen and Claude Turmes in their manifold expressions against this deficit, as can be seen as a joint summary in one of the key events of the

⁴ under Chapter 4 of the Treaty-



the disaster NPP in Chernobyl. At least EURATOM and the secondary legislation ensure in question of non-proliferation and of radiation protection a certain uniform standard which without EURATOM could not be maintained.

Major secondary legislation

Even though the Euratom Treaty has been modified only slightly in the last 60 years safety and more uniform rules and standards have been developed partly following clarifying jurisdiction from the European Court which in consequence has led to an effective amendment or broadening of the EURATOM treaty. In parallel to European jurisdiction Europe developed a large set of secondary legislation and important communications which need to be safeguarded also in a reform process on EURATOM, with a Strength and Weaknesses Analysis attached to it in order to move ahead and froge towards hiegher standards , integrating more tasks and coordination..

The most important legislation needs to be enumerated for the future blue print guideline:

Drinking water

[2013/51/EURATOM](#)

Council Directive of 22 October 2013 laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption. (OJ L-296 of 07/11 2013, page 12)

[2001/928/EURATOM](#)

Commission Recommendation of 20 December 2001 on the protection of the public against exposure to radon in drinking water supplies. (OJ L-344 of 28/12/2001 page 85)

Information

[2005/844/EURATOM](#)

Commission Decision of 25 November 2005 concerning the accession of the European Atomic Energy Community to the Convention on Early Notification of a Nuclear Accident. (OJ L-314 of 30/11/2005 pages 21-22)

[2005/845/EURATOM](#)

Commission Decision of 25 November 2005 concerning the accession of the European Atomic Energy Community to the Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency. (OJ L-314 of 30/11/2005 pages 27-34)

[89/618/EURATOM](#)

Council Directive of 27 November 1989 on informing the general public about health



protection measures to be applied and steps to be taken in the event of a radiological emergency. (OJ L-357 of 07/12/89 page 31)

[91/C103/03](#)

Commission Communication on the implementation of Council Directive 89/618/EURATOM. (OJ C-103 of 19/04/91 page 12)

[87/600/EURATOM](#)

Council Decision of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency. (OJ L-371 of 30/12/87 page 76)

Contamination of foodstuffs and feedingstuffs- Post-Chernobyl

[733/2008/EC](#)

Council Regulation No 733/2008 of 15 July 2008 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station (codified version); Council Regulation (EC) No 1048/2009 extends its validity until 31 March 2020. (OJ L-201 of 30/07/2008, page 1)

[1048/2009/EC](#)

Council Regulation No 1048/2009 of 23 October 2009 amending Regulation (EC) No 733/2008 on the conditions covering imports of agricultural products originating in third countries following the accident of the Chernobyl nuclear power station. (OJ L-290 of 06/11/2009, page 4)

[1635/2006/EC](#)

Commission Regulation No 1635/2006 of 6 November 2006 laying down detailed rules for the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station. (OJ L-306 of 07/11/2006 page 3)

[1609/2000/EC](#)

Commission Regulation No 1609/2000/EC of 24 July 2000 establishing a list of products excluded from the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station. (OJ L-185 of 25/07/2000, page 27)

[274/2003/EC](#)

Commission Recommendation No 274/2003 of 14 April 2003 on the protection and information of the public with regard to exposure resulting from the continued radioactive cesium contamination of certain wild food products as a consequence of the accident at the Chernobyl nuclear power station. OJ L-99 of 17/04/2003 page 55, amended by **corrigendum** published in [OJ L-109 of 01/05/2003 page 27](#)



[List of Customs Offices in which products listed in Annex I of Commission Regulation \(EC\) No 1635/2006 \(1\) may be declared for free circulation in the European Community](#) (OJ C-262 of 29/09/2010, page 13)

Future accidents

[2016/52/EURATOM](#)

Council Regulation (Euratom) 2016/52 of 15 January 2016 laying down maximum permitted levels of radioactive contamination of food and feed following a nuclear accident or any other case of radiological emergency, and repealing Regulation (Euratom) No 3954/87 and Commission Regulations (Euratom) No 944/89 and (Euratom) No 770/90. (OJ L-13 of 20/1/2016 page 2)

Commission recommendations

[91/444/EURATOM](#)

Commission Recommendation of 26 July 1991 on the application of the third and fourth paragraphs of **Article 33** of the Euratom Treaty. (OJ L-238 of 27/08/91 page 31)

[2010/635/EURATOM](#)

Commission Recommendation of 11 October 2010 on the **application of Article 37** of the Euratom Treaty. (OJ L-279 of 23/10/10 page 36)

[2000/473/EURATOM](#)

Commission Recommendation of 8 June 2000 on the **application of Article 36** of the Euratom Treaty concerning the monitoring of the levels of radioactivity in the environment for the purpose of assessing the exposure of the population as a whole. (OJ L-191 of 27/07/2000 page 37)

[2004/2/EURATOM](#)

Commission Recommendation of 18 December 2003 on standardised information on radioactive airborne and liquid discharges into the environment from nuclear power reactors and reprocessing plants in normal operation. (OJ L-002 of 06/01/2004 page 36)

Commission communication – Article 35

Communication concerning: "Verification of environmental radioactivity monitoring facilities under the terms of the EURATOM Treaty. Practical arrangements for the conduct of verification visits in Member States." ([OJ C-155 of 04/07/2006](#) page 2)

Part 2 The cleaning process

In order to have a swift and pragmatic approach, it would be necessary to first change the Title: Instead of Establishing the European Atomic Energy Community



the title should be like the European Treaty on safeguard from radiation, on nuclear non-proliferation, and on liability

It is necessary to ensure the role of the European Parliament for full co-decision as guiding principle in EURATOM Further fin-tuned analysis might reserve some restriction to this full authority in case of serious security questions.

There should be no more separate EURATOM based provisions on promotion of research and information dissemination, neither on external relations nor on any regulation on European institutions. All these provisions are already part of the general Treaty and do not need to be singled out under EURATOM for the nuclear field.

As a team from within the European Commission with outside experts already found out 15 years ago, many articles of EURATOM are obsolete and had never been enforced: "this is the case in particular of part of the chapter on supplies, especially the provisions on the right of option on ores and the chapter on property ownership, which has never been applied".⁵

Conversely, the provisions retained are those on the setting of standards (Chapter III on health and safety) with small adjustments to incorporate nuclear safety, Chapter IV on investments (with more explicit authorisation power), Chapter V on joint undertakings and Chapter VII on safeguards.

These chapters, which contain some of the best drafting of the existing treaties, have hardly been changed and are included in an Additional Act.

Parliament is restored to the institutional system, as it is given the power to adopt, with the Council, "Laws" for basic standards whereas at present it is very much outside the decision-making process. There remain only a few cases where the Council would decide on its own, on a proposal from the Commission, for instance where specific rules concerning the non-disclosure of confidential information apply.

The Community has been able to develop a system of regulations unparalleled in international organizations, highly resembling the systems of checks and balances commonly found in sovereign states.

The Member States, while desiring the benefits of a nuclear community, have not been prepared to discard the political need for certain quantities of independent action and control over the functioning of Euratom.

The Community's solution to the issues of ownership and supply of nuclear materials, and the conduct of external relations, are acceptable and workable. Many of Euratom's regulatory functions, however, could be improved. In the health protection

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area, the States could allow the Commission to enact directly binding provisions insuring more certain and uniform safeguards. In the nuclear uses area, the Commission could either prohibit the production of nuclear weapons or insure a uniform production policy. Safety could be improved by developing and employing uniform systems of inventory, accounting, and reporting of nuclear materials; by conducting inspections without prior announcement and by increasing their frequency; and by assuring that practical and political necessities will not render ineffective sanctions which might be imposed.

National research programs of the Member States could be better developed and coordinated by granting the Commission authority to publish its opinions on existing programs, without the approval of the State concerned,' and to grant outright subsidies for national research.

In the final analysis, when atomic energy activities and needs within the Community will increase to the point where progress will be mandatory, it will only be achieved if it can prevail over nationalism.

Part 3 EURATOM Research

It will be necessary to Change the wording of Title II, change the title of chapter 1 in principles for nuclear research,

Outline in a new Article 4 that research in nuclear is limited to research for protection from radiation, dismantling fo nuclear power plants, decontamination, safe transport of waste, waste handling, storage preparation and interim and final storage capacities and safe management. Article 4 will set a sunset clause for 4 years after which all nuclear and radiation related research will be organised and steered under the general research and development programmes of the European Union.

The principles for EURATOM research are laid down in Title II of EURATOM with Article 4 cons.

Following, nuclear research is a competence shared between Euratom and Member States, see article 4 EURATOM. The Euratom Programme is the EU's main but not the exclusive instrument for the funding of nuclear research in Europe, with a current budget of EUR 1.6 billion for the period 2014-2018.

The objectives of the Euratom Programme are established by Article 3 of the Council Regulation (Euratom) No. 1314/2013

The future reformed EURATOM treaty needs to amend Article 4 and to restrict the objectives and obligations of the Commission strictly on issues such as safe dismantling of existing nuclear power plants,



A. A new liability regime under EURATOM for the EU

	Convention ratified by MS	Liability cap	Financial security minimum
Austria	PC (signed but not ratified)	Unlimited	446.6 million
Belgium	PC	1.2 billion	1.2 billion
Bulgaria	VC	49.1 million	49.1 million
Croatia	VC	43.9 million	43.9 million
Cyprus	-	Unlimited	-
Czech Republic	VC	232 million	232 million
Denmark	PC	Unlimited	700 million
Estonia	VC	Unlimited	-
Finland	PC	Unlimited	700 million
France	PC	91.5 million	91.5 million
Germany	PC	Unlimited	2.5 billion
Greece	PC	16.3 million	-
Hungary	VC	109 million	109 million
Ireland	-	Unlimited	-
Italy	PC	5.4 million	5.4 million
Latvia	VC	114.2 million	to be determined by government
Lithuania	VC	154 million	€ 154 million
Luxemburg	PC (signed but not ratified)	Unlimited	-
Malta	-	Unlimited	-
Netherlands	PC	1.2 billion	1.2 billion
Poland	VC	345 million	345 million
Portugal	PC	16.3 million	-
Romania	VC	345 million	345 million
Slovakia	VC	75 million	75 million
Slovenia	PC	700 million	-
Spain	PC	1.2 billion	1.2 billion
Sweden	PC	Unlimited	1.2 billion
United Kingdom	PC	156.7 million	156.7 million

Note: All amounts are in €.



Directives under EUR-ATOM		
Basic Safety Standards under EUR-ATOM	<p>2013/59/EURATOM Council Directive of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom. (OJ L-13 of 17/01/2014 page 1)</p> <p>The following legislation was thus replaced :</p> <p>96/29/EURATOM Council Directive of 13 May 1996 laying down basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation. (OJ L-159 of 29/06/96 page 1)</p> <p>98/C133/03 Communication from the Commission concerning the implementation of Council Directive 96/29/Euratom. (OJ C-133 of 30/04/98 page 3)</p> <p>97/43/EURATOM Council Directive of 30 June 1997 on health protection of individuals against the dangers of ionizing radiation in relation to medical exposure, and repealing Directive 84/466/EURATOM. (OJ L-180 of 09/07/97 page 22)</p> <p>90/641/EURATOM Council Directive of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionizing radiation during their activities in controlled areas. (OJ L-349 of 13/12/90 page 21)</p> <p>2003/122/EURATOM Council Directive of 22 December 2003 on the control of high-activity sealed radioactive sources and orphan sources. (OJ L-346 of 31/12/2003 pages 57-64)</p>	
Important accompanying standards	<p>Standard record sheet for High-Activity Sealed Sources-(HASS) (Excel format)</p>	



for basic safety	<p>Competent authorities referred to in Council Directive 2003/122/EURATOM on the control of high-activity sealed radioactive sources and orphan sources</p> <p>90/143/EURATOM Commission Recommendation of 21 February 1990 on the protection of the public against indoor exposure to radon. (OJ L-80 of 27/03/90 page 26) http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:1990:080:FULL&from=EN</p>	

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 legislation
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></p>		Necessary to remain under EURATOM as inherent part of radiation protection and strong link to non-proliferation	Not fully aligned with ES-POO Aarhus: overlapping to the detriment of clear application of Aarhus and ES-POO.	Y	Y



	<p>establishing a Community framework for the nuclear safety of nuclear installations</p>			<p>Art. 34 needs clear link to right of neighbouring and third States for involvement and respect of ESPOO and Aarhus</p>		
<p>Articles 31 and 32</p>	<p>COUNCIL DIRECTIVE 2013/59/EURATOM of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom</p>		<p>Necessary to remain under EURATOM</p>			
<p>Art. 31 and 32</p>	<p>COUNCIL DIRECTIVE</p>					



	2011/70/EUR- ATOM of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste					
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Proposing the nuclear package the European Commission is highlighting the need for the reform of the Euratom Treaty, for the following reasons:

- 1) The Commission is proposing that it, through Euratom, take on new powers to both promote - by increasing the Euratom Loan Ceiling - and regulate - by setting targets for radioactive waste management and new power on nuclear safety. No institution should both promote and regulate nuclear power. - ironically, the draft safety directive states that on the Member State level the regulator must not be concerned with promoting nuclear power.
- 2) The mechanism to adopt these new powers will not involved the European Parliament in co-decision.
- 3) The draft legislation calls for the safety assessment of nuclear facilities to remain confidential.

A number of Governments and delegates to the European Convention have stated that the reform of Euratom should be included on this agenda. It is clear that by proposing the further extension of the powers of Euratom the Commission is highlighting the need for the extensive overhaul or removal of the Euratom Treaty from the EU legal framework.



Back up

PENELOPE 2002⁶

"The Euratom Treaty

The Euratom Treaty has been substantially slimmed down by removing a series of provisions which:

- duplicated those already included in the Constitution (and previously in the Treaty establishing the European Community), i.e. the chapters on the promotion of research and dissemination of information, on the institutions and on external relations; or
- were obsolete and had never been applied: this is the case in particular of part of the chapter on supplies, especially the provisions on the right of option on ores and the chapter on property ownership, which has never been applied.

Conversely, the provisions retained are those on the setting of standards (Chapter III on health and safety) with small adjustments to incorporate nuclear safety, Chapter IV on investments (with more explicit authorisation power), Chapter V on joint undertakings and Chapter VII on safeguards.

These chapters, which contain some of the best drafting of the existing treaties, have hardly been changed and are included in an Additional Act. Parliament is restored to the institutional system, as it is given the power to adopt, with the Council, "Laws" for basic standards whereas at present it is very much outside the decision-making process. There remain only a few cases where the Council would decide on its own, on a proposal from the Commission, for instance where specific rules concerning the non-disclosure of confidential information apply."⁷

"Article 17

Peaceful use of atomic energy

⁶ EUROPEAN COMMISSION, FEASIBILITY STUDY- CONTRIBUTION TO A PRELIMINARY DRAFT CONSTITUTION OF THE EUROPEAN UNION WORKING DOCUMENT," This document was produced, at the request of President PRODI in agreement with Mr BARNIER and Mr VITORINO by a working party under the responsibility of François LAMOUREUX and made up of Marie LAGARRIGUE, Paolo STANCANELLI, Pieter VAN NUFFEL, Alain VAN SOLINGE, with the technical assistance of Marguerite GAZZE", 4. 12. 2002; available under http://www.europarl.europa.eu/meetdocs/committees/afco/20021217/consto51202_en.pdf

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http://www.europarl.europa.eu/meetdocs/committees/afco/20021217/consto51202_en.pdf



The Union, on the basis of what has been achieved under the Euratom Treaty, shall conduct a policy of high nuclear safety and security standards allowing installations to remain in use in those Member States that have opted to use this source of energy and to guarantee non-proliferation. This policy is laid down in Additional Act No 2.”
“Additional Act No 2. Peaceful use of atomic energy, which takes over all the provisions of the Euratom Treaty except those which are obsolete or duplicate the general provisions of the Constitution”

“They have adopted five Additional Acts to the Constitution of the European Union:

– ADDITIONAL ACT No 1

Defence

– ADDITIONAL ACT No 2

Peaceful use of atomic energy

– ADDITIONAL ACT No 3

Association of overseas countries and territories

– ADDITIONAL ACT No 4

Supplementary institutional provisions

– ADDITIONAL ACT No 5

Territorial Application, protocols, transitional and miscellaneous provisions »

Intergovernmental conferences since 2001

Introduction

BACKGROUND

The Treaty of Nice, agreed by the Heads of State or Government at the Nice European Council on 11 December 2000 and signed on 26 February 2001, is the culmination of eleven months of negotiations that took place during an Intergovernmental Conference (IGC) opened in February 2000. It entered into force on 1 February 2003 after being ratified by the fifteen Member States of the European Union (EU) according to their respective constitutional rules.

The Treaty of Amsterdam made specific provisions for the IGC 2000 in its Protocol on the institutions in the context of EU enlargement. It did in fact anticipate that "at least one year before the membership of the European Union exceeds twenty, a conference of representatives of the governments of the Member States shall be convened in order to carry out a comprehensive review of the provisions of the Treaties on the composition and functioning of the institutions". Furthermore, three Member States, Belgium, France and Italy were also intent on making a Declaration stating that strengthening the institutions was an "an indispensable condition for the conclusion of the first accession negotiations".



The Cologne European Council (June 1999) confirmed the need to convene an IGC to consider the institutional issues which had not been settled in Amsterdam and which had to be resolved before enlargement.

The Helsinki European Council (December 1999) reaffirmed this mandate and decided that the IGC would look at the size and composition of the Commission, the weighting of votes in the Council, the extension of qualified-majority voting, as well as any other institutional adjustments that would have to be made to the Treaties in connection with the above issues and in the context of implementing the Treaty of Amsterdam.

This European Council's conclusions left the option of adding further items to the IGC's agenda, which the Feira European Council (June 2000) took advantage of with the addition of enhanced cooperation.

Preparation for the IGC began in October 1999 when, at the request of the Commission, the group of high level experts led by Mr Dehaene presented its report on the institutional implications of enlargement. Following this report, on 26 January 2000, the Commission presented its opinion entitled "Adapting the institutions to make a success of enlargement".

After consultation of the Commission and Parliament, whose opinions must be sought before an IGC is convened (Article 48 of the EU Treaty), the conference of Member States' government representatives opened on 14 February 2000 under the Portuguese Presidency. From July 2000 the IGC worked under the French Presidency.

OBJECTIVES OF THE TREATY OF NICE

The Intergovernmental Conference which resulted in the Treaty of Nice had the very clear mandate of preparing the European Union for enlargement by revising the Treaties in four key areas:

- size and composition of the Commission;
- weighting of votes in the Council;
- extension of qualified-majority voting;
- enhanced cooperation.

STRUCTURE OF THE TREATY

The Treaty of Nice consists of two parts and four Protocols. In addition, the IGC adopted 24 Declarations and took note of three more from different Member States which were also annexed to the Final Act.

The first part includes the most substantive amendments in the following six Articles:



- Article 1 deals with the amendments made to the EU Treaty:- serious breach of EU founding principles;- common foreign and security policy (CSFP);- international agreements;- enhanced cooperation;- judicial cooperation in criminal matters.
- Article 2 deals with the amendments made to the Treaty establishing the European Community:- extension of the qualified majority;- establishment of a Social Protection Committee;- the status of Members of Parliament and European Political Parties;- the Commission (composition and role of the President);- the other institutions (Court of Justice, Court of Auditors, European Economic and Social Committee, Committee of the Regions);- the European Investment Bank;- title of the Official Journal.
- Article 3 deals with the amendments made to the Treaty establishing the European Atomic Energy Community (Euratom Treaty).
- Article 4 deals with the amendments made to the treaty establishing the European Steel and Coal Community (ECSC Treaty).
- Article 5 deals with the amendments made to the Protocol on the Statute of the European System of Central Banks and of the European Central Bank.
- Article 6 deals with the amendments made to the Protocol on the privileges and immunities of the European Communities

Part two, which consists of Articles 7 to 13, includes the transitional and final amendments.

Lastly four Protocols are annexed to the Treaties:

- the Protocol on the enlargement of the European Union dealing with the composition of the European Parliament and the Commission and the weighting of votes in the Council;
- the Protocol on the Statute of the Court of Justice and the Court of First Instance;
- the Protocol on the financial consequences of the expiry of the ECSC Treaty (European Coal and Steel Community);
- the Protocol on Article 67 of the EU Treaty (administrative cooperation between the Member States' administrations over "visas, asylum, immigration and other policies related to free movement of persons").

CONTRIBUTIONS OF THE TREATY

The institutional reform achieved in Nice has been described as "technical" and "limited". The Treaty does not, in fact, drastically change the institutional balance but rather makes some adjustments, mainly to the function and composition of the institutions and enhanced cooperation. In addition to the discussion on the reform of the institutions, some more unusual non-institutional topics were tackled.

In the interests of clarity this guide to the Treaty of Nice has been divided into three chapters covering the main changes that have been made.



Institutional questions

- The Council of the European Union and the new weighting of votes in the Council: adjustment in the weighting of votes in favour of the more populated Member States and redistribution of votes among the 25 then 27 Member States.
- The European Commission: change in the composition of the Commission, increase in the powers of the President and change in the way he or she is nominated.
- Judicial System: new division of tasks between the Court of Justice and the Court of First Instance and the possible creation of specialist judicial Chambers.
- Other Institutions: Parliament: extension of the codecision procedure and adjustment of the number of seats allocated to each current and future Member State. The Court of Auditors, the European Economic and Social Committee and the Committee of the Regions: composition and nomination of members.

The decision-making process

Enhanced Cooperation: the Treaty of Nice has made the enhanced cooperation system more flexible (less strict conditions, removal of the right to veto, more fields of application).

Qualified-majority voting: extension of the qualified-majority decision-making process to around thirty new Articles.

Other reforms

These involve several thematic provisions relating to fundamental rights, security and defence policy, cooperation over criminal law, the status of European political parties as well as a number of provisions contained in the Declarations and Protocols annexed to the Treaty.

POST-NICE, PURSUING INSTITUTIONAL REFORM

Declaration on the future of the Union

In a Declaration on the future of the Union annexed to the Treaty of Nice, the inter-governmental conference called for a deeper and wider debate on the future of the European Union. The debate was to involve national parliaments and all public opinion as well as the candidate countries and lead to the convening of a new IGC in 2004.

The debate was to address four key issues in particular:

- a more precise demarcation of responsibilities between the European Union and the Member States;
- the status of the Charter of Fundamental Rights of the European Union;



- a simplification of the Treaties;
- the role of national parliaments in the European architecture.

The Laeken Declaration (December 2001)

At its meeting in Laeken in December 2001 the European Council presented the agreed method for bringing about reform (a Convention) and the timetable, and defined the agenda for the debate.

The Convention

In accordance with the Laeken Declaration a Convention was organised in order to prepare for the next IGC which, like the Convention that established the Charter of fundamental rights, involved representatives from national governments and parliaments in the Member States and candidate countries and representatives from the European Parliament and the Commission. Its inaugural session was held on 28 February 2002 and work came to an end after 17 months of discussions.

The Convention drew up a draft Treaty establishing a European Constitution which was presented by its President, Mr Giscard d'Estaing, to the Thessaloniki European Council. The Convention concluded its work in July 2003.

The Intergovernmental Conference and the draft Constitution

The draft Constitution, the result of the Convention's work, served as a basis for the negotiations at the IGC convened in October 2003. After a political agreement was reached on 18 June 2004, building on the work of the IGC, the draft Constitution was forwarded to the Heads of State and Government, all of whom signed it on 29 October 2004.

The ratification of the Constitution was the final stage prior to its entry into force. It had to be ratified by all the Member States in accordance with each one's constitutional rules, namely either parliamentary ratification or referendum.

Following the difficulties in ratifying the Treaty in some Member States, the Heads of State and Government decided, at the European Council meeting on 16 and 17 June 2005, to launch a "period of reflection" on the future of Europe.

The Treaty of Lisbon

At the European Council meeting on 21 and 22 June 2007⁸, European leaders reached a compromise and agreed to convene an IGC to finalise and adopt, not a

⁸ See short view by nuclear industry : kernenergie.de On June 26, 2007 the European Council decided under the chairmanship of the Head of State of the German Government, Angela Merkel, to work out a "Reform Treaty" for the European Union. The current version of the



Constitution, but a reform treaty for the European Union. The final text of the treaty, drawn up by the IGC, was approved at the informal European Council in Lisbon on 18 and 19 October. The Lisbon Treaty was signed by the Member States on 13 December 2007.

The Treaty of Nice modified by the accession treaties

When the Treaty of Nice was being drawn up, it was not known when and in what order the candidate countries would join the Union. The Treaty of Nice was therefore confined to setting out the principles and methods for changing the composition of the Commission and redefining the qualified majority in the Council. Thus, as anticipated in the Protocol on enlargement and the Declarations annexed to the Treaty, the allocation of Parliamentary seats and Council votes to the new Member States and the qualified majority threshold applicable in the future were determined legally in their accession treaties. The Treaty of Accession of the ten new Member States, signed in Athens on 16 April 2003, and the Treaty of Luxembourg on the accession of Romania and Bulgaria, signed on 25 April 2005, thus lay down the rules in this area. Since 1 January 2007 the foundation of the Union has therefore been the EU and EC Treaties as last amended by the Treaties of Nice, Athens and Luxembourg.

Intergovernmental agreements in energy

Brussels, 16 February 2016

European Commission - Fact Sheet

According to the new law Member States will have to notify the Commission about their intergovernmental energy agreements with non-EU countries before concluding them.

What are intergovernmental agreements in energy?

"Reform Treaty" and the Intergovernmental Conference are a successful result of the German and French policy for Europe. The process will be continued under the Portuguese chairmanship of the European Union.

The "Reform Treaty" includes a special separate energy chapter. The chapter includes targets for an EU-energy policy as well as targets for the peaceful uses of nuclear energy. Furthermore special technical topics of a revision of the EURATOM-Treaty are mentioned.

General revisions of the EURATOM-Treaty or a special Intergovernmental Conference on the EURATOM-Treaty are not expected. Maybe, the European Parliament will get more competence in some parts of decision making processes.

Due to the differing views on the peaceful uses of nuclear energy in the EU member states a revision of the EUROATOM-Treaty is more unlikely expected. http://www.ktg.org/kern-energie-en/service/fachzeitschrift-atw/hefte-themen/2007/oct/03_euratom-vertrag-und-regierungskonferenz.php



The EU's energy dependency is increasing and more and more Member States are seeking new energy supplies outside of the EU. Negotiations with energy suppliers frequently require political and legal support, for example to provide certainty to investors on the construction of energy infrastructure. This political support is given in the form of intergovernmental agreements (IGAs). These agreements are often the basis for more detailed commercial contracts. The new IGA Decision covers all agreements between one or more Member States and one or more non-EU countries which have an impact on the security of the EU's energy supply and the functioning of the EU internal energy market. It includes intergovernmental agreements and non-legally binding commitments, such as joint political declarations or *memoranda* of understanding that include interpretations of EU law, set conditions for energy supply (i.e. prices) or for the development of energy infrastructure. The IGAs on nuclear issues are excluded from this Decision as they are covered by the Euratom Treaty.⁹

The EU decision on energy intergovernmental agreements is already in force since 17

November 2012. Why a new decision?

Euratom Treaty, art.98 :

“Member States shall take all necessary measures to facilitate the conclusion of insurance contracts covering atomic risks. Within a period of two years after the date of the entry into force of this Treaty and after the Assembly has been consulted, the Council, acting by means of a qualified majority vote on a proposal of the Commission which shall previously obtain the opinion of the Economic and Social Committee, shall issue directives as to the particulars of application of this Article.”

⁹ The PINC 2016 outlines : While Member States are free to decide their energy mix, the Energy Union Strategy and the European Energy Security Strategy stressed that Member States who decide to use nuclear energy in their own energy mix to apply the highest standards of safety, security, waste management and non-proliferation as well as diversify nuclear fuel supplies.

The Commission also presented a recommendation to Member States concerning the application of Article 103 of the Euratom Treaty. The recommendation requires Member States to have the Commission's opinion on agreements with third countries on nuclear matters (Intergovernmental Agreements) before concluding them.

This recommendation aims to make that process more efficient by clarifying the key aspects and requirements that Member States have to take into account when negotiating such agreements, in particular regarding the new directives on nuclear safety and the safe management of spent fuel and radioactive waste. The application of this recommendation should reduce the need for the Commission to object to the conclusion of agreements, and thereby reduce the risk of delay in their conclusion. See: http://ec.europa.eu/euratom/observatory_news2016.html



Euratom Treaty - Article 77

- In accordance with the provisions of this Chapter, the Commission shall satisfy itself that, in the territories of Member States:
 - ores, source materials and special fissile materials are not diverted from their intended uses as declared by the users;
 - the provisions relating to supply and any particular safeguarding obligations assumed by the Community under an agreement concluded with a third State or an international organization are complied with.

Euratom Treaty - Article 78

- Anyone setting up or operating an installation for the production, separation or other use of source materials or special fissile materials or for the processing of irradiated nuclear fuels shall declare to the Commission the basic technical characteristics of the installations, to the extent that knowledge of these characteristics is necessary for the attainment of the objectives set out in Article 77.
- The Commission must approve the techniques to be used for the chemical processing of irradiated materials, to the extent necessary to attain the objectives set out in Article 77.

Euratom Treaty - Article 79

- The Commission shall require that operating records be kept and produced in order to permit accounting for ores, source materials and special fissile materials used or produced. The same requirement shall apply in the case of the transport of source materials and special fissile materials.
- Those subject to such requirements shall notify the authorities of the Member State concerned of any communications they make to the Commission pursuant to Article 78 and to the first paragraph of this Article.
- The nature and the extent of the requirements referred to in the first paragraph of this Article shall be defined in a regulation made by the Commission and approved by the Council.

Regulation 302/2005 (in part)

|

- Article 3 Declaration of the Basic Technical Characteristics
- Article 6 Particular Safeguards Provisions (PSP)
- Article 7 Accounting system
- Article 8 Operating records
- Article 9 Accounting records
- Article 10 Accounting reports



- Article 12 Inventory change report (ICR)
- Article 13 Material balance report (MBR) and PIL
- Article 17 Particular Safeguards Obligations
- Article 19 Derogations

Euratom Treaty - Article 81

- The Commission may send inspectors into the territories of Member States.
- On presentation of a document establishing their authority, inspectors shall at all times have access to all places and data and to all persons who, by reason of their occupation, deal with materials, equipment or installations subject to the safeguards provided for in this Chapter, to the extent necessary in order to apply such safeguards to ores, source materials and special fissile materials and to ensure compliance with the provisions of Article 77.

IAEA Safeguards Agreements

- Euratom Treaty - Article 77
- In accordance with the provisions of this Chapter, the Commission shall satisfy itself that, in the territories of Member States:
 - ores, source materials and special fissile materials are not diverted from their intended uses as **declared by the users**;
 - **the provisions relating to supply and any particular safeguarding obligations assumed by the Community under an agreement concluded with a third State or an international organization are complied with.**

IAEA Safeguards Agreements

The use of nuclear energy poses two questions that are of universal interest:

- How can we prevent nuclear energy from being used for the manufacture of weapons of mass destructions?
- How can we use nuclear energy responsibly and safely for peaceful means?

The American policy pursued after the Second World War was summarised in the speech by President Eisenhower "Atoms for Peace": the stimulation of the peaceful use of nuclear energy within the framework of verification and control (safeguards). In 1956, two organisations were created in this vein, which aimed to encourage the peaceful use of nuclear energy and its control:

- International Atomic Energy Agency (IAEA)
- **European Atomic Energy Community (Euratom)** for European Member States.

On 1 July 1968, the non-proliferation treaty was proposed for signature. This treaty only includes the recognition of five nuclear-weapon states (United States, Soviet Union, China, United Kingdom and France) and it prohibits the development and the manufacture of nuclear weapons by non-nuclear-weapon states. Each non-nuclear-



weapon state must submit all nuclear materials in its territory to the controls required by IAEA, by signing up to a cooperation agreement with IAEA. This additional control (currently voluntary) expands verification to all nuclear activities of a non-nuclear-weapon state.

Safeguards

This area covers all of the control measures defined internationally that are available to IAEA for controlling the peaceful use of nuclear energy in a country. This can involve: regular inspections of nuclear facilities, the assessment of nuclear accounting, the verification of nuclear material quantities in a certain country, the collection of information or the use of external sources, such as images transmitted by satellite or by information from third-party countries. Nuclear control should not be confused with nuclear security (measures that a nuclear operator must take to protect employees, the population and the environment against radioactivity) or with nuclear protection (measures that a nuclear operator or a transporter must take to protect against nuclear terrorism).

Non-proliferation treaty

The non-proliferation of nuclear weapons treaty (non-proliferation treaty) entered into force on 5 March 1970. The majority of countries signed the treaty. Only three countries with large quantities of nuclear materials are not members, namely India, Pakistan and Israel.

The non-proliferation treaty contains numerous rights and obligations for the parties:

1. Non-nuclear-weapon states undertake to not develop or produce nuclear weapons.
2. Nuclear-weapon states undertake to not transfer nuclear weapons to non-nuclear-weapon states and to not cooperate with non-nuclear-weapon states in the production or development of nuclear weapons.
3. Non-nuclear-weapon states undertake to authorise IAEA guarantees in their territories by an agreement with IAEA (Article III, paragraph 1). This is currently a general guarantee agreement under which all of the nuclear materials of the non-nuclear-weapon state in question in the territory are subject to IAEA control. Apart from a general guarantee agreement, several parties signed an additional protocol with IAEA under which all of the nuclear activities of the non-nuclear-weapon state in question are subject to a control relating to the nuclear fuel cycle. A specific regulation applies for Member States of the European Union. This additional control (currently voluntary) expands verification to all nuclear activities of a non-nuclear-weapon state. A voluntary regulation applies to France and the United Kingdom out of the nuclear-weapon states by agreement with Euratom.



4. Non-nuclear-weapon states and nuclear-weapon states undertake to collaborate in the field of nuclear energy through the transfer of nuclear materials and nuclear equipments, as well as through the exchange of technologies and scientific data. The transfer of nuclear materials and nuclear equipment can only be carried out if the peaceful use of nuclear energy is guaranteed by the application of the safeguards required (by IAEA). These obligations in relation to controlling nuclear exports have been perfected and completed through forums, such as the Zangger Committee and the Nuclear Suppliers Group (article IV and article III, paragraph 2).
5. Nuclear-weapon states undertake to strive towards complete disarmament of nuclear weapons and to take measures that aim to stop the course of nuclear armament (article VI).
6. All of the parties have the right to the peaceful use of nuclear energy (article IV paragraph 1).

Nuclear verification and safeguards in Belgium

To allow the International Nuclear Energy Agency to draw conclusions relating to the absence of nuclear material thefts and the absence of clandestine nuclear activities in Belgium, Belgium has concluded agreements with IAEA and Euratom together with other non-nuclear-weapon states, in accordance with article III, paragraphs 1 and 4, of the treaty of 1 July 1968 on the non-proliferation of nuclear weapons (non-proliferation agreement). The strict application of these agreements guarantees that the nuclear energy is only used for peaceful means in Belgium and not for the development or production of nuclear weapons.

The European Regulation and the Law of 20 July 1978 establishing provisions specific to the International Atomic Energy Agency for carrying out inspection and verification activities in Belgium, in accordance with the International Agreement of 5 April 1973 taken into account in sections 1 and 4 of article III of the Treaty of 1 July 1968 on the non-proliferation of nuclear weapons, lay down the national application of general safeguards in Belgium. Facilities that hold any quantity of nuclear materials must also perform nuclear accounting. Nuclear inspectors of the Federal Nuclear Control Agency (AFCN) support the verification and inspection work of Euratom and IAEA.

The European Regulation and the Law of 1 June 2005 on the application of the Additional Protocol of 22 September 1998 to the International Agreement of 5 April 1973 taken into account in article III, paragraphs 1 and 4 of the Treaty of 1 July 1968 on the non-proliferation of nuclear weapons, lay down additional obligations in Belgium.

The Directorate-General Energy monitors nuclear activities in Belgium and therefore it is responsible for obtaining information related to the following nuclear activities at IAEA:



- state and civil nuclear research and development;
- the production of certain nuclear equipment, which will be used in the civil nuclear combustion cycle;
- nuclear exports and intracommunity transfers to a Member State of the EU;
- nuclear imports;
- activities relating to the nuclear fuel cycle over the next ten years;
- nuclear research and development within the private sector relating to the enrichment of radioactive waste or to the reprocessing of nuclear fissile materials.

Except for nuclear exports and intracommunity transfers, the Directorate-General Energy spontaneously contacts natural and moral entities.

For nuclear exports and intracommunity transfers, it is sufficient to send a detailed export file to the Directorate-General Energy, prior to the actual export, containing the following data: a description of the goods, the quantity, the place of storage of the goods, the final point of use and the (presumed) export date. The full information (including the exact date of export) must be sent to the Directorate-General Energy within thirty days following the quarter during which export actually took place. This obligation is inextricably linked to the obligations regarding nuclear exports.

Protection against nuclear terrorism

The non-proliferation treaty aims to prevent nuclear energy from being abused by governments for the manufacture of nuclear weapons (risk of proliferation). A bundle of commitments and obligations for governments ensures that the peaceful use of nuclear energy can be guaranteed by a state.

Furthermore, nuclear materials must be protected against unlawful removal or theft by private persons or organisations (nuclear terrorism). The regulations concerning the security of nuclear facilities and the security of nuclear transport fall under the remit of AFCN.

The EURATOM Treaty was signed in 1957 and is one of the founding Treaties of the current European Union. There were six original Member States in the European club, however, since then the number of countries and the responsibility of the EU over areas of national and pan-national governance has increased. As a consequence the Laeken Summit in December 2001 called for the creation of a new structure for the EU, in particular to take onboard the entrance of ten new countries into the EU in 2004. As a result a European Convention was established to draft a new Constitution for Europe whose purpose is to: -



- Clarify where the competence of the EU lies whether at Community, national or sub-national level.
- Reform the EU institutions,
- Simplification of Treaties, to integrate them into a single text
- Democratisation of the EU structures.

Although the Laeken declaration does not mention the EURATOM Treaty by name it calls for action on the four treaties of the EU, which are:

- The Treaty establishing the European Coal and Steel Community (ECSC), which was signed on 18 April 1951 in Paris, entered into force on 23 July 1952 and expired on 23 July 2002;
- The Treaty establishing the European Economic Community (EEC);
- The Treaty establishing the European Atomic Energy Community (Euratom), which was signed (along with the EEC Treaty) in Rome on 25 March 1957, and entered into force on 1 January 1958.
- The Treaty on European Union, which was signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. 'The Maastricht Treaty changed the name of the European Economic Community to simply "the European Community".'

The Convention and the Review of the EURATOM Treaty

There have been a number of submissions to the Convention that call for changes in the EURATOM Treaty. The full list of submissions by Convention members is listed in the annex. However, the three major proposals on EURATOM reform are:

- Penelope Paper, 4th December 2002
- Praesidium Proposal, March 14th 2003
- Nagy et al Proposal, 18th February 2003

Penelope Proposal

The first "preliminary draft" -known as the Penelope Paper - prepared by a specific task force in the Commission, headed by Francois Lamoureux, Director General of DG TREN envisages the creation of an addition act on the Peaceful Use of Atomic Energy to replace the EURATOM TREATY, which include:

- a) The EURATOM Treaty would be substantially slimmed down by removing a series of provisions which:
 - Duplicated those already included in the Constitution (and previously in the Treaty establishing the European Community), i.e. the chapters on the promotion of research and dissemination of information, on the institutions and on external relations;
 - Were obsolete and/or had never been applied: this is the case in particular of part



of the chapter on supplies, especially the provisions on the right of option on ores and the chapter on property ownership.

b) The provisions retained are those on the setting of standards (Chapter III on health and safety) with small adjustments to incorporate nuclear safety, Chapter IV on investments (with more explicit authorisation power), Chapter V on joint undertakings and Chapter VII on safeguards. These chapters have hardly been changed.

c) Parliament is restored to the institutional system, as it is given the power to adopt, with the Council, "Laws" for basic standards whereas at present it is very much outside the decision-making process.

d) The Penelope proposal inserts language on compatibility of investments with the single market as Article 11 states:

The Commission shall discuss with the persons or undertakings all aspects of investment projects, which relate to the objectives of the Union, including their impact on the proper functioning of the internal market. It shall evaluate, within this framework, the methods of financing the planned investments and shall decide on their authorisation of the investment project.

This is important as it highlights the deficiencies of the current EURATOM Treaty and its compatibility with the EU's electricity market.

To review text of civil nuclear act access [here](#)

Praesidium Proposal

This approach does not think it "appropriate" to become involved in an operation "to amend the EURATOM Treaty substantially". This is the guiding principle for the whole suggestion. There is no mentioning or willingness to rethink the sense, timeliness or the need for a reflection in view of the liberalisation of the energy market.

The Praesidium favours the amendment of the EURATOM Treaty, allowing it to continue to exist independently. The adjustments should be done by means of a Protocol annexed to the Constitutional Treaty. The suggestion is to introduce a so-called general clause into the EURATOM Treaty as new Article 107, with the consequence that apart from specific exemptions, all articles under Title III of the EURATOM Treaty (provisions governing the institutions) and Title IV (Financial Provisions) would be replaced by "the institutional and financial provisions of the Treaty establishing a Constitution for Europe."

According to this suggestion, the amended EURATOM Treaty "would not change its nature, as it would continue to be primary legislation". And "the fact, that it is still a separate Treaty would not preclude a merging of the legal personalities of the EURATOM Community and of the European Union". Therefore the suggestion wants to "repeal Art. 184 of the EURATOM Treaty", and in consequence the EURATOM community would have no more legal personality.

To access Praesidium proposal click [here](#)



Nagy Proposal.

The proposal [Contribution by Ms Marie Nagy, Ms Renée Wagner and Mr Neil MacCormick, alternate members of the Convention: "The Future of the EURATOM Treaty in the Framework of the European Constitution. Ms Marie Nagy, Ms Renée Wagner and Mr Neil MacCormick, alternate members of the Convention, February 23rd 2003, CONV 563/03] calls for the abolishment of 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. This proposal would have the effect of abolishing the EURATOM Treaty.

The proposal assesses the EURATOM Treaty chapter by chapter and concludes that there are only two areas in which special attention needs to be retained for nuclear technology. Firstly in the area of security of nuclear material and non-proliferation where it is proposed that a special Article be inserted into the new EC Treaty to enable community competence to continue in this area. The paper, however, does draw attention to the High Level Expert Group report for the European Commission, on the Euratom Safeguards Office (ESO), which recommended that the ESO should refocus its effort on its core activities, namely nuclear material accounting and controls. Furthermore, the report highlighted a number of areas in which the functioning of the ESO could be improved including greater transparency, greater integration into other parts of the Commission services and a thorough review of its mode of operation.

The second area that EU competence needs to be retained is that relating to environmental protection and nuclear safety. The proposal suggests that this be inserted into the new EC Treaty along with legislation associated with the handling of other dangerous materials. However, it should be noted that the Commission has proposed to extend its powers in this area within the Nuclear Package, currently being reviewed by the European Council. This will give the Commission new powers in the setting of nuclear safety principals and the setting of timetables for the management of radioactive waste.

In all other areas the proposal suggests that powers under the EURATOM Treaty are no longer used or are no longer appropriate, these include:·General Objectives of the Treaty·Promotion of Research Investment·Joint Undertakings·Euratom Supply Agency·Property Ownership·The Nuclear Common Market·External Relations.

EURATOM in the Draft Constitution

Within the Convention there has been no substantive debate on the future of the EURATOM Treaty and consequently the first complete draft of the Constitution proposed that the Praesidium option be adopted. This means: No change to the powers



of the EURATOM Treaty. As a consequence the lack of democratic controls within the Treaty will remain, with no effective co-decision with the European Parliament. The Treaty is included within the EU Constitution and thus given increased status and potentially protection. It should be noted that Chapter IV Article 5 of the draft constitution states 'The protocols annexed to this Treaty shall form an integral part thereof'. The Treaty remains as an independent treaty.

Therefore it is impossible to see how the Convention's proposal meets its objectives of reforming or democratising the EU Treaties

To access relevant pages of draft (mid-June 2003 version) of draft Constitution access [here](#).

The Next Steps

1. Members of the Convention must take action in the next weeks to ensure that the current EURATOM proposal is not adopted. At the very minimum wording should be inserted into the draft proposal that calls for the review of the EURATOM Treaty with the objective of phasing it out by 2007, fifty years after its founding. This would mirror the life of the European Coal and Steel Community that was abandoned in 2002 after fifty years in existence.

2. If the current proposal is presented to the European Summit later this month in Thessaloniki then Member States must take action to highlight the failure of the Convention to fulfil its mandate. During the 1996 Inter Governmental Conference (IGC) process Ireland submitted a detailed proposal to amend the EURATOM Treaty, which got support from Austria, Luxembourg, and Sweden but was finally turned down. Now similar minded Member States must make a similar proposal to review the EURATOM Treaty within the subsequent IGC.

Failure by the Members of the Convention or Member States to undertake a thorough review of the potential role of the functions of the EURATOM Treaty threatens the credibility and even adoption of the new Constitution.

Already a number of Member States who have previously been sceptical to the value of nuclear power in modern society have declared that they will have referendum's on the adoption of the Constitutions, these include, Austria, Denmark and Ireland. In particular, in the latter two countries they have also rejected previous EU Treaties in referendum. Given that the Constitution must be adopted by all Member States prior to its entry into force, its future maybe threatened by the current proposal.



THE EUROPEAN CONVENTION

THE SECRETARIAT

Brussels, 27 May 2003

(OR. fr)

CONV 725/03

VOLUME II

COVER NOTE

from : Praesidium

to : Convention

Nos prev. docs : CONV 729/03, CONV 723/03, CONV 685/03, CONV 647/03, CONV 614/03

Subject : Draft Constitution, Volume II

– Draft text of Parts Two, Three and Four, Page 179: ANNEX I: Protocol amending the Euratom Treaty

ANNEX I

PROTOCOL AMENDING THE EURATOM TREATY

THE HIGH CONTRACTING PARTIES,

RECALLING the necessity that the provisions of the Treaty establishing the European Atomic

Energy Community should continue to have full legal effect,

DESIROUS however to adapt that Treaty to the new rules established by the Treaty establishing a

Constitution for Europe, in particular in the institutional and financial fields,

HAVE ADOPTED the following provisions, which are annexed to the Treaty establishing a

Constitution for Europe and amend the Treaty establishing the European Atomic Energy

Community as follows:

Article 1

The word "Community" shall be replaced by "Union".

Article 2

Article 3 shall be repealed.

Article 3

The heading of Title III "Institutional provisions" shall be replaced by the following:

"Institutional and financial provisions".

Article 4

Articles 107 to 170 shall be replaced by the following:

"Article 107



Without prejudice to the specific provisions laid down in Articles 134, 135, 144, 145, 171, 172, 174

and 176, the institutional and financial provisions of the Treaty establishing a Constitution for

Europe (Articles I-XX to I-ZZ and Articles III-XX to III-ZZ) and Article I-45 of that Treaty shall

apply to this Treaty".

Article 5

The heading of Title IV "Financial provisions" shall be replaced by the following:

"Specific financial provisions".

Article 6

Articles 173, 173a, 175 and 177 to 183a and 184 shall be repealed.

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Article 7

Article 190 shall be replaced by the following:

"The rules governing the languages of the institutions of the Community shall, without prejudice to

the provisions contained in the Statute of the Court of Justice, be determined by the Council, acting

unanimously".

Article 8

Article 198 shall be amended as follows:

"(a) This Treaty shall not apply to the Faeroe Islands".

Article 9

Article 201 shall be amended as follows:

"The Union shall establish close cooperation with the Organisation for Economic Co-operation and

Development, the details of which shall be determined by common accord".

Article 10

Article 206 shall be amended as follows:

"The Union may conclude with one or more States or international organisations agreements

establishing an association involving reciprocal rights and obligations, common action and special

procedures.

These agreements shall be concluded by the Council, acting unanimously after consulting the

European Parliament.

Where such agreements call for amendments to this Treaty, these amendments shall first be adopted



in accordance with the procedure laid down in Article N¹⁰ of the Treaty on European Union".

11

EU Commission Factsheet :

“Treaty establishing the European Atomic Energy Community (Euratom)

Initially created to coordinate the Member States' research programmes for the peaceful use of nuclear energy, the Euratom Treaty today helps to pool knowledge, infrastructure and funding of nuclear energy. It ensures the security of atomic energy supply within the framework of a centralised monitoring system.

CREATION

The establishment of the European Coal and Steel Community ([ECSC](#)), which came into being in July 1952, was the first great achievement of the supranational Europe. For the first time, the six Member States of this organisation surrendered part of their national sovereignty, albeit in a limited field, to the Community.

The limitations of this first attempt at integration were quickly revealed with the failure of the European Defence Community (EDC) in 1954.

While it might have been feared that the effort undertaken by the ECSC would not bear fruit, the Messina Conference of June 1955 attempted to relaunch the European process. The Conference was followed by a series of other meetings of ministers and experts. A preparatory committee was set up at the beginning of 1956 with the task of preparing a report on the creation of a European common market. This committee met in Brussels and was chaired by P.H. Spaak, the Belgian Foreign Minister at the time.

¹⁰ Article N Maastricht Treaty of 7.2.1992:

“Member State or the Commission may submit to the amendment of the Treaties on which the Union is

If the Council, after consulting the European Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purpose of determining by common accord the amendments to be made to those Treaties. The European Central Bank shall also be consulted in the case of institutional changes in the monetary area.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

2. A conference of representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of this Treaty for which revision is provided, in accordance with the objectives set out in Articles A and B.

¹¹ <http://www.statewatch.org/news/2003/may/cv00725.en03.pdf>



In April 1956, the committee proposed a set of two projects which corresponded to the two options chosen by the States:

- the creation of a generalised common market;
- the creation of an atomic energy community.

These famous "Treaties of Rome" were signed in Rome in March 1957.

The first treaty established a European Economic Community ([EEC](#)) and the second established a European Atomic Energy Community, better known as Euratom.

Following unproblematic ratification in the various countries, the two treaties entered into force on 1 January 1958.

This summary sheet deals only with the Euratom Treaty.

OBJECTIVES

To tackle the general shortage of "conventional" energy in the 1950s, the six founding States (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) looked to nuclear energy as a means of achieving energy independence. Since the costs of investing in nuclear energy could not be met by individual States, the founding States joined together to form Euratom.

The general objective of the Treaty is to contribute to the formation and development of Europe's nuclear industries, so that all the Member States can benefit from the development of atomic energy, and to ensure security of supply. At the same time, the Treaty guarantees high safety standards for the public and prevents nuclear materials intended principally for civilian use from being diverted to military use. It is important to note that Euratom's powers are limited to peaceful civil uses of nuclear energy.

Moreover, in the preamble, the signatories described themselves as:

" - recognizing that nuclear energy represents an essential resource for the development and invigoration of industry and will permit the advancement of the cause of peace ... ,

- resolved to create the conditions necessary for the development of a powerful nuclear industry which will provide extensive energy resources, lead to the modernization of technical processes and contribute, through its many other applications, to the prosperity of their peoples,

- anxious to create the conditions of safety necessary to eliminate hazards to the life and health of the public,

- desiring to associate other countries with their work and to cooperate with international organizations concerned with the peaceful development of atomic energy ...".

SCOPE

The objective of the Euratom Treaty is to pool the nuclear industries of Member States. In this context, it applies only to certain entities (Member States, physical persons, and public or private undertakings or institutions) which carry out some or all of their activities in an area covered by the Treaty, i.e. special fissile materials, source materials and the ores from which source materials are extracted.



STRUCTURE

The Euratom Treaty comprises 234 articles which are set out under six titles and preceded by a preamble. The number of articles was reduced to 177 following the signature in December 2007 of the Treaty amending the Treaty on European Union (EU Treaty) and the Treaty establishing the European Community (EC Treaty).

- The first title sets out the seven tasks which the Treaty entrusts to the Community.
- The second title sets out provisions to encourage progress in the field of nuclear energy (promotion of research, dissemination of information, health and safety, investment, joint undertakings, supplies, safeguards, property ownership, the nuclear common market and external relations).
- The third title deals with the institutions of the Community and with general financial provisions. These provisions were adapted in line with the Treaty amending the EU Treaty and the EC Treaty signed in December 2007.
- The fourth title deals with specific financial provisions.
- The fifth and sixth titles deal respectively with general provisions and provisions relating to the initial period (setting up the institutions, initial application provisions and transitional provisions).

Furthermore, the Treaty also includes five annexes dealing with the fields of research concerning nuclear energy referred to in Article 4 of the Treaty, the industrial activities referred to in Article 41 of the Treaty, the advantages which may be conferred on joint undertakings under Article 48 of the Treaty, a list of goods and products subject to the provisions of Chapter 9 on the nuclear common market, and the initial research and training programme referred to in Article 215 of the Treaty.

Lastly, two protocols are also appended to the Treaty. These are the Protocol on the application of the Treaty establishing the European Atomic Energy Community to the non-European parts of the Kingdom of the Netherlands and the Protocol on the Statute of the Court of Justice of the European Atomic Energy Community.

TASKS

According to the Treaty, the specific tasks of Euratom are:

- **to promote research and ensure the dissemination of technical information** The Commission calls upon Member States, persons or undertakings to communicate to it their programmes relating to nuclear research. At regular intervals the Commission publishes a list of the sectors of nuclear research which it considers to be insufficiently explored. It has also established a joint nuclear research centre. The Joint Research Centre (JRC) has grown into one of the leaders in nuclear research in the Community and also in research in fields such as the environment and food safety. Member States, persons or undertakings have the right, on application to the Commission, to obtain non-exclusive licences under patents, provisionally protected patent rights, utility models or patent applications owned by the Community.



- **to establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied** Each Member State lays down the appropriate provisions, whether by legislation, regulation or administrative action, to ensure compliance with the basic standards which have been established by the Treaty, including the necessary measures with regard to teaching, education and vocational training. Legislation has also been adopted on medical applications, research, the maximum permissible levels of radioactive contamination in food and the health protection measures to be taken in the event of a radiological emergency. Each Member State is required to provide the Commission with the general data relating to any plan for the disposal of radioactive waste. At the same time, the assent of the Commission is required where these plans are liable to affect the territories of other Member States.
- **to facilitate investment and ensure the establishment of the basic installations necessary for the development of nuclear energy in the EU-** The Commission regularly publishes illustrative nuclear programmes (PINCs) indicating, in particular, nuclear energy production targets and the investment required for their attainment. Persons and undertakings engaged in the industrial activities listed in Annex II to the Treaty are required to notify the Commission of any investment projects.
- **to ensure that all users in the EU receive a regular and equitable supply of ores and nuclear fuels** Supplies of ores, source materials and special fissile materials are ensured by means of a common supply policy based on the principle of equal access to sources of supply. In this context, the Treaty:

- prohibits all practices designed to secure a privileged position for certain users;
- establishes an Agency with a right of option on ores, source materials and special fissile materials produced in the territories of Member States and an exclusive right to conclude contracts relating to the supply of ores, source materials and special fissile materials coming from inside the Community or from outside.

The [Euratom Supply Agency](#) has legal personality and financial autonomy and is under the supervision of the Commission, which issues directives to it and possesses a right of veto over its decisions.

Member States are required to submit an annual report to the Commission on the development of prospecting and production, on probable reserves and on investment in mining which has been made or is planned in their territories.

- **to make certain that civil nuclear materials are not diverted to other (particularly military) purposes** The Euratom Treaty introduces an extremely comprehensive and strict system of safeguards to ensure that civil nuclear materials are not diverted from the civil use declared by the Member States. The EU has exclusive powers in this domain, which it exercises with the aid of a team of 300 inspectors who enforce the Euratom safeguards throughout the EU.

The Commission must ensure that, in the territories of the Member States:

- ores, source materials and special fissile materials are not diverted from the intended uses declared by users;



- the provisions relating to supply are complied with, together with any particular commitments to ensure access to the best available techniques by means of a common market in materials, equipment, etc.

The Commission may send inspectors into the territories of Member States. These inspectors have access at all times to all places and data and to all persons who, by reason of their occupation, deal with materials, equipment or installations subject to the safeguards.

The Euratom safeguards are applied in conjunction with those of the [International Atomic Energy Agency \(IAEA\)](#) under tripartite agreements concluded between the Member States, the Community and the IAEA.

In the event of infringement of these obligations, the Commission may impose sanctions on the persons or undertakings responsible. These sanctions can range from a simple warning to the total or partial withdrawal of source materials or special fissile materials, and also include the withdrawal of special benefits (such as financial or technical assistance) or the placing of the undertaking under the administration of a person or a board.

- **to exercise the right of ownership conferred upon it with respect to special fissile materials**
- **to foster progress in the peaceful uses of nuclear energy by working with other countries and international organisations** The IAEA is an autonomous organisation based in Vienna (Austria) which cooperates with the United Nations (UN). Its objectives are, on the one hand, to foster peaceful uses of nuclear energy and, on the other hand, to ensure that the aid which it provides is not used for military purposes.

The Commission negotiates and concludes agreements governing nuclear cooperation with third countries. However, conclusion of such agreements is subject to approval by the Council. The Member States are required, for their part, to notify the Commission of any draft agreements or contracts with a third State, an international organisation or a national of a third State. Currently, there are Euratom agreements with many countries, including the USA, Australia and Canada.

- **to establish joint undertakings** Such undertakings are set up for specific projects of fundamental importance to the development of the nuclear industry in Europe. Examples include the Joint European Torus (JET) in the field of nuclear fusion (this undertaking was dissolved in 2000, but its activities continue under the aegis of the European Fusion Development Agreement ([EFDA](#)) and the [ITER](#) project, which should even extend beyond Europe.

INSTITUTIONS AND MEMBER STATES

The institutional structure of the Euratom Treaty is broadly similar to that of the EEC Treaty and is built around the same "institutional triangle" (Council, Commission and European Parliament). Thus, the fulfilment of the tasks entrusted to the Community is ensured not only by the European Parliament, the Commission and the Council, but also by the Court of Justice and the Court of Auditors. Each institution acts within the



limits of the powers conferred on it by the Treaty. The Council and the Commission are assisted by an Economic and Social Committee acting in an advisory capacity. The Community institutions are responsible for implementing the Treaty and for the two specific Euratom bodies: the Supply Agency and the Safeguards Office (which carries out physical and accounting checks in all nuclear installations in the Community).

Although the Euratom Treaty gives the Community no strict, exclusive powers in certain fields, it retains real added value for its members: on the basis of this Treaty, the Commission has adopted recommendations and decisions which, although not binding, set European standards. In addition, it must be stressed that other Community policies, for example the environment and research policies, also have a marked impact on the nuclear industry.

The value added by Euratom and the EU can be seen particularly clearly in the context of enlargement. As a result of Euratom, the EU pursues a harmonised Community approach to nuclear energy with which candidate countries must comply. The enlargements of the EU to the East put the spotlight on the nuclear sector, particularly [nuclear safety](#) issues. Nuclear power is an important energy source for many eastern European countries (candidates or new members of the EU). However, the safety standards in their nuclear power plants and the level of protection of the public and workers are not always sufficient. In this context, the Commission has provided them with support to improve the situation via the [PHARE](#) programme. Since the collapse of the Soviet Union, many of the newly independent States (NIS) are facing the same problems, and they too receive aid from the Commission.

Over the years, other nuclear energy issues have grown in importance, too, notably operational safety of [nuclear facilities](#), storage of [radioactive waste](#), and nuclear non-proliferation (nuclear safeguards). Although the Member States retain most powers in these fields, a degree of uniformity has been achieved at international level with the aid of a series of treaties, conventions and initiatives which, one by one, have pieced together an international regulatory framework governing activities in the nuclear sector (the Convention on Nuclear Safety).

THE FUTURE OF THE EURATOM TREATY

Unlike the EC Treaty, no major changes have ever been made to the Euratom Treaty, which remains in force. The European Atomic Energy Community has not merged with the European Union and therefore retains a separate legal personality, while sharing the same institutions. The Treaty amending the EU and EC Treaties, which was signed in December 2007, changed certain provisions of the Euratom Treaty via its "Protocol No 12 amending the Treaty establishing the European Atomic Energy Community". These changes are limited to adaptations to take account of the new rules established by the amending Treaty, particularly in the institutional and financial fields.



In March 2007 the Commission reviewed and assessed the outlook for the Euratom Treaty. The result was generally positive, particularly in the areas of research, health protection, monitoring of the peaceful use of nuclear material, and international relations. Interest in nuclear power is being boosted by the need to ensure a secure supply of energy and by concern over climate change. In future, the application of the Euratom Treaty will need to continue focusing on the security and safety of nuclear materials. The Euratom Community will need to continue helping to guide the development of the nuclear industry and ensure the observance of high standards of radiation protection, safety and security.”¹²

References

BREXIT goes nuclear: The consequences of leaving Euratom

The UK Government has confirmed that it will withdraw from Euratom. But what does Euratom actually do? And what will happen when the UK leaves? The authors find major risks, potential costs and open questions.

By: [Enrico Nano](#) and [Simone Tagliapietra](#) Date: February 21, 2017 Topic: Energy & Climate

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The UK Government has clarified with its [Brexit White Paper](#) that when invoking Article 50, it ‘will be leaving Euratom as well as the EU’. The need to distinguish exiting Euratom from exiting the EU arises because Euratom is legally distinct from the EU. The UK decided to leave Euratom because, albeit independent, the institution relies for its functioning on EU bodies such as the Commission, the Council of Ministers and the Court of Justice.

According to the White Paper, the UK Government considers the nuclear industry of strategic importance for the country, and for this reason it ‘will seek alternative arrangements’ to continue civil nuclear cooperation on safeguards, safety and trade with Europe.

¹² <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:xy0024>



In this blog we examine the functions of Euratom, its relevance for the UK, the potential implications of a UK departure from Euratom for both the UK and Euratom itself, and the potential ways forward.

Euratom: what is it and what does it do?

The European Atomic Energy Community ([Euratom](#)) was founded by the Treaties of Rome of 1957 with the aim of creating a European market for nuclear power. Euratom is legally distinct from the EU, although it is governed by EU institutions. Its membership is composed the EU Member States plus Switzerland (Associated State since 2014). Euratom also has cooperation agreements with eight “Third Countries”: US, Japan, Canada, Australia, Kazakhstan, Ukraine, Uzbekistan and South Africa.

The key functions of Euratom are to:

- Promote research on nuclear energy, and particularly on nuclear fusion – a technology that has the potential to provide a sustainable solution for the world’s energy needs and could thus be considered a global common good;
- Establish uniform safety standards and ensure that they are applied;
- Ensure the regular supply of ores and nuclear fuels;
- 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.

Euratom carries out these functions using three key instruments:

- The Euratom Supplies Agency, which owns and controls the supply of all fissile materials in Euratom’s Member States;
- The European Commission, which develops research programmes to foster research on nuclear energy;
- The Euratom Safeguards Directorate, which ensures that nuclear materials are not diverted from their intended uses (non-proliferation).

The UK’s links to Euratom

Reflecting the key functions of Euratom, the UK’s links with the organisation are in the following areas:

Nuclear fusion research: Euratom’s flagship project is the ‘International Thermonuclear Experimental Reactor’ ([ITER](#)), the world’s largest planned nuclear fusion experiment. Located in the south of France, ITER is designed to



produce 500 MW of fusion power from 50 MW of input power: a ten-fold return on energy. It is funded and run by a seven-party consortium composed of the EU, India, Japan, China, Russia, South Korea and the US.

The UK has an important role in this project. It hosts the Joint European Torus ([JET](#)), the world's largest operational nuclear fusion device. This project is also known as 'Little ITER', since its experimental design and results are mainly supposed to consolidate ITER's design. The JET project – carried out by a team of 350 scientists – is formally a joint venture used by more than 40 EU laboratories.

Budget for nuclear fusion: The EU is covering the largest share of ITER's construction costs (45 percent), amounting to €2.7 billion over the 2014-2020 period. This is financed through a specific budget line within the Multiannual Financial Framework (MFF) of the EU budget. During the forthcoming negotiations, the European Commission is expected to claim the UK's share of this amount as a liability towards the EU.

In addition, ITER-related research costs are covered through the EU Framework Programme for Research and Innovation (Horizon2020, formerly FP7), administered by Euratom. The UK stands to lose access to those funds.

To put it into perspective, over the 2014-18 period Euratom has a total research budget of €1.6 billion drawn from the H2020 budget, of which €700 million will be [distributed](#) to carry out research specifically on nuclear fusion. €424 million will go to EUROfusion, a consortium of university groups and national labs, mostly for research related to the ITER project. The remaining €283 million have been budgeted solely for the Culham Centre, the UK institute that hosts JET, operating as a common facility for researchers across Europe. JET alone [receives](#) around €69 million per year of funding, 87.5% of which is provided by the European Commission and the remaining 12.5 percent is funded by the UK.

Safety, non-proliferation and free movement of capital and labour: Euratom is not only relevant to the UK for its research component, but also for its operational functions. The UK is historically highly dependent on nuclear energy. As of 2016, nuclear accounts for around 21% of the UK's electricity generation mix. With its 15 nuclear reactors in operation, the UK [ranks](#) 2nd in the EU by number of nuclear power plants (after France) and 4th in terms of nuclear power capacity (after France, Germany and Sweden).

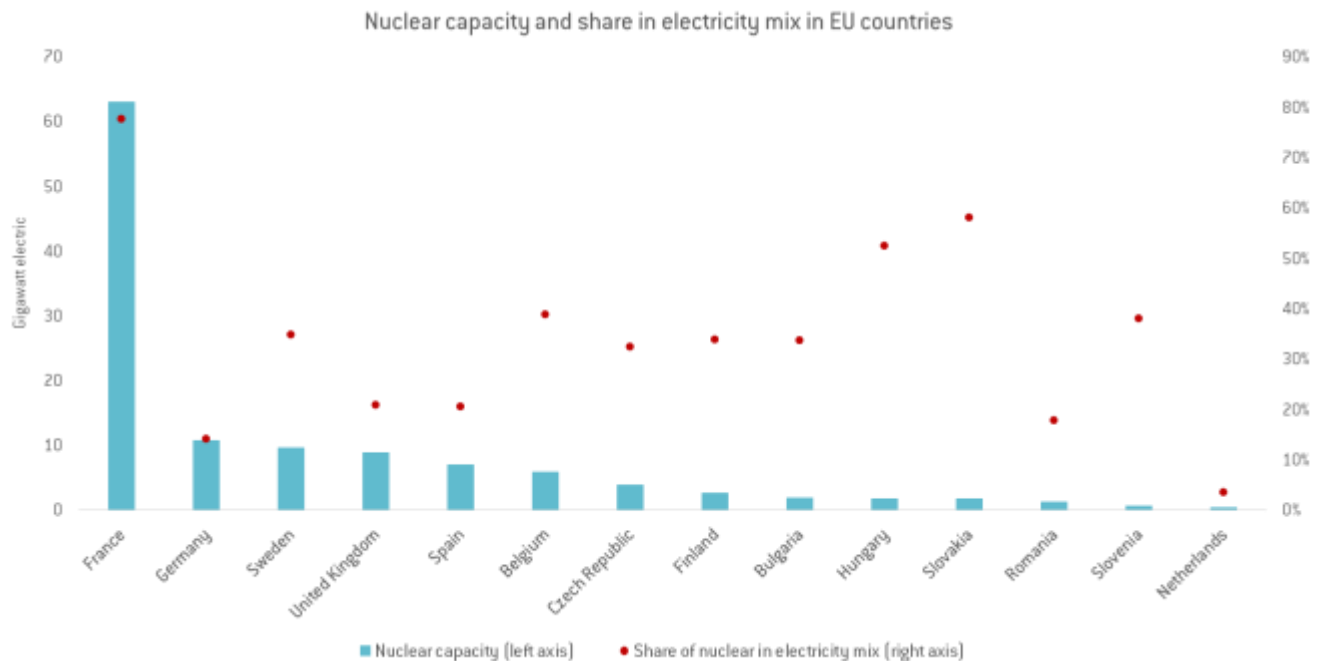
As a nuclear country, the UK thus relies on Euratom for activities related to safety at nuclear power plants, the supply of nuclear fuels and non-proliferation. Euratom is an established legislative framework for issues, such as free movement of capital for nuclear investments and free movement of labour for nuclear specialists, which facilitate investment in the sector and reduce costs associated with nuclear power generation.



By leaving Euratom, the UK might lose this package of advantages. This might have an impact not only on the UK's operating nuclear power plants, but also on new projects under development. This includes the controversial Hinkley Point mega-project, which was finally approved by the UK Government in September 2016.

Supply of nuclear fuel: Under the Euratom Treaty, the Euratom Supplies Agency is endowed with a right of option on ores, source materials and special fissile materials produced in the territories of Member States. It also has an exclusive right to conclude contracts relating to the supply of ores, source materials and special fissile materials coming from inside or outside the Community. This common purchasing scheme gives the Euratom Community more bargaining power when negotiating contracts with external suppliers of nuclear fuels, thus contributing to the reduction of nuclear power generation costs. By leaving Euratom, the UK might lose also this economic advantage.

Source: IEA World Energy Balances, European Nuclear Society



<http://bruegel.org/2017/02/brexit-goes-nuclear-the-consequences-of-leaving-euratom/>



	1990	1995	2000	2005	2010	2015
EU-28	794 863	880 821	944 993	997 699	916 610	857 129
EA-19	619 948	678 405	751 210	780 934	726 011	660 738
Belgium	42 722	41 356	48 157	47 595	47 944	26 103
Bulgaria	14 665	17 261	18 178	18 653	15 249	15 383
Czech Republic	12 585	12 230	13 590	24 728	27 998	26 841
Germany	152 468	153 091	169 606	163 055	140 556	91 786
Spain	54 268	55 455	62 206	57 539	61 990	57 305
France	314 081	377 231	415 162	451 529	428 521	437 428
Lithuania	17 033	11 822	8 419	10 337	0	0
Hungary	13 731	14 026	14 180	13 834	15 761	15 834
Netherlands	3 502	4 018	3 926	3 997	3 969	4 077
Romania	0	0	5 456	5 555	11 623	11 640
Slovenia	4 622	4 779	4 761	5 884	5 657	5 648
Slovakia	12 036	11 437	16 494	17 727	14 574	15 146
Finland	19 216	19 216	22 479	23 271	22 800	23 245
Sweden	68 185	69 935	57 316	72 377	57 828	56 348
United Kingdom	65 749	88 964	85 063	81 618	62 140	70 345

Eurostat, 2017 Gross Electricity Production Nuclear-2015



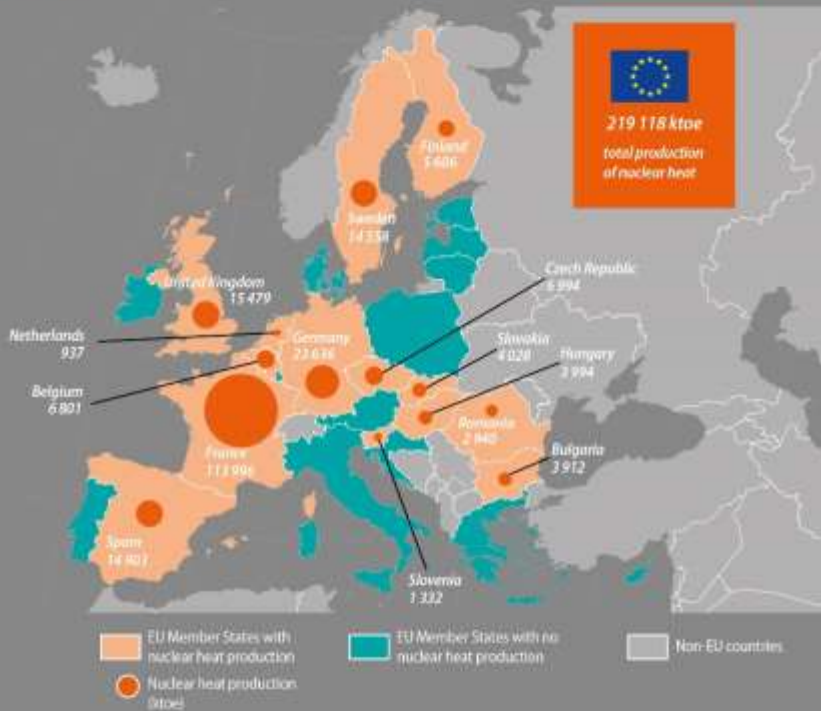
The Greens | European Free Alliance
in the European Parliament



BECKER BÜTTNER HELD

Nuclear energy in the EU

14 EU Member States operated nuclear facilities in 2015



In the EU, the nuclear heat production decreased by 6 % between 2009 and 2015



Change in nuclear heat production between 2009 and 2015 (%)

The EU Member States with no nuclear heat production:
Denmark, Estonia, Ireland, Greece, Croatia, Italy, Cyprus,
Latvia, Lithuania (since 2010), Luxembourg, Malta, Austria, Poland, Portugal,
ktoe (thousand tonnes of oil equivalent)



Brexit from Euratom: potential impacts on the UK's nuclear sector

The decision to leave Euratom could impact the UK's nuclear industry in several ways:

Nuclear fusion research: Although the JET program is not likely to be affected before the end of 2018, its subsequent status is currently in a [legal limbo](#). JET's experiments may be halted or seriously delayed and, as a result, the ITER project could also be slowed down, because it is highly dependent on the JET's outcomes;

Safety and non-proliferation: The UK Government would have to budget additional costs to run an autonomous system to guarantee appropriate safety standards, in particular for nuclear safety inspections. On leaving Euratom, the UK would also need to set up the proper framework to comply with its nuclear non-proliferation safeguards commitment and to decommission radioactive waste. The JET facilities alone, for instance, [have produced](#) some 3000 cubic meters of radioactive waste, which will cost about €336 million to decommission. This is currently provided for through an EU-wide cost-sharing arrangement.

Free movement of capital and labour: The Brexit announcement caught the scientific community unprepared and caused large disquiet, with researchers now considering to leave the UK. [According to](#) Prof. Steve Cowley, former CEO of the UK Atomic Energy Authority, the possibility of losing EU funding puts at risk more than 1000 clean-energy exploration jobs. It also risks a loss of expertise well beyond that at the JET-hosting Culham Centre, possibly impacting the research and tertiary education sector at large.

Furthermore, labour movement and trade restrictions may also have implications for the construction costs and schedule of new projects. Long negotiations could impose severe delays on new facilities, such as Hinkley Point C. This could increase general nuclear costs and also the risk that the UK will not hit its targets for reducing greenhouse gas emissions.

Supply of nuclear fuels: Currently the Euratom Supply Agency [guarantees](#) equal access to nuclear raw materials to the Member States. By pulling out of Euratom, the UK will have to re-negotiate commercial contracts to ensure provision of nuclear fuel, ores and fissile materials. Outside of the EU it is debatable whether the UK will have similar bargaining capacity to negotiate with others, a fact that may lead to higher costs for nuclear power generation in the UK.



Other legal issues: Euratom [currently has](#) about 20 nuclear cooperation agreements with third countries around the world, which the UK will have to renegotiate. Of crucial importance are those with the International Atomic Energy Agency, the world's intergovernmental body for co-operation in the nuclear field, and with the US, from which the UK is a substantial importer of technology and fuel for its nuclear reactors.

Possible ways forward

Looking ahead, there are three possible scenarios for the post-Brexit UK-Euratom relationship. These should could offer broad frameworks for cooperation to be taken into consideration during the forthcoming negotiations:

1. UK out of Euratom: In this scenario, the UK Government would have neither obligations nor rights towards Euratom. As a result, the UK might ultimately see increasing costs for its nuclear power generation, due to the additional operational costs and supply costs deriving from being outside the established framework of Euratom. Furthermore, new projects such as Hinkley Point might also be delayed, due to the volatile climate investment that this scenario could generate.

As far as the EU is concerned, this scenario would not imply any additional costs, but only a potential delay in the nuclear fusion research at ITER, due to the potential unravelling of the JET project.

2. UK working with Euratom as a third country: According to Article 101 of the [Euratom Treaty](#), 'The Euratom Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with a third "state, an international organisation or a national of a third state'.

By acquiring the status of third country, the UK might join countries such as China and Russia, with which Euratom has [established](#) a 'structured dialogue to identify a common set of research topics of mutual interest in which cooperation can take place on a shared-cost basis';

3. UK in Euratom as Associated Country: According to Article 206 of the Euratom Treaty, 'The Community may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedures'. It is on the basis of this article that [Switzerland became](#) in 2014 an Associated Country to Euratom.



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No. Field Relation between treaties

1. Environmental nuclear liability Compensation and remediation of damage to the environment in case of nuclear incident is not regulated by any of these treaties. If would be in the future, the Euratom Treaty should be the legal ground and the TFEU would not be applied here.
2. Transport of radioactive substances The Euratom Treaty and its secondary legal acts mostly regulate the authorising, notification and other similar processes that build grounds for the physical transportation and control the movement of radioactive substances in Europe to be possible, while the TFEU and its secondary legislation focus on the safety of the actual transfer of the radioactive substances from place A to place B.
3. Free movement of radioactive goods The nuclear common market and "nuclear" goods is exceptional competence of the Euratom Treaty and provisions of the TFEU are not applicable here. Applicability of the SSM 2011:32