

Euratom – Teil des Problems und Teil der Lösung

Dr. Dörte Fouquet
Rechtsanwältin

- Überblick

Erste Bemerkung

- The European Commission estimates that approximately one third of the 145 power reactors currently operating in the European Union will need to be shut down by 2025.
- This will result in the need to dismantle, decontaminate and demolish these nuclear facilities as well as to undertake processing, conditioning and disposal of nuclear waste and spent fuel ('decommissioning').
- Source: Irrek, Müller, Fouquet, Froggatt et al., EU Decommissioning Funding Methodologies , 2007

Ein kleiner Blick in die Zusammenhänge

- Die KfW hat für die Bundesregierung die Kosten des Ausstiegs, inklusive Rückbau, beschleunigter Ausbau der Erneuerbaren Energien auf ca. 250 Mia EUR geschätzt. Unklar, ob hier auch die gesellschaftlichen Vorteile einbezogen sind.
- Frankreich befürchtet, bei einem Ausstieg Kosten von mehr als 700 Mia EUR, auch wegen der aktuell besonders hohen Abhängigkeit von Atomstrom und wegen seines dreifach höheren Anteils an AKWs
- Quelle: Figaro, France Economie, 21.09.2011

EURATOM und Risiko

- *Artikel 98*
- „Die Mitgliedstaaten treffen alle Maßnahmen, die erforderlich sind, um den Abschluß von Versicherungsverträgen zur Deckung der Gefahren auf dem Kerngebiet zu erleichtern.
- Der Rat erläßt innerhalb von zwei Jahren nach Inkrafttreten dieses Vertrags nach Anhörung des Europäischen Parlaments auf Vorschlag der Kommission, die zuvor die Stellungnahme des Wirtschafts- und Sozialausschusses einholt, mit qualifizierter Mehrheit die Richtlinien für die Art und Weise der Anwendung dieses Artikels.“

Das Haftungs Patchwork

- “2004 Amended Paris Convention” and “2004 Amended Brussels Convention”
- Austria and Luxembourg signed the 1960 Paris Convention but never acceded to it, which means that only domestic law is applicable there.
- No convention applies to Ireland, Cyprus and Malta, where nuclear third party liability is equally entirely governed by domestic law.
- In Bulgaria, the Czech Republic, Estonia, Hungary, Lithuania, Poland and the Slovak Republic, the original version of the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963 (“1963 Vienna Convention”), signed under the auspices of the International Atomic Energy Agency (“IAEA”), applies.
- In Latvia and Romania, the revised 1997 version of the Vienna Convention, following the amendments introduced by the Protocol of 12 September 1997 (“1997 Amended Vienna Convention”), applies. In addition, Romania is the only EU Member State that has ratified the Convention on Supplementary Compensation for Nuclear Damage of 12 September 1997 (“CSC”), signed under the auspices of the IAEA, which is, however, not yet in force.

Haftungs Patchwork II

- A Joint Protocol relating to the application of the Vienna Convention and the Paris Convention of 21 September 1988 (“Joint Protocol”) was concluded under the auspices of both the OECD and the IAEA to bridge the Paris and Vienna regimes. However, this Joint Protocol adds towards harmonisation but does not remove the intrinsic differences of all regimes and their revisions, both in conceptual and financial terms.
- In sum, the protection of victims of nuclear accidents, the obligations of nuclear operators, transporters, (re-)insurers and public authorities in the EU Member States are governed by a patchwork of diverse legal regimes: (i) the liability of some operators is unlimited, whereas others have a capped liability; (ii) the operators’ insurances differ both as regards their coverage and payable fees; and (iii) the obligation to compensate victims of a nuclear accident differs both as regards the damages covered and the payable amounts.
- The environmental liability Directive 2004/35/EC1 does not provide any assistance as it expressly excludes nuclear damages.

Unzureichende Haftungsversicherungen- weltweit – Beispiel Deutschland

- **Costs of Insurance**

Nuclear Electricity Production in Germany '06: **167,4 Mrd. KWh**
(Quelle Dt. Atomforum 17.1.2007)

Insurance obligation for all Nuclear Power Stations in Germany '06:
€ 11,523 Mio. + Vers.Steuer (insurance tax) = **€ 13,367 Mio.**

Cost of Insurance per KWh = **0,008 Cent/KWh**

- Source: Haftungsvorsorge und Versicherung der Atomenergie, Dirk Harbrücker, DKVG Köln

Wie hoch muss die Versicherung sein?

- For the conservative government in Germany damage costs major accident were evaluated by Prognos:
- Price for Germany 5.469 billion EUR. Full liability would lead to external costs of 0.022 EUR/kWh.
- Ewers/Rennings, Prognos-Schriftenreihe Identifizierung und Internalisierung Externer Kosten der Energieversorgung, Band 2, 1992, Prognos-Gutachten im Auftrag des Bundeswirtschaftsministeriums

Vorhandene Summe

- **Overview of available financial capacity in Germany**
- € 700 Mio. EURO per Power Plant

Source: Haftungsvorsorge und Versicherung der Atomenergie, Dirk Harbrücker, DKVG Köln

- **Definitely not enough**

Responsibility and Coverage Source: DKVG Dt

Kernreaktorversicherungsgemeinschaft

Deckung durch:	Deutschland	Belgien	Finnland	Frankreich	Großbritannien	Niederlande	Schweden	Schweiz	Slowenien
	EUR	EUR	EUR	EUR	EUR	EUR	EUR	EUR	EUR
Versicherung	256	297	200	91	183	340	343	545 ³⁾	75
Solidaritätsvereinbarung der Betreiber	2.244								
Staatsgarantie -gebührenfrei- ¹⁾				109					
Umlage unter BZÜ-Staaten ²⁾	143	143	143	143	143	143	143		
Summe	2.643	440	343	343	326	483	485	545	75
weitergehende Betreiberhaftung	unlimitiert	keine	keine	keine	keine	keine	keine	unlimitiert	keine
Kurs SZR zu EUR vom 31.12.2006	1,142290	1,142290	1,142290	1,142290	1,142290	1,142290	1,142290	1,142290	1,142290
Kurs WE zu EUR vom 31.12.2006	1,000000	1,000000	1,142290	1,000000	1,308920	1,000000	1,142290	0,544716	0,036290

¹⁾ Für Staaten, die dem Brüsseler Zusatzübereinkommen beigetreten sind: Differenz zwischen SZR 175 mio. und Versicherung, falls Versicherung < SZR 175 Mio.

²⁾ Betrag entspricht SZR 125 mio

³⁾ Davon stehen aber nur CHF 500 Mio. für Schäden durch Terror zur Verfügung

⁴⁾ Berechnung: 104KKW haften bis zu USD 100,59 Mio. pro Block, maximal USD 15 Mio. pro Jahr

Risiko vollkommen unterversichert – Kreiert Energiemarktverzerrung

- Potential Risk of costs of a major accident is at least more than 1000 Bio EURO
- All German Nuclear Power Producers in their solidarity pool could not cover such a risk
- Therefore State still the guarantor for such risk
- In view of a liberalised market this potential state support must be calculated with a potential risk premium insurance calculation – per kWh result would be the amount of state support

Nicht Harmonisierte Welt des Atoms

- Nuclear third party liability rules are currently not harmonised in the EU. In Greece and Portugal, the original version of 29 July 1960 of the Paris Convention on Third Party Liability in the Field of Nuclear Energy (“1960 Paris Convention”) of the Nuclear Energy Agency (“NEA”) of the Organisation for Economic Co-operation and Development (“OECD”) applies.
- In Belgium, Denmark, Finland, France, Germany, Italy, the Netherlands, Slovenia, Spain, Sweden and the UK, the 1960 Paris Convention and the Convention of 31 January 1963
- Supplementary to the Paris Convention of 29 July 1960 (“1963 Brussels Convention”) apply.
- The Paris and Brussels Convention states are expected to accede, in the medium term, to the amendments of these conventions introduced by the Protocol of 12 February 2008

Das Problem der mittel- und osteuropäischen Staaten

- Accession to the European Union
- In the case of Bulgaria, Lithuania and Slovak Republic, there are agreements between the state governments, the European Union and some Member States about European contributions to financing decommissioning of the nuclear power plants in the context of the countries' accession to the European Union.
- • Joint binational ownership There is the special case of Slovenia, where the Krsko NPP belongs jointly to a Slovenian and a Croatian company. In this case, formally, the liabilities are fully with the Slovenian operator of Krsko NPP because the plant is situated on Slovenian ground, while in practice - due to a Slovenian-Croatian contract – decommissioning is a bilateral obligation.

Country	Name of nuclear facility	Kind of facility	Total decommissioning costs estimated [Mio. EUR]	Provisions accumulated by 31-12-2004 [Mio. EUR]	Provisions accumulated in relation to expected costs [%]	Years of operation until 31-12-2004 in relation to total expected lifetime [%]
RO	Cemavoda 1	NPP	N/A	0	0	2.7
RO	Cemavoda 2	NPP	N/A	0	0	-
RO	Horia Hulubei, Magurele, Bukarest	RR	16	0	0	100
RO	TRIGA, Mioveni, Pitesti	RR	100	0	0	49
RO	CNU Bihor	Uranium mine	N/A	0	0	100
RO	CNU Banat	Uranium mine	N/A	0	0	100
RO	CNU Suceava	Uranium mine	N/A	0	0	N/A
RO	CNU Feldioara	Milling facility for uranium ore	N/A	0	0	N/A
RO	FCN, Mioveni, Pitesti	Fuel fabrication plant	N/A	0	0	N/A

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BG	Kozloduy unit 1	NPP	2.6 billion Euro	550 million Euro from EU + 280 million Euro in decomm. funds + 69 million Euro in radioactive waste management funds	35%	21/30 as a rough weighted average of the 6 plants.
BG	Kozloduy unit 2	NPP				
BG	Kozloduy unit 3	NPP				
BG	Kozloduy unit 4	NPP				
BG	Kozloduy unit 5	NPP				
BG	Kozloduy unit 6	NPP				

Das Problem der russischen Nuklearindustrie in Europa

- “All the Chernobyl reactors were of a design that the Russians call the RBMK--natural uranium-fueled, water-cooled, graphite-moderated--a design that American physicist and Nobel laureate Hans Bethe has called "fundamentally faulty, having a built-in instability." Because of the instability, an RBMK reactor that loses its coolant can under certain circumstances increase in reactivity and run progressively faster and hotter rather than shut itself down. Nor were the Chernobyl reactors protected by containment structures ..” (Concerned Scientists)

Russland und Nuklear

- In Russia today there are 10 nuclear power plants with a total of 31 operating reactors. In 2004 these reactors produced some 21.740 MWe. Seven of the reactors have recently been granted a prolonged engineered life span of 15 years. This means that intended engineered life spans on aged reactors can increase from their 30 year intended term of service to 45 years. (Bellona)
- Secrecy in information prevails

- Die Politik der Kommission

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

- aus dem Jahre 2006

- “In 2005, the EU is the biggest nuclear electricity generator in the world (944.2 TWh(e)). It has a mature nuclear industry spanning the entire fuel cycle, with its own technological base and expertise. Attention has focused on the safety and security of nuclear installations and protection of the public. The recent liberalisation of electricity markets has significantly changed the investment scenarios compared with the 1970s and 1980s when most nuclear plants were constructed.
- The Community has strengthened its international relations with agreements that facilitate trade in nuclear materials and technology, instrumental to a policy of diversification of supply and closer cooperation on technology transfer and business with non-Community countries⁹.
- At the same time, the EU has continued to foster research and development on nuclear safety, reduction and treatment of radioactive waste, final repositories and innovative nuclear technology. In May 2006 Euratom became a full member of the Generation IV Forum (GIF), studying potential future reactor designs that will make nuclear energy generation safer and more economic, improve security, reduce non-proliferation concerns and limit waste generation. “
- Quelle: Nuclear Illustrative Programme, Presented under Article 40 of the Euratom Treaty for the opinion of the European Economic and Social Committee;{SEC(2006) aaaa}; {SEC(2006) bbbb}

Communication (II)

- “Established and emerging economies in Asia, such as Japan, South Korea, China and India, along with Russia and the USA are planning future construction of nuclear generation capacity, ensuring that nuclear power plays a significant role in meeting their increasing energy requirements. The international situation calls for constant attention to policies consistent with nuclear developments in other regions of the world, given the potential geopolitical implications for global security, health, industry and public opinion.
- In the EU Finland and France decided to construct new nuclear reactors. Other EU countries, including the Netherlands, Poland, Sweden, the Czech Republic, Lithuania (in collaboration with Estonia and Latvia), Slovakia and the United Kingdom along with Bulgaria and Romania have re-opened the debate about their nuclear power policy, which could lead either to extending the rating and operating life of existing plants or to debating their replacement or planning to build new installations. Germany, Spain and Belgium are continuing their nuclear phase-out policies for the time being.”

EURATOM und Finanzierung

- **3.2. Investment notifications**
- Under Article 41 of the Euratom Treaty, investment projects related to the nuclear fuel cycle in the EU must be notified to the Commission prior to conclusion of contracts with suppliers or, if the work is to be carried out by the undertaking with its own resources, three months before the work begins.
- Since 1997 a total of 19 projects have been notified to the Commission. Ten were for installations in France, seven of them on replacement of steam generators for NPPs, one on construction of a treatment and storage facility for radioactive waste (CEDRA) at Cadarache, one on construction of a new uranium enrichment plant (Georges Besse II) at Tricastin using centrifuge technology and the last on construction of a new EPR NPP at the Flamanville site.
- In 2004 Finland notified the Commission of its plans for a new NPP at Olkiluoto, the first new NPP to be built in the EU for more than a decade.
- Upgrades and additional capacity at the three uranium enrichment plants (Urenco) in Germany, the Netherlands and the United Kingdom, construction of an installation for vitrified high-active waste (VEK) in Karlsruhe

- Ein Beihlife- Selbstbedienungsladen

Der Markt

- *„Today, the big four energy companies, E.ON, RWE, EnBW and Vattenfall, own 70 percent of German capacity and produce an even greater share of the electricity. They have extensive cross-ownership structures. They own the Stadtwerke, or municipal utilities; regional sales companies; and either own or operate the electricity and natural gas transportation networks. ...*
- *Renewable energy is a threat to all four of them. It would mean decentralizing the energy sector, giving local regions independence from the big energy companies.“*

International Herald Tribune: Judy Demsey, Letter from Europe: Climate change German energy companies balk at climate-change agenda, Published: July 13, 2007

Windfall

- Windfall profits or producer rents resulting from marginal cost pricing and earned by electricity companies owning large depreciated nuclear and lignite fuelled utilities (especially in Germany and France) –
 - Estimated for 2005 and 2006 together for the companies RWE, EnBW, E.On and Vattenfall Europe with their German operations at the order of 8.2 bill Euros and for EDF in France at 13 bill Euros

Source: Uwe Leprich, The Crisis of the Electricity Markets in Europe: Problems and Consequences, 2005

- Windfall profit derived to passing on a large share of the not occurring additional costs for Greenhouse gas (GHG) emissions allowances by electricity producers to customers
Free allocation or so-called grandfathering is rectified under current ETS Directive just allowing 5 % allowances' auctioning between 2005 and 2008 and 10 % between 2008 and 2012. This will start to change under the new ETS system

Example: Subsidies to Nuclear

“More than half of the subsidies (in real terms) ever lavished on energy by OECD governments have gone to the nuclear industry.” (The Economist, **Nuclear power Out of Chernobyl's shadow** May 6th 2004, from print edition)

Example US:

- Wind, solar and nuclear power got around \$150 billion in cumulative US Federal subsidies over roughly fifty years, some 95% of which supported nuclear power.
- Nuclear power received far higher levels of support per kilowatt-hour generated early in its history than did wind or solar.

Subsidies II

- Between 1947 and 1961: Commercial, fission-related nuclear power development received subsidies worth \$15.30 per kWh.

This compares with

- subsidies worth \$7.19/kWh for solar and
- 46¢/kWh for wind between 1975 and 1989.
- In their first 15 years, nuclear and wind technology produced comparable amount of energy (2.6 billion/Nucl. and 1.9 billion kilowatt-hours/wind), but the subsidy to nuclear outweighed that to wind by a factor of over 40, at \$39.4 billion to \$900 million.

(Source: **FEDERAL ENERGY SUBSIDIES: NOT ALL TECHNOLOGIES ARE CREATED EQUAL** by Marshall Goldberg, REPP, July 2000 • No. 11)

- EURATOM und seine Wirkung

Atoms for Peace -1958

- IN DEM BEWUSSTSEIN, daß die Kernenergie eine unentbehrliche Hilfsquelle für die Entwicklung und Belebung der Wirtschaft und für den friedlichen Fortschritt darstellt,
- IN DER ÜBERZEUGUNG, daß nur ein gemeinsames Vorgehen, ohne Verzug unternommen, Aussicht bietet, die Leistungen zu verwirklichen, die der schöpferischen Kraft ihrer Länder entsprechen,
- ENTSCHLOSSEN, die Voraussetzungen für die Entwicklung einer mächtigen Kernindustrie zu schaffen, welche die Energieerzeugung erweitert, die Technik modernisiert und auf zahlreichen anderen Gebieten zum Wohlstand ihrer Völker beiträgt,
- IN DEM BESTREBEN, die Sicherheiten zu schaffen, die erforderlich sind, um alle Gefahren für das Leben und die Gesundheit ihrer Völker auszuschließen,
- IN DEM WUNSCH, andere Länder an ihrem Werk zu beteiligen und mit den zwischenstaatlichen Einrichtungen zusammenzuarbeiten, die sich mit der friedlichen Entwicklung der Kernenergie befassen,
- HABEN BESCHLOSSEN, eine Europäische Atomgemeinschaft (EURATOM) zu gründen; ...

Hauptaufgabe von EURATOM

- *Artikel 1*
- Durch diesen Vertrag gründen die HOHEN VERTRAGSPARTEIEN untereinander eine EUROPÄISCHE ATOMGEMEINSCHAFT (EURATOM).
- Aufgabe der Atomgemeinschaft ist es, durch die Schaffung der für die schnelle Bildung und Entwicklung von Kernindustrien erforderlichen Voraussetzungen zur Hebung der Lebenshaltung in den Mitgliedstaaten und zur Entwicklung der Beziehungen mit den anderen Ländern beizutragen.

Die Elemente des Vertrages

- Förderung der Forschung
- Verbreitung der Kenntniss
- Geheimhaltung
- Gesundheitsschutz
- Investitionen
- Gemeinsame Unternehmen
- Versorgung mit Brennstoffen
- Überwachung der Sicherheit
- Eigentum am spaltbaren Material
- Gemeinsamer Markt auf dem Kerngebiet
- Aussenbeziehungen
- Die Organe derGemeinschaft
- Finanzen

Das Problem EURATOM

- The Euratom Treaty, with its requirement for the community to create the *'conditions necessary for the speedy establishment and growth of nuclear industries'* contradicts the requirement for equal treatment of electricity generators.
- Furthermore, it creates advantages for the nuclear industry such as Euratom Loans and a specific nuclear R&D program and has been used by the European Commission to justify their lack of action to tackle the questions of market distortion created by state aids to the nuclear industry.
- At the latest since the liberalisation of EU energy markets, there should be no more specific role for nuclear as energy source, outside the Competition framework of the EC Treaty. The liberalisation directive itself does not give any privileged role or reserved area for nuclear power.

Das Problem

- Euratom Treaty as carrying “the stigma of an undemocratic, outdated alien in the world of the liberalised energy market”, hindering the development of an open sustainable energy market in Europe.
- The organisation of nuclear power on the basis of the Euratom Treaty and the Member States’ own national legislation leads to the behaviour of closed shop policy with disturbing consequences for a democratic society in Europe.

- Reformversuche

Der Reformversuch aus den Jahren 2002/2003

- 9.7.2003 Verfassungskonvent entschied:
- Der Euratom-Vertrag über die EU-Kernenergiepolitik ist nicht in den EU-Verfassungsentwurf integriert worden und bleibt daher auch in Zukunft eigenständig.

Die Europäische Verfassungsdebatte

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

The status after Lisbon

- The Convent in its work in 2002/2003 simply preserved and re-justified EURATOM, following the implementation of the Maastricht, Amsterdam and Nice Treaties.
- Idea was to merge EURATOM with a special chapter into the new convention :The official philosophy, if one can find such, was just to increase clarity through a new unified structure, integrating or harmonising it in one way or the other the Euratom articles with the general Treaty Articles.
- Euratom now remained a stand-alone treaty with own legal personality. A so-called sunset clause approach of those who want to phase out did not succeed.
- But at least the attempt to merge Euratom with the Constitution was also defeated.
- 2003 conclusion: “Now there is time to analyse the risks and costs of a phasing-out under different alternatives, be it via a unanimous procedure within the intergovernmental conference rules or be it by an approach, that some Member-States will leave the Euratom Treaty in accordance with relevant international rules.” (Dörte Fouquet)

Gründe für ein Ende von EURATOM

- Notwendigkeit der Beendigung der nuklearen Energieversorgung
- Signalwirkung für gemeinsamen Aufbruch in die Zeit nach Nuklear
- Anerkennung der besonderen, verzerrenden Energiemarktbeeinflussung von Nuklear über EURATOM

Etat de Lieu

- The world has faced a multitude of nuclear incidents with Chernobyl (26 April 1986) and now with Fukushima (11 March 2011) as its most gruelling consequence.
- The dual use of nuclear power – it is also used for military purposes – constitutes a daily threat.
- After Fukushima, Germany finally said good-bye to Nuclear and reconnected to the essence of the German law on the peaceful use of nuclear energy and the protection against the risks of nuclear energy in its wording from 22 April 2002 - a complete change of energy policy has occurred in this country and I would say in many other countries, which have decided to follow the same path.
- Countries such as Denmark do not rely on nuclear energy themselves, but are provided with electricity by many nuclear power stations in neighboring countries.
- The countries without nuclear power as well as countries, which have recognised the anti-competitiveness and the non-sustainability of Euratom's structure have an interest in ending Euratom

Gründe im Einzelnen

- Europe lost clarity in its energy policy with Directive 92/96 of the Parliament and the Council, 19 December 1996, regarding common rules for the common market in the electricity field.
- Europe created after long years of discussion and preparation the opening towards a single market in energy. No energy source has been legally exempted from the application of this directive.
- The directive did not create a separate market for nuclear power, but the nuclear sector uses the Euratom Treaty and specific national legislation to maintain and create a market in a market which faces concentration process of market power and oligopolistic structures, especially coming from France and Germany and in Central Europe, with consequences for energy security and energy independence in the whole Europe.
- The undemocratic mode, in which nuclear energy policies are imbedded in Europe, leads to a situation where openness and clarity and a level playing field are not applied to the necessary democratic and economic extent.

No integration of the European Parliament in the decision processes

- The most basic problems in this respect are: The non-integration of co-decision and control right by the European Parliament in all basic questions related to Euratom, especially nuclear research structure and budgeting, the management of lavish reserve funds for future dismantling of nuclear power stations in the hands of nuclear power operating utilities and the generous cap of responsibility in case of nuclear accidents.
- The European Parliament and also the European Commission often underline the importance – in order for the internal energy market to function - of appropriate legislation requiring the establishment of funds for decommissioning and waste management to ensure the availability of the funds in due time and to ensure that funds are not used for improper activities in that sense.
- A problematic dinosaur, because it has a clear priority in favor of only one power industry in Europe. The Treaty starts in a way that recognizes that nuclear power represents “an essential resource for ensuring the expansion and invigoration of production and for effecting progress in peaceful achievement” and with a conviction “that only a common effort undertaken without delay can lead to achievements commensurate with the creative capacities of their countries”.
- Almost fifty years ago the parties of the Treaty were convinced and resolved that the development of a powerful nuclear industry, which would provide extensive energy resources would lead to the modernisation of technical processes and contribute through its many applications to the prosperity of their people.

- Ein Einstieg in den Ausstieg

Wer beginnt mit dem Ausstieg aus EURATOM?

- Since 2003: We still need a phasing-in as well as a phasing-out, which is currently not happening.
- The only concrete action for a phase out from the side of governments has been the statement of several countries such as Austria, Germany and Sweden in 2003, asking for an intergovernmental conference of the Euratom member states to start discussion on what to do and how to do it.
- The German government in 2004 outlined the following: “The purpose of the EURATOM Treaty as adopted against the historical background of the 1950s, namely the promotion of nuclear energy in the European Atomic Energy Community, does not automatically oblige member states to promote the use and development of nuclear energy as a commercial energy source within their territories. It is rather for each member state to decide whether and to what extent it wishes to use nuclear energy, as the technology advances. The EU Commission has also come to this conclusion: “It is generally thought that it is up to each member state to decide to introduce or maintain nuclear power as an energy source.”
- [Source: http://www.auswaertiges-amt.de/EN/Aussenpolitik/GlobaleFragen/Klima/InternationaleOrganisationen_node.html](http://www.auswaertiges-amt.de/EN/Aussenpolitik/GlobaleFragen/Klima/InternationaleOrganisationen_node.html)

Fairness

- **Contribution to the Convention on Future EU Constitution**
- To abolish the 'special economic zone' that the Euratom created, and
- To respect the principles of fair competition and the creation of a level playing field for different energy sources, thereby ceasing to give nuclear energy undue advantages over its rivals.
- Marie Nagy, Renée Wagner, Neil MacCormick *The Future of the Euratom Treaty in the Framework of the European Constitution*, CONV 563/03 HMA/go

Das Ringen um Euratom 2003

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

- Wie beginnt man das Ende?

Das Wie des Ausstiegs – oder wie verlässt man einen unbefristeten Vertrag ?

- Alternative I
- Organisation einer Intergovernmental Conference der Vertragsstaaten
- Alternative II
- Kündigung durch einzelne Staaten oder Staatengruppen

Grundsatz des Völkerrechts

- **Art. 26 *Pacta sunt servanda***
- Ist ein Vertrag in Kraft, so bindet er die Vertragsparteien und ist von ihnen nach Treu und Glauben zu erfüllen.

Die Kündigung – Übereinkommen über das Recht der Verträge

Abgeschlossen in Wien am 23. Mai 1969

- **Art. 56 Kündigung eines Vertrags oder Rücktritt von einem Vertrag, der keine Bestimmung über Beendigung, Kündigung oder Rücktritt enthält**
- (1) Ein Vertrag, der keine Bestimmung über seine Beendigung enthält und eine Kündigung oder einen Rücktritt nicht vorsieht, unterliegt weder der Kündigung noch dem Rücktritt, sofern
 - a) nicht feststeht, dass die Vertragsparteien die Möglichkeit einer Kündigung oder eines Rücktritts zuzulassen beabsichtigten, oder
 - b) ein Kündigungs- oder Rücktrittsrecht sich nicht aus der Natur des Vertrags herleiten lässt.
- (2) Eine Vertragspartei hat ihre Absicht, nach Absatz 1 einen Vertrag zu kündigen oder von einem Vertrag zurückzutreten, mindestens zwölf Monate im Voraus zu notifizieren.

Wann ist genug?

- **Art. 62 Wiener Konvention**
- **Grundlegende Änderung der Umstände**
- (1) Eine grundlegende Änderung der beim Vertragsabschluss gegebenen Umstände, die von den Vertragsparteien nicht vorausgesehen wurde, kann nicht als Grund für die Beendigung des Vertrags oder den Rücktritt von ihm geltend gemacht werden, es sei denn
 - a) das Vorhandensein jener Umstände bildete eine wesentliche Grundlage für die Zustimmung der Vertragsparteien, durch den Vertrag gebunden zu sein,
 - und
 - b) die Änderung der Umstände würde das Ausmass der auf Grund des Vertrags noch zu erfüllenden Verpflichtungen tief greifend umgestalten.
- (2) Eine grundlegende Änderung der Umstände kann nicht als Grund für die Beendigung des Vertrags oder den Rücktritt von ihm geltend gemacht werden,
 - a) wenn der Vertrag eine Grenze festlegt oder
 - b) wenn die Vertragspartei, welche die grundlegende Änderung der Umstände geltend macht, diese durch Verletzung einer Vertragsverpflichtung oder einer sonstigen, gegenüber einer anderen Vertragspartei bestehenden internationalen Verpflichtung selbst herbeigeführt hat.
- (3) Kann eine Vertragspartei nach Absatz 1 oder 2 eine grundlegende Änderung der Umstände als Grund für die Beendigung des Vertrags oder den Rücktritt von ihm geltend machen, so kann sie die Änderung auch als Grund für die Suspendierung des Vertrags geltend machen.

Die Folge

- **Art. 70 Folgen der Beendigung eines Vertrags**
- (1) Sofern der Vertrag nichts anderes vorsieht oder die Vertragsparteien nichts anderes vereinbaren, hat die nach den Bestimmungen des Vertrags oder nach diesem Übereinkommen eingetretene Beendigung des Vertrags folgende Wirkungen:
 - a) sie befreit die Vertragsparteien von der Verpflichtung, den Vertrag weiterhin zu erfüllen;
 - b) sie berührt nicht die vor Beendigung des Vertrags durch dessen Durchführung begründeten Rechte und Pflichten der Vertragsparteien und ihre dadurch geschaffene Rechtslage.
- (2) Kündigt ein Staat einen mehrseitigen Vertrag oder tritt er von ihm zurück, so gilt Absatz 1 in den Beziehungen zwischen diesem Staat und jeder anderen Vertragspartei vom Zeitpunkt des Wirksamwerdens der Kündigung oder des Rücktritts an.

EURATOM ist keine Bibel

- Article 208 in Euratom: “This Treaty is concluded for an unlimited period”.
- A treaty without exit date can under conditions always be modified or ended. The Euratom community can via the organisation and e.g. management of an inter-governmental conference try to find a unanimous solution to end the treaty.
- Realistically, one should try to do that as a member state, focusing on competition danger, but it is a difficult way. It would be helpful if member states acted together - those member states, which agree that Euratom should go away. In a way, they should in a parallel fashion opt for a way following the procedure and rules under the international common law in combination with the Vienna Convention on International Treaties. Since Euratom has no specific rules, the Treaty has to be ended under this limit in the context of international law and procedures.
- *In the legal academia there is a unanimous view in legal terms that such a treaty can be ended or phased out under specific conditions. However, there is no unanimous view whether these conditions have been met.*

International rule

- The Vienna Convention dates back from 26 May 1969 and is therefore younger as the Euratom Treaty. But ratification and entering into force were later than 1969, depending the accession country.
- The wording of the Treaty can always be used, because it repeats a general rule in international law, which has been established long before the Vienna Convention.
- So a country such as Germany ,Austria, Denmark, Ireland, could look at the energy policy in relation to the philosophy and the objectives of the Euratom Treaty in the late fifties and could list a table a of conditions, which could lead to a withdrawal right on the basis of the nature of the Treaty.
- The second approach to phase out and to ask for the right to withdrawal, which is a unilateral approach, is to combine forces with several likeminded nations.
- This is a fundamental change of circumstances, the second normally known international term and it also reflects a long-standing internationally accepted ground for phasing out an international commitment.

Der Ball liegt bei den Regierungen

- European countries should finally make their homework by reflecting on, what consequences Euratom and thus its sheltered industry has for the economy: *“At least, the discussion should be opened and countries such as Denmark, Austria and Ireland should press for example Germany to come to terms. If the current situation is apart from what feelings you have towards nuclear, one should realize that there is an obligation of Member States to be loyal towards European law. Since the directive for the liberalisation of the energy market has come into force, the time has also come, where the phase-out process should start”.* (Dörte Fouquet, 2003)

Wiener Übereinkommen

- **Art. 69 Folgen der Ungültigkeit eines Vertrags**
- (1) Ein Vertrag, dessen Ungültigkeit auf Grund dieses Übereinkommens festgestellt wird, ist nichtig. Die Bestimmungen eines nichtigen Vertrags haben keine rechtliche Gültigkeit.
- (2) Sind jedoch, gestützt auf einen solchen Vertrag, Handlungen vorgenommen worden,
 - a)
 - so kann jede Vertragspartei von jeder anderen Vertragspartei verlangen, dass diese in ihren gegenseitigen Beziehungen soweit wie möglich die Lage wiederherstellt, die bestanden hätte, wenn die Handlungen nicht vorgenommen worden wären;
 - b)
 - so werden Handlungen, die vor Geltendmachung der Ungültigkeit in gutem Glauben vorgenommen wurden, nicht schon durch die Ungültigkeit des Vertrags rechtswidrig.
- (3) In den Fällen des Artikels 49, 50, 51 oder 52 findet Absatz 2 keine Anwendung in Bezug auf die Vertragspartei, welcher der Betrug, die Bestechung oder der Zwang zuzurechnen ist.
- (4) Ist die Zustimmung eines bestimmten Staates, durch einen mehrseitigen Vertrag gebunden zu sein, mit einem Mangel behaftet, so finden die Absätze 1 bis 3 im Verhältnis zwischen diesem Staat und den Vertragsparteien Anwendung.

Wer beginnt?

- EU-Staaten können aus "Euratom aussteigen, ohne dass dadurch die Mitgliedschaft in der Europäischen Union berührt wird", der österreichische Europaabgeordnete und Mitglied des Reformkonvents, Johannes Voggenhuber (Grüne) am 9. Juli 2003

- Herzlichen Dank

Dr. Dörte Fouquet
Doerte.fouquet@bbh-
online.be