

Energy intelligence for Europe

The Euratom Treaty and future energy options: Conditions for a level playing field in the energy sector

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Prospects for Cooperation on Euratom Reform between Non-nuclear and Nuclear Phase-out Countries in the EU

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Good morning, Ladies and Gentlemen,

I have been asked to present "Prospects for Cooperation on Euratom Reform between Non-nuclear and Nuclear Phase-out Countries in the EU". I assume that many of you are looking forward to learn about past experience and, even more importantly, future prospects on how to set up an "anti-nuclear coalition" on governmental level. And some of you certainly would like to know a "fast track" to abolish the Euratom-Treaty¹ altogether. Being a civil servant of a small and reportedly "anti-nuclear" Member State I should be the right person to do so.

I will not meet these expectations.

Why? Simply, because such an "anti-nuclear coalition" would be counterproductive. It would almost immediately force the forging of a "pro-nuclear coalition" leading to posturing of both sides and an almost indissoluble stalemate. You could argue that this stalemate is already lasting for quite some time. Yes, that's true. But what we need is a move forward, a breakthrough, not a stalemate.

¹ Treaty establishing the European Atomic Energy Community

Of course, there have been – and there will be – coalitions of European Governments, but according to my experience coalitions are rapidly changing and usually focussed on specific issues.

A successful initiative:

In this context, I would like to recall the issue of nuclear safety in the context of enlargement. Already well before the start of the accession negotiations in spring 1998² it was clear that nuclear safety is an issue. But how to deal with it? The “EU Opening Statement for Accession Negotiations” contained a tiny reference to nuclear safety, but no clear message was given to the then candidate states, because we did not have any piece of “acquis communautaire” regarding nuclear safety. - We still do not have it, even today. - Later on that year the Commission published her “Communication from the Commission to the Council and the European Parliament on nuclear sector related activities for the applicant countries of Central and Eastern Europe and the New Independent States”³ and by the end of the UK presidency in late spring 1998 we have been addressed by the UK colleagues on the issue. They were considering Council Conclusions on the subject and proposed to us to continue work on a pertinent draft during our Presidency in the second half of 1998. During the summer of 1998 we developed a joint Austrian-UK draft.

What did we do next?

Did we talk to our Irish friends to gain support? No, we did not.

Did we talk to our Danish, our Greek colleagues or to our very like-minded friends in Luxemburg? No, we did not.

² March 31, 1998

³ COM(1998) 134 final of 31 March 1998

We went to Paris. Yes, we went to Paris and talked to a number of colleagues from different ministries and to the French chief regulator, then chairman of WENRA, the Western European Nuclear Regulator's Association. We were able to convince them, that UK and Austria had drafted a balanced and sensible text. And only then we officially put forward the proposal for "Council Conclusions on Nuclear Safety in the Context of Enlargement of the European Union"⁴. Of course, it took a few more months of in-depth discussion to arrive at a consensus text, but the lesson I have learned from that is:

First talk to those who are presumably your opponents and look for common ground and then talk to your friends. By the way, this is exactly what Community Law is inviting us to do, at least in the nuclear field.

These Council Conclusions were the first guidelines for the candidate countries on Council level, later on followed by the general and country specific recommendations contained in the "Report on Nuclear Safety in the Context of Enlargement"⁵ and – after examining the replies by candidate countries - the "Peer Review Status Report"⁶.

Although we had to compromise, I am convinced that this process led to real improvements in nuclear safety in the new Member States and even in terms of "phase-out" this process has been successful to a certain extent leading to the closure of first generation plants of Russian design in the new Member States.

But let us come back to the issue of Euratom reform.

Where are we now?

Almost exactly three years ago I had the pleasure to address a similar conference in Brussels and by that time I have put some hopes into the "Convention on the Future of Europe". As it turned out, I had been overly optimistic.

⁴ Adopted at the 2148th Council - General Affairs on 6 December 1998, Council Document 13677/98 (Press 431 – G)

⁵ Council Document 9181/01 + ADD 1 & COR 1 of 27 May and 5 June 2001

⁶ Council Document 9601/02 of 5 June 2002

Despite endeavours by some Members of the Convention and interesting contributions to the debate – in this context I would in particular like to refer to contribution by Austrian Members of the Convention⁷ but also to the so-called “Penelope” paper elaborated under the auspices of the Commission⁸ – the Convention failed to properly address the nuclear issue. Finally the Convention proposed to adjust the Euratom Treaty by means of a Protocol to the Constitution. In the final draft Treaty establishing a Constitution for Europe⁹ the “Protocol amending the Euratom Treaty” merely provides for unified institutional and financial provisions of the Euratom Treaty but leaves it with a separate legal personality. The Convention’s Presidency Report concluded that “although some members wished to re-examine, and perhaps update, the provisions of the Euratom treaty, the Convention did not believe it had either the mandate or the time and competence to do so. The future of Euratom therefore remains an issue which the European Council may wish at some stage to address”¹⁰.

The Intergovernmental Conference (IGC) following the Convention basically left things unchanged. A rather complicated legal debate finally resulted in a Protocol to the Constitution amending the Euratom-Treaty¹¹. In principle, decision making procedures are harmonized with those foreseen in the Constitution. But a more in-depth analysis shows that there are almost no cases to apply these new procedures, as for most cases the procedures are firmly set in the Euratom-Treaty.

⁷ CONV 189/02 of 12 July 2002, Hänsch, Duhamel, Marinho, McAvan, Van Lancker, Berès, Berger, Carnero González, Paciotti, Thorning-Schmidt;
CONV 344/02 of 14 October 2002, Hänsch “Future of the Euratom Treaty”;
CONV 358/02 of 22 October 2002, Farnleitner, Einem, Bösch “A single legal personality – On the future of Euratom”;
CONV 455/02 of 11 December 2002, Borrel, Carneo, Lopez Garrido “A European Constitution for peace, solidarity and human rights”;
CONV 563/03 of 18 February 2003, Nagy, Wagner, MacCormick “The future of the Euratom Treaty in the Framework of the European Constitution”
CONV 666/03 of 2 April 2003, Berger, Einem, Farnleitner, Rack, Tusek regarding the “Presidium’s suggested approach for the Euratom Treaty”

⁸ Durchführbarkeitsstudie, Beitrag zum Vorentwurf einer Verfassung der Europäischen Union, Arbeitspapier, 4. Dezember 2002

⁹ CONV 850/03 of 18 July 2003, Draft Treaty establishing a Constitution for Europe, page 236-237

¹⁰ CONV 851/03 of 18 July 2003, Report from the Presidency of the Convention to the President of the European Council

¹¹ OJ C 310 of 16 December 2004, The Treaty establishing a Constitution for Europe, page 391, 36. Protocol amending the Treaty establishing the European Atomic Energy Community

When analysing the current situation it has to be taken note of the fact that the European Court in a rather revolutionary decision ruled that Art. 30 to 39 of the Euratom-Treaty cover not only radiation protection but also nuclear safety as – in the view of the Court – “it is not appropriate, in order to define the Community's competences, to draw an artificial distinction between the protection of the health of the general public and the safety of sources of ionising radiation”¹². The Commission based her proposal for a nuclear safety directive¹³ on this ruling but for the time being there is no sufficient majority in the Council to adopt the proposal.

Nevertheless, the arguments in favour of a substantial reform of the Euratom-Treaty are still valid. Currently the European Union is faced with a rather unsatisfactory situation:

- The European Council of Laeken¹⁴, in its Declaration on the Future of the European Union, stated that
 - making the Union “more democratic, more transparent and more efficient”
 - and simplifying the provisions on the “objectives, powers and policy instruments” “spread across the four treaties” with a view “to have greater transparency”would be central political challenges for the Convention. Nevertheless the Draft Constitutional Treaty perpetuates two separate legal entities.

¹² OJ C 19 of 25 January 2003, Judgment of the Court of 10 December 2002 in Case C-29/99: Commission of the European Communities v Council of the European Union (International agreements - Convention on Nuclear Safety - Accession decision - Compatibility with the Euratom Treaty - External competence of the Community - Articles 30 to 39 of the Euratom Treaty)

¹³ COM(2002) 605 final of 6 November 2002, Communication from the commission to the Council and the European Parliament, Nuclear Safety in the European Union, COM(2003) 32 final of 31 January 2003 Proposal for a Council (Euratom) Directive Setting out basic obligations and general principles on the safety of nuclear installations Proposal for a Council Directive (Euratom) on the management of spent nuclear fuel and radioactive waste, modified by COM(2004) 526 final of 8 September 2004

¹⁴ SN 300/1/01 REV 1, Laeken Declaration on the Future of the European Union, Annexes to the Presidency Conclusions - Laeken, 14 and 15 December 2001, ANNEX 1

- Although the Convention's work was guided by a strong commitment to more democratic structures and procedures, it set aside the reform of the Euratom Treaty – thus excluding co-decision by the European Parliament in an entire sector of policy making.
- Although the European Union is heading for an open and transparent common electricity market, the nuclear industry, an essential sector of this market continues to be governed by a specific set of rules, thus distorting competition between the different energy resources.

Therefore, my Government and some others joined in a declaration to the Constitution supporting “the idea of a Conference of the Representatives of the Governments of the Member States, which should be convened as soon as possible”¹⁵ to bring up to date the core provisions of the Euratom-Treaty.

On the one hand, from an Austrian point of view, it is a success that altogether five governments supported this declaration; on the other hand this is far off the support needed to even start a new intergovernmental conference. And you all now that we need unanimity to change the Euratom-Treaty or to integrate those elements which are still needed into a future Constitution. In addition, the results of the recent German general elections render the future German position on this issue in doubt.

Bleak prospects?

Is there a way forward?

Yes, I do think so. Although I learned to be a professional pessimist over the years, I do see some approaches to keep things moving.

¹⁵ OJ C 310 of 16 December 2004, The Treaty establishing a Constitution for Europe, page 473, 44. Declaration by the Federal Republic of Germany, Ireland, the Republic of Hungary, the Republic of Austria and the Kingdom of Sweden

Although the future fate of the Constitution is quite uncertain at the moment, inter alia, with the effect that the provisions regarding a “citizens’ initiative”, part of the “principle of participatory democracy”¹⁶, will not enter into force very soon, I am convinced that it is very important, that the citizens of Europe make their voice heard. The larger the support and the more countries involved the bigger the possible political impact will be.

Secondly, the European Parliament should be involved even more than it is today, thus adding to the political momentum. I would like to recall that the European Parliament has repeatedly asked for fundamental reform. With regard to the Constitution, it welcomed “the separation of the Euratom Treaty from the legal structure of the future Constitution;” urged “the Intergovernmental Conference to convene a Treaty revision conference in order to repeal the obsolete and outdated provisions of that Treaty, especially those relating to the promotion of nuclear energy and the lack of democratic decision-making procedures”¹⁷.

Thirdly, it will be of the utmost importance to engage in an intense dialogue with those currently opposing Euratom reform, be it governments or other stakeholders. This dialogue must be honest; it will be difficult and most probably take years.

A major prerequisite for those engaging in this dialogue will be to accept that some Member States will not phase-out nuclear power in the foreseeable future, might even re-establish nuclear power programmes. This is certainly difficult to accept for many of you, but with mere confrontation we will never ever reach consensus.

Thank you very much for your attention.

¹⁶ OJ C 310 of 16 December 2004, The Treaty establishing a Constitution for Europe, page 35, Article I-47, para 4,

¹⁷ P5_TA(2003)0407, European Parliament resolution on the draft Treaty establishing a Constitution for Europe and the European Parliament's opinion on the convening of the Intergovernmental Conference (IGC) (11047/2003 - C5-0340/2003 - 2003/0902(CNS)) of 24 September 2003, point 14