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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DECISION on the extension of the joint-undertaking status of Hochtemperatur-Kernkraftwerk GmbH

Delegations will find attached document COM(2022) 598 final.

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2022/0373 (NLE)

Proposal for a

COUNCIL DECISION

on the extension of the joint-undertaking status of Hochtemperatur-Kernkraftwerk GmbH

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

HISTORICAL BACKGROUND OF THE JOINT UNDERTAKING STATUS OF HKG AND THE THTR 300 PROJECT

The objectives of Hochtemperatur-Kernkraftwerk GmbH (HKG) were to construct, equip and operate a nuclear power station at Uentrop (Unna district) in the Federal Republic of Germany. This was to be a prototype thorium high-temperature reactor with a capacity of approximately 300 MWe (THTR 300). In order to attain this objective, HKG applied for establishment as a Joint Undertaking.

The Council, upon proposal of the Commission, found that HKG's statutes were compatible with the provisions of the Euratom Treaty relating to Joint Undertakings and that, at the time, HKG's project was of fundamental importance to the development of the nuclear industry in the Community and therefore granted HKG Joint Undertaking status for a period of 25 years from 1 January 1974.

HKG also applied for certain advantages listed in Annex III to the Euratom Treaty.

Considering that:

- the nuclear power station was to be constructed by a consortium of Community undertakings and nearly exclusively with components from the Community;
- construction of the power station would allow considerable improvements in the technical processes for generating electricity on an industrial scale;
- conferment on HKG of advantages listed in Annex III to the Treaty could lighten the financial burden and limit the economic risks inherent in such an undertaking;
- HKG was to make available to the Community the non-patentable information it would collect in the course of implementing the nuclear power station project,

the Council decided to confer some of the advantages listed in Annex III to the Euratom Treaty, in particular in the form of exemption from some taxes. These advantages were conferred for a period ending three years after final acceptance of the power station by the undertaking.

Original decisions

In June 1974 the Council, acting on proposals from the Commission, adopted two decisions:

– Council Decision 74/295/Euratom of 4 June 1974 on the establishment of the Joint Undertaking Hochtemperatur-Kernkraftwerk GmbH (HKG)[1];

– Council Decision 74/296/Euratom of 4 June 1974 on the conferring of advantages on the Hochtemperatur-Kernkraftwerk GmbH (HKG) Joint Undertaking[2].

Amendments to the original decisions

On 11 July 1983 the general meeting of the Joint Undertaking decided to increase the company's subscribed capital. This increase called for an amendment to the statutes of the Joint Undertaking.

The Joint Undertaking also requested an extension of the exemption from the "Kapitalverkehrsteuer" conferred in 1974 on the assets contributed, in line with the abovementioned increase in capital.

Considering that:

– the amendment to the statutes had no effect on the provisions governing the Joint Undertaking and was consistent with the development of the project;

– and extension of the exemption could reduce financing expenses and thereby limit the economic risks inherent in such an undertaking,

in February 1984 the Council adopted two decisions adapting the 1974 decisions to the increase in HKG's capital:

– Council Decision 84/104/Euratom of 21 February 1984 approving an amendment to the Statutes of the Joint Undertaking HKG[3]

– Council Decision 84/105/Euratom of 21 February 1984 amending Decision 74/296/Euratom on the conferring of advantages on the Joint Undertaking HKG[4].

Service record of the power station and reasons for change of objectives

HKG finally brought THTR to commercial operation on 1 June 1987. The power station operated until 29 September 1988, when it was shut down. During that period operations were interrupted on a number of occasions due to faults.

Economic, technical and fuel element supply difficulties, combined with problems in obtaining authorisation to restart the plant due to financial uncertainties, resulted in the decision, taken on 1 September 1989, immediately to shut down the plant definitively.

Since then the Joint Undertaking's objectives have become: shutdown of the reactor, core unloading, construction of the safe enclosure and surveillance. On 13 December 1989 a contract on controlled decommissioning of the THTR 300 project was concluded between the

1 OJ L 165, 20.6.1974, p. 7-13
2 OJ L 165, 20.6.1974, p. 14-15
3 OJ L 58, 29.2.1984, p. 35
4 OJ L 58, 29.2.1984, p. 37

Federal authorities, the Land of North Rhine-Westphalia, HKG and its members. This included provisions on the financial aspects.

Consequent further applications by HKG

The tax advantages conferred on HKG by Decision 74/296/Euratom expired on 31 May 1990, three years after final acceptance of the power station by the undertaking on 1 June 1987.

By letters of 9 February and 6 March 1990 the members of HKG submitted a request for the advantages conferred to be extended until HKG's Joint Undertaking status expired and for the advantages to be adjusted to the undertaking's situation at the time, which had necessitated additional financial contributions regarded, for tax purposes, as contributions of assets.

HKG was implementing a programme for decommissioning the nuclear power station up to the safe enclosure stage and proposed, thereafter, to carry out a programme of surveillance of the nuclear installations concerned.

The Council considered that there was no equivalent to these programmes in the Community and that implementation thereof was, therefore, important to provide useful experience for the nuclear industry and the future development of nuclear energy in the Community.

The Council also considered it advisable to assist HKG with implementation of the programmes by lightening its financial burden and, therefore, to extend the advantages conferred.

By Decision of 16 November 1992, the Council extended the advantages conferred to HKG until the expiring date of the 74/295/Euratom Decision.

On 30 March 1998, HKG applied to the Commission for extension of its Joint Undertaking status for a further 25 years.

The reason given for this request was the importance of the experience which would be gained from the definitive shutdown and decommissioning operations to the nuclear power industry in Germany, Europe and worldwide. This view was based on the fact that THTR 300 was the largest reactor of its type in the world and that the unique configuration of the plant, particularly with regard to the enclosure, provided an unprecedented opportunity to acquire experience on the results and costs of enclosure.

HKG added that on 13 November 1989 the Federal Republic, the Land of North Rhine-Westphalia, HKG and its members had concluded a framework agreement with a view to completing the final phase of the THTR 300 project. This framework agreement and the amendment annexed thereto on 18 December 1996 govern the phases up to 2009, including the arrangements for financing HKG's activities.

Germany supported HKG's request and stated that the Federal Government was in favour of maintaining the tax advantages granted.

On the basis of the information received the Commission considered that the arguments accepted by the Council in 1992 were still valid; in particular, the undertaking's activities were still the same and the context in which it performed them was identical.

However, as the arrangements concluded between the Federal Republic, the Land of North Rhine-Westphalia, HKG and its members for financing HKG's activities applied only for a period up to 31 December 2009, the Commission proposed that the Council, in accordance with the period arranged between the German authorities and HKG, would approve extension of the Joint Undertaking status and of the advantages conferred on HKG for the same period, that was until 31 December 2009.

On the basis of the Commission proposal the Council prolonged on 7 May 2002 the Joint Undertaking status and the advantages conferred on HKG until 31 December 2009[5].

By letter, dated 26 April 2010, Hochtemperatur-Kernkraftwerk GmbH (HKG), Hamm, asked for the further extension of the joint-undertaking status, established originally by Decision 74/295/Euratom, which had been already once extended by Council Decision of 7 May 2002, for 11 years with effect from 1 January 1999. This extension should also include the exemptions from land transfer tax, land tax and trade earnings tax on long-term debt interest, which were granted at the same time.

HKG applied for the existing status to be extended beyond 31 December 2009 for a further 25 years. In its justification, HKG provided in particular the following arguments:

With the Thorium High-Temperature Reactor (THTR) prototype nuclear power plant project in Hamm-Uentrop, HKG had undertaken to carry out industrial-scale and economic testing of high-temperature reactor technology in the interest of providing for Germany's future and long-term security of energy supply.

Knowledge gathered from experience in the generation of electricity from nuclear energy could not be confined to construction and operation alone. For the sake of completeness, knowledge accumulated from shutdown planning, shutdown itself, safe enclosure operation and decommissioning (in this case, in high-temperature reactor technology) should be included.

In HKG's opinion, knowledge obtained during the period of maintaining the safe enclosure (enclosure time) and subsequent decommissioning would be of great importance to the nuclear industry in Europe and worldwide, all the more so at a time when high-temperature reactor technology was being taken up again in the work on Generation IV and the different phases of shutdown were also to be included in obtaining an overall picture (Lifecycle Cost).

The THTR 300 plant was the largest pebble-bed reactor in the world with a prestressed concrete reactor pressure vessel (RCRPV) and built-in ceramic reflector and liner and hot-gas duct insulation.

The specific nature of the safely enclosed plant offered a hitherto unique opportunity to calculate the data and costs for a 'quasi-passive' safe enclosure of a plant with RCRPV, especially in the case of energy costs (ventilation, air drying, etc), operating costs, periodic testing and repairs.

HKG expected important findings from the eventual decommissioning of the plant, from remote and manual in-core decommissioning work. In addition, stripping out the internal surface of the RCRPV (not all tendons could be detensioned unequivocally) and dismantling

[5] OJ L 123, 2002/355/Euratom, 9.5.2002, p. 53; OJ L123, 2002/356/Euratom, 9.5.2002, p. 54

of 550 Mg of radiologically contaminated ceramic components installed inside the RCRPV would bring new knowledge on the decommissioning of high-temperature reactors.

HKG aimed to continue placing these findings too at the disposal of EU Member States.

It was still unclear when decommissioning could take place – an important factor here was to have a suitable repository prepared and ready to receive – and this was why it was asked for the joint-undertaking status to be extended by 25 years.

The prime importance to the development of the nuclear industry in the Community, that was necessary for granting of the status of 'European Joint Undertaking', had already been accepted with the Council Decision of 16 November 1992 on the extension of the advantages conferred on the Joint Undertaking HKG – i.e., at the time when the THTR 300 plant was shut down. It had also been recognised that no comparable case existed in the Community for the programmes to shut down the power plant up to the safe enclosure phase and for preserving and monitoring such a 'safely enclosed plant' condition. It had also been established that carrying out these programmes would lead to useful experience for the nuclear industry and the future development of nuclear energy in the Community.

The THTR 300 project would continue to receive substantial aid from the German Government and the State of North Rhine-Westphalia. This was laid down in the contract on controlled decommissioning of the THTR 300 project concluded in 1989, on the basis of which inter alia the standby operation of the THTR 300 plant after 31 December 2009 was being paid for.

In its communication to the European Commission the German government supported the request of HKG to extend the status of joint undertaking. However the extension was only to be conceded until 31 December 2017 and not for further 25 years as requested by HKG, since the German financing arrangements were limited to that date.

By its Decision of 17 June 2011 on extension of the joint-undertaking status of Hochtemperatur-Kernkraftwerk GmbH (HKG) (2011/362/Euratom)[6], the Council decided the following:

The joint-undertaking status, within the meaning of the Treaty establishing the European Atomic Energy Community, granted to Hochtemperatur-Kernkraftwerk GmbH (HKG) was extended for eight years with effect from 1 January 2010.

The objective of HKG was to implement a programme for decommissioning the nuclear power station located at Uentrop (Unna district) in the Federal Republic of Germany, up to the safe enclosure stage and, thereafter, to carry out a programme of surveillance of the enclosed nuclear installations.

RECENT DEVELOPMENTS

By letter, dated 7 October 2021, Hochtemperatur-Kernkraftwerk GmbH (HKG), Hamm, asked for the further extension of the joint-undertaking status, established originally by Decision 74/295/Euratom, which has been already twice extended by Council Decision of 7 May 2002, for 11 years with effect from 1 January 1999 and by Council Decision of 17 June 2011 for eight years with effect from 1 January 2010. This extension should also include the

[6] OJ L 163, 23.6.2011, p. 24–25

exemptions from land transfer tax, land tax and trade earnings tax on long-term debt interest, which were granted at the same time. In addition, HKG applied to be exempt from all direct taxes to which Joint Undertakings, their property, assets and revenue might otherwise be liable. It applied for this exemption to be carried out in the most extensive way feasible and to be applicable from 1 January 2018 onwards. For reasons of clarity, but not to be understood as an exhaustive list, HKG sought exemption from the following direct taxes applicable in Germany:

- Körperschaftsteuer (corporate tax),
- Solidaritätszuschlag ("solidarity surcharge" to corporate tax)
- Gewerbesteuer (local business tax)
- Grunderwerbsteuer (land transfer tax)
- Grundsteuer (land tax)

Statement of the German Government on the request of HKG to extend the status of joint undertaking

In its communications to the European Commission of 23 April 2021 and 6 May 2022, the German government supported the request of HKG to extend the status of joint undertaking in particular for the following reasons:

The safe-enclosure stage of the THTR will extend beyond the period currently planned for. This stage is financially secured by contractual arrangements between the Federal Government, the Land of North Rhine-Westphalia, the HKG and its members until 31 December 2022.

The unusually long safe enclosure stage to be expected for the THTR, and especially the later dismantling of a concrete reactor pressure vessel (RCRPV), give reason to expect new knowledge to be gained on the decommissioning of nuclear facilities. In addition, the subsequent dismantling of the reactor vessel, for which there is not yet sufficient practical experience, will have considerable cost implications. Under these circumstances, further involvement of the managing company HKG and its members is essential and an extension of 'European Joint Undertaking' status is in principle materially justified.

HKG has applied to the Commission's DG Energy to have the status of "European Joint Undertaking" extended until 31 December 2027. However, the financing arrangements are currently only scheduled until the end of 2022 and the Council of the European Union, in its decision of 17 June 2011, reiterated that such a duration was a determining reason for limiting the duration of the advantages to be conferred, so the Ministry of Finance of the Land of North Rhine Westphalia (FM NRW), affected by the tax advantages, has endorsed the extension of 'European Joint Undertaking' status only until 31 December 2022. The Federal Government has no reservations about setting such a time limit and, besides that, the Federal Ministry of Education and Research (BMBF) sees no reason why the 'European Joint Undertaking' status should necessarily be decoupled from the duration of the previously mentioned financing arrangement.

Accordingly, the German Government is in favour of the 'European Joint Undertaking' status of HKG being extended until 31 December 2022.

CONCLUSIONS

The Commission considers that the arguments accepted by the Council in 2011 for the extension of HKG's Joint Undertaking status are still valid today; in particular, the undertaking's activities are still the same and the context in which it performs them is identical.

The arrangements concluded between the German Federal Republic, the Land of North Rhine-Westphalia, HKG and its members for financing HKG's activities apply only for a period up to 31 December 2022.

The Commission therefore proposes that the Council, in accordance with the period arranged between the German authorities and HKG, approves the extension of the Joint Undertaking status until 31 December 2022.

2. LEGAL BASIS

Article 45 Euratom Treaty provides for the establishment of Joint Undertakings, which the Treaty defines as undertakings which are of fundamental importance to the development of the nuclear industry in the Community.

Under Article 46 Euratom Treaty, every project for establishing a Joint Undertaking is subject to an inquiry by the Commission.

The Commission must forward to the Council any project for establishing a Joint Undertaking, together with its reasoned opinion.

Under Articles 47 to 49 Euratom Treaty, Joint Undertakings are established by Council decision on a proposal from the Commission.

3. BUDGETARY IMPLICATIONS

There is no budgetary implication for the EU budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 49 thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) By Decision 74/295/Euratom, the Council established Hochtemperatur-Kernkraftwerk GmbH (HKG) as a joint undertaking for a period of 25 years as from 1 January 1974.

(2) The objectives of HKG were to construct, equip and operate a nuclear power station with a capacity of approximately 300 MWe at Uentrop (Unna district) in Germany.

(3) After being in operation from 1987 to 1988, the nuclear power station was finally shut down on 1 September 1989 as a result of technical and economic difficulties.

(4) Since 1 September 1989 the objective of HKG has been to implement a programme for decommissioning the nuclear power station up to the safe enclosure stage and, thereafter, to carry out a programme of surveillance of the enclosed nuclear installations.

(5) By Decision 2011/362/Euratom[7], the Council extended the status of HKG as a joint undertaking until 31 December 2017 to enable HKG to complete its decommissioning and surveillance programmes, in particular by lightening the financial burden.

(6) The extension periods corresponded to the duration of arrangements concluded between the German Federal Republic, the Land of North Rhine-Westphalia, HKG and its members for financing HKG's activities.

(7) By letter of 7 October 2021, HKG asked for the further extension of the joint-undertaking status with retroactive effect from 1 January 2018, until 31 December 2022, which corresponds to the duration of arrangements concluded between the German Federal Republic, the Land of North Rhine-Westphalia, HKG and its members for financing HKG's activities.

(8) HKG's joint-undertaking status should therefore be extended for the same period.

[7] OJ L 163, 23.6.2011, p. 24–25

(9) After 31 December 2022, any further extension of HKG's Joint Undertaking status is conditional on the submission by HKG of an application for a decommissioning licence.

HAS ADOPTED THIS DECISION:

Article 1

1. The joint-undertaking status, within the meaning of the Treaty, granted to Hochtemperatur-Kernkraftwerk GmbH ('HKG') is hereby extended for five years with effect from 1 January 2018.

2. The objective of HKG shall be to implement a programme for decommissioning the nuclear power station located at Uentrop (Unna district) in the Federal Republic of Germany, up to the safe enclosure stage and, thereafter, to carry out a programme of surveillance of the enclosed nuclear installations.

Article 2

This Decision is addressed to the Member States and to Hochtemperatur-Kernkraftwerk GmbH.

Done at Brussels,

For the Council
The President