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EUROPEAN COMMISSION

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2011/0064 (NLE)

Proposal for a

**COUNCIL DECISION**

**on extension of the advantages conferred on the  
Joint Undertaking Hochttemperatur-Kernkraftwerk GmbH (HKG)**

## EXPLANATORY MEMORANDUM

### **1. EURATOM TREATY PROVISIONS ON JOINT UNDERTAKING STATUS**

1. 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.

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

### **2. HISTORICAL BACKGROUND OF THE JOINT UNDERTAKING STATUS OF HKG AND THE THTR 300 PROJECT**

#### **Reasons for the application**

3. 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.
4. The Council 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.
5. 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**

6. In June 1974 the Council, acting on proposals from the Commission, adopted two decisions:
- Council Decision 74/295/Euratom of 4 June 1974<sup>1</sup> on the establishment of the Joint Undertaking Hochttemperatur-Kernkraftwerk GmbH (HKG);
  - Council Decision 74/296/Euratom of 4 June 1974<sup>2</sup> on the conferring of advantages on the Hochttemperatur-Kernkraftwerk GmbH (HKG) Joint Undertaking.

### **Amendments to the original decisions**

7. 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 "Kapitalverkehrssteuer" conferred in 1974 on the assets contributed, in line with the abovementioned increase in capital.

8. 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<sup>3</sup>
- Council Decision 84/105/Euratom of 21 February 1984 amending Decision 74/296/Euratom on the conferring of advantages on the Joint Undertaking HKG<sup>4</sup>.

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

9. HKG finally started THTR 300 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.
10. 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.
11. 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

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<sup>1</sup> OJ No L 165, 20.6.1974, pp 7 to 13

<sup>2</sup> OJ No L 165, 20.6.1974, pp 14 to 15

<sup>3</sup> OJ No L 58, 29.2.1984, p. 35

<sup>4</sup> OJ No L 58, 29.2.1984, p. 37

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

### **Consequent further applications by HKG**

12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. By Decision of 16 November 1992<sup>5</sup>, the Council extended the advantages conferred to HKG until the expiring date of the 74/295/Euratom Decision.
18. On 30 March 1998 HKG applied to the Commission for extension of its Joint Undertaking status for a further period of 25 years.
19. 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 is the largest reactor of its type in the world and that the unique configuration of the plant, particularly with regard to the enclosure, provides an unprecedented opportunity to acquire experience on the results and costs of enclosure.
20. 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.
21. Germany supported HKG's request and stated that the Federal Government was in favour of maintaining the tax advantages granted.
22. 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 are still the same and the context in which it performs them is

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<sup>5</sup> Not published.

identical. The Commission therefore proposed that the Council extend its 1992 decision further.

23. However as the arrangements concluded between the 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 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 is until 31 December 2009.
24. 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.<sup>6</sup>

### **3. RECENT DEVELOPMENTS**

25. By letter, dated 26 April 2010, Hochttemperatur-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 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.
26. 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 cannot 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) have to be included.
  - In HKG's opinion, knowledge obtained during the period of maintaining the safe enclosure (enclosure time) and subsequent decommissioning will be of great importance to the nuclear industry in Europe and worldwide, all the more so at a time when high-temperature reactor technology is being taken up again in the work on Generation IV and the different phases of shutdown are also to be included in obtaining an overall picture (Lifecycle Cost).
  - The THTR 300 plant is the largest pebble-bed reactor in the world with a reinforced 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 offers a hitherto unique opportunity to calculate the data and costs for a 'quasi-passive' safe enclosure of a

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<sup>6</sup> OJ L 123, 2002/355/Euratom, 9.5.2002, p.53; OJ L123, 2002/356/Euratom, 9.5.2002, p.54

plant with RCRPV, especially in the case of energy costs (ventilation, air drying, etc), operating costs, periodic testing and repairs.

- HKG expects 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 can be detensioned unequivocally) and dismantling of 550 Mg of radiologically contaminated ceramic components installed inside the RCRPV will bring new knowledge on the decommissioning of high-temperature reactors.
- HKG aims to continue placing these findings too at the disposal of EU Member States.
- It is still unclear when decommissioning can take place – an important factor here is to have a suitable repository prepared and ready to receive – and this is why it is 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 is necessary for granting of the status of 'European Joint Undertaking', was already 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 was also recognised that no comparable case exists 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 was also established that carrying out these programmes is leading to useful experience for the nuclear industry and the future development of nuclear energy in the Community.
- The THTR 300 project will 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 is being paid for.

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

27. In its communication to the European Commission the German government supports the request of HKG to extend the status of joint undertaking in particular for the following reasons:

- HKG is the responsible undertaking for the thorium high-temperature reactor (THTR) in Hamm-Uentrop. The THTR has been since 1989 in the decommissioning phase with the goal to eliminate the facility after a longer phase of safe inclusion (30 years are planned) completely. The time of the complete decommissioning depends among other things on the availability of a final disposal facility for highly radioactive waste, which in view of the uncertain future of Gorleben to-time is not foreseeable.
- It can be assumed that the phase of safe inclusion at the THTR will go beyond the period planned at present. This phase is financially ensured by an agreement between the Federal State, the Land NRW and HKG. The running time of this financing arrangement is however limited to 31 December 2017.
- The unusually long phase of safe inclusion of the THTR to be expected and, in particular the later decommissioning work concerning the concrete reactor

pressure vessel (SRB) will surely provide new knowledge about the decommissioning of such facilities. Also the decommissioning work related to the SRB, for which up to now no practical experience is present, would represent a substantial cost element. Before this background a further commitment of HKG and its associates is essential as well as an extension of the status of a joint undertaking.

28. However the extension should only be conceded until 31 December 2017 and not for further 25 years as requested by HKG, since the German financing agreement is limited to this date.
29. The Federal Government argues for such a lifetime limitation, as it sees no reason uncoupling of the status of a joint undertaking from the running times of the German financing arrangements.
30. Before this background the Federal Government endorses the extension of the status of the HKG as a joint undertaking until 31 December 2017.

#### **4. BUDGETARY IMPLICATION**

31. No budgetary implication for the EU budget.

#### **5. CONCLUSIONS**

32. The Commission considers that the arguments accepted by the Council in 2002 for the extension of HKG's Joint Undertaking status and advantages 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 Commission therefore considers that the Council, after having approved the extension of the joint undertaking status, should also extend its decision concerning the advantages conferred to HKG accordingly.
33. 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 2017.
34. The Commission therefore proposes that the Council, in accordance with the period arranged between the German authorities and HKG, approves also the extension of the advantages conferred on HKG until 31 December 2017.



Proposal for a

## **COUNCIL DECISION**

### **on extension of the advantages conferred on the Joint Undertaking Hochttemperatur-Kernkraftwerk GmbH (HKG)**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 48 thereof,

Having regard to the proposal from the Commission<sup>7</sup>,

Whereas:

- (1) By Decision 74/295/Euratom<sup>8</sup> the Council established Hochttemperatur-Kernkraftwerk GmbH (HKG) as a joint undertaking, within the meaning of the Treaty, for a period of 25 years as from 1 January 1974.
- (2) By Decision 2002/355/Euratom of 7 May 2002<sup>9</sup> the Council extended the Joint Undertaking status granted to Hochttemperatur-Kernkraftwerk GmbH (HKG) for eleven years with effect from 1 January 1999 until 31 December 2009.
- (3) By Decision 74/296/Euratom<sup>10</sup> and its Decision of 16 November 1992<sup>11</sup> the Council conferred on HKG a number of advantages listed in Annex III to the Treaty, for a period of 25 years as from 1 January 1974.
- (4) By Decision 2002/356/Euratom of 7 May 2002<sup>12</sup>, the Council extended the conferred advantages on HKG, for a period of 11 years until 31 December 2009.
- (5) With letter, dated 26 April 2010, Hochttemperatur-Kernkraftwerk GmbH (HKG), Hamm, asked for the further extension of its tax advantages for the new period for which it had been granted Joint Undertaking status.
- (6) The current objective of HKG is 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.
- (7) There is no equivalent to these programmes in the Community since, to date, no high-temperature reactor has been shut down definitively in the Community.
- (8) Implementation of these programmes is therefore important since they provide useful experience and the future development of nuclear energy in the Community, notably as regards the decommissioning of nuclear installations.

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<sup>7</sup> OJ C , , p. .

<sup>8</sup> OJ L 165, 20.6.1974, p.7.

<sup>9</sup> OJ L 123, 9.5.2002 p. 53

<sup>10</sup> OJ L 165, 20.6.1974, p. 14.

<sup>11</sup> OJ L 352, 02.12.1992, pp. 9 to 12

<sup>12</sup> OJ L 123, 9.5.2002 p. 54

- (9) HKG should therefore be assisted with implementing the programme for decommissioning the nuclear power station up to the safe enclosure stage and the programme of surveillance of the enclosed nuclear installations, by lightening the financial burden.
- (10) Arrangements for financing HKG's activities have been agreed between the Federal Republic of Germany, the Land of North Rhine-Westphalia, HKG and its members for the period up to 31 December 2017.
- (11) The advantages conferred on HKG should therefore be extended for the same period as the extension of its Joint Undertaking status, that is until 31 December 2017.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The Member States hereby extend for eight years with effect from 1 January 2010 the following advantages listed in Annex III to the Treaty conferred on the Joint Undertaking Hochttemperatur-Kernkraftwerk GmbH (HKG):

1. Under paragraph 4 of the abovementioned Annex, the exemption from the Grunderwerbsteuer (tax on the acquisition of immovable property);
2. Under paragraph 5 of the abovementioned Annex:  
the exemption from Grundsteuer (land tax);  
the exemption from that part of the industrial or commercial profits tax which is levied, pursuant to Article 8, point 1 of the Gewerbesteuergesetz (trade tax law), on the interest due on long-term debt.

#### *Article 2*

The conferment of the advantages listed in Article 1 on HKG is subject to the condition that the Commission shall have access to all the industrial, technical and economic information, including that relating to safety, acquired by HKG in the course of implementation of the programme for decommissioning the nuclear power station up to the safe enclosure stage and of the programme of surveillance of the enclosed nuclear installations. This obligation extends to all the information which HKG is entitled to pass on in accordance with the contracts concluded with it. The Commission shall determine which information must be communicated to it, as well as the manner in which such communication shall be made and shall ensure that this information is disseminated.

#### *Article 3*

This Decision is addressed to the Member States and to HKG.

Done at Brussels,

*For the Council  
The President*