

## **Denunciation of the Treaty establishing the European Atomic Energy Community (Euratom)**

Options open to the Federal Republic of Germany in terms of European, international and constitutional law with Green conclusions drawn from the Euratom expert opinion by Prof. Dr. Bernhard W. Wegener, Friedrich-Alexander University Erlangen-Nürnberg

### A. Purpose and summary of conclusions

The report seeks to examine the possibility of the Federal Republic of Germany denouncing the Euratom Treaty either unilaterally or together with other states. The following main conclusions are drawn:

1. The European Atomic Energy Community has failed to meet its primary objectives. Large sections of primary Euratom law are not applied as a result of an explicit consensus of the Member States.
2. The decision-making structures of the Atomic Energy Community are not in line with the democratic standard achieved in the European Union in general, which is required by the Basic Law for the Federal Republic of Germany as a precondition for Germany's participation.
3. The traditional exclusion of the atomic energy sector from the general provisions on competition under the EC Treaty justified with reference to the out-dated structures of the Euratom Treaty is no longer tenable in view of developments in the areas of energy policy and technology. The Euratom Treaty runs counter to the development of a free internal market in energy which EU law calls for.
4. To this day, the Euratom Treaty has served to obstruct the establishment of uniform legislation across Europe on the safety of nuclear energy installations. Should the Treaty be terminated, it would be possible to invoke the relevant sections of the EC Treaty as the legal basis for such provisions.
5. The Euratom Treaty constitutes a significant obstacle to the establishment of a uniform and transparent constitutional system in the European Union. The denunciation of the Euratom Treaty should be seen as a means of expediting the overdue reform of the EU's primary law.
6. EU law does not oppose the application of generally applicable principles under international law for the denunciation and termination of international treaties at least as far as the Euratom Treaty is concerned.
7. The termination of the Euratom Treaty by mutual consent is permissible.
8. The Euratom Treaty may be denounced on the basis of the ordinary grounds for termination referred to under Article 56(1)b of the Vienna Convention on the Law of Treaties (nature of the treaty).

9. The Euratom treaty may be denounced unilaterally on the basis of the extraordinary grounds for termination under Article 62(1) of the Vienna Convention on the Law of Treaties (fundamental change of circumstances). However, in view of the primacy of ordinary grounds for termination over extraordinary grounds for termination, Article 62(1) of the Vienna Convention on the Law of Treaties should only be invoked as subsidiary grounds for termination.
10. The German Basic Law does not oppose the denunciation of the Euratom Treaty by the Federal Republic of Germany.
11. The formal conditions required for the denunciation of the Euratom Treaty can be created by a Member State which has resolved to denounce it.
12. A partial denunciation of the Euratom Treaty is precluded under Article 44 of the Vienna Convention on the Law of Treaties.
13. Any regulatory structures of the Euratom Treaty which are worth preserving could and should be incorporated in the EC Treaty or the Treaty on a Constitution for Europe following the abrogation of the Euratom Treaty.

## **We can and must leave Euratom.**

Green conclusions drawn from the Euratom expert opinion.

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The Euratom Treaty is a dinosaur which runs counter to many principles underlying today's European Union. It is one of the reasons why the European Union is so slow to act when it comes to switching to safe and sustainable sources of energy. The text of the Treaty enshrines a one-sided support of nuclear energy. Even Member States which have already decided to abandon nuclear energy or which never had and do not wish to have nuclear power stations are obliged to support nuclear energy.

Thus, comprehensive privileges in the funding of research, the approval of nuclear power stations and their financial support are enshrined in the Euratom Treaty. All other sources of energy, including renewable sources of energy, are thus discriminated against in comparison to nuclear energy. The Euratom expert opinion by Prof. Wagener concluded that the Member States, including the Federal Republic of Germany, are entitled to denounce the Euratom Treaty either unilaterally or with other Member States. Both a unilateral denunciation and a denunciation by common consent of the Euratom Treaty are possible under EU, German and international law. The decision-making structures of the Atomic Energy Community are not in line with the democratic standard achieved in the European Union in general, which is required by the Basic Law for the Federal Republic of Germany as a precondition for Germany's participation. The Euratom Treaty runs counter to the development of a free internal market in energy which EU law calls for. The denunciation of the Euratom Treaty should be seen as a means of expediting the overdue reform of the EU's primary law. Any regulatory structures of the Euratom Treaty which are worth preserving, for instance as regards radiation safety in the field of medicine, could and should be incorporated in the EC Treaty or the Treaty on a Constitution for Europe following the abrogation of the Euratom Treaty.

We call on the German Government to convene a conference of signatory states with the aim of terminating the Euratom Treaty in the near future. Should such a conference not take place or should a decision to terminate the Treaty not be adopted, then we call on the German Government, either unilaterally or together with other Member States, to denounce the Euratom Treaty. We want to ensure that Europe becomes the most competitive and sustainable region in the world. To this end, the current energy policy must be abandoned. By 2020, Europe must have reduced its green-house gas emissions to 30% below the 1990 levels. In order to do so, energy efficiency must be improved by at least 20%, the share of renewable sources of energy in the energy mix must be expanded massively and the trade in emissions must be further developed. The promotion of nuclear energy, which after all is the purpose of the Euratom Treaty, is incompatible with this objective.