



**Friends of
the Earth
Europe**



WILL THE NEW EU CONSTITUTION PROMOTE NUCLEAR ENERGY?

**A Friends of the Earth Europe (FOEE) and World Information
Service on Energy (WISE) Paper**

**analyzing the role of the EURATOM Treaty
in the new EU constitution**

May 2005

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Summary

In 2005 and 2006 people in many EU-countries will vote in referendums that will decide the future of the new EU Constitution (for overview of the timetables see Annex). If the EU Constitution enters into force it will shape the future of the EU and all its partners for many years to come.

Consequently, it is of vital importance to assess whether the new Constitution will contribute to a sustainable development. Energy supply and its environmental consequences, especially the sensitive question of nuclear power, is one of the crucial areas we have to address.

The EURATOM Treaty and whether to abolish, amend or replace it and whether the EU should introduce a common energy policy generated a heated debate among delegates to the Convention and the engaged public. On energy the most important decisions were:

1. Introduction of an Energy chapter, creating a new Community competency
2. New for EURATOM in the Constitution:
 - The EURATOM Treaty is now protocol Nr. 36 to the new Constitutional Treaty. This means:
 - The EURATOM Treaty itself did not undergo any changes (wording, functions)
 - The EURATOM Treaty is not an integrated part of the new Constitution
 - EURATOM maintains a separate legal personality from the EU's new future legal personality and the EURATOM Treaty will remain a separate Treaty from the new EU Constitution.

The text of the new EU Constitution has not been "contaminated" by the outdated and inappropriate pro-nuclear text of EURATOM. This leaves the way open for a dedicated review conference, which could either reform or repeal EURATOM altogether.

Five States (Austria, Germany, Ireland, Sweden, Hungary) made a declaration stating that they see EURATOM as outdated and in need of review "as soon as possible". Friends of the Earth Europe is campaigning for a substantial EURATOM-reform and is supported by around 100 environmental groups.

Despite that many EU Member States and its citizens do not support nuclear energy, the EURATOM Treaty increases the support for nuclear: For the 7th Framework research programme for 2007-2011, the EU Commission proposes an increase for nuclear research of around 200 %. In addition, new EURATOM loans may help build new nuclear power plants in Bulgaria or Russia.

1. History of the EURATOM Treaty and Nuclear Energy in the EU

The EURATOM Treaty establishing the European Atomic Energy Community was signed in 1957 with the purpose of assisting the development of nuclear power. At the time, the technology was being introduced to commercial operation and nuclear power was thought to be an “essential resource for the development and invigoration of industry”. EURATOM funded research into nuclear power, as well as lending billions of euros to help build or improve nuclear power plants. As a result, the EU is the world's leading nuclear generator. The enlarged EU operates 156 reactors that produce 32 per cent of its electricity, a higher proportion than in North America, Japan or Russia.

The EURATOM Treaty is a political oddity. Although public opinion is largely opposed to the expansion of nuclear energy, and despite the fact that several Member States have phased out nuclear power or have begun to do so, the EU-25 continue to be members of a Community whose main objective is the “speedy establishment and growth of nuclear industries”. Having existed for nearly half a century, the treaty appears to have been largely forgotten about by politicians and citizens alike – but not by the nuclear industry and nuclear scientists.

After the Chernobyl accident in Ukraine in 1986 many countries lost their enthusiasm for the technology. Today only France and Finland are considering or building new reactors, while Germany, Sweden, Belgium, Netherlands and Spain are planning to shut down their existing reactor programmes.

The EURATOM Treaty was signed in conjunction with the treaty establishing the European Economic Community (Treaty of Rome). The European Atomic Energy Community entered into force in 1958. In contrast to the other founding treaties, the EURATOM Treaty has never been substantially revised. Furthermore, whereas the treaty establishing the European Coal and Steel Community expired in July 2002 – fifty years after it came into force – the EURATOM Treaty contains no expiry provision.

2. Current Competencies of the EURATOM TREATY

The main goals of the EURATOM Treaty are:

- ⊕ promotion of the European nuclear industry
- ⊕ special funding of nuclear research
- ⊕ dissemination of information
- ⊕ investment facilitation
- ⊕ creation of a common market
- ⊕ safeguards
- ⊕ supply of nuclear fuels

The promotion of the European nuclear industry mainly consists of the creation of a special economic zone for the nuclear industry, which contradicts the EC Treaty and the new European Constitution, for example in relation to nuclear state aids and the internal market for energy.

a) EURATOM research

The current European Commission's 6th Framework Programme for research (2002 – 2006) has a budget of 17,5 billion euro. EURATOM-research received 1,23 billion Euro, which amounts to 246 million euro annually. To compare, the EU spends only around 96

million euro per year on research of renewable energies.

In the 6th Framework Programme the funds for nuclear research are spent in the following manner: 330 million on further research in the area of nuclear fission, 150 million on research into final storage of nuclear waste, and thermonuclear fusion research is the winner with 700 million euro. However, even the EURATOM Science and Technology Advisory Committee, which is dominated by the nuclear industry, admits that "nuclear fusion is an energy option, which has the potential to play a key role in the long term perspective (earliest 50 years)".

Sadly, these were the same experts who announced already 25 years ago that the commercial exploitation of nuclear fusion could start in only about 50 years. This would lead one to believe that the commercial usage of fusion will always be 50 years in the future – despite of billions of research funds.

The European Commission Framework Programme proposes a budget in which the share for nuclear technology will increase considerably to €4.75 billion (over 7 years). However, over the five year period of the official EURATOM 7th research programme (2007 - 2011), it is proposed that 3103 million euro be allocated for nuclear; this means that e.g. fusion and ITER could receive an increase from 824 million in the 6th Framework Programme to 2167 million euro. The final amounts will be decided together with the European parliament and EU Member States in 2006.

b) EURATOM loans

The EURATOM loan facility: short history and outlook

- ⊕ 1977 Introduction of EURATOM loans
- ⊕ 1994 EURATOM loans made available for CEE countries
- ⊕ 2000 EU granted 212.5 million euro loan for upgrade of NPP Kozloduj 5&6, Bulgaria
- ⊕ 2004 EU granted 223.5 million euro for NPP Cernavoda 2, Romania
- ⊕ 2004 EU granted a 83 million euro for the completion of Khmelnytsky 2 and Rovno 4, Ukraine
- ⊕ 2005 EU may grant 350 million euro for Belene NPP in Bulgaria

Due to pressure from pro-nuclear governments and industry, the European Council established a special loan facility for the development of nuclear technology in 1977. At favourable interest rates, companies in France, Germany, Belgium, Italy and other EU Member States used these loans. In total 50 loans worth 2,8 billion euro were granted.

However, since 1989 no new nuclear power plant was ordered and consequently, no further applications within the EU has been made. The nuclear industry discovered the former Eastern bloc as a new customer and the loans followed the market: In 1994 the European Council decided to extend the field of action and EURATOM loans were made available for projects for the "increase of safety and efficiency of nuclear power plants" in Central – and Eastern Europe.

EURATOM loans for non-EU countries have been granted for three projects, the completing of two new reactors in Ukraine, the building of a new reactor in Romania and the upgrade of two VVER-1000 reactors in Bulgaria.

Future nuclear power plants to be financed by EURATOM : In 2004 the EU Commission confirmed that Bulgaria may apply for a loan (350 million euro) for its planned nuclear power plant in Belene, probably 2 VVER units. There may be more support for the construction of further reactors in Russia (e.g. Kalinin 3).

c) Nuclear Waste Management

The management and disposal of spent nuclear fuel and the dismantling of nuclear facilities is expensive and often occurs decades after closure, at which point the nuclear power plant is no longer generating profit. Consequently, funds must be put aside during operation in order to pay for this future activity. The European Commission has acknowledged that there is a need to ensure that adequate funds are put aside and to ensure that these funds are used only for this purpose. Despite this acknowledgment, the EU has not introduced legislation.

In September 2004 the Commission approved a government €6 billion grant to the private nuclear operator British Energy in order to fund nuclear waste and decommissioning activities. Part of the justification given by the European Commission for approving this state aid was the Euratom Treaty with its requirements for worker and public protection.

3. The EURATOM Treaty and the new Constitutional Treaty

Energy and the new European Constitution

The main energy-related aspects of the new European Constitution are:

- the EURATOM Treaty stays a separate Treaty
- a new chapter on energy policy was introduced

a) EURATOM and the way towards a new European Constitution

In 2001 the Laeken European Council “specified that the Convention was to draft a Constitutional Treaty that would simplify and integrate the EU founding treaties. Although not explicitly mentioned, this mandate was understood by some to include the EURATOM Treaty – an interpretation shared, for example, by the Convention Working Group on legal personality. The Laeken Declaration also called for the merging of the different legal personalities established through these treaties (i.e. The European Atomic Energy Community and the European Community). One consequence of the merger of legal personality would have been that EURATOM and EU membership would have been inseparable. By contrast, now there is the theoretical possibility for a state to be a member of the European Union without being a member of EURATOM”.¹

b) The current situation

In July 2003, shortly before the finalisation of the draft text, the full integration of the Euratom Treaty into the new Constitution was prevented. As a consequence, the EURATOM Community will maintain a separate legal personality from the EU’s new legal personality. Further, the EURATOM Treaty will remain a separate treaty from the Constitutional Treaty, although linked by a new protocol. A spokesman for the Convention stated that the compromise was not necessarily anti-nuclear, but rather leaves the subject untouched.

The EURATOM Treaty and its articles as such stayed unchanged. Both Treaties are now

¹ Source: <http://www.ecofuturum.de/de/downloads/ecobriefs/EcoBriefsNRG.pdf>

primary law of the EU constitution. They are connected by using the same institutions (Council, European Commission, Parliament, Court of Justice), by having the same Member States and (a change in the new constitution) a shared budget.

However, the two treaties contradict each other. On the one hand this concerns the relationship between state subsidies for companies producing nuclear power (BE, EdF) and the regulations of the free electricity market. This state aid is contra to the spirit of internal market regulations of the EU constitution, but is covered by the EURATOM Treaty. Moreover the new energy chapter and the EURATOM Treaty are contradicting each other (see below).

Conclusion: The current situation of two independent Treaties, which are contradicting each other in energy and market issues is not sustainable. A specific EURATOM review conference is now even more essential.

c) The Energy Chapter

The introduction of a separate energy chapter is potentially a landmark in European energy policy and increases the need to reform EURATOM. The energy chapter established common competence for energy policy and strengthens the EU's role in this field. Previously the absence of a separate section specifying targets for energy policy meant that the objectives for Community activities in this field were not defined from an energy perspective, but had to be inferred from other policies.

Article III-157 of the new European Constitution specifies the objectives of European energy policy as follows:

“In establishing an internal market and with regard to the need to preserve and improve the environment Union policy on energy shall aim to
(a) ensure the functioning of the energy market,
(b) ensure security of energy supply in the Union and
(c) promote energy efficiency and saving and the development of new and renewable forms of energy”.

The article of the draft constitution also states that:

Such laws or framework laws shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply.

The energy chapter in the new Constitution does not refer explicitly to sustainable development. This wording was inserted to allow the further use of 'clean coal'; new reactors designs and eventually nuclear fusion.

At this stage it is unclear what impact the energy chapter will have as the language states that it still incumbent upon Member States to choose the type of energy supply and its structure – probably the two most important areas.

4. Arguments for EURATOM reform

⊖ Expiry of the coal and steel Community

In July 2002 one of the other founding treaties of the EU, the ECSC expired. Therefore EURATOM remains the only stand-alone Treaty outside the EC Treaty or the new European Constitution. The European Parliament has suggested to phase out the EURATOM Treaty after 50 years in operation (2007), the same timescale as for the ECSC and to coincide with the start of the 7th Framework research program.

⊖ Competition Policies /Electricity Market Liberalization

A consumer and environmental friendly liberalization of the electricity market requires increased transparency, fair access to grids, rights for consumers and a level playing field between generators. The EURATOM Treaty with its requirement for the community to create the “conditions necessary for the speedy establishment and growth of nuclear industries” contradicts this requirement. Furthermore, it creates advantage 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 question of market distortion created by state aids to the nuclear industry.

⊖ EURATOM does not fit into a democratic EU

“The European Parliament was still nascent when the EURATOM Treaty was first drawn up in 1957. In addition democratic control of the nuclear industry was neither a priority nor regarded as desirable at the time. Consequently the EURATOM Treaty is largely shielded from scrutiny of the European Parliament, as there is no co-decision for its operational functions. The European Parliaments function is merely advisory”.²

The lack of co-decision with the Parliament on nuclear questions and the sole responsibility for granting EURATOM loans, resting with Commission (no Parliamentary or Council oversight!), highlights the need to reform the undemocratic EURATOM Treaty.

⊖ Consensus on nuclear energy among Member States does not exist any more

The policies regarding the use of nuclear power increasingly diverge between Member States. Whereas some have an active phase-out policy, others continue to support their nuclear sector. The 1957 consensus on nuclear energy no longer exists and this has to be reflected by the new European Constitution. Of the current 25 EU Member States, ten have never used nuclear energy. Austria and Italy have phased out nuclear energy. Four other countries (Belgium, Germany, the Netherlands and Sweden) have decided to stop using nuclear energy. In Spain the new government has announced similar plans. This leaves Finland, France, Lithuania, Czech Republic, Slovakia, Hungary, Slovenia and the UK (8 of 25) as nuclear supporting countries. Of these only Finland and France have decided to construct a new nuclear power plant. This means that the majority of members of the European Atomic Energy Community are opposed to, or at least sceptical of nuclear energy.

⊖ Lack of public acceptance

Not only governments, but also a majority of European citizens are opposed to nuclear energy. In a 2002 Eurobarometer survey³ on attitudes towards the environment, nuclear energy and radioactive waste ranked highest among all environmental concerns – well ahead of global warming. Nuclear risks were named as a serious concern by half of the

² Source: <http://www.ecofuturum.de/de/downloads/ecobriefs/EcoBriefsNRG.pdf>

³ http://europa.eu.int/comm/public_opinion/archives/eb/ebs_165_en.pdf

respondents.

In a European-wide opinion-poll conducted by Greenpeace in 2003, 62 % of respondents said they were in favour of a reform of EURATOM with the aim of ending the special benefits for nuclear power in Europe.

⊖ Conflict with other policies

The EURATOM Treaty conflicts de facto with other European policies, most notably the common energy market and environmental policy. Support provided through EURATOM loans and research funding effectively established a special economic zone for nuclear energy. At the same time, neither environmental liability nor cost internalisation are enforced for nuclear energy providers. This situation contradicts the objectives of a common energy market, which requires an equal treatment of energy producers and energy sources.

5. Future Options for EURATOM reform

The process of the Constitutional Treaty and the IGC did not reform or abolish the EURATOM Treaty. EURATOM is still a stand-alone treaty and will continue to promote nuclear power.

The following options are possible:

A. Phase out of the EURATOM Treaty: Using the European Steel and Coal Community as a model (it expired in 2002), the duration of EURATOM could be limited to 50 years. This would mean that EURATOM expires in 2007. Certain provisions i.e. pertaining to health and safety or to non-proliferation could then be transferred into an annex to the Constitutional Treaty or the newly created energy chapter. We call upon the EU Member States to start a EURATOM Treaty conference to achieve this aim. **FOEE position**

Aa First step policy: Put an end to the EURATOM research budget for nuclear energy and the EURATOM loan facility for nuclear projects (EURATOM loan facility)⁴, e.g. in the form of a political moratorium agreed by EU Member States on using these promotional tools (No Treaty conference needed!). **FOEE position**

B. Unilaterally leave the EURATOM Treaty: The objective would be for a number of non-nuclear countries to suspend their membership in the European Atomic Energy Community unilaterally. This seems politically elegant, but as there is no precedent for a country leaving a EU treaty, it is questionable whether non-nuclear governments are determined enough to carry through with this process. It is unclear, what happens if individual countries would leave EURATOM while staying in the EU.

⁴ see also: Why EURATOM does not make NPPs safer:
http://www.foeeurope.org/publications/2002/EURATOM_fact_sheet_October_2002.pdf

Annex: List of countries holding popular referenda on the EU Constitution

Note: in the countries not mentioned, the national parliaments have to ratify the Constitution, which they already did or will do.

Czech Republic	Possible date: June 2006
Denmark	27 September 2005
France	29 May 2005
Ireland	Late 2005 or early 2006
Luxembourg	10 July 2005
Netherlands	1 June 2005
Poland	Second half of 2005
Portugal	9 October 2005
Spain	20 February 2005 Outcome of referendum: 76.73% 'yes', 17.24% 'no'. Voter participation: 42.32%
United Kingdom	Possibly May or June 2006

Source and further information: <http://www.euractiv.com/Article?tcmuri=tcm:29-130616-16&type=Overview>