DET EUROPÆISKE KONVENT

SEKRETARIATET

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fra:	sekretariatet
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Vedr.:	Bidrag fra Marie Nagy, Renée Wagner og Neil MacCormick, suppleanter til konventet: – "Euratom-traktatens fremtid inden for rammerne af den europæiske forfatning"

Generalsekretæren for konventet har modtaget vedlagte bidrag fra Marie Nagy, Renée Wagner og Neil MacCormick, suppleanter til konventet.

ANNEX

CONTRIBUTION TO THE CONVENTION

by Marie Nagy, Renée Wagner, Neil MacCormick

THE FUTURE OF THE EURATOM TREATY IN THE FRAMEWORK OF THE EUROPEAN CONSTITUTION.

The purpose of the Convention is to propose a new framework and structures for the European Union which are geared to changes in the world situation, the needs of the citizens of Europe and the future development of the European Union[1].

I. Recommendations to the Convention

We wish to make the following recommendations to the Convention in relation to the Euratom Treaty:

The Convention has already achieved consensus on the following points:
- There should be a single constitution treaty
- The Union should have a single legal personality and a single institutional structure.

Therefore it is necessary to repeal the Euratom Treaty.

We argue here that it is now appropriate
- to abolish the 'special economic zone' that the Euratom created, and
- to respect the principles of fair competition and the creation of a level playing field for different energy sources, thereby ceasing to give nuclear energy undue advantages over its rivals.

We offer an analysis of the present functions of Euratom and make proposals concerning their transposition into the Part Two of the Constitution (see Praesidium preliminary draft Constitutional Treaty (CONV 369/02)), while proposing that others be simply repealed.

II. Reasons for Abolishing the 'Special Economic Zone' for Nuclear Power

Expiry of European Coal and Steel Community: In July 2002 the ECSC Treaty (one of the other founding treaties of the EU) expired as it was deemed no longer necessary to retain a Treaty to support Coal and Steel industries. Therefore, Euratom remains the only Treaty outside the EC Treaty. The European Parliament has suggested to phase out the Euratom Treaty after 50 years in operation (2007), the same timescale as for the ECSC to coincide with the start of the 7th Framework Research Program.

[1] Opening Statement on the Web site of the Convention: http://european-convention.eu.int/bienvenue.asp?lang=EN&Content=

Competition Policies / Electricity Market Liberalisation: The Lisbon Summit called for increased liberalisation of key sectors such as energy. A consumer-friendly and environmental-friendly liberalisation of the electricity industry 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*[1]' contradicts the requirement for equal treatment of electricity generators. Furthermore, it creates advantages 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 questions of market distortion created by state aids to the nuclear industry. Since the liberalisation of the energy markets, there must be no more special provisions concerning nuclear reactors as an energy source, outside the Competition framework of the EC Treaty.

Recent Proposals of the Commission to extend its powers regarding nuclear technology: Proposals from the Commission to increase their regulatory role under Euratom have been put forward (the so called 'nuclear package') and will be considered by the European Parliament and Council. The adoption of this by either institution is far from certain given the uncertainties surrounding the legal framework for these directives[2]. Such a proposal must not be considered until the role and control of Euratom has been reviewed.

Euratom has a democratic deficit: The Euratom Treaty is largely shielded from the scrutiny of the European Parliament, as there is no co-decision for its operational functions. As the Commission notes in its own draft constitution for the future of Europe, "*The legislative role of the European Parliament must be confirmed by general use of the codecision procedure*[3]". Such a change must affect the provisions currently contained in the Euratom Treaty and would at minimum require the modification of the decision mechanisms prescribed in it.

No present consensus on nuclear energy among Member States: Policies regarding the use of nuclear power have become increasingly divergent among Member States. Whereas some have an active phase-out policy others continue to support their nuclear sector. Therefore the 1957 consensus on nuclear energy no longer exists, and this changed situation has to be reflected in the new constitution.

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1 Article 1 of the Euratom Treaty

2 Short legal opinion concerning the evaluation of the applicability of Articles 31 and 32 of the EC Euratom Treaty as legal basis for the current different draft directive proposals of the European Commission, the "Nuclear Safety Package" Prepared for The Greens / EFA Group of the European Parliament, December 2002, Dr. Dörte Fouquet, Kuhbier law firm.

3 For the European Union: Peace, Freedom, Solidarity: Communication of the Commission on the Institutional Architecture, 4th December 2002; COM (2002) 728

III. Consequential proposals concerning present contents of the Euratom Treaty and their adaptation to the new Constitution

The Euratom Treaty must be reformed within the Convention process by repealing the Treaty and transferring its remaining key functions (health and safety, safeguards and non-proliferation) into the Part Two of the new Constitution (see Praesidium preliminary draft Constitutional Treaty (CONV 369/02)). There are nine key functions of the Euratom Treaty, and they should be addressed in the following way.

A) Tasks of Treaty

Articles 1-3 outline the tasks of the Euratom Treaty and as such should be deleted from a future Constitution

B) Promotion of Research

The Framework Programs give research for nuclear technology a separate budget from non-nuclear research. Despite changing priorities in any framework program, funds cannot be transferred between nuclear and non-nuclear activities. Furthermore, no other energy technology receives the level of funding that nuclear technology is awarded. This creates distortions to the disadvantage of non-nuclear energies. The treatment of nuclear research as a 'special case' is no longer acceptable. Therefore, any nuclear research and development program should be included within the general framework research program budget and subject to the same scrutiny and public accountability as all other research programs – currently the European Parliament has no second reading on the Euratom Framework program. This should start from the 7th Framework Program in 2007.

Chapters I and II (articles 4-29) should not be transposed into the Constitution, but should be simply repealed

C) Health and Safety

The EU should still retain responsibility to ensure that basic standards for workers and the general public are applied and enforced and enlarged to include environment protection. However, it is not necessary that this be undertaken in the framework of solely nuclear issues and it would be more appropriate for the standards to be based on the present EC Treaty, using articles 174 and 175 (Title XIX Environment). Already most Member States have higher protection standards than the minimum required by Euratom and these EU-wide standards must be revised to take into consideration Member State experience and the precautionary principle. In addition the standards have to reflect the new challenges which result from nuclear phase-out and the increasing importance of final disposal of nuclear waste.

The intent of Chapter III (Articles 30-39) should be subsumed in the new Constitution to conform with EU environmental and health legislation in line with similar directives for hazardous activities based on present article 174.

D) Investment

Chapter IV on investment should be abandoned. Under Article 40, the Commission is charged with publishing periodical reports on the nuclear industry, to *'facilitate co-ordinated development'*. Such a report purely on the nuclear sector is no longer necessary as a more holistic view of the electricity and energy sector is required.

Specifically Chapter IV, along with articles 2C, 173 and 203 are the justification for the Euratom Loan Facility. To date nearly 100 loans have been awarded by Euratom for the construction of nuclear power plants and nuclear facilities inside and outside Member States. Such a technology specific EU loan facility does not exist for other energy sources and gives a clear market advantage for nuclear power within the liberalised electricity market.

Chapter IV (articles 40-44) and articles 2C, 173 and 203 should not be transposed into the Constitution, but should be simply repealed

E) Joint Undertakings

Article 45 claims that joint undertakings are of *'fundamental importance to the development of the nuclear industry'*. The tax advantages that the joint undertaking status grants once again create a market distortion

Chapter V (articles 45-51) should not be transposed into the Constitution, but should be simply repealed

F) Supplies

Many of the provisions within this chapter (Chapter VI) have been only partially taken up, or have never been used. In particular Euratom 's legal right to ownership of all special fissile material serves little or no purpose. There are three main issues that need to be addressed within the framework of supply; firstly security of supply, secondly equal access to nuclear material (the functioning market for uranium) and thirdly non-proliferation.
Security of Supply: There is already a diversity of sources for the production of uranium, as for other fuel supplies, no special measures are necessary to oversee on an EU wide level the import of this material.
Material Market: Article 14 of the EC Treaty requires the establishment of an internal market. This should be applied to uranium as it has been for other goods, on condition that adequate environmental and public safety and proliferation threats are given priority.
Proliferation: This issue of fissile material proliferation should be dealt with under a special article in a new Constitution. This should include the issues of sanctions against Member States for failure to implement adequate safeguards against diversion of material. see below.

The elements of Chapter VI relating to the safeguards and non-proliferation should be included in a new article (see point G below), but all other elements of Chapter VI should not be transposed into the Constitution, but should be simply repealed

G) Safeguards and Non-Proliferation

The core objectives of this Chapter must be retained to ensure that the ores, source materials and special fissile material s are not diverted from their intended uses. However, the High Level Expert Group report for the European Commission, on the Euratom Safeguards Office (ESO) [1], recommended that the ESO should refocus its effort on its core activities, namely nuclear material accounting and controls. The report highlighted a number of areas in which the functioning of the ESO could be improved, including greater transparency, greater integration into other parts of the Commission services and a thorough review of its mode of operation. Furthermore, decommissioning of nuclear facilities as well as the EU enlargement will lead to new demands for nuclear safeguards.

To cover the points in the present Chapter VII (articles 77-85), a special article of the Constitution should be established to provide for Nuclear Safeguards and Non-Proliferation.

H) Property Ownership

This chapter (Chapter VIII) relates to the ownership by the Community of special fissile material. Although the ownership of special fissile material does not touch the general rules on safeguards and non-proliferation it can strengthen non-proliferation regulations. It should be dealt with under a special article on safeguards and non-proliferation. Especially the traditional Non-Nuclear Member States such as Ireland and Austria should consider the consequences of this ownership clause. In case of an incident and given the tendency in international jurisdiction towards broad liability and damage it could be possible that they would have to pay for damages resulting from a nuclear accident in one of the formerly nuclear or still-nuclear Member States.

Chapter VIII (articles 86-91) should be included in a special article on Safeguards and Non-Proliferation.

I) Nuclear Common Market

Article 14 of the present EC Treaty should apply to nuclear materials, subject to the provision that issues relating to environmental and human health protection and non-proliferation are given priority. As there is already a European Common Market it should apply to all non-fissile nuclear materials.

Chapter IX (articles 92-100) should not be ransposed into the Constitution, but should be simply repealed

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[1] Review of the Euratom Safeguards Office, by a High Level Expert Group, Appointed by the European Commission Directorate-General for Energy and Transport, 15th February 2002.

J) External Relations

Chapter X enables the Commission to negotiate directly with third counties on nuclear issues. Such agreements do not require approval of the European Parliament and in some cases can be entered into without the approval of the Council. Such agreements should be included with other external relations issues of a future EU Constitution, and do not require specific articles in the Constitution. They can be dealt with in a similar way to that involved in Energy co-operation agreements with (for example) Russia.

Chapter X (articles 101-106) should not be ransposed into the Constitution, but should be simply repealed

Annex : Calls for the Reform of Euratom in and outside the Convention

The call for the inclusion of Euratom reform within the framework of the Convention is not new but is gaining momentum in Member States, the European Parliament, Members of the Convention and in the public and Non-Government Organisations. This is a result of the growing recognition that in such a wide-ranging review of the EU institutions it would be illogical to exclude an analysis of the future need for the Euratom Treaty.

Member States

The Austrian Government has requested "to reform the Euratom Treaty and to include it in the Basic Treaty" [9]

The UK Government representative on the Convention stated, "I am sure that it [Euratom Reform] will be considered in convention proceedings if there is scope for doing so [10]".

European Commission

In December 2002 the Commission published a document which proposed a Constitution of the European Union. The document states clearly that it does not necessarily represent the views of the Commission, however, it was undertaken at the request of President Prodi and headed by François Lamoureux. This document calls for the establishment of a separate additional act to the Constitution on the Peaceful use of Atomic Energy. [11]

Working Groups of the Convention

Legal Personality: *"15. The underlying case for merging the Euratom Treaty is the same as for merging the Treaty of European Community (TEC). The Euratom merger would in addition allow a large number of Euratom Treaty provisions that are identical or similar to the TEC to be deleted. However, in view of certain specific problems relating to the Euratom Treaty, it was felt that the possible implications of merging this Treaty needed to be further investigated"* [12].

9 S. "Intergovernmental Conference on institutional matters concerning the issues of the Laeken declaration and enlargement, Basic principles of Austria's position", sent as annex attached to a letter, sent by the Austrian government on the 27 of April 2002 to the Secretary General of the Council.

10 Peter Hain, UK Parliamentary Debate on the Convention, 2nd December 2002.

11 Feasibility Study , Contribution to a Parliamentary Draft Constitution of the European Union, Working Document, 4th December 2002.

12 Final report of Working Group III, Legal Personality, 1st October 2002, Convention 305/02

Representatives of the Convention

Mr Hanns Farnleitner et al.: "..we consider it to be imperative for the Convention to address the question as to which role should be played by the European Atomic Energy Community and the underlying Treaty within the context of a future system of European integration and cooperation. The role of EURATOM must have its place precisely in the comprehensive debate on the future of the Union which we are conducting at the present time.13

Mr Klaus Hänsch et al. "to reinforce nuclear safety, promotion of research and external relations policies in this field, the Euratom Treaty will have to be revised, brought up to date and integrated into the constitutional Treaty. At the same time, the democratic deficit must be reduced by introducing the co-decision Procedure14".

Mr Diego López Garrido et al. "We support growth based on a responsible and effective use of natural resources which respects the environment and follows production methods that do not harm public health (Kyoto Protocol). The EU's missions and responsibilities must enable us…. to reinforce policies on nuclear safety, promote research and foreign relations, revise and update the Euratom Treaty"15.

Mr Klaus Hänsch: "Unlike the EC Treaty, the Euratom Treaty has never been substantially amended. The conditions obtaining at the inception of the European Atomic Energy Community have, however, changed markedly over the last five decades, while some inherent shortcomings have not up to now been eliminated.16"

Mr Josep Borrel**: "**We support growth based on a responsible and effective use of natural resources which respects the environment and follows production methods that do not harm public health (Kyoto Protocol). The EU's missions and responsibilities must enable us:

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13 Contribution by Mr. Hannes Farnleitner, Mr. Caspar Einem and Mr. Reinhard E. Bösch, members of the Convention : " A single legal personality - On the future of EURATOM ", 22nd October 2002, Convention 358/2

14 Contribution by Klaus HÄNSCH, Olivier DUHAMEL, Luís MARINHO, Linda McAVAN and Anne VAN LANCKER, members, and Pervenche BERÈS, Maria BERGER, Carlos CARNERO GONZÁLEZ, Elena PACIOTTI and Helle THORNING-SCHMIDT, alternate members of the Convention. 12th July 2002. Convention 189/02

15 Contribution from Diego López Garrido, José Borrell and Carlos Carnero, members of the Convention: "A European Constitution For Peace, Solidarity And Human Rights" 8th October 2002, The Convention 389/02

16 Contribution from Mr Klaus Hänsch, member of the Convention: "Future of the Euratom Treaty", 14th October 2002, The Convention 344/02

d) to reinforce policies on nuclear safety, promote research and foreign relations, revise and update the Euratom Treaty "17

European Parliament:

"whereas the expiry of the ECSC leaves only Euratom as a stand-alone energy treaty; whereas the Euratom Treaty should expire after 50 years of its existence in 2007 [18],,

"Calls for the European Convention to modify the Euratom Treaty in order to bring Nuclear Safety and Security under the responsibility of a Community authority, as Nuclear Safeguards is under the responsibility of ESO19".
Brussels, 21 January 2003

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17 Contribution from Mr Josep Borrel, member of the Convention, Carlos Carnero and Diego López Garrido alternate members of the Convention: "A European Constitution for peace, solidarity and human rights" 11th December 2002, The European Convention 455/02

18 European Parliament resolution on the Commission Green Paper Towards a European strategy for the security of energy supply (COM(2000) 769 - C5-0145/2001 - 2001/2071(COS))

19 Report on the Commission report to the European Parliament and the Council: Operation of the Euratom Safeguards Office 1999-2000 (COM(2001) 436 – C5-0535/2001 – 2001/2214(COS)) Committee on Industry, External Trade, Research and Energy Rapporteur: Paul Rübig, 29th May 2002,l A5-0196/2002.