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Comparison among different decommissioning funds methodologies for nuclear installations

Final Report

EU Stakeholder Report

on behalf of the European Commission
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**Comparison among different decommissioning
funds methodologies for nuclear installations**

Final EU Stakeholder Report (WP 3)

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Summary

The issues of the management of spent fuel and decommissioning funds have been of interest to the European institutions for around a decade. In 1998 the European Commission identified the issue of decommissioning funds as one which could potentially distort the single market for electricity. In part as a result of this the European Parliament passed an amendment in its first reading of the Electricity Market Directive in 2002 for the separation of decommissioning and radioactive waste management funds from the accounts of utilities. This amendment was subsequently overturned, but resulted in a joint institutional statement which called for the separate management of radioactive waste and decommissioning funds. This statement in turn led to the Commission preparing a draft directive under Article 31 of the Euratom Treaty on nuclear safety, which included recommendations on the financial management of decommissioning funds.

If adopted these would have required that the operators of nuclear facilities ensure that there were adequate funds to cover their future decommissioning activities and that these should be retained in legal separate accounts from that of the operator and only used for the purpose for which they were accumulated. The European Parliament largely agreed with the recommendation of the Commission. However, discussions in the European Council's Atomic Questions Working Group resulted in the altering of the proposals so that the final recommendation from the Council, which was subsequently adopted by the Commission in its redrafted directives in 2003, called for operators to ensure that there were adequate funds for decommissioning and waste management activities, but no recommendations on the ownership or management of these funds.

However, there was insufficient support from Member States to have the nuclear safety directive (and a linked directive on nuclear waste management) adopted. As a consequence the European Council have developed three working groups, one on decommissioning funds, to development policy initiatives. The Working Group on decommissioning funds is expected to complete its work by November 2006.

In October 2006 the Commission published a recommendation on decommissioning and radioactive waste management funds. Although it is not binding on Member States, it states that segregated funds are the preferred method of accounting for future decommissioning funds and that new installations should set up such funds. Furthermore, the collected revenues should be only used for the purpose which they have been established. In addition the recommendation calls on Member States to report annually on their fund management.

The groups representing the major electricity producers and the nuclear sector lobbied to have the Commission's original proposal for legally separate decommissioning and waste management abandoned instead calling for Member States to decide the most appropriate mechanisms for fund management.

Stakeholder Analysis

Within the EU institution there are two main categories of stakeholder bodies, those with a formal role and those that don't.

There are five bodies that have a role in developing the EU's views on decommissioning financing, these are:

- **European Commission**
- **European Parliament**
- **European Council**
- **European Economic and Social Committee**
- **Article 31 Expert Group**

In 2002 the European Parliament passed amendments to the electricity market directive that suggested that the use of decommissioning funds for market acquisitions was a market distortion. As a consequence the three EU institutions (Commission, Council and Parliament) agreed a joint statement on decommissioning funds. This is outlined below.

The three institutions are strongly committed to the principle that the funds collected for the decommissioning and management for nuclear waste should be separated from the normal accounts and cash flow of an undertaking. Separated management of decommissioning funds is essential to secure both the availability of funds to pay for decommissioning and radioactive waste management and in order to prevent market distortion by using the cash flow of or the more favourable financial ratings due to potential access to the decommissioning funds for competitive purposes in the energy market. (OJ 2003b)

The joint statement leads to the development of further legislation on this issue.

European Commission

In 1998, the European Commission initiated the discussion on decommissioning funds, with a publication which concluded, *'this situation [lack of uniformity of decommissioning policies] could lead to distortion and discrimination between now competing nuclear electricity producers from different Member States. Decommissioning costs are clearly seen as part of the electricity production costs. They may not be cross-subsidised from the transmission activity nor be directly subsidised via state aid'* (European Commission 1998).

In 2002 the Commission proposed legislation on the issue, in the so called nuclear package. This consisted to two directives, one on nuclear safety – which contained the proposed language on decommissioning funds – and the second on radioactive waste management. The main decommissioning financing points of this draft legislation were:

- Member States shall ensure that financial resources sufficient to cover decommissioning costs of each nuclear installation,
- The funds shall be created from contributions by operators of nuclear installations during their operation.
- The assets of the funds are to be used only to cover the costs of decommissioning and waste management and may not be used for other purposes. To this end the decommissioning funds shall be duly established with their own legal personality, separate from the operator of the installation. If exceptional and duly justified reasons make such legal separation impossible, the fund could continue to be managed by the operator, provided that the availability of assets to meet the necessary costs is guaranteed. (European Commission 2003).

However, this text was revised following discussions within the European Parliament and European Council. The revised text concluded:

Member States shall take the appropriate steps to ensure that adequate financial resources are available from the regulatory body and the operators to support the safety of nuclear installations throughout their life. (European Commission 2004)

As can be seen the Commission has significantly reduced its recommended legislative requirements.

In October 2006 the Commission published a recommendation on decommissioning and radioactive waste management funds. Although it is not binding on Member States, it states that segregated funds are the preferred method of accounting for future decommissioning funds and that new installations should set up such funds. Furthermore, the collected revenues should be only used for the purpose which they have been established. In addition the recommendation calls on Member States to report annually on their fund management.

Under the terms of Article 31 of the EURATOM Treaty, the legal base of draft directive, the Commission must consult both the European Economic and Social Committee and the Article 31 expert group, in addition to the European Parliament and Council. Their views are:

European Economic and Social Committee (EESC):

The EESC is made up of representatives from employers, employees and other interest groups from Member States. They work on six specific areas, one of which is energy and are responsible for giving the European Institutions opinions on proposed legislation. The Committee basically endorsed the Commission's concern to ensure that the necessary funding is available for decommissioning nuclear installations. However, it felt that most of the Member States already have effective systems for achieving this. Moreover, it regarded the decommissioning funds proposed by the Commission to leave operators or the Member States too little flexibility in choosing the most economic way of achieving this goal.

The Committee also recommended that regarding financing of decommissioning that Member States should have sole responsibility and that operators should be allowed to choose the most economic method of obtaining sufficient and secure funding within the Member States in line with Community competition law. (OJ 2003a)

Article 31 Expert Group:

Under Article 31 of the Euratom Treaty a group of independent experts from Member States is charged with advising the European Commission on issues relating to basic safety radiation standards for workers and the general public. The expert group did not make specific recommendations on the decommissioning funds. (Expert Group 2002)

In October 2006 the European Commission published a Recommendation on the Management of financial resources for the decommissioning of nuclear installations, spent fuel and radioactive waste (European Commission 2006). This makes a number of recommendation for Member States, including:

- That the polluter pay principles should be fully applied throughout the decommissioning of nuclear installations.
- The financial resources available should be aimed at covering all aspects of decommissioning activities
- Member States should set up a national body capable of providing an independent expert judgment on fund management.
- Member States should report annually to the European Commission on financial resources gathered and decommissioning costs estimates.
- A segregated fund with appropriate control on prudent use should be the preferred option for all nuclear installations and that new nuclear installations should set up segregated funds.
- Financial resources should be used only for the purpose for which they have been established and managed

European Parliament:

As the proposed legislation came under the EURATOM Treaty the Parliament was only consulted and did not have joint competence. The European Parliament adopted its view of the Commission's proposed Directives on 13th January 2004 the main points of which were:

- Member States shall ensure that financial resources sufficient to cover the decommissioning and waste management costs of each nuclear installation.
- Member States must adopt separate accounting for the financing of future decommissioning or waste management activities.
- These funds must be reviewed and audited annually by an independent body, such as the regulator or regulatory bodies, to verify that the revenues and the associated

interest raised for these future activities shall only be used for these purposes, i.e. for decommissioning or waste management activities, and not used directly or indirectly to fund activities in the market. (European Parliament 2004)

The European Parliament adopted a resolution based on the own-initiative report by Rebecca Harms (European Parliament 2005).

This concluded that:-

- A lack of financial resources for decommissioning might in some cases delay the decommissioning of nuclear power plants and hence should be avoided.
- In all Member States, all nuclear undertakings must have sufficient financial resources available when needed to cover all the costs of decommissioning, including waste management in order to uphold the polluter pays principle and avoid any recourse to State aid.
- At each step in the decommissioning of nuclear power plants the safety of humans and the environment must be considered and that previous experience should be put to good use as far as possible.
- Questioned whether the accounting provisions made so far in a number of Member States and the corresponding financial resources are equal to the real needs.

European Council:

The European Council discussed the issue within the Atomic Questions Working Group. During the discussions many of the specific requirements of the directives were removed or altered. On the issue of decommissioning, the latest version stated that:

Member States shall take the appropriate steps to ensure that adequate financial resources are available to support the safety of nuclear installations throughout their life, including during the decommissioning phase. (European Council 2004)

However, there was insufficient support with the Council, as the legislation had to be adopted by qualified majority voting, to be adopted. Consequently, three working groups have been established to continue the discussions on nuclear safety, nuclear waste and decommissioning financing. The working groups are expected to report back to the Atomic Questions Working Group with a draft report due to be completed by October 2006 and finalized in November .

Member States representatives are also involved in an informal group organized by the European Commission called the Decommissioning Funding Group. This meets once per year and advises the Commission and shares information on the funding of radioactive waste management and decommissioning.

There are a number of bodies involved in the EU wide process. The most prominent are:

EURELECTRIC

EURELECTRIC is the Electricity industry association represents the interests of Members across Europe, its mission is to contribute to the development and competitiveness of the Electricity industry. On decommissioning financing EURELECTRIC states:

- There must be adequate financing for decommissioning and that these funds must be available when needed.
- Member States must have the ability to develop their own ways of reaching this goal.
- Member States and nuclear companies must be allowed the freedom necessary to reach national agreements on the design and management of decommissioning financing.
- The organization held legally responsible for decommissioning should also be responsible for ensuring the necessary financial resources are accumulated.
- “EURELECTRIC shares the Commission’s goal regarding the availability of the necessary financial resources. However, we find the Commission’s proposed specific funding mechanism as arbitrary”. (EURELECTRIC 2003)

FORATOM –European Atomic Forum:

The European Atomic Forum (FORATOM) is the Brussels-based trade association for the nuclear energy industry in Europe, European Nuclear Assembly. FORATOM’s view is that Member States should be given the freedom to establish comparable financing systems that would be the most appropriate for the countries concerned, taking into account their own current needs and existing regulations. Specifically they believe that (FORATOM 2002):

- Financial arrangements for nuclear plant decommissioning should be established and managed in such a way as to ensure liquidity of adequate resources at the time of need for the decommissioning of nuclear facilities.
- Different member states and companies should have the ability to develop their own ways of achieving this goal, taking into account the considerable variations in national circumstances. There are important historical factors to be accounted for when assessing the fair and reasonable methods for funding liability management. It is therefore unlikely that a single arrangement could be applied to all situations.
- The financial resources accumulated under the funding arrangements, including the earnings from any investment of funds, should normally be the responsibility of the organisations legally responsible for the decommissioning, whatever the chosen type of funding or technical arrangements. It must also be crystal clear legally, and stated that the ownership of the resources (internal or external) accumulated for

decommissioning at any time is with the organisation responsible and paying for its decommissioning commitments.

Western Nuclear Regulators Association:

WENRA was founded in 1999 and is made up of regulators from the European Union and Switzerland. It has until now focused on the harmonisation of nuclear safety standards within Europe. In November 2000 WENRA established a working group on Waste and Decommissioning. They have produced two reports:

- Waste and Spent Fuel Storage Safety Reference Levels Report, December 2005 (WENRA 2005a)
- Decommissioning Safety Reference Levels Report, December 2005. (WENRA 2005b)

WENRA is currently (May 2006) undertaking a consultation process on these and a safety report (Harmonisation of Safety Standards in WENRA countries), which is due to end in mid 2006. Neither the Waste nor Decommissioning reference level reports make reference to the funding issues.

Environmental NGOs:

Some environmental NGOs that are focused on energy markets, energy policy or EU enlargement issues have followed and interacted in the decommissioning funds issue.

Bank Watch Network: Works across Central and Eastern Europe and has campaigned for increased transparency on the decommissioning fund schemes in Bulgaria, Lithuania and Slovakia.

Friends of the Earth Europe have been actively engaged in the debate on the nuclear package, including decommissioning funds. Furthermore, they made a State Aid complaint against the Slovakian Government's proposed subsidy scheme for the nuclear industry in Slovakia which particularly focused on its plans for financing of decommissioning.

Greenpeace have also been engaged in the debate on the nuclear package. In 2006 they proposed five ways to improve the Commission's approach to nuclear decommissioning finance (Greenpeace 2006):

- A call for binding legislation in 2007
- Use the EC Treaty for further action
- Ensure that adequate funds are available for all categories of waste and for all installations
- Ensure that all funds are segregated
- That there is adequate research, analysis and monitoring

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