

New Treaty, no Treaty or Status Quo ?

Basic legal arguments for an ending of the EURATOM Treaty and towards Energy Democracy

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Main factors for an obligation to end EURATOM

- The Amsterdam treaty of May 1999 - leading to the revised Treaty of the European Union (ECT) - manifested the importance of co-decision procedure and equal legislative power of the European Parliament
 - Article 10 ECT (Loyalty principle) obliges Commission to refrain from any legal action which would diminish the co-decision right of the EP since Maastricht
 - The Directive 96/92/EC, replaced by Directive 2003/54/EC - set common rules for an internal market in electricity for all sources and asks for coherence in line with internal market regulations and obliges to and barriers and to avoid new barriers
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Main consequences from a liberalised market approach

- ❑ The directive 2003/54/EC did not spare the nuclear energy or created a separate market for nuclear power
 - ❑ But EURATOM Treaty has as direct effect to maintain and create a “market in a market” and deeply disturb the internal market for energy with consequences for energy security and energy independence in the whole Europe.
 - ❑ The undemocratic mode, in which nuclear energy policies are imbedded in Europe, leads to a situation where a level playing field is not applied
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EURATOM is subsidiary to ECT

- ❑ EURATOM cannot give legal ground for any crucially needed legislative action in the field of safety of nuclear installations and decommissioning funds security in EU- 27 /Article 31,32 EURATOM cannot be applied legally
 - ❑ ECT Article 95 and 174 – excellent legal ground
 - ❑ ECT has all necessary legal instruments in place to take over EURATOM
 - ❑ EC secondary law based on ECT already included nuclear regulations without link to EURATOM
 - ❑ Example: - ESPOO Convention; Council Directive 97/11/EC from March 97 on the Effect of certain public and private projects on the environment.; Council Directive 98/83/EC on quality of water for human consumption; Directive 2001/42/EC of EP and Council on the assessment of certain plans and programmes on the environment;
 - ❑ BUT: Renaissance on Commission level to use Article 31, 32 EURATOM at all costs
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Without EURATOM no vacuum-Phase-out basics

- ❑ EURATOM is not eternal but outdated
 - ❑ Intergovernmental conference as postulated during Convention process
 - ❑ Unanimity – no easy task
 - ❑ Alternative: Individual Member State's withdrawal from EURATOM and based on general international principles as outlined in Vienna Convention on the Law of the Treaties
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Common Rules of the Law of international treaties -Vienna Convention Principles

- Article 56 principle which is based on the ground of “nature of contract” reason and
 - Article 62 (*Fundamental change of circumstances*), “(1) a fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless
 - (a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty and (b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty. “
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The fundamentally changed world of energy

- ❑ Start of introduction of an energy market within member states and on EU level
 - ❑ New energy technologies
 - ❑ Legislation of Founding Member State to phase out of Nuclear
 - ❑ Democracy increase on EU level
 - ❑ Chernobyl and increased proliferation
 - ❑ Dismantling security: regulatory and financial chaos in EU 27
 - ❑ Nuclear as one of the main receiver of harmful subsidies distorting EU market
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Thank you for your attention !

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