

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 4 June 1974

on the establishment of the Joint Undertaking Hochttemperatur-Kernkraftwerk GmbH
(HKG)

(74/295/Euratom)

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 49 thereof;

Having regard to the Opinion of the Commission;

Having regard to the proposal from the Commission;

Having regard to the report from the Commission;

Whereas the objects of Hochttemperatur-Kernkraftwerk GmbH (HKG) are to construct, equip and operate a nuclear power station with a capacity of approximately 300 MWe at Uentrop, Landkreis Unna in the Federal Republic of Germany;

Whereas HKG has for this purpose applied for establishment as a Joint Undertaking;

Whereas the statutes of HKG are compatible with the provisions of the Treaty which relate to Joint Undertakings, and whereas Article 19 in particular of those Statutes provides that, if HKG is established as a Joint Undertaking, it will be governed by the said provisions, by the acts adopted in implementation thereof and in particular by this Decision;

Whereas it is the task of the Community to contribute to the raising of the standard of living in the Member States and to the development of relations with other

countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries;

Whereas, notwithstanding the economic risks at present inherent in such an undertaking, it is important that there should be established immediately the first power station equipped with a high-temperature reactor and benefiting from all the progress achieved hitherto;

Whereas the project put forward by HKG is therefore, at the present stage of the application of nuclear techniques to the production of energy, of prime importance to the development of the nuclear industry in the Community,

HAS ADOPTED THIS DECISION:

Article 1

Hochttemperatur-Kernkraftwerk GmbH (HKG) is hereby established as a Joint Undertaking within the meaning of the Treaty for a period of 25 years from 1 January 1974.

The objects of HKG shall be to construct, equip and operate a nuclear power station with a capacity of approximately 300 MWe at Uentrop, Landkreis Unna in the Federal Republic of Germany.

Article 2

The statutes of HKG annexed to this Decision are hereby approved. The dissolution provided for in Article 17 of these statutes shall, however, be effected only after approval by the Council, acting on a proposal from the Commission, in accordance with Article 47 of the Treaty. HKG shall add 'Gemeinsames Europäisches Unternehmen' after its name.

Article 3

This Decision is addressed to the Member States and to HKG.

Done at Luxembourg, 4 June 1974.

For the Council

The President

H. D. GENSCHER

COMPANY STATUTES

OF HOCHTEMPERATUR-KERNKRAFTWERK GmbH (HKG)

I

NAME, SEAT AND OBJECTS
OF THE COMPANY

Article 1

Name and seat

The name of the Company shall be

HOCHTEMPERATUR-KERNKRAFTWERK
Gesellschaft mit beschränkter Haftung (HKG)

The seat of the Company shall be at Uentrop (Kreis
Unna).

Article 2

Objects of the undertaking

The objects of the undertaking are the planning, financing, construction and operation of a high-temperature nuclear power station with a capacity of the order of 300 MWe at Uentrop as a power station jointly owned by the Members, in order to test by means of this prototype the technical suitability and the profitability of a high-temperature nuclear power station for public electricity generation.

For the fulfilment of its objects, the undertaking may produce, procure, use and sell electrical energy and further construct, acquire and operate all installations and plant necessary for this purpose, either alone or jointly with other undertakings, for its own account or for account of outsiders. The undertaking may acquire, utilize and dispose of real estate and industrial property rights, establish subsidiaries, acquire holdings in other companies, and generally undertake any operations relating to the objects of the Company.

II

MEMBERS, CAPITAL AND SUBSCRIPTIONS

Article 3

Members

The Members of the Company are: *Subscription*

- | | |
|---|---------------|
| 1. Gemeinschaftskraftwerk Weser Gesellschaft mit beschränkter Haftung, Veltheim | DM 13 000 000 |
|---|---------------|

- | | |
|---|---------------|
| 2. Kommunales Elektrizitätswerk Mark Aktiengesellschaft, Hagen | DM 13 000 000 |
| 3. Vereinigte Elektrizitätswerke Westfalen Aktiengesellschaft, Dortmund | DM 13 000 000 |
| 4. Gemeinschaftswerk Hattingen Gesellschaft mit beschränkter Haftung, Hattingen | DM 6 000 000 |
| 5. Stadtwerke Aachen Aktiengesellschaft, Aachen | DM 2 500 000 |
| 6. Stadtwerke Bremen Aktiengesellschaft, Bremen | DM 2 500 000 |

Article 4

Capital

The capital of the Company is 50 million (fifty million German marks), subscribed by the Members named in Article 3 in the proportions specified therein.

Article 5

Subscriptions of capital

One quarter of the capital shall be subscribed prior to application for registration of the Company in the commercial register and the remaining three-quarters shall be paid when called for by the Managers in amounts proportional to the amounts of the subscriptions.

All calls by the Managers for payment of the remaining three-quarters of the capital shall require the assent of the General Meeting of the Members.

Article 6

Shares

The share of each Member in the undertaking shall be determined on the basis of the amount of this subscription to the capital.

Article 7

Transfer of shares

Transfers of shares or of any parts thereof shall be permissible only if approved by the General Meeting of the Members by a majority representing 75 % of the capital.

III

ORGANIZATION

Article 8

Administrative organs

The administrative organs of the Company shall be:

1. The General Meeting of the Members.
2. The Managers.

Article 9

General Meeting of the Members

- (a) The General Meeting shall be convened by the Managers by registered letter, stating the place, time and agenda of the meeting, at two weeks' notice (including the date of dispatch and the date of the meeting).

The voting rights shall be exercised by one representative only. Exercise of voting rights shall be conditional on possession of a legal powers of representation or of a proxy.

A General Meeting shall be validly held only if the shares of the Members represented thereat amount to not less than 60 % of the capital and if at least two-thirds of the Members are represented.

If the quorum is not attained, the General Meeting may be convened afresh at one week's notice with the same agenda, in which case a quorum shall be deemed to be present irrespective of the amount of the capital and the number of Members represented. Special reference shall be made thereto in the notice convening such a meeting.

- (b) The Ordinary General Meeting of the Members shall be convened during the first seven months

of the calendar year. At the Ordinary General Meeting the Managers shall present the balance sheet for the preceding financial year, together with the profit and loss account and the auditor's report.

- (c) An extraordinary general meeting shall be convened forthwith by the Managers whenever the latter deems necessary or upon requisition, stating the reasons therefor by not less than two Members or by Members whose shareholdings amount, individually or jointly, to not less than one-tenth of the capital.
- (d) The chairmanship of the General Meeting shall be exercised in rotation on an annual basis, and in the order shown in Article 3, by the representative of the Member concerned. If this Member is not represented, the chair shall be taken by the representative following in the order shown in Article 3.
- (e) The Chairman shall lay down the voting procedure.
- (f) Proceedings of the General Meeting shall be recorded in minutes, which shall be signed by the Chairman of the meeting and the Secretary and sent to all the Members.

Article 10

Powers of the General Meeting

In addition to matters referred to elsewhere in these Company Statutes, and to matters prescribed by law, the General Meeting shall be empowered to pass resolutions concerning:

1. Acquisition and disposal of interests in undertakings;
2. Conclusion and amendment of contracts for the supply and purchase of electricity;
3. Control contracts, profit transfer agreements and other company interlinking contracts;
4. The finance and economic plan, to be submitted annually within the prescribed time;
5. Undertaking of long-term commitments, investments, acquisition of immovable property and rights in such property not covered by the economic plan, where the amounts in individual cases exceed DM 500 000 (five hundred thousand German marks);
6. Authorization of the Managers to grant powers of procuration.

Article 11

Majority requirements and voting rights

- (a) Resolutions of a Meeting of Members duly represented thereat shall be passed by a simple majority, unless a qualified majority is expressly prescribed in the Company Statutes or by law. Each DM 100 000 share in the Company shall carry entitlement to one vote.
- (b) A three-quarters majority of the Members duly represented shall be required for:
1. Amendment of the Company Statutes;
 2. Appointment of the Managers;
 3. Acquisition of holdings in other undertakings;
 4. Conclusion and amendment of electricity supply and purchase contracts;
 5. Contracts of the type referred to in Article 10 (3);
 6. Winding-up of the Company.

Article 12

Written votes

Written votes shall be acceptable in accordance with Article 48 (II) of the Law on Companies with Limited Liability (GmbH - Gesetz).

Article 13

Management

- (a) The Company shall have three Managers, who shall be appointed by the Members listed in Article 3, paragraphs 1, 2 and 3, namely:
1. Gemeinschaftskraftwerk Weser GmbH, Veltheim,
 2. Kommunales Elektrizitätswerk Mark AG, Hagen,
 3. Vereinigte Elektrizitätswerke Westfalen AG, Dortmund.
- (b) Such appointments shall be for not more than five years; reappointment shall be permissible. The Managers shall perform their duties on a part-time basis.
- (c) The Company shall be represented by two Managers or by one Manager acting jointly with an agent with power of procuration.

Article 14

Distribution of responsibilities

Distribution of responsibilities among the Managers shall be regulated by internal rules, which shall be approved by the General Meeting.

Article 15

Financial year

The financial year shall be the calendar year.

IV

SPECIAL OBLIGATIONS AND RIGHTS OF MEMBERS

Article 16

Special obligations and rights

- (a) All Members undertake to place at the disposal of the Company their knowledge and experience in the field of the construction and operation of reactors — in particular high-temperature reactors — and to obtain the necessary qualified personnel for engagement by the Company.
- (b) The Member designated (3) (Vereinigte Elektrizitätswerke Westfalen AG, Dortmund) undertakes to sell to the Company a site in Uentrop of the required size, which shall be restored to its original owner on expiry of the validity of these statutes.
- (c) The Members shall have the right and the obligation to take up electrical energy generated by the Company to their shareholdings.

For this purpose an electricity supply contract shall be concluded between the Company and the Members. The electricity shall be supplied at the relevant transfer points. The price of the electricity shall be governed by the provisions of the 'risk-sharing contract' between the Company and the Federal Republic of Germany.

- (d) The Member designated (3) (Vereinigte Elektrizitätswerke Westfalen AG, Dortmund) shall conclude with the Company the necessary

arrangements for the supply of electricity at the relevant transfer points.

- (e) The Member designated (3) (Vereingte Elektrizitätswerke Westfalen AG, Dortmund) further undertakes to make available to the Company the workshops and other installations of the VEW-Westfalen power station and such personnel as may be required.

V

WITHDRAWAL, WINDING-UP AND LIQUIDATION

Article 17

Duration of the Company

- (a) The Company is formed for an indefinite period.
- (b) After 25 years (from the date of registration of the Company in the commercial register) each Member shall have the right to give notice of withdrawal. If this right is not exercised, the validity of the Statutes shall be extended for a period of three years.
- (c) Notice of withdrawal may be submitted before the end of a calendar year at two years' prior notice and shall be forwarded to the Managers by registered letter.
- (d) If a Member gives notice of withdrawal, the General Meeting shall decide whether the Company should continue in existence or be dissolved.
- (e) If the Company is to continue in existence, each remaining Member shall have the right to acquire out of the shareholding of the withdrawing Member, a number of shares proportionate to his subscription to the capital of the Company. On receipt of the notice of withdrawal, the Managers shall call on the Members to exercise their right of acquisition, which may only be exercised within six months after receipt of such call. The Member who has given notice of termination shall transfer his shareholding to one or more Members in accordance with the resolution passed by the General Meeting.
- (f) If the General Meeting fails to adopt a resolution or if none of the Members entitled exercises his right within the meaning of subparagraph (e) of this Article, the shareholding of the withdraw-

ing Member shall be redeemed. In such a case compensation shall be paid to the withdrawing Member.

- (g) The foregoing shall be without prejudice to the right of each Member to apply for winding-up of the Company in accordance with Article 61 of the law on companies with limited liability.
- (h) If differences of opinion arise between the Members concerning the valuation of the shareholding pursuant to subparagraph (e) or the compensation pursuant to subparagraph (f) of this Article, the parties to the dispute shall, if they are unable to reach an amicable arrangement, submit to arbitration by experts. If no agreement can be reached on the choice of an expert, the President of the Chamber of Industry and Commerce in Dortmund shall be requested to appoint an expert.

VI

ARBITRATION TRIBUNAL

Article 18

Arbitration tribunal

Failing settlement by amicable arrangement of a dispute — with the exception of disputes referred to in Article 17 (h) — either between the Members themselves or between a Member and the Company in connection with these Statutes, the dispute shall be settled, to the exclusion of action at law, by an arbitration tribunal, upon which the parties hereto have today agreed in a separate document, and to which reference is hereby made.

VII

'JOINT UNDERTAKING' (EURATOM)

Article 19

Obligations under the Euratom Treaty

If the Company is established as a 'Joint Undertaking' within the meaning of the Treaty establishing the European Atomic Energy Community, it shall be subject, for the whole of the period of its activity as such, to the provisions of the Euratom Treaty which relate to Joint Undertakings and also to the Decisions of the Council of Ministers of the European Atomic

Energy Community establishing it as a Joint Undertaking and conferring on it any of the advantages listed in Annex III to the Euratom Treaty. In particular:

- (a) amendments to these Statutes shall not come into force until they have been approved by the Council of Ministers, pursuant to Article 50 of the Euratom Treaty;
- (b) in accordance with Article 171 (3) of the Euratom Treaty the Company's profit and loss accounts and the balance sheets for the preceding financial year shall, within one month after their approval by the General Meeting, be sent by the Managers to the Commission of Euratom, which shall place them before the Council of Ministers and the European Parliament. The estimates of revenue

and expenditure shall be submitted in accordance with the same procedure one month at latest before the beginning of each financial year;

- (c) the transfer of shareholdings or of any parts thereof to companies whose seat is outside the Community, or to persons who are not citizens of Member States of the Community, and also the taking-up of subscriptions in the event of an increase of the capital of the Company by such companies or persons shall require the approval of the Council of the European Communities.

Subject to the foregoing provisions, the Company shall continue to be governed by German law, in particular by the Law of 20 April 1892 on companies with limited liability.
