

COUNCIL DECISION**of 28 October 1969****approving amendments to the statutes of the 'Société d'énergie nucléaire franco-belge des Ardennes' Joint Undertaking****(69/393/Euratom)****THE COUNCIL OF THE EUROPEAN COMMUNITIES,**

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 50 and 47 thereof;

Having regard to the Council Decision of 9 September 1969 ¹ on the establishment of the 'Société d'énergie nucléaire franco-belge des Ardennes' Joint Undertaking;

Having regard to the proposal from the Commission;

Whereas the general meeting of the Joint Undertaking decided on 12 November 1968 to amend its Statutes in order to bring them into line with the provisions of the French Law No 66-537 of 24 July 1966 on *Sociétés commerciales*;

Whereas those amendments do not affect the provisions in accordance with which the Joint Undertaking is administered,

HAS ADOPTED THE FOLLOWING DECISION:

Article 1

The amendments to the Statutes of the 'Société d'énergie nucléaire franco-belge des Ardennes' Joint Undertaking, set out in the Annex to this Decision, are hereby approved.

Article 2

This Decision shall be published in the *Official Journal of the European Communities*. It shall enter into force on the date of its publication.

Done at Luxembourg, 28 October 1969.

For the Council

The President

L. DE BLOCK

¹ OJ No 65, 9.10.1961, p. 1173/61.

ANNEX

to the Council Decision of 28 October 1969

Amendments to the Statutes of the 'Société d'énergie nucléaire franco-belge des Ardennes'
Joint Undertaking

The following wording shall be substituted for the second subparagraph of Article 1:

'This company is established pursuant to *Ordonnance* No 58-1137 of 28 November 1958 and shall be governed by that *Ordonnance*, by these Statutes and by the laws relating to *sociétés anonymes* and in particular by the Law of 24 July 1966, in so far as the provisions of such laws do not conflict with the provisions of the *Ordonnance* of 28 November 1958.'

The following subparagraph shall be added to Article 4:

'Records and documents of the company intended for third parties must give the business name, followed immediately by the words *société anonyme* or the abbreviation *S.A.* and a statement of the amount of the capital.'

The following paragraphs shall be substituted for the second sentence of Article 5:

'It may be transferred to any other place in Paris or in an adjoining Department by resolution of the Board of Directors which shall be submitted for confirmation at the next ordinary general meeting of the shareholders.'

It may be transferred to any place in France outside Paris and the adjoining Departments by resolution of an extraordinary general meeting of the shareholders.'

The following text shall be substituted for the text of Article 6:

'The company is formed for a period ending on 31 December 2058, unless previously dissolved or extended.'

The following text shall be substituted for the first sentence of the first paragraph of Article 8:

'The capital of the company may be increased from time to time by the creation of new shares representing contributions in kind or in cash, or by capitalization of profits, provisions or reserves and allotment of such new shares to the shareholders credited as fully paid up or increase of the nominal value of the existing shares, all of which operations shall be by resolution of a competent general meeting passed in accordance with the law and these Statutes.'

The following text shall be substituted for the sixth paragraph of Article 8:

'This right shall be transferable and negotiable subject to Article 11; those shareholders whose shareholdings are such that they are unable to acquire a new share

or an exact number of new shares shall be entitled to combine to exercise their rights, subject to the application of legislative provisions and regulations regarding joint holdings.'

The following text shall be substituted for the last paragraph of Article 8:

'Further, the various provisions contained in this Article shall not affect the preferential right of subscription of shareholders as provided for by the laws in force.'

The following text shall be substituted for the fourth paragraph of Article 9:

'Notice of calls shall in each case be served on shareholders by registered letter, with advice of delivery, fifteen days before the time fixed for such payment.'

The following paragraphs shall be substituted for the ninth and tenth paragraphs of Article 9:

'Furthermore, if a holder of Class B shares fails to make the required payments when due, the Board of Directors shall serve him with notice, by registered letter, with advice of delivery, addressed to his last known permanent addresses, to pay the amounts due.'

If this service of notice has no effect, the company shall, without any need for authorization by a court of law, sell the shares.'

To this end it shall, at least thirty clear days after the service of notice referred to in the preceding paragraph, announce, in a publication which carries legal notices in the Department in which the company has its seat, the numbers of the shares put up for sale and shall advise thereof the debtor and, as the case may be, the co-debtors by registered letter which shall include mention of the date and number of the publication in which the announcement was made.'

The sale, which shall not take place less than 15 clear days after dispatch of the last registered letter, shall be by public auction through a stockbroker or notary, at the risk of the defaulting shareholder.'

Only holders of Class B shares shall be permitted to bid if the shares can be sold at a price which ensures that the company will receive the whole of sums due from the defaulting shareholder. If no bid reaches that figure, bidding shall be open to persons who are not members of the company, provided they are nationals of foreign countries signatories of the Euratom Treaty.'

The registration of the defaulting shareholder shall be automatically deleted from the company's books. The buyer shall be registered and new certificates marked

'duplicate' indicating that the amounts due have been paid shall be issued.

The net proceeds of sale shall be received by the company in full and shall be applied in payment of what is owed to the company by way of principal and interest by the defaulting shareholder and, thereafter, towards the refund of expenses incurred by the company in making the sale. The defaulting shareholder shall be liable for any deficiency or entitled to any surplus.

The company may also take personal action against the defaulting shareholder and against co-debtors, if any, either before, after or during the sale.

The provisions of paragraphs one to eight of this Article shall be applicable in cases of non-payment of share premiums.'

The following paragraphs shall be substituted for the last six paragraphs of Article 11:

'If, on the other hand, the transferee is not yet a shareholder of the company, the following rules shall apply:

Except in cases of succession, separation of joint estates of husband and wife or transfer either to a spouse or to an ascendant or descendant of the shareholder, the transfer of shares for whatever reason shall be subject to approval by the company.

With a view to obtaining that approval the transferor shall inform the company of the proposed transaction by formally served notice, or by registered letter with advice of delivery stating the surname, forenames and address of the transferee if a natural person, or the business name and seat if a legal person, the number of shares to be transferred and the price offered. Approval shall either be notified or may be assumed in the absence of a reply within three months of request.

If the company does not approve the proposed transferee, the Board of Directors shall be required, within three months of notification of the refusal, to arrange for the shares to be purchased either by a holder of B shares or by a third party who is a national of a foreign country signatory of the Euratom Treaty, or else, with the consent of the transferor, by the company with a view to reducing capital. In the absence of agreement between the parties, the price of the shares shall be determined as laid down in the fifth paragraph of Article 1868 of the Civil Code.

If, on the expiry of the time-limit mentioned above, the purchase has not been completed, approval shall be deemed to have been given. However, upon application by the company, the President of the Commercial Court within whose jurisdiction the seat of the company is, may, in summary proceedings, make an order, not subject to appeal, extending this time-limit; the transferor and the transferee must have been duly summoned.'

The following text shall be substituted for the third paragraph of Article 12:

'The legal owner or owners shall be validly represented in relation to the company by a beneficial owner, subject to the provisions of Article 30 concerning the right to vote'

The following paragraphs shall be substituted for the last paragraph of Article 15:

'A legal person may be appointed as a Director but must, upon appointment, designate a natural person as its permanent representative on the Board of Directors; the powers of the permanent representative of a legal person as Director of a company are granted for the period during which that legal person continues in office as a Director.

When a legal person terminates the appointment of such a representative it shall at the same time provide for his replacement; the same shall apply in the case of the death or resignation of the representative.

Any change with respect to a natural person representing a legal person shall be notified without delay to the company of which the legal person is a Director. The powers of a permanent representative shall be confirmed whenever the directorship of the company conferring those powers is renewed.'

The following paragraphs shall be substituted for the first paragraph of Article 17:

'The term of office of a Director shall be six years.

The term of office of a Director shall end at the close of the ordinary general meeting of shareholders, held in the year during which the functions of that Director ends, and at which the accounts for the preceding financial year have been agreed.'

The following text shall be substituted for the text of Article 18:

'Where a vacancy arises on the Board owing to the death or resignation of one or more Directors, the Board may make provisional appointments in the interval between two general meetings but in such a manner that the requirements of Article 15 are at all times complied with.

When the number of Directors has fallen below the legal minimum of three, the remaining Directors shall immediately convene an ordinary general meeting with a view to bringing the Board up to complement.

When the number of Directors has fallen below the minimum provided by the Statutes without being less than the legal minimum, the Board of Directors shall make temporary appointments with a view to bringing the Board up to complement within three months of the day when the vacancy occurred.

Appointments made by the Board pursuant to the first and third paragraphs shall be submitted for confirmation to the next ordinary general meeting. In the absence of confirmation the resolutions passed and acts done previously by the Board continue nevertheless to be valid.

A Director appointed to replace another Director whose term of office has not expired shall hold office only for the remainder of the term for which his predecessor was elected.

If the Board fails to make the necessary appointments or to convene a general meeting, any interested party may request at law the appointment of an agent to convene the general meeting for the purpose of making or confirming the appointments provided for above. The agent shall be appointed, on application, by the President of the commercial court within whose jurisdiction the seat of the company is.'

The following paragraphs shall be substituted for the second and third paragraphs of Article 19:

'The Chairman shall be elected from the Directors appointed by *Électricité de France*

The Vice-Chairman shall be elected from the Directors representing the holders of B shares.'

The following paragraphs shall be substituted for the second and third paragraphs of Article 20:

'A Director may, by letter or telegram, appoint another Director as his proxy at a meeting of the Board of Directors. A Director may not act as proxy for more than one Director in the course of any particular meeting. These provisions shall apply to a permanent representative of a legal person who is a Director.

The Board's resolutions shall be valid only if not less than half its members are present.'

The last paragraph of Article 20 shall be deleted.

The following text shall be substituted for the text of Article 21:

'Proceedings of the Board of Directors shall be recorded in minutes, which shall be kept in a special minute-book held at the company seat.

The minutes shall state the names of the Directors present or represented, excused or absent and shall provide a record of the presence or absence of persons convened by virtue of legal provisions and of the presence during all or part of the meeting of any other person.

They shall be signed by the Chairman of the meeting and at least one Director who has been present at the meeting; if the Chairman of the meeting is unable to sign, they shall be signed by two Directors.

Extracts and copies shall be certified by the Chairman of the Board of Directors, a Director temporarily carrying out the duties of Chairman, or a person duly authorized for the purpose who may be the Secretary of the Board of Directors.'

The following text shall be substituted for the text of Article 22:

'The Board of Directors shall have full power to act on behalf of the Company and to perform or authorize

any or all acts and transactions relating to the objects of the Company, save as reserved to the ordinary general meeting or to any extraordinary general meeting.

In particular it shall enter into contracts with *Électricité de France, service national*, for the operation of installations for producing electricity from nuclear energy, pursuant to *Ordonnance* No 58-1137 of 28 November 1958. It shall appoint and dismiss employees of the company, and fix their salaries, wages and bonuses, and all other conditions governing their appointment and dismissal, in accordance with the *Statut National de personnel des industries électriques et gazières*.'

The following text shall be substituted for the second sentence of the first paragraph of Article 23:

'On a proposal from the Chairman, the Board may appoint to assist him, in the capacity of General Manager, either one of its members or an agent not chosen from among its members, who must be a natural person.'

The following text shall be substituted for the third paragraph of Article 23:

'If the Chairman is temporarily prevented from performing his duties or in case of his death, the Board of Directors may delegate a Director representing *Électricité de France* to act as Chairman. In the first case, such delegation shall be for a limited period and may be extended. In the case of death, it shall continue until the election of another Chairman.'

The following text shall be substituted for the last paragraph of Article 23:

'The Board of Directors may, subject to the conditions laid down by law, set up a committee to examine such questions as they may submit to it, the members of which may receive special remuneration therefore'.

The following text shall be substituted for the first paragraph of Article 28:

'The general meeting shall appoint, for such term and in such manner as the laws in force require, at least two auditors to perform the duties assigned to them by those laws.'

The following paragraphs shall be substituted for the third and fourth paragraphs of Article 28:

'They shall have the right to convene a general meeting if the Board of Directors has failed to do so.

One or more deputy auditors, to replace auditors in the event of death, unavailability or refusal to act, may be appointed by the ordinary general meeting for a period equal to the term of office of the auditors.'

The following text shall be substituted for the text of Article 29:

'General meetings of shareholders shall be convened by the Board of Directors.'

If this is not done, they may be convened:

1. By the auditors;
2. By an agent appointed by a Court upon application, in case of urgency, by any interested party or by one or more shareholders together holding not less than one tenth of the capital;
3. During liquidation, by the liquidator or liquidators;

Subject to the provisions of Article 41 concerning extraordinary general meetings other than those meeting on first notice, meetings shall be convened, by means of a notice appearing in a publication which carries legal notices in the Departments in which the company has its seat, at least fifteen clear days before the date set for the meeting in the case of a meeting on first notice. This period shall be reduced to six clear days in the case of a second notice and in the case of adjourned meetings.

Since the shares are in the names of the holders, the published notice provided for in this Article may be replaced by a notice addressed to each shareholder by registered letter dispatched at the expense of the Company.

Where the meeting is convened by a published notice, shareholders who have held shares in their name for at least one month on the date when the meeting is convened shall be given notice of the meeting by ordinary letter. If they so request such shareholders may be convened by registered letter if they remit to the Company the amount of the registration fee.

The notice of meeting shall state the day, time and place of the meeting and briefly state its object.

The following paragraphs shall be substituted for the second paragraph of Article 30:

'The voting right attaching to each share, together with the right to attend the general meeting, shall be vested in the beneficial owner at ordinary meetings and to the legal owner at extraordinary general meetings.

Where securities have been pledged the voting right shall continue to vest in the owner of the securities.

Joint holders of shares shall be represented at meetings by one of them or by a representative in common. In case of disagreement, the representative shall be appointed by the President of the Commercial Court, in summary proceedings, upon application by the first joint holder to apply.

A shareholder may at any time arrange to be represented at meetings by his spouse or by another shareholder.'

The fourth paragraph of Article 30 shall be deleted.

The following text shall be substituted for the text of Article 32:

'At all general meetings (ordinary or extraordinary) the voting right attaching to the shares shall be sub-

ject only to the restriction specified in Article 82 of the Law of 24 July 1966 and shall be proportionate to the share of capital that they represent respectively, each share carrying not less than one vote.'

The following paragraphs shall be substituted for the fourth paragraph of Article 33:

'The record of attendance at meetings shall contain the following information:

1. The name, usual forename and permanent address of each shareholder present, the number of shares held by him and the number of votes attaching to those shares;
2. The name, usual forename and permanent address of each shareholder represented, the number of shares held by him and the number of votes attaching to those shares;
3. The name, usual forename and permanent address of each representative, the number of shares which he is representing and the number of votes attaching to those shares;

The officers of the meeting may annex to the attendance record the proxies bearing the name, usual forename and permanent address of each shareholder represented, the number of shares held by him and the number of votes attaching to those shares. In this case the officers of the meeting shall not be required to record the represented shareholders on the attendance record, but the number of proxies annexed to that record shall be shown thereon. These proxies shall be notified under the same conditions and at the same time as the attendance record.

The attendance record duly initialled by the shareholders and representatives present shall be certified by the officers of the meeting.'

The following paragraph shall be substituted for the first and second paragraphs of Article 34:

'The agenda of general meetings shall be drawn up by the convener thereof, subject to the provisions of Article 128 of Decree No 67-236 of 23 March 1967.'

The following paragraph shall be substituted for the first and second paragraphs of Article 35:

'Proceedings of the general meeting shall be recorded in minutes, which shall be kept in a special minute-book held at the company seat, consecutively numbered and initialled. Alternatively and if the conditions laid down in Article 85 of Decree No 67-236 of 23 March 1967 are complied with, the minutes may be kept on loose leaves consecutively numbered and initialled.

The minutes of the meeting shall show the date and place of the meeting, the manner of convening it, the agenda, the names of the officers, the number of shares participating in the vote and the quorum obtained, the documents and reports submitted to the meeting, a summary of the discussion, the text of re-

solutions put to the vote and the results of the voting. They shall be signed by the officers of the meeting..

Copies of extracts of such minutes shall be validly certified either by the Chairman of the Board of Directors, or by the Secretary of the meeting.'

The following text shall be added to Article 37 as the first paragraph of that Article:

'The ordinary general meeting shall be convened at least once a year within six months of the end of the financial year, unless that time-limit is extended by decision of a Court.'

The following text shall be substituted for the text of Article 38: :

Resolutions of an ordinary general meeting shall be passed by a majority of the votes cast; in case of a ballot no account shall be taken of blank voting papers.'

The following text shall be substituted for the first paragraph of Article 39:

'The ordinary general meeting shall receive the report of the Board of Directors on the business of the company and also reports of the Auditors.'

The following text shall be substituted for the last paragraph of Article 39:

'The resolution approving the balance-sheet and accounts shall not be passed until after the reports of the Auditors have been received; otherwise it shall be invalid.'

The following text shall be substituted for the text of Article 40:

'Resolutions of the extraordinary general meeting shall be passed by a two-thirds majority of the votes cast.'

The following text shall be substituted for the first paragraph of Article 41:

'Subject to approval in the manner required by *Ordonnance* No 58-1137 of 28 November 1958, second paragraph of Article 1, only an extraordinary general meeting has authority to amend the Statutes. It may not, however, increase the obligations of shareholders except by unanimous vote, with the exception of those arising from a regrouping of shares, duly effected.'

The following text shall be substituted for the sixth paragraph of Article 41:

'Resolve to change the name and to transfer the seat of the company to a place outside Paris, where it now is, and the adjoining Departments.'

The following text shall be substituted for the twelfth paragraph of Article 41:

'In verifying capital subscribed in kind and any special rights granted, the general meeting acting in this

case as an *assemblée constitutive* shall be governed by the procedure as to quorum and majority prescribed for extraordinary general meetings.'

The following paragraphs shall be substituted for the last five paragraphs of Article 41:

'An extraordinary general meeting may be validly held only upon first notice if the shareholders present or represented hold between them at least half of the shares carrying the right to vote.

If this condition is not fulfilled the general meeting shall be reconvened in accordance with the procedure and periods of notice laid down in Article 29 of the Statutes. On this second notice the meeting may be validly held if the shareholders present or represented hold between them at least one quarter of the shares carrying the right to vote, but only in respect of questions which were on the agenda of the meeting as first convened.

In the absence of such a quorum, the second meeting may be adjourned in accordance with the procedure and periods of notice laid down in Article 29 of the Statutes to a date not more than two months later than that on which it was last due to meet. On such third notice, the meeting shall be validly held if the shareholders present or represented hold between them at least one quarter of the shares carrying the right to vote, but only in respect of questions which were on the agenda of the meeting as first convened.

In all cases the meeting shall decide by a two-thirds majority of the votes cast; in the case of a ballot no account shall be taken of blank voting papers.

By way of derogation from these rules, if the general meeting has before it a proposal to capitalise reserves, profits or share premium, it shall be governed by the procedure as to quorum and majority prescribed for ordinary general meetings.'

The following Article shall be substituted for Article 43:

'Article 43

Company Accounts

A schedule of the assets and liabilities of the company shall be drawn up each year by the Board of Directors, in accordance with the laws in force.

The Board of Directors shall also draw up a general operating account, a profit and loss account and a balance sheet and shall present to the shareholders a report on the activities of the company during the preceding financial year.

Even where there is no profit or insufficient profit, the necessary provisions shall be made for depreciation and reserves so that the balance sheet reflects a true and fair view.

The documents referred to in this Article shall be made available to the Auditors not less than forty-five days before the date of the general meeting.

Any shareholder may exercise the right of perusal of the documentation referred to in the provisions of laws and regulations in force.'

The following text shall be substituted for the first eight words of the second paragraph of Article 44:

'From this net profit, less previous losses if any, there shall be deducted:'

The following text shall be substituted for the last paragraph of Article 44:

'For the purpose of determining the share of profit of the Board of Directors, account shall be taken of the sums withdrawn for distribution from the reserves available to the general meeting.'

The following text shall be substituted for the text of Article 45:

'If the capital of the company falls by three-quarters of the original amount, the Board of Directors shall, in the four months following approval of the accounts which have revealed that loss, call an extraordinary general meeting to decide whether the company should be prematurely dissolved.

If it is decided not to dissolve the company, the capital shall forthwith be reduced by an amount equal to the loss revealed, subject to the legislative provisions regarding the minimum capital of *sociétés anonymes*.

In either case the resolution of the meeting shall be published in accordance with the laws and regulations in force.

In the absence of a general meeting, as in a case where the meeting could not be held validly on last being convened, any interested party may apply to a court for the dissolution of the company.'

The following text shall be substituted for the last sentence of the fourth paragraph of Article 46:

'And further, pursuant to a resolution of an extraordinary general meeting, they may assign to another company or firm all or part of the property, rights and obligations held by the company being dissolved, or agree to the transfer of such property, rights and obligations to any other company, firm or person, subject to the provisions of Articles 394 to 396 of the Law of 24 July 1966.'

The following text shall be substituted for the text of the first indent and the first sentence of the second indent of Article 49:

- amendments to these Statutes shall not enter into force until they have been approved by the Council of the European Communities;
- in accordance with Article 171 (3) of the Treaty, the company's profit and loss accounts and balance sheets relating to each financial year shall, within one month after their approval by the general meeting of the company, be sent by the Board of Directors to the Commission of the European Communities, which shall place them before the Council and the European Parliament.'