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COUNCIL DECISION

of 28 July 1966

on the establishment of the 'Kernkraftwerk Obrigheim GmbH' Joint Undertaking

(66/30/Euratom)

THE COUNCIL OF THE EUROPEAN ATOMIC ENERGY COMMUNITY,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 1 and 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 *Kernkraftwerk Obrigheim GmbH* are to construct, equip and operate a nuclear power station with a capacity of the order of 280 MWe at Obrigheim/Neckar, Landkreis Mosbach, Regierungsbezirk Nordbaden, Land of Baden-Württemberg, Federal Republic of Germany;

Whereas *Kernkraftwerk Obrigheim GmbH* has for this purpose applied for establishment as a Joint Undertaking;

Whereas the Statutes of *Kernkraftwerk Obrigheim GmbH* are compatible with the provisions of the Treaty which relate to Joint Undertakings, and whereas Article 16 in particular of those Statutes provides that, if *Kernkraftwerk Obrigheim GmbH* is established as a Joint Undertaking, it will be governed by the provisions of the Treaty, by 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 the 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 from now onwards large nuclear power stations incorporating all the progress achieved hitherto;

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

HAS ADOPTED THIS DECISION:

Article 1

Kernkraftwerk Obrigheim GmbH is hereby established as a Joint Undertaking within the meaning of the Treaty for a period of twenty-five years from the date of entry into force of this Decision.

The objects of *Kernkraftwerk Obrigheim GmbH* shall be to construct, equip and operate a nuclear power station with a capacity of the order of 280 MWe at Obrigheim/Neckar, Land of Baden-Württemberg, Federal Republic of Germany.

Article 2

The Statutes of *Kernkraftwerk Obrigheim GmbH* annexed to this Decision are approved. The dissolution provided for in Article 14 of these Statutes, and the transfer of any share of the capital or any fraction of a share to a non-member 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. This approval clause shall be incorporated in the Statutes of the Joint Undertaking.

Article 3

If the advantages conferred upon *Kernkraftwerk Obrigheim GmbH* by special Decision of the Council, pursuant to Article 48 of the Treaty, are completely withdrawn before the expiry of the period referred to in Article 1, the Council shall at the same time withdraw the status of Joint Undertaking from *Kernkraftwerk Obrigheim GmbH* by a Decision which shall be published.

Article 4

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 Brussels, 28 July 1966.

For the Council

The President

S. A. POSTHUMUS

ANNEX

STATUTES

of Kernkraftwerk Obrigheim GmbH ('KWO')

Article 1

Name and seat

The following electricity supply undertakings:

- (a) Energie-Versorgung Schwaben Aktiengesellschaft, Stuttgart;
- (b) Badenwerk Aktiengesellschaft, Karlsruhe;
- (c) Technische Werke der Stadt Stuttgart Aktiengesellschaft, Stuttgart;
- (d) Neckarwerke Elektrizitätsversorgungs-Aktiengesellschaft, Esslingen/Neckar;
- (e) Stadt Karlsruhe, Stadtwerke, Karlsruhe;
- (f) Kraftübertragungswerke Rheinfelden, Rheinfelden/Baden;
- (g) Stadt Ulm/Donau, Stadtwerke, Ulm/Donau;
- (h) Württembergisches Portland-Cement-Werk zu Lauffen am Neckar, Heilbronn/Neckar;
- (i) Stadt Heidenheim/Brenz, Stadtwerke, Heidenheim/Brenz;
- (k) Alb Elektrizitätswerk Geislingen/Steige, eingetragene Genossenschaft mit beschränkter Haftpflicht, Geislingen/Steige;
- (l) C. Klinglers Erben Elektrizitätswerk Nagold, Nagold;
- (m) Elektrizitätswerk Braunsbach, eingetragene Genossenschaft mit unbeschränkter Haftpflicht, Obersteinach, Kreis Schwäbisch-Hall;

- (n) Elektrizitätswerk Vaihingen/Enz A. Hessenthaler & Co., Vaihingen/Enz;

established a company with limited liability, the name of which was:

*Kernkraftwerk Baden-Württemberg
Planungsgesellschaft mit beschränkter Haftung*

The objects of the company were to commission design studies for a nuclear power station, to process and evaluate such studies and to locate and acquire a suitable site for such a power station.

The company shall continue its activities under the name of:

*Kernkraftwerk Obrigheim
Gesellschaft mit beschränkter Haftung*

The seat of the company is at Obrigheim am Neckar.

Article 2

Objects of the company

The objects of the company are to construct and operate a nuclear power station at Obrigheim, to perform the activities entailed thereby and to supply the members with electricity generated by the power station.

Article 3

Capital and subscriptions

The capital of the company is DM 25'000 000 (twenty-five million German marks).

The subscriptions shall be as follows:

Members	Share of capital subscribed on formation of company	Share of capital subscribed on increase of capital on 24.2.65	Total DM
(a) Energie-Versorgung Schwaben AG	420 000	8 330 000	8 750 000
(b) Badenwerk AG	420 000	6 580 000	7 000 000
(c) Techn. Werke der Stadt Stuttgart AG	210 000	3 200 000	3 500 000
(d) Neckarwerke Elektrizitätsversorgungs-AG	150 000	2 350 000	2 500 000
(e) Stadt Karlsruhe, Stadtwerke	75 000	1 175 000	1 250 000
(f) Kraftübertragungswerke Rheinfelden	150 000	600 000	750 000
(g) Stadt Ulm/Donau, Stadtwerke	33 000	517 000	550 000
(h) Württ. Portland-Cement-Werk	25 000	400 000	425 000
(i) Stadt Heidenheim/Brenz, Stadtwerke	6 000	94 000	100 000
(k) Alb Elektrizitätswerk Geislingen/Steige GmbH	6 000	69 000	75 000
(l) C. Klinglers Erben Elektrizitätswerk Nagold	3 000	47 000	50 000
(m) Elektrizitätswerk Braunsbach eGmbH	1 000	24 000	25 000
(n) Elektrizitätswerk Vaihingen/Enz A. Hessenthaler & Co.	1 000	24 000	25 000
	1 500 000	23 500 000	25 000 000

Article 4

Transfer of shares of the capital

1. Until the risk-sharing contract with the Federal Republic of Germany (*Bundesvertrag*) expires, the transfer of any share of the capital or any fraction of a share shall be subject to approval by the Federal Republic of Germany.

2. The transfer of any share of the capital or any fraction of a share to a non-member shall be subject to authorisation by the general meeting of the members, without prejudice to the provisions of Article 17 of the law relating to companies with limited liability (*GmbH-Gesetz*). The transfer of any share of capital or of any fraction of a share to a member shall be notified in advance to the general meeting.

3. Before any transfer of any share of the capital to a non-member, the member transferring it shall offer it without discrimination to the other members at its nominal value plus a percentage proportionate to the reserves and minus a percentage proportionate to any losses. The other members shall have the option of acquiring that share in order of priority according to the amount of their holdings, preference being given to the member with the largest holding.

Article 5

Supply of electricity and covering of costs

1. The company undertakes to make available to the members, in proportion to the shares of the capital held by them, the electricity capacity and output that it is capable of producing.

The members undertake to purchase such electricity.

2. As long as the *Bundesvertrag* remains in force, members shall pay for their share of such electricity in accordance with the provisions of the *Bundesvertrag*; after the expiry of the *Bundesvertrag*, members shall bear the actual annual costs, except for payment of interest on the company's own capital in proportion to their holdings in the capital of the company.

Article 5a

Obligations of members pursuant to the '*Bundesvertrag*'

1. Members shall be under an obligation to the company to carry out in full the provisions of the *Bundesvertrag* con-

cluded between the Federal Republic of Germany of the one part and all the members of the other part.

2. If a member wrongfully acts in breach of a basic obligation under the *Bundesvertrag* (paragraph 17 (12)) or if through an act or omission on his part the objectives of the *Bundesvertrag* are frustrated (paragraph 17 (3)), he shall make good the damage thereby caused to the company and to the individual members. In addition, he may be expelled from the company by resolution of the general meeting of the members.

3. Any member so expelled shall, in respect of his share of the capital, be entitled to compensation, the amount and due date of payment of which shall be determined in accordance with Article 13 (3). The other members shall be entitled to acquire the share of the expelled member, according to the order of priority laid down in Article 4 (3), against payment of the compensation laid down. If none of the members is willing to take over this share, it shall be cancelled.

4. If the rights acquired by a member through his first subscription are affected by the preceding provisions, the member shall accept the consequences thereof in accordance with Article 34 (2) of the law relating to companies with limited liability (Article 34 (2), *GmbH-Gesetz*).

5. If the general meeting resolves by a three-quarters' majority to terminate the *Bundesvertrag*, the members shall be under an obligation to the company and the other members to make the joint declaration provided for in paragraph 16 of the *Bundesvertrag* in the event of termination.

Article 6

Administrative organs of the company

The Company shall have three administrative organs:

1. the managers;
2. the general meeting;
3. the standing committee.

Article 7

Managers

1. The company shall have either one or two managers who shall be appointed by the general meeting. Their appointments shall be for a period not exceeding five years and shall be renewable.
2. The company shall be represented at law by two managers or by one manager and a person having power of attorney, acting jointly.

Article 8

Management

The managers shall conduct the business of the company in accordance with the provisions of the law, the Statutes and the rules of procedure adopted by the general meeting.

Article 9

Powers of the general meeting

Apart from cases provided for by law and by the Statutes, the general meeting shall resolve upon the following acts of the managers, which may not be performed without its approval:

1. conclusion of transactions relating to amounts exceeding DM 100 000;
2. decisions concerning scales of salaries and wages;
3. other important tasks of the company;
4. co-operation with domestic and foreign undertakings or with domestic or foreign public bodies, where fundamental problems connected with the objects of the company are concerned.

The general meeting shall lay down the rules of procedure for the managers and the standing committee (Article 11) and shall elect the auditor.

Article 10

General meeting

1. The general meeting shall be held during the first six months of each financial year for the purpose of passing a resolution in respect of the balance sheet for the preceding financial year.
2. General meetings shall also be held whenever the members or the standing committee consider it necessary or upon requisition in writing, setting out the reasons for and the purpose of convening the meeting, by members whose shares of the capital together represent not less than 10% of the capital.
3. General meetings shall be convened by the managers by registered letter, stating the agenda, two weeks in advance. Any member may within four days propose any other items which he wishes to be placed on the agenda for consideration by the general meeting.
4. At general meetings each DM 1000 of a share of the capital shall carry the right to one vote.
5. A general meeting shall be validly held only if not less than half the members specified in Article 1 (a) to (f) are present and if the members present represent not less than half the votes.

If the quorum is not reached, a further general meeting shall be convened for a date falling in the third week following, with the same agenda. That meeting may pass valid resolutions irrespective of the number of members present and of the votes represented if this has been stated in the notice calling the meeting.

Resolutions of a general meeting shall be passed by a simple majority of the votes cast, save in cases where the law requires a higher majority.

6. The Chairman of the standing committee shall preside at general meetings, or if he is prevented from attending his alternate shall preside. If the latter is prevented from attending, the meeting shall, under the chairmanship of the oldest attending representative of the members present, elect a Chairman for the occasion.

The Chairman shall determine the method of voting.

7. Members may have themselves represented by management executives of their undertakings holding a proxy in writing. They may also be validly represented by another member or by a person holding a proxy from that member.

8. Proceedings of general meetings shall be recorded in minutes, which shall be signed by the Chairman and the Secretary. The Secretary shall be appointed by the managers, in agreement with the Chairman.

Article 11

The standing committee

1. The general meeting shall appoint a standing committee to supervise the conduct of the business of the company; the minutes shall not be subject to the provisions of company law relating to supervisory boards. That committee shall have power to appoint and dismiss persons having power of attorney or proxy, to engage and dismiss staff whose monthly salary exceeds DM 2500 and to grant monthly salaries exceeding DM 2500. The general meeting may delegate to the Committee all or some of the powers of decision conferred on it by Article 9, items (1) to (4).

Any member of the company whose share of the capital amounts to not less than 3% of the capital of the company shall be represented by a full member on the standing committee. Without prejudice to this provision, the members of the company specified in Article 1 (g) to (n) shall collectively be represented by one member on the standing committee. A member of the company may appoint an alternate to replace a full member on the standing committee.

Appointment or dismissal of full members of the standing committee or of alternates shall be notified in writing to the management.

2. The only persons who may sit on the standing committee as full members or alternates shall be persons holding executive managerial positions in the member undertakings.

3. In the performance of its duties the standing committee shall comply with the rules of procedure laid down by the general meeting.

4. Resolutions of the standing committee shall be valid only if at least half its members are present and if the members present represent not less than half the capital. Furthermore, Article 10 (5) shall apply by analogy.

Resolutions of the standing committee shall be passed by a simple majority of the votes cast. The voting rights of members of the committee shall be determined by reference to the shares of the capital held by the members of the company whom they represent. Resolutions may, at the direction of the Chairman, be passed in writing or by telegram, provided that no immediate objection is raised by any member of the committee.

5. Full members of the committee and alternates shall be entitled to an attendance fee, the amount of which shall be determined by the general meeting.

Article 12

Financial year

The financial year of the company shall be the calendar year.

Article 13

Duration of the company and withdrawal from participation

1. The company is formed for an indefinite period.

2. On the expiry of the *Bundesvertrag*, any member may at the end of the financial year withdraw from participation subject to two years' notice. Withdrawal shall be permissible only if the member wishing to withdraw has offered his share of the capital to the other members under the conditions laid down in Article 4 (3) and if, within one year from the time when the offer was made, none of the other members is willing to take over that share and if the other members cannot reasonably be required to assume the obligation to purchase electricity incumbent on the member who wishes to withdraw. Where that requirement would be unreasonable, withdrawal shall still be permissible if the member concerned places his share of the capital at the disposal of the other members free of payment.

3. The share of the capital of a member who has ceased to participate shall be withdrawn.

Save in the case covered by the last sentence of paragraph 2, a member who has withdrawn from participation shall receive as compensation an amount equal to the current value of his share of the capital but not greater than the nominal value thereof plus a proportionate share of the reserves. In the determining of the current value of the share, account shall be taken not only of the current value of the assets but also of the obligation to purchase the electricity produced and of the incidence of the annual costs.

The date for payment of the compensation shall be determined in such a way that it does not have the effect of impairing the liquidity of the company or of entailing an increase in the price of electricity supply by the company.

Article 14

Dissolution of the company

1. The company may be dissolved by resolution of the general meeting but not before 31 December 1985.

As long as commitments exceed 20% of the capital, a three-quarters' majority shall be required for dissolution.

2. If the company is dissolved by resolution of the general meeting, the members who voted against dissolution shall, in the course of the winding up, be offered the opportunity of acquiring the installations of the company. The proceeds of the winding up shall not, through the exercise of such right of acquisition, be less than would result from a sale on the open market.

Article 15

Legal notices

All legal notices shall be published in the *Bundesanzeiger*.

Article 16

Joint Undertakings

1. If the company is established as a Joint Undertaking within the meaning of the Treaty establishing the European Atomic Energy Community, it shall, for the whole of the period of its activity as such, be subject 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 enter into force until they have been approved by the Council of Ministers, pursuant to Article 50 of the Treaty;
- (b) in accordance with Article 171 (3) of the Euratom Treaty, the company's profit and loss accounts and balance sheets relating to each preceding financial year shall, within one month after their approval by the general meeting, be sent by the management 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 the latest before the beginning of each financial year.

2. Subject to the foregoing provisions, the company shall continue to be governed by German law, and in particular by the law of 20 April 1892 relating to companies with limited liability (*GmbH Gesetz*).

Article 17

Final provisions

1. If any of the provisions of the Statutes contravenes any statutory provisions, the members shall agree that the other provisions of the Statutes will remain in force nevertheless and that the invalid terms will be replaced by other terms, if possible having equivalent effect.

2. Any differences of opinion concerning the content and effect of the Statutes shall as far as possible be settled amicably. The court with jurisdiction shall be that of Stuttgart.