
Opening citation

“20 years after launching an internal market for energy, the Commission is resurrecting the EURATOM Treaty as a special law for financing nuclear power.”

Intro

Hinkley Point C is a nuclear new build in Somerset on the southwest coast of England.

There are many things to be said about Hinkley. For instance, we could talk about whether Hinkley serves as a nuclear deterrent. Today the focus is on the link between Hinkley and EURATOM.

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Let's take a quick look at the status of nuclear new builds.

The last nuclear new build in the European Union was completed in 2007 in Romania. The last one in the UK, in 1995.

The average construction time is 10 years.

All of the few nuclear new builds worldwide are characterized by significant cost overruns and delays.

So we should always be aware of the gap between the rhetoric of nuclear industry lobbyists and reality (that is real-world evidence).

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So what does a reality check on Hinkley look like?

It is being jointly constructed by French state-owned energy group, EDF, and Chinese state-owned CGN.

They plan to construct two European Pressurized Reactors (EPR) on site. There are only two other EPR builds under construction worldwide, one in Flamanville (France) and one in Olkiluoto (Finland). The complexity of the EPR design has caused serious difficulties and they are many years behind schedule.

The projected start-up has been delayed several times. As at the end of January 2021 it should be 2027.

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EDF simply couldn't pay to build Hinkley so it negotiated and reached an agreement with the UK government. Here's the 2013 deal:

- The UK government guaranteed EDF a price of 92.5 Pounds for each megawatt hour generated by Hinkley for its first 35 years of operation. The price is index linked and rises each year with inflation. A study of the German Energy Brainpool shows that this subsidy would amount to EUR 108bn over 35 years. To draw a comparison: UK offshore wind farms come at the low price of 39.65 Pounds per megawatt hour.
- The UK government will underwrite up to 17bn Pounds of debt on the project.
- EDF will be compensated in the case of a political nuclear phase-out.

In return, EDF will bear all the construction risks – of course, not the risk of nuclear accidents – including any cost overruns.

The deal provides EDF with a huge selective advantage on the market! This is why the European Commission needed to be notified and this is why Austria lodged an appeal against the distortion of competition.

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Here's a short timeline.

- The European Commission approved the British state aid in 2014 as compatible with the internal market.
- The General Court dismissed an action for annulment by Austria against this decision in 2018.
- Austria appealed against the ruling.
- The European Court of Justice finally dismissed Austria's appeal in 2020.

The European Commission justified the admissibility of state aid on two grounds:

- A common interest in promoting the development of nuclear power which is derived from the EURATOM treaty.
- And, a market failure when it comes to the financing of nuclear power plants. So state involvement is legitimate in such a case.

The European Commission only considered the production of nuclear energy as the relevant economic sector under scrutiny. If the relevant economic sector is the whole European market of electricity production, we can't say it's a failure of the market. It's more the end of a technology that can't compete on a free market.

The General Court emphasized that the "promotion of nuclear energy as an objective of EU law must not be subordinated to other objectives of EU law such as environmental protection." This position was amended slightly by the ECJ but the outcome of the ruling remained the same.

So the "take home" message here is: "EURATOM defines its own powerful legal system for the use of nuclear energy".

And from a state aid point of view: the rules of the Treaty on the Functioning of the European Union apply in the nuclear sector only when EURATOM does not contain any specific rules.

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To sum it up in my own words:

EURATOM has existed since 1957. Since then, only very few directives have been issued to regulate the atomic industry. They can be counted on one hand. Well, EURATOM intends to promote and not to regulate the industry, right? Additionally, EURATOM has always been a powerful financing instrument.

What we see in the case of Hinkley is the resurrection of the EURATOM Treaty as Primary Law to justify acceptable state aid measures as defined in the Treaty on the Functioning of the European Union.

The Hinkley case is complex and contested. It is as if there is a semi-permeable membrane protecting the internal market or, you could say, EURATOM. Some elements were allowed in while some were kept out. And the ECJ failed to justify the different treatment of norms.

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So can we afford nuclear? Can we afford EURATOM... that creates a special economic zone for a high-risk industry that can't deliver what it promises?

Let us put the snail in perspective. It should make way for faster, cheaper, safer and more democratic options!

Thank you!

If you would like to work with us, here's my e-mail. I'm pleased to share that we recently finalized our work on a EURATOM analysis which is available on our website from today.