

EURATOM TREATY REFORM AND PROSPECTS FOR A EURATOM REVISION CONFERENCE

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to

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I am delighted to be here today to participate in this important conference. Before I begin, I should point out that the views expressed in this presentation are my personal views and are offered as such to the discussions here today.

The European Atomic Energy Community- Historical Background

At the outset, I believe it useful to set the Euratom Treaty in its historical context. Euratom was very much a creature of its time and while it is usual to refer to the current EC Treaty and the Euratom Treaty very much in the same breath, their aims, policies and indeed their philosophies and subsequent paths of development are very much different.

The establishment of the European Coal and Steel Community (ECSC), which came into being in July 1952, was the first great achievement of the European process, in that the six founding Member States surrendered a part of their national sovereignty to the Community by creating a Common Market for Coal and Steel.

In March, 1957 the "Treaties of Rome" were signed, establishing the European Economic Community (EEC) and the European Atomic Energy Community (EAEC) known as Euratom. The two treaties entered into

force on 1 January 1958 for an unlimited period of time, unlike the Treaty establishing the Coal and Steel Community in 1952, which was concluded for 50 years (therefore expiring in July 2002).

Signed on the same day, the philosophy behind each of the two Treaties of Rome is, however, very different. While the EEC Treaty (now, EC Treaty) is based on free market principles, the Euratom Treaty was to encourage the development of a European civilian nuclear industry. In order to achieve the Community's objectives, the Euratom Treaty invested considerable centralised powers in the Commission.

The European Communities (ECSC, EEC and Euratom) constitute the foundations of the European integration process that led to the creation of the European Union (EU) by means of the Treaty of Maastricht, in 1993. The EU saw further developments in the form of the Treaty of Amsterdam in 1997 and in the form of the Treaty of Nice, in 2001.

We can immediately see that unlike the EC Treaty, which has considerably developed since its signature in 1957, the Euratom Treaty has not been substantially modified. Nevertheless, since 1958, the European nuclear industry has developed into one of the most prominent in the world. At the same time, the number of States party to Euratom has significantly increased following five waves of accession.

There is also another important distinction to be drawn between Euratom and the other Treaties which have developed and evolved into the European Union. This concerns the absence of any requirement for the Council to formally consult the European Parliament on a whole range of issues relating to different articles of the Euratom Treaty. The development of the EU Treaties has continually increased the role, power, and influence of the European Parliament, by the introduction of co-decision, and the assent procedure for international agreements.

* Opinions expressed in this presentation reflect the author's personal viewpoint and should not be regarded as the official position of the Irish Government

EURATOM, however, has remained stagnant carrying a considerable “democratic deficit”.

The Euratom Treaty has also not kept pace with or evolved to address the substantial emergence of public concerns in relation to the negative public health and environmental impacts of economic development in general and more particularly in relation to the nuclear industry itself.

It is in this context, that the future of the EURATOM Treaty must be openly assessed. The philosophy, character and accountability of the Treaty relate to its origins almost 50 years ago in a very different world. EURATOM has not benefited from the continuous assessment and evolution of the EU Treaties which has better placed the EU to address the modern needs, demands and norms of Europe in the 21st Century.

Irish Government Policy

The Euratom Treaty was addressed in the Convention which framed the European Constitution but it attracted only a limited evaluation.

Some members of the Convention were in favour of a comprehensive review of the Euratom Treaty. While others suggested that provisions relating to nuclear power, if necessary, should simply be included in the article in the new Constitution dealing with energy. Others at the Convention, however, clearly opposed any change. The view taken by the Praesidium, which was not challenged by most Convention members, was that this was a distinct, complex, and technical subject which was not appropriate for the Convention to deal with.

At the Inter Governmental Conference on the EU Constitution, while Ireland and some other Member States proposed a more extensive debate on Euratom, it was clear that there was no consensus in support of this. Therefore the Convention simply drafted a Protocol making institutional and financial changes to the Euratom Treaty in line with those changes being made in the Constitution proper.

In an attempt to keep the proposal alive, Ireland, together with Germany, Austria, Hungary and Sweden made a Declaration noting that the core provisions of the Euratom Treaty have not been substantially amended since its entry into force, and need to be brought up to date. The Member States called for an Inter Governmental Conference on Euratom to be convened as soon as possible.

The Irish Government would have favoured an extensive review of the Euratom Treaty leading to a significant updating of its provisions. It has made clear that this continues to be its position.

The Current Political Landscape

The rejection by French and Dutch voters of the European Constitution in their recent referenda clearly has far-reaching implications for Europe. The negative outcome in these two founding members of the Union is obviously a serious setback.

The EU will have to reflect on the implications of the French and Dutch votes. There is a need to understand fully why the voters in France and The Netherlands rejected the European Constitution. Indeed, the European Council in June decided to pause the ratification process in order to give time for reflection to take place in each Member State.

The message sent from these voters is addressed not only to their Governments, but also to all of the members of the European Council. I consider that there is a growing belief among EU Member States of a need to address this message collectively and in a spirit of mutual support and understanding. While the way ahead is not clear, it is only through collective action based on the Treaties and a commitment to the people of Europe, that a collective and successful response can be made to the profound concerns for the future expressed in the votes in France and The Netherlands.

In this environment there will be a need to focus on what unites us at EU level, not what divides us. What unites us above all is our future, and we

need to seek agreement on how to confront the challenges posed to our Union as a whole rather than reflecting inwardly and perhaps divisively. As our prime minister, the Taoiseach, said recently at Humboldt University in Berlin, if Europe begins to pull in different directions, we will all lose out dramatically in the face of all the challenges which will confront us. And undoubtedly, challenges will confront us irrespective of how well or poorly we prepare for them.

In looking forward, there will also be a concentration on how much the Union has achieved to date. This is only right and natural in times of uncertainty and challenge. The European Union has served its populations well. The EU emanated from a history of war, want, and instability within its own borders and today it currently provides, despite its flaws and the challenges it faces, a Europe which is significantly better than the sum of its individual parts.

Implications for Euratom Renegotiation

As I have outlined, I believe that the uncertainty precipitated by the rejection of the EU Constitution by the French and Dutch voters will prompt a deliberate and careful period of reflection by all EU member states and will also prompt, correctly in my view, a reassessment and recognition of the undoubted benefits delivered by the European Union in the last 50 years. However, the question arises as to what are the implications of this for Euratom ?

Certainly the Irish Government would have liked to have been able to do more to revise Euratom, aspects of which are outdated and no longer appropriate, and to highlight the safety dimension further. The Irish Government is expected to publish a white paper on the European Constitution shortly. In relation to Euratom, I expect it will again reflect existing Government policy to which I have referred earlier.

However, amendment of Euratom will require unanimity. This is an important provision that allows every Member State, including Ireland, to defend its interests to the full. It also means that it is not possible to amend or revise the Euratom Treaty without unanimous support, including from those Member States with significant nuclear industries. Such support was simply not forthcoming in the IGC on the EU Constitution and in a time of uncertainty, I suspect there will be little appetite for a hugely divisive nuclear debate which might only contribute further to the issues and challenges which have arisen directly from the EU Constitution issue. However, I believe all is far from lost, but it will require a far more subtle approach to the issue than has heretofore been the case.

The issue of Renegotiation – Polarisation of Debate

As I have said, unanimity is required to amend Euratom and the reality, whether we like it or not, is that it will not be a case that Member States who actively engage in nuclear power generation will suddenly be persuaded by the power of the non nuclear arguments, quietly fold their tents and Euratom will be no more. Member States will have at least two powerful range of arguments lined up against each other together with many shades in between. These arguments will be shaped not by ideology but by an assessment of where each of the Member States interests lie. This is the case for non-nuclear States and equally will also be the case for nuclear States. In considering where the balance of interests may fall for each of the 25 countries, we must also have regard to the relatively recent tortuous path of the Nuclear Package proposals.

However, I strongly believe that it is not actually a situation of Euratom or nothing and the polarisation of the debate serves none of us well.

What we can justifiably endorse as achievement under Euratom

Notwithstanding the problems Ireland has with the Euratom Treaty and these are considerable, it is important to remember that the founding fathers of the EU who agreed the Treaty, did put in place far sighted provisions which have served Europe well.

In Article 2 of the Treaty, the Community is obliged under para 2(b) to “establish uniform safety standards to protect the health of workers and of the general public and ensure they are applied” and under para. 2 (e) to “make certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended”.

Safety Standards

Safety Standards are dealt with under the provisions of Title II, Chapter 3, Euratom. Together with the secondary legislation derived from it, this Chapter has significantly contributed to securing a high level of protection of the population and workers.

The adoption and implementation of the latest BSS Directive, as supplemented by the MED Directive, and the adoption of the HASS Directive has continued the progress in terms of reinforced protection.

Safeguards

Chapter 7 of the Treaty constitutes the legal basis of Euratom Safeguards. The obligation to implement the provisions of this Chapter lies with the Commission, which has wide powers under the Treaty to fulfil its task.

Since 2004, the Commission has been developing a " New Safeguards Approach". Strong criticisms from Member States against this New Approach have resulted in its implementation being postponed for the time being and an intensive exchange of views between the Commission and the authorities of the Member States is currently taking place. I would point to the vehemence of the opposition by almost all member states to the introduction by the Commission of the proposed new

safeguards approach as indicative of the real value derived by the Member States from these provisions of Euratom.

There is one further important example that I wish to refer to and that is in the terms of the negotiations with the accession countries on nuclear issues. Regrettably, there is as yet no Euratom Directive establishing the basic safety standards for the design, construction and operation of nuclear reactors in the EU. However, in the framework of the enlargement negotiations, Euratom did exercise its competences on nuclear safety. A system of peer review of nuclear safety in the installations in the candidate countries was established, which led to negotiating a number of measures as a condition for accession.¹

Hard, difficult and indeed economically painful decisions were taken in imposing conditions on the accession countries which included shut down requirements. These conditions were based on safety considerations, which from Ireland's perspective must be considered paramount. The EU can justifiably point to the fact that these decisions were taken under the terms of Euratom when it is, in my view, very unlikely that similar hard decisions would have arisen within a similar timeframe under the peer review mechanism of the Convention on Nuclear Safety.

Some problems as Ireland sees it

The Euratom Treaty was designed to promote and encourage an industry that was embryonic. It was intended to share the burden and benefits of what was seen then, as providing "electricity too cheap to meter". We know different now.

¹ During the accession negotiations, Lithuania committed to closure of Unit 1 of the Ignalina nuclear power plant before 2005 and of Unit 2 by 31 December 2009 at the latest. Slovakia committed to the closure of Unit 1 of the Bounice nuclear power plant by 31 December 2006 and of Unit 2 by 31 December 2008 at the latest. These closure commitments were included in Protocols 4 and 9 to the Act concerning the conditions of accession to the European Union of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

It is not unreasonable to expect an industry almost 50 years old to be mature enough to take its place within the EU Common Market. The EU has decided that the market place should dictate the allocation of resources and that state aids and subsidies should not be employed to distort competition. The EU has developed and evolved to meet the profound changes that have occurred in the last 50 years while Euratom continues to promote nuclear and shelter it from competition oblivious to the wider developments within Europe. It is certainly an anachronism but this is probably consistent for the nuclear industry itself. The more it seeks to persuade the public that it should be considered on an equal basis with other industries, the more it seeks to preserve or foster its special position in terms of promotion, investment, competition, research, waste generation and environmental contamination. The Euratom Treaty provides a special position for the industry in Europe, Ireland believes that this is no longer tenable.

Revolution or Evolution

There is one additional avenue that can contribute to the necessary evolution of the Treaty to meet current conditions and demands in the EU. This is by evolution through case law.

Again, we can note that the EU Treaties have benefited by being driven by considerable case law which has undoubtedly contributed to the ongoing development and amendment of the Treaties. In contrast, case law under Euratom has not attracted a similar level of development and evolution. While there have been significant decisions such as the Cattenom Case (C-187/87), the development and evolution of Euratom through case law has not been dramatic. However, the possibilities afforded by evolution through the legal process are best indicated by the decision regarding the competences of the Commission on nuclear safety under the Euratom Treaty (C29/99). This particular case provided the legal basis for the Commission to introduce the nuclear package.

While progress on the nuclear package as proposed by the Commission has been disappointing, it does at least indicate that the Euratom Treaty can benefit from legal elaboration through the European Court of Justice. Perhaps with a more proactive approach from the Commission, as ultimate guardians of the Treaties, the potential of the current Treaty can be developed particularly in terms of safety.

Summary and Conclusions

In my presentation, I have outlined the historical context of Euratom, current Irish Government policy in relation to a review of Euratom and the political landscape against which our discussions here today are set. I have considered the implications of this political landscape for Euratom renegotiation and referred to the polarisation of the debate regarding the Treaty. I have also pointed to some welcome benefits for Europe while indicating briefly the main problems for Ireland with the Treaty. I hope I have contributed some food for thought and discussion and I am certainly here to listen, discuss, debate and learn from the many eminent contributions that form the programme for this conference.

To summarise my own conclusions, I believe that any renegotiation of Euratom will be a two way process, the debate in relation to Euratom review should reflect this reality. For those from the non – nuclear side of the debate, a more focused view of the real possibilities which can be achieved against such a background will need to be developed while recognising the gap between what is ultimately desirable to what is realistically achievable, and finally pending renegotiation, I believe there is a more proactive role for the Commission in maximising the potential of the existing Treaty through development of case law through the European Court of Justice.
