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ATO 7

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the extension of the advantages conferred on the joint undertaking Hochtemperatur-Kernkraftwerk GmbH

COUNCIL DECISION (Euratom) 2023/...

of ...

**on the extension of the advantages conferred
on the joint undertaking Hochttemperatur-Kernkraftwerk GmbH**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 48 thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Decision 74/295/Euratom¹, the Council established Hochttemperatur-Kernkraftwerk GmbH ('HKG') as a joint undertaking, within the meaning of the Treaty, for a period of 25 years as from 1 January 1974.
- (2) By Decision 2011/362/Euratom², the Council extended the status of HKG as a joint undertaking until 31 December 2017.
- (3) By Decision 74/296/Euratom³ and by Decision of 16 November 1992⁴, the Council conferred on HKG a number of advantages listed in Annex III to the Treaty, for a period of 25 years as from 1 January 1974.

¹ Council Decision 74/295/Euratom of 4 June 1974 on the establishment of the Joint Undertaking Hochttemperatur-Kernkraftwerk GmbH (HKG) (OJ L 165, 20.6.1974, p. 7).
² Council Decision 2011/362/Euratom of 17 June 2011 on extension of the joint-undertaking status of Hochttemperatur-Kernkraftwerk GmbH (HKG) (OJ L 163, 23.6.2011, p. 24).
³ Council Decision 74/296/Euratom of 4 June 1974 on the conferring of advantages on the Hochttemperatur-Kernkraftwerk GmbH (HKG) Joint Undertaking (OJ L 165, 20.6.1974, p. 14).
⁴ Not published in the Official Journal.

- (4) By Decision 2011/374/Euratom¹, the Council extended those advantages until 31 December 2017.
- (5) By letter of 7 October 2021, HKG asked for a further extension of the joint-undertaking status. The extension should also apply to the relevant exemptions from land transfer tax, land tax and trade earnings tax on long-term debt interest. In addition, HKG applied to be exempted from all direct taxes to which Joint Undertakings, their property, assets and revenue might otherwise be liable. It applied for that exemption to be framed in the most extensive way possible, and for it to be applicable from 1 January 2018 onwards. For reasons of clarity, but not to be understood as an exhaustive list, HKG sought exemption from the following direct taxes applicable in the Federal Republic of Germany: *Körperschaftsteuer* (corporate tax), *Solidaritätszuschlag* (‘solidarity surcharge’ to corporate tax), *Gewerbesteuer* (local business tax), *Grunderwerbsteuer* (tax on the acquisition of immovable property) and *Grundsteuer* (land tax).
- (6) The current objective of HKG is to implement a programme for decommissioning the nuclear power station up to the safe enclosure stage and, thereafter, to carry out a programme of surveillance of the enclosed nuclear installations.

¹ Council Decision 2011/374/Euratom of 17 June 2011 on extension of the advantages conferred on the joint undertaking Hochttemperatur-Kernkraftwerk GmbH (HKG) (OJ L 168, 28.6.2011, p. 8).

- (7) There is no equivalent to those programmes in the Community since, to date, no high-temperature reactor has been shut down definitively in the Community.
- (8) Implementation of those programmes is therefore important since they provide useful experience for the nuclear industry and the future development of nuclear energy in the Community, in particular as regards the decommissioning of nuclear installations.
- (9) HKG should therefore be assisted with implementing the programme for decommissioning the nuclear power station up to the safe enclosure stage and the programme of surveillance of the enclosed nuclear installations, by lightening the financial burden and by conferring the requested additional tax advantages.
- (10) Arrangements for financing HKG's activities have been agreed between the Federal Republic of Germany, the Land of North Rhine-Westphalia, HKG and its members for the period up to 31 December 2022.

- (11) The advantages conferred on HKG should therefore be extended retroactively for the same period as the extension of its Joint Undertaking status, namely from 1 January 2018 until 31 December 2022.
- (12) After 31 December 2022, any further extension of the advantages conferred on the joint undertaking HKG is conditional on the submission by HKG of an application for a decommissioning licence,

HAS ADOPTED THIS DECISION:

Article 1

The following advantages listed in Annex III to the Treaty conferred on the Joint Undertaking Hochttemperatur-Kernkraftwerk GmbH ('HKG') are hereby extended for five years with effect from 1 January 2018:

- (a) under point 4 of that Annex, the exemption from the *Grunderwerbsteuer* (tax on the acquisition of immovable property);
- (b) under point 5 of that Annex, the exemption from all direct taxes to which the Joint Undertaking, its property, assets and revenue might otherwise be liable.

Article 2

The conferment of the advantages listed in Article 1 on HKG is subject to the condition that the Commission shall have access to all the industrial, technical and economic information, including that relating to safety, acquired by HKG in implementing the programme for decommissioning the nuclear power station up to the safe enclosure stage and in implementing the programme of surveillance of the enclosed nuclear installations.

That condition shall extend to all the information which HKG is entitled to pass on in accordance with the contracts concluded with it. The Commission shall determine which information shall be communicated to it, as well as the manner in which such communication shall be made, and shall ensure that this information is disseminated.

Article 3

This Decision shall take effect on the date of its notification.

Article 4

This Decision is addressed to HKG.

Done at ...,

For the Council

The President
