



August 2013  
AK Position Paper

AK Open letter to the European Commission:  
No state aid for nuclear power generation!

## About us

**The Federal Chamber of Labour is by law representing the interests of about 3.2 million employees and consumers in Austria. It acts for the interests of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore the Austrian Federal Chamber of Labour is a part of the Austrian social partnership.**

**The AK EUROPA office in Brussels was established in 1991 to bring forward the interests of all its members directly vis-à-vis the European Institutions.**

### **Organisation and Tasks of the Austrian Federal Chamber of Labour**

The Austrian Federal Chamber of Labour is the umbrella organisation of the nine regional Chambers of Labour in Austria, which have together the statutory mandate to represent the interests of their members.

The Chambers of Labour provide their members a broad range of services, including for instance advice on matters of labour law, consumer rights, social insurance and educational matters.

Rudolf Kaske  
President

More than three quarters of the 2 million member-consultations carried out each year concern labour-, social insurance- and insolvency law. Furthermore the Austrian Federal Chamber of Labour makes use of its vested right to state its opinion in the legislation process of the European Union and in Austria in order to shape the interests of the employees and consumers towards the legislator.

All Austrian employees are subject to compulsory membership. The member fee is determined by law and is amounting to 0.5% of the members' gross wages or salaries (up to the social security payroll tax cap maximum). 560.000 - amongst others unemployed, persons on maternity (paternity) leave, community and military service - of the 3.2 million members are exempt from subscription payment, but are entitled to all services provided by the Austrian Federal Chambers of Labour.

Werner Muhm  
Director

## The AK position in detail

AK is very concerned about the various proposals on EU-level to introduce a new system of preferential State aid treatment for subsidies in favour of nuclear power.

AK rejects the opening of subsidy regimes for nuclear power and other traditional energy sources as a policy option, as experience of Fukushima shows that the unpredictable follow-up costs come to such amounts that a subsidisation of this technology proves to be totally counter-productive and violate fundamental principles of EU-legislation.

First, such subsidies are in breach of article 107 TFEU (Treaty on the Functioning of the European Union), allowing only State aid for environmental protection if a higher level of environmental protection is achieved than would occur without the aid. Secondly, they violate Art 191(2) TFEU, stating that environment policy is to be based on the principles of precaution and prevention, i.e. environmental damage should as a priority be rectified at source and that the polluter should pay. Thirdly, enhancing investments and a subsidy race for nuclear power stations within the European Union after the Fukushima disaster goes against paragraph 3 of Article 3 of the Treaty on European Union (TEU) stipulating that sustainable development is one of the objectives in the European Union. This should be based on economic prosperity, social cohesion and a high level of protection of the environment. In addition, Article 11 TFEU stipulates the obligation to integrate protection of the environment into all Community policies.

Hence, a revision of these principles by any legislative act providing exemptions from the ban of State aid for nuclear energy and disregarding the above mentioned provisions of the TFEU has to pass the European Parliament and may not be smuggled past it by an executive act of the EU Commission in order to avoid an open discussion between European citizens.

### **Subsidies of nuclear power – breach of article 107 TFEU**

In its working paper relating to the recast of State aid in favour of environmental protection of 11 March 2013 (ref. nr. HT 359), DG Competition takes the position that “[t]he wish of some Member States to widen support also to other low-carbon energy sources including nuclear merits an in-depth discussion in order to analyse whether market failures justify intervention and whether it is possible to establish ex-ante rules in the framework of Guidelines while ensuring cost transparency and the internalisation of external costs.”

However, based on the State aid principles, there is no valid justification for that kind of subsidy:

- First, nuclear energy does not qualify for State aid simply on the ground that it does not fall into the class of technologies defined as “less mature technologies which are beyond the research and development stage but still not commercially viable”. Applying the “balancing test” developed by the EU Commission for the assessment of subsidies,

State aid to nuclear power production clearly cannot be justified as

a) the aid measure is not aimed at a well-defined objective of common interest, but goes against environmental protection within the sense of Art 3 (3) TEU, Art 11 and 191 TFEU;

b) consequently, the aid is not well designed as it does not deliver an objective of common interest;

c) with a view to Fukushima, State aid to nuclear power generation is not an appropriate policy instrument: it leads undertakings to invest in technologies endangering health and life of European citizens and therefore lacks any incentive effect for the achievement of better environmental protection standards.

- Secondly, according to settled case-law, it is crucial that environmental State aid measures are well targeted. In cases where aid is not necessary or proportionate to achieve its intended objective it will harm competition, in particular if it a) maintains inefficient firms afloat; b) distorts dynamic incentives/crowding out c) creates market power or exclusionary practices or d) artificially alters trade flows or the location of production. Subsidies for nuclear power have the effect of diverting resources away from techniques and technologies which are cheaper than nuclear power and altogether more effective as a means of meeting our energy needs and cutting emissions.

Hence, State aid for nuclear power brings about distortion of competi-

tion incompatible with Art 107 (3) (c) TFEU.

- Thirdly, internalisation of external costs covering the whole life-cycle is the stepping stone, including inter alia, the hidden costs of liabilities in case of accidents and the costs of radioactive waste repositories. This technology would never have left the experimental stage, had the investments been left to the free play of market forces and thus internalising all external costs. As long as it is evident that tax payers will foot the bill for the removal of the follow-up damages (moral hazard) and as long as these costs are not fed into the electricity prices, State aid to such technology has to be rejected as it clearly violates the polluter pays principle stipulated in Art 191 TFEU.

In conclusion, AK holds the opinion that allowing for State aid in favor of nuclear power corresponds to a complete abandonment of the principles guiding the EU-Commission's State aid policy and the TFEU. Moreover, such a policy shift boosts moral hazard bringing about an unacceptable environmental burden for society and future generations, especially as regards the disposal of radioactive wastes.

This result equals the jettison of the EU's pioneer work as to the development of renewable energy production and energy efficiency.

Therefore, we request the European Commission

- a) to reject any proposals for the admissibility of State aid in favour of nuclear power

b) to endorse the successful State aid policy enforced by the EU-Commission until now, fighting any market foreclosure to the detriment of the development of new, sustainable energy production from renewables by blocking State budgets in favour of nuclear power production

c) to make explicit in the future Environmental Aid Guidelines and the General Block Exemption Regulation that nuclear power generation is not considered a low-carbon energy source.

Should you have any further questions  
please do not hesitate to contact

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