

Act reorganising responsibility for nuclear waste management – facts and additional information

As a result of Germany's decision to phase out nuclear power, the amount of radioactive waste requiring final storage is now limited and easier to calculate than before. At the same time, the amount of time during which income can be generated from the operations and provisions be made for the disposal of nuclear waste is now limited as well.

Under the Atomic Energy Act and in line with the polluter-pays principle, it is the operators of nuclear power plants (NPPs) that must pay for the decommissioning and dismantling of the NPPs, and for the management of the nuclear waste, including the cost of final storage. These costs will be incurred over several decades. In light of this, the Federal Government decided to appoint a commission named the Commission to Review the Financing for the Phase-out of Nuclear Energy. This commission was asked to conduct an assessment as to how financing for decommissioning and dismantling of nuclear power plants and for nuclear waste disposal can be organised such that the companies responsible will be financially capable of meeting their obligations arising from nuclear power operations, including in the long term.

The final report, which was unanimously adopted by the commission and published on 27 April 2016, sets out a proposal on how this can be achieved in a way that is acceptable to policy-makers across party lines, and to society at large. Under this proposal, the responsibility for interim and final storage is to lie with the government, whereas the financial burden is to be borne by the companies, which are to provide the necessary liquidity by paying into a fund established under public law.

The new draft legislation is to implement the recommendations made by the commission. Its purpose is to ensure that the financing for decommissioning, dismantling and disposal is guaranteed over the long term, to prevent any costs being one-sidedly shifted to society, and to achieve all this without jeopardising operators' economic viability.

Respective responsibilities of NPP operators and the German government

The responsibility for the management and financing of the decommissioning and dismantling of NPPs and of packaging the nuclear waste will continue to lie entirely with the NPP operators. The German government will assume responsibility for the management and financing of interim and final storage. The funds for interim and final storage will be provided by the operators and paid into a fund for the financing of nuclear waste disposal, which will be administered by the German government. The fund itself will be set up as a simple foundation under public law. It will collect the funds, invest them and pay them out.

The NPP operators will be obligated to pay a total of €17.389 billion into the fund. They can opt to pay an additional risk surcharge of 35.47 per cent, upon receipt of which the German government will discharge them of any obligation to make additional contributions to the fund if it is found that additional liquidity is required. This risk surcharge will cover any cost and interest-related risks that exceed the calculated disposal costs. Hence, total payments into the fund are made up of the basic contribution of €17.389 billion and the voluntary risk surcharge of €6.167 billion, which is a combined total of €23.556 billion.

The German government is able to agree with individual operators that payments can be made in instalments, but this will be undertaken in a manner which ensures that the fund's liquidity balance is always sufficient to cover all running costs. Any operator wishing to pay in instalments must lodge securities that are sufficient to cover the entire sum owed.

German government to take over responsibility for interim and final storage

The Act transferring responsibility for nuclear waste storage provides for the responsibility for financing final and interim storage to be passed on from the NPP operators to the German government. Under the new legislation, responsibility will be transferred from the relevant operator to the fund upon receipt of the payment by the fund. The German government will establish a new state-owned company tasked with managing interim storage, which will take over the NPP operators' various interim storage sites as of 1 January 2019 (for high active nuclear waste), and as of 1 January 2020 (for low and medium active nuclear waste). The sites designated for low and medium active waste will be able to accept both waste that has been packaged correctly and waste that has yet to be packaged correctly. Ownership of waste that has been packaged correctly will be transferred directly to the German government, whereas waste that has yet to be packaged correctly will remain the property of the relevant operator. There will be clear requirements in place as to how this "mixed storage" is to be organised and as to what additional treatment the waste that has yet to be packaged correctly has to receive, so as to keep any risks at a minimum. Full responsibility for waste that has yet to be packaged correctly will lie with the operators.

Amendments of related legislation

The new legislation introducing the transfer of responsibility for interim storage will also make the necessary amendments to the Atomic Energy Act, the Repository Site Selection Act, the Waste Disposal Advance Payments Ordinance, and the Ordinance on the Protection against Damage and Injuries Caused by Ionizing Radiation.

Transparency around the dismantling of NPPs

Operators will remain fully responsible for decommissioning and dismantling NPPs and for ensuring that any nuclear waste generated is packaged correctly. For this reason, they continue to be obligated to make provisions for this.

The Transparency Act sets out certain requirements regarding transparency around this, and grants the Federal Office for Economic Affairs and Export Control the right to access certain information. Under this legislation, operators must provide a detailed list of the provisions they have made, broken down by disposal-related tasks. This list must be based upon the company's annual financial statement and feature a forecast of the expenditure for each task and for the coming financial years. Furthermore, the document must also show what liquid assets the operator will have at the time of each payment.

This is to ensure that all tasks, including the ones for the financing of which operators retain direct responsibility, are financially covered, and to give the government clarity on how the cost estimates used to calculate the amount of provisions needed come into being. There are no plans for changing the applicable accounting provisions.

Extended liability for dismantling and nuclear waste storage costs

At present, all NPP operators form part of large corporations and the control agreements and profit-and-loss-transfer agreements in place within these corporations ensure that the entire corporation is liable for the cost of decommissioning and dismantling NPPs and for the disposal of nuclear waste. There is, however, no legislation that would ensure that this remains the case. There is a danger that a decision by the corporation to restructure its business might result in individual operators' insolvency, which in turn would result in major risks for the government and society as a whole. This law is to keep these risks to a minimum.

At the same time, the provisions governing operators' extended liability for decommissioning and dismantling will also be revised. We are introducing a legal requirement under which controlling companies will remain liable for the operating companies they control, to the extent that this concerns

- the cost of decommissioning and dismantling of their NPPs;
- liabilities towards the fund; and – in the case that a company decides against paying the risk surcharge –
- any additional payment obligations in the event that the cost of the nuclear waste disposal is higher than anticipated.

The controlling company will be held liable only if the operator has ceased to meet its payment obligations – e.g. as a result of insolvency – or has ceased to exist.