

## GERMANY AND NUCLEAR POWER: WHO LIVES BY THE SWORD, DIES BY THE SWORD

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**In 2011, the German government imposed a tax on processing nuclear fuel amounting to 145 euros per gram to be paid by the nuclear producers. The decision has now been declared unconstitutional and forces the government to pay a 6.3 billion euro refund.**

Germany is one of the first countries to witness the emergence of a green movement. *Die Grünen* (the Green Party) was founded in Karlsruhe, West Germany in January 1980 as a merger of civil initiatives, social movements arising from the 1968 protests and part of the conservative spectrum. The aims of these united movements were to defend the environment, support world peace and anti-nuclear energy. These objectives enabled them to have political representation and the capacity to run for the parliamentary elections. *Die Grünen* played a particularly important role in conveying the popular support for finding alternative energy sources, popularity arising from two subsequent oil crises in 1973 and 1979 and the nuclear power plant accident of Chernobyl in 1986. This support transpired into votes and in 1987 they gathered 8.3 % in the national elections.

Since then, the Green party has shaped public opinion on a complexity of environmental matters and has strongly contributed to the emergence of the *Energiewende*.

The so-called *Energiewende* (energy transition) promoted by the German authorities since the end of 2011 entails a shift in energy provision from the coal-fired generation to a low-carbon and environmentally compatible energy supply, based upon renewable energies coming from wind, solar and hydropower. The policy package also envisages an 85-90% reduction of greenhouse gas (GHG) emissions (relative to 1990 levels) and a renewable energies target of 60% by 2050. This very ambitious programme has been praised worldwide and has projected Germany right into the core of the major supporters of the COP21 conference.

However, when scraping the surface, one discovers that these energy provisions are not all sunshine and rainbows. One of the core pillars of the *Energiewende* is that the shutdown of all nuclear reactors on German territory will be complete, by 2022. This provision, despite being very strong on paper, is in reality the weak link of a deeply ambiguous position on German energy supply.

The troubled relationship between the current leadership and nuclear power dates back to 2010, when Chancellor Merkel declared that under her mandate Germany would boost its

nuclear energy production to avoid dependence from its neighbouring producers. Consequently in November 2010, the government voted in favour of reversing the existing nuclear policy and chose to delay Germany's exit from a nuclear power, previously agreed to be concluded in 2021. According to the leader of the opposition and incumbent Minister of Foreign Affairs Sigmar Gabriel, the vote was the result of an "agreement behind closed doors" pushed by "efficient and coordinated pro-nuclear lobbyists". Moreover, in January 2011, the German government introduced a tax on all the fuel elements that were used by the nuclear reactors, equating to 145 euros per gram. The tax was justified with the need to refill the state treasuries after boosting spending during the height of the 2008-2009 economic crises and to sustain the costs of nuclear waste management. At this time the nuclear sector appeared to be heading towards florid times and as a result of this impending prosperity the corporations were duly taxed by the government.

However, the equilibrium was broken after the Fukushima Daiichi nuclear disaster on March 11, 2011, which shocked public opinion. *Die Grünen* once again played the role of catalyser of public fears on environmental issues: just after the incident, polls showed that one in five Germans supported the Green Party. The final blow was given in the elections: in the Baden-Württemberg state election held on March 27, 2011, the CDU-led coalition lost its majority to a coalition of Alliance 90/The Greens and the Social Democrats on an agenda focused on switching away from nuclear power. From 2011 to 2016, the Greens gained representation in all of the state elections.

Thus, Merkel critics claim that the government used the consequences of the electoral results and rode the wave of the Fukushima Daiichi incident to make a spectacular U-Turn on the nuclear policy that had not conquered the favours of the electorate in any case. Hence, the shutdown of the nuclear reactors was been agreed for 2022 and the *Energiewende* gained momentum, to the biggest disappointment of the nuclear corporations already enraged by the fuel-tax.

Recently, however, the nuclear headache has made a spectacular comeback in Germany due to the backfiring of the nuclear-fuel tax.

Shortly after the government's decision, the nuclear corporations led by E.ON filed a lawsuit against the state on the grounds that the tax created an unfair competition between themselves and the other electricity producers. Consequently, the *Finanzgericht Hamburg* appealed to the Federal Constitutional Court in 2013, maintaining that the state did not have the competence to impose the tax.

The Federal Constitutional Court recently judged the law to be effectively unconstitutional. The decision has hammered the leadership that will have to find a way to refund the nuclear corporations. The most expensive check will be the one to E.ON, which announced that it is expecting a reimbursement of approximately 2.85 billion euros plus around 450 million euros in lost interest. RWE and EnBW follow closely with respective bills of 1.7 and 1.44 billion euros.

The government will be forced to figure out a solution to fill the 6.3 billion euro void in the federal taxes. The Chancellor has already tried to downsize the dimensions of the issue, by stating that "the big goals are not in danger".

However, the ruling by the court has several consequences. On the one hand, it testifies that the government has made an ill-advised choice from a legislative and economic point of view, maybe dictated by the uncertainty in the definition of the policy vectors at the beginning of the mandate. On the other hand, the declared unconstitutionality of the provision makes the government an easy target by its political opponents in the current electoral campaign, allowing them the chance to hinder Merkel's party ahead of next national election on September 24, 2017. The Social Democrat Environment Minister Barbara Hendricks has indeed labelled the decision as a "resounding slap in the face" for the governing coalition. More

accusations are likely to come when the payments will have to be made: therefore, the Chancellor risks seeing his energy legacy damaged ahead of the next close electoral call.

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