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**How an ‘agnostic’ became a ‘believer’  
– the changing discourse on nuclear energy within European  
Commission.**

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## **How an ‘agnostic’ became a ‘believer’**

**– the changing discourse on nuclear energy within European Commission.**

### **Abstract**

It is argued in this paper that during the Barroso I and Barroso II Commissions there has been a marked change in the political discourse concerning the use of nuclear energy within the Commission of the European Union (EU). Despite repeated reassurances in Commission energy policy proposals since 2004 that the choice of energy resource remains within the competences of the nation states, there is evidence of increasing ‘capture’ of the discourse by those in the Commission who support the continued use of nuclear energy. Nuclear energy is linked with renewable energy technologies as a resource which produces little or no greenhouse gas emissions and one which is able to make a significant contribution to a low carbon energy future within the EU. The process by which the Commission has moved from that of agnostic in the debates about nuclear energy to a seeming believer is examined in this paper. If as Fischer has concluded ‘...public policy is not only expressed in words, it is literally ‘...constructed’ through the languages in which it is described...’ (Fischer 2003:41) questions are raised in this paper about the implication of the changes to the discourse for future energy policy developments within the EU.

## How an ‘agnostic’ became a ‘believer’

– the changing discourse on nuclear energy within European Commission.

### Introduction

‘The European Commission, while exercising its powers, particularly in the context of the EURATOM Treaty, has been in a neutral position regarding the choice of nuclear energy policy’ (Barroso, 2010)

But it is argued in this paper that during the Barroso I and Barroso II Commissions there has been a marked change in the political discourse concerning the use of nuclear energy within the Commission of the European Union (EU). Despite repeated reassurances within Commission energy policy proposals since 2004 that the choice of energy resource remains within the competences of the nation states there is evidence of increasing ‘capture’ of the discourse by those in the Commission who support the continued use of nuclear energy. The growing realization of the linkage between energy resource abuse and climate change in the early/mid 2000s provided the catalyst for increased high level support from the Commission for the technology. Nuclear energy was (and continues to be) portrayed as a low carbon energy resource which will enable the EU to curb its greenhouse gas emissions. It is considered to be a secure and readily accessible energy resource able to provide low cost volume base load electricity throughout the EU.

The paper begins by reviewing the EURATOM Treaty which provides the legal and constitutional framework for the role of the European Commission in EU nuclear energy policy. The question of why the Treaty has retained a separate legal personality from that of the Treaty on European Union will be briefly analysed. Discussion will then follow of the apparent changes in the discourse during the Barroso Commissions since 2004. Attention is then turned to what the potential implications of this might be for future development of the EU’s energy policy. It is argued that as the EURATOM Treaty will be maintained (at least for the foreseeable future) the change in the nature of the discourse within the European Commission provides additional credibility and support for the nuclear sector within the EU.

If as Fischer has concluded ‘...public policy is not only expressed in words, it is literally ‘...constructed’ through the languages in which it is described...’ (Fischer 2003:41) <sup>1</sup> questions are raised in this paper about the implication of the changes to the discourse for future energy policy developments within the EU. It is argued that the changing nature of the discourse within the Commission will undermine an open and objective debate about the contribution which nuclear energy may make to the development of a low carbon economy in the future. In essence the European Commission appears to have moved from its former agnostic, neutral position, to that

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<sup>1</sup> Fischer F. (2003), “Reframing public policy – discursive politics and deliberative practices”, Oxford University Press.

of believer in the technology. As such it is argued that the European Commission has in effect become a 'lobbyist' within the EU on behalf of those EU states which continue to have a commitment to its use.

### **The historical context – the EURATOM Treaty.**

In the early 1950s the European states urgently needed access to reliable energy resources for the massive reconstruction required in their war torn economies. The desire for peaceful co-operation with their neighbours also dominated the policy agendas of the countries of Western Europe. Coal was the primary energy source in Europe at the time and a major component in the manufacture of steel, therefore, committing to policy co-operation in coal and steel production was an obvious choice for that concrete action in limited areas which would '...substitute for historic rivalries the merger of their essential interests and lay the foundations of a broader and deeper community among peoples long divided by bloody conflicts' (Preamble to the Treaty of Paris, 1951, establishing the European Coal and Steel Community, ECSC). But at the same time the vested national interests of the individual states generated a number of controversies about how the process of European integration was to be moved forward into other policy areas.

Although the EURATOM Treaty in 1957 came early in the EU's history, it was born, not from the rational plan for integration proposed by Jean Monnet in 1956, but from political compromises brokered during the 1956/7 negotiations. The strategy for increased policy integration amongst the signatory states of the ECSC had been undermined when the proposals for a European Defence Community were rejected in 1954. The ECSC had shown that successful policy integration was possible in two areas – trade and energy co-operation. So if national defence policies could not become integrated, attention was turned to other possibilities. The civilian use of the nuclear technologies was an exciting new development which appeared to offer an opportunity to re-energize the enthusiasm and impetus for further policy integration. The EURATOM Treaty began by '...Recognizing that nuclear energy represents an essential resource for the development and invigoration of industry and will permit the advancement of the cause of peace'. It would be a costly approach, as it was new technology and would need a great deal of investment. It was not investment which the individual Member States of the EAEC could afford to make on their own. But if all the States worked together to integrate their nuclear energy policies and shared the costs, all would benefit from the '...prospect of achievements commensurate with the creative capacities of their countries.' (EURATOM Preamble)

Jean Monnet had considered the nuclear energy sector to be de-politicized and therefore open to political integration and the possibilities of supranational action. Monnet's vision was however quickly overtaken by events. The national nuclear energy programmes of the time were admittedly haphazard, but they were being developed in response to narrow interests and commercial pressures. The governments were not prepared to pool decision making about national energy policy resources and the choices being made about their energy resources 'mix'. The French government supported the evolving electronuclear industry in which France had an important business interest. The German and Italian governments on the other hand were looking to forge agreements with the United States to obtain cheap supplies of enriched uranium and US-built reactors. Of the other signatories, neither the states

preparing to use nuclear electricity, nor those which did not want to develop the technology were prepared to open their national industry to the possibility of interference.

The outcome of the 1956/7 negotiations was that the main terms of the EURATOM Treaty were limited to promoting the development of the new nuclear technologies and the management of some aspects of safety related issues, but excluding the safety of the nuclear installations themselves. Overall the Treaty conformed to a traditional statist model of intergovernmental agreement for action in a limited sectoral policy area. It was much narrower in focus than the European Economic Community (EEC) Treaty also signed at the same time. Monnet's view of the role of the Commission was that it would function as a benevolent technocracy which would have competences conferred on it to work on behalf of the whole community. Unlike the model adopted for the EEC the role for the then General Assembly, later European Parliament (EP), was minimal in EURATOM. Furthermore, the objective of promotion of nuclear energy appeared to contradict the promotion of use of coal supported in the ECSC Treaty. Despite the existence of the two Communities – the EAEC and the ECSC – it was clear that a coherent and effective EU energy policy was not in the process of being developed.

The objective of the European Atomic Energy Community was clarified as raising the standards of living in its Member States '...by creating the conditions for speedy establishment and growth of nuclear industries' that would provide extensive and cheap energy resources (EURATOM article 1). Promotion of the electronuclear industry was thus to be accomplished through the promotion of research and the dissemination of the information gained as a result. The terms of the Treaty were also to facilitate investment in the industry. As the electricity utilities were predominantly state owned in the 1950s this was in effect to agree to a considerable degree of state aid going to the developing industry.

The EURATOM Treaty conferred the sole rights of option and ownership of all fissile material being used for civilian purposes on the EAEC, thus creating a nuclear common market for trade in nuclear ores and materials within the EU so that sufficient supplies would be available for Community users (Chapter IV EURATOM).<sup>2</sup> The provisions of the Treaty brought international agreements and co-operation to the European Commission's competence as a necessary element of the common supply of the raw materials for the industry. The EURATOM Treaty also provided the basis for the free movement of the staff, capital and services required in the nuclear sector. The European Commission was given considerable power over the implementation of the Treaty but the supranational action was limited and focused on eight main areas which were outlined in Article 2 with prominence being given to safety of the workers in the industry and the public in the areas surrounding the

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<sup>2</sup> The EURATOM Supplies Agency (ESA) was established on June 1st 1960 to ensure the equitable and regular supplies of nuclear ores and fuels for the EU's nuclear utilities (Chapter IV EURATOM Treaty). The Agency is a common supply agency for ores, source materials and special fissile materials and under the supervision of the European Commission. Currently this is within DG TREN. However 'The Supplies Agency exists, but is a mere shadow of what was intended'. (EP 2002:xiii). As the EU is highly dependent on imported uranium supplies then the ESA arguably has a role to play in the future in monitoring imports.

nuclear power plants.<sup>3</sup> A notable omission from Article 2 was competence for safety of the nuclear installations themselves. These remained within the competence of the national governments and authorities.

The creation of the European Atomic Energy Community was not a commitment by the national governments of the six signatory states to any form of co-operation on the military use of nuclear technology. The underlying political philosophy for the creation of the EAEC was a search for peaceful co-operation, not collaboration so that weapons of war could be developed. The underlying political realities of the 1950s were dominated by reluctance of national governments to proceed with strategic and military integration in a context other than North Atlantic Treaty Organization (NATO), combined with on-going military actions involving national forces outside the European region. The EURATOM Treaty therefore contained measures to ensure that the fissile materials being used in the nuclear power plants of the EAEC were being used for peaceful purposes. The EURATOM Safeguards Office (ESO) was established to deal with measures to ensure Member States do not divert or acquire materials away from their intended and declared uses (Chapter VII EURATOM). The ESO continues under the supervision of the European Commission (most recently with DG ENERGY) with more robust mechanisms in place and a much clearer role and mandate than that of the EURATOM Supplies Agency (ESA) now has.<sup>4</sup>

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<sup>3</sup> Article 2 EURATOM In order to perform its task, the Community shall, as provided in this Treaty:

- a. promote research and ensure the dissemination of technical information;
- b. establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied;
- c. facilitate investment and ensure, particularly by encouraging ventures on the part of undertakings, the establishment of the basic installations necessary for the development of nuclear energy in the Community;
- d. ensure that all users in the Community receive a regular and equitable supply of ores and nuclear fuels;
- e. make certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended;
- f. exercise the right of ownership conferred upon it with respect to special fissile materials;
- g. ensure wide commercial outlets and access to the best technical facilities by the creation of a common market in specialised materials and equipment, by the free movement of capital for investment in the field of nuclear energy and by freedom of employment for specialists within the Community;
- h. establish with other countries and international organizations such relations as will foster progress in the peaceful uses of nuclear energy’.

<sup>4</sup> In 2002 a High Level Expert Group was established to report on the effectiveness of the ESO as the terms of the EURATOM Treaty had not been revised since 1957. The findings of the Group were that the ESO should remain the focus of EU wide controls for both practical and legal reasons. “The EURATOM Treaty being a ‘...remarkable document that expresses the essential commitments of the parties in a flexible and forward-looking language’ (CEC 2002:7) High Level Expert Group Review of the EURATOM Safeguards Office.

**Why has ‘...an outdated alien in the liberalized energy market...’ continued to survive? (Barnes, 2008)**

The substantive terms of the EURATOM Treaty have not been altered since the 1950s. Since the adoption of the Lisbon Treaty amendments of the Treaty on European Union in 2009 it has retained its separate legal personality and is now one of two founding Treaties of the European Union (the Treaty on European Union being the other). In 2002 the European Parliament had concluded that the Treaty was outdated, undemocratic and biased towards the electronuclear industry, and proposed that the Treaty should be phased out at the same time as the ECSC Treaty was due to expire. European Parliament (EP 2002:iv) <sup>5</sup> These criticisms of lack of democracy stem from a number of aspects of the Treaty provisions. They primarily relate to the unchanged nature of the Treaty, which dates from the period prior to the introduction of direct elections to the EP in 1979. As a consequence of this there is no requirement for the Council of Ministers to do anything more than formally consult the EP on substantive issues. Under the provisions of the EURATOM Treaty the unelected European Economic and Social Committee (EESC) and the Scientific and Technical Committee (STC) (with a membership nominated by national governments) have formal rights of consultation comparable to those of the European Parliament. Article 101 EURATOM excludes the EP from involvement in international agreements based on its terms. But the EP is co-budgetary authority for all the expenditure based on the Treaty, although in aspects of expenditure the European Commission is not formally required to consult the EP.

EURATOM legislation is subject to majority or qualified majority voting (QMV) in the Council of Ministers, but not to the co-decision procedures. In other areas of action covered by the TEC now TFEU there have been substantial changes made to the role of the EP which now has the power to act as co-legislator with the Council on a considerable number of market related issues which have an impact on the energy sector. As there are a number of safety related issues considered of importance to the public, the MEPs considered that “(I)t can be plausibly argued that it is precisely in these areas .....relating to safety ... that the public most feels the need for rigorous democratic scrutiny, control and accountability” (EP 2002:2) and thus requires more opportunity for the EP to perform an active role in the EAEC decision making process.

The most recent debate about the founding Treaties of the EU was during the Convention on the Future of Europe in 2002 and 2003 which culminated in the adoption, after much controversy of the Lisbon Treaty. Little attention was paid to the EURATOM Treaty during the Convention itself. The approach initially favoured by Giscard d’Estaing was to make only minor technical adjustments to the Treaty and ‘import’ its articles wholesale into the proposals for the Constitutional Treaty (CT). This however prompted disagreement from a number of Convention delegates and environmental groups. The major objection was that by including it in body of the Treaty, supranational action by the European Union would be extended to areas over which national governments would not want interference (i.e., the choice of energy

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<sup>5</sup> European Parliament (2002:iv) ‘The EP and the EURATOM Treaty: past, present and future’. Energy and Research Paper ENER 114, European Parliament

resources). It would also seem to introduce an obligation for all Member States of the EU to introduce nuclear power plants and reactors.

The EP arguments of 2002 were upheld by the European Commission during the Convention. The European Commission presented a position paper to the Convention, known as the Penelope paper, which favoured repeal of the Treaty and incorporating articles still considered to be of some relevance to the TEU. The Penelope paper highlighted the criticism made by the MEPs about the EP's lack of input to nuclear energy policy. The Commission drew attention to the inconsistency of this approach and the manner in which it undermined further energy policy developments. Support was given for the extension of QMV and co-decision to nuclear energy policy proposing that "...Parliament is restored to the institutional system, as it is given the power to adopt with the Council, 'Laws' for basic standards whereas at present it is very much outside the decision-making process".<sup>6</sup> Further "...the first and the most important in many ways would be to give the EP a greater role rather than just a consultative one. Make more decisions, co-decisions with a qualified majority voting for more issues"<sup>7</sup>

However it was not considered appropriate to substantially amend the Treaty or to change its nature from that of primary legislation.<sup>8</sup> The EURATOM Treaty was regarded as being a distinct, complex and technical subject and "in view of certain specific problems relating to the EURATOM Treaty, it was felt that the possible implications of merging this Treaty needed to be further investigated".<sup>9</sup> This conclusion went unchallenged by most members of the Convention. Andrew Duff, a Convention member, concluded that "Given the essentially controversial nature of nuclear power but also because of lack of time the Convention was unable to reach consensus on whether to repeal, assimilate or amend the EURATOM Treaty." (Duff 2006:167)<sup>10</sup>

It was decided instead to incorporate any changes which were required for the EURATOM Treaty into a Protocol into what became the Lisbon Treaty.<sup>11</sup> The changes were quite small and related mainly to the adaptation of the Treaty to the new rules for institutional and financial arrangements. The Treaty's legal 'personality' remained unchanged. The limited role of the EP in the decision making process was also unchanged. In addition to the Protocol to amend the Treaty, a Declaration was also appended to the Constitutional Treaty on behalf of the States of Germany, Ireland, Hungary, Austria and Sweden noting that the EURATOM provisions had not been altered since 1957 and supporting the idea of an inter-governmental conference to review as soon as possible.<sup>12</sup> But not all the Member States with criticisms of the EURATOM Treaty signed the Declaration, Denmark being a notable exception, although it is a state with a strong anti-nuclear policy.

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<sup>6</sup> The "Penelope Paper" first preliminary draft submitted to the Convention on the Future of Europe, prepared by task force led by Francois Lamoureux, Director-General DG TREN

<sup>7</sup> Commission official DG TREN, in correspondence with the author, July 2005.

<sup>8</sup> Secretariat of the European Convention (2003:paras.2, 5b) (ii), Suggested approach for the EURATOM Treaty, CONV 621/03, Brussels, 14<sup>th</sup> March

<sup>9</sup> Para.15 Final report of Working Group III.

<sup>10</sup> Duff A (2006) 'The Struggle for Europe's Constitution', Federal Trust

<sup>11</sup> Protocol amending the EURATOM Treaty CONV 850/03:236

<sup>12</sup> Declaration 44 annexed to the Constitutional Treaty

This outcome was not unexpected. The EURATOM Treaty was framed as a traditional statist model treaty, based on intergovernmental action. Divergent national interests and policies remained at the heart of the debate about change to the TEU. The EURATOM Treaty could not be used to identify the core values of the Union which the citizens of the EU could appreciate. It is addressing issues in a narrow field of economic activity. The EURATOM Treaty is dealing with a particular sector of industry which is reluctant to engage in open debate.

**Nuclear energy is ‘...a less than perfect energy option...’ (CEC, 2000:31-32)**

Why is the lack of political willingness of the national governments to change the EURATOM Treaty of importance? It leaves the European Commission with the competence for action which it has retained throughout the history of the EURATOM. As a result of which the European Commission has ‘...as part of its responsibilities ...played a leading role by proposing an evolving application of the Treaty, taking into account the wider needs of the EU, of its countries, of its industry and of its civil society.’ (Piebalgs 2007).<sup>13</sup> If it accepted that ‘...public policy is not only expressed in words, it is literally “constructed” through the language in which it is described’ and that in accepting that a policy discourse may change over time the focus of attention should be on ensuring that common values are shared (Fischer 2003:41) then the question must be asked about the implications of what appears to be a change in the discourse about nuclear energy within the European Commission.

In 2000 the discourse surrounding nuclear energy within the Commission was one in which was is considered to be a “...a less than perfect energy option...(one of the) undesirables... a sources of energy in doubt...tainted by the original sin of dual usage – civil and military” (CEC 2000:31-32).<sup>14</sup> However in the areas where the public has concerns about the use of the nuclear technology – safety, waste management, nuclear non-proliferation and the Commission had been proactive in initiating measures, particularly with regard to safety of the industry and health of the workers. During the later 1990s and early 2000s more focus of attention in the discourse was given to safety. It was acknowledged that the EU had a comprehensive nuclear safety regime based on international standards and voluntary harmonization of national procedures and practices. EURATOM competences given to the Commission to conclude agreements with international organizations had also led to co-operation and collaboration on safety standards between the EU states and the International Atomic Energy Agency. The ability of the Commission to use the competences of the Treaty to deal with safety issues was evident as the prospect of enlargement to states of the former Soviet Union in Central and Eastern Europe became more probable.

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<sup>13</sup> Speech 07/599 Commissioner Andris Piebalgs “*The Euratom Treaty and development of the nuclear industry*” at the International Law Association Congress, Brussels, 03.10.2007

<sup>14</sup> Commission of the EC (2000), Green Paper ‘*Towards a European Strategy for the security of energy supply*’, COM (2000) 769 final, Brussels, November

**Changing discourse on nuclear energy** – ‘...no longer desirable to consider nuclear safety in a purely national perspective’.

Many of the reactors in the candidate states were graphite moderated light water reactors (RBMK), similar to those which had been involved in the catastrophic accident at the Chernobyl nuclear power plant. Once the formal application and accession process was begun, candidate states became subject to thorough review of their economic and political development in order to determine if they fulfilled the requirements of membership. Appropriate nuclear safety standards were among these requirements. The Council of Ministers mandated an investigation led by Commission officials (at the time based in DG TREN, Transport & Energy), to review safety standards and procedures in the reactors in candidate states, including onsite visits by Commission officials to reactors such as the Ignalina power plant in Lithuania. Some reactors subsequently received EU funding to initiate programmes of reactor closure. The Commission was responsible for monitoring the funding facilities made available for the reactor closures.

Reactor closures were responsible for much heated controversy between the EU and the candidate states, exposing even more starkly the different national positions on nuclear power. Underlying these controversies was the high dependency on nuclear electricity of the EU's Central and Eastern European states with little prospect of quickly and easily finding alternatives. There was nevertheless significant concern that the accession of states such as Lithuania and the Czech Republic the measures might become less stringent. For the Commission ‘...It (was) no longer desirable to consider nuclear safety in a purely national perspective. Only a common approach can guarantee the maintenance of a high level of nuclear safety in an enlarged EU...’.<sup>15</sup>

In 2002, the Commission introduced a Nuclear Safety Strategy including a ‘package’ of proposals for several pieces of legislation to make safety regulations legally binding, to provide funding for de-commissioning of reactors as they reached the end of their operational lives and to establish a framework to deal with radioactive waste. Under the terms of this proposed legislative package the national regulatory authorities were to retain responsibility for safety, but the EU would have enhanced competence to monitor the work of the national authorities.

An important aspect of the legislation was the inclusion of safety at nuclear installations within the compass of EU action, an aspect not included in the original Treaty. Concerns that the national energy industries would be undermined if the supranational authorities had enhanced competences in respect of the operational conduct of the reactors were supported by the national governments. Article 2b of the Treaty did however provide competence for the Community to establish uniform safety standards to protect the health of workers and the general public and have the competence to ensure that they are applied and was used as the legal basis for the proposals. Furthermore a ruling by the ECJ in December 2002 had confirmed that the technical competence of national authorities to deal with the safety of nuclear installations did not preclude the EU from legislating in addition on safety issues. In the opinion of the ECJ, the safety of the workers and the public must be seen in unison with the overall safety of the installations themselves. (Case C-29/99) The

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<sup>15</sup> CEC, *Nuclear Safety in the EU*, COM (2002:11) 605 final, Brussels 6<sup>th</sup> November.

entrenched interests of the national governments led to much controversy surrounding the 2002 proposals which were not adopted. [In 2008 the package of proposals was disaggregated and safety at the nuclear installations was addressed first.]

In 2009 legislation was adopted as Council Directive 2009/71/EURATOM to establish a Community framework for safety at nuclear installations. The Nuclear Safety Directive required the Member States to set up regulatory authorities to monitor and continuously improve national safety standards at installations, reporting to the Commission every three years. The introduction of the legislation did not represent a radical development in safety standards. The European Commission had already established a pattern of close co-operation with the IAEA and implementation procedures to put the IAEA's safety standards, the basis of the global standards for all nuclear electricity generating states, into place in the EU. But it did bring International Atomic Energy Agency (IAEA) standards into a legally binding framework within the EU and strengthened what had been a non-binding 'acquis' of harmonisation of national practices. The IAEA standards are underpinned by the principle of protection for all people to the same level all the time. Within the EU the logic of IAEA principle of protection for all to the same level in all Member States irrespective of the inclusion of nuclear electricity in their national energy mix underpinned the Nuclear Safety Directive.

### **EU and nuclear safety**

The EU '... becomes the most advanced region for the safe management of radioactive waste and spent fuel...' (Oettinger 2011)

The second major issue addressed in the 2002 nuclear legislative package had been that of management of radioactive waste. Radioactive waste disposal and management represents a major concern for the public in the EU. Waste has been generated for more than fifty years and it will continue to be produced in varying amounts as the EU states maintain their nuclear programmes. The importance of how to manage waste has grown as older reactors are de-commissioned or nuclear capacity is phased out. But it is not only the disposal of the spent fuel and materials from nuclear energy production which must be taken into account, radioactive waste is produced by all EU states as it is the result of medical procedures, research, industrial processes and agriculture. For low level waste repositories at the nuclear power plants have been used. Disposal of the small amounts of high level waste is more problematic and there is less public acceptance of proposed measures. Scientific opinion favours deep geological repositories for the disposal of the small amounts of this most dangerous waste. The national authorities have however been slow to take decisions about the location of such sites within the EU.

A major feature of the public concern is the lack of information which is provided about how the most dangerous materials should be managed and disposed of in the longer term. Eurobarometre public opinion surveys (Eurobarometre 1998, 2001, 2005, 2008) for the Commission showed that 74% of the respondents (2008) felt that they were not well informed enough about the most appropriate mechanisms for dealing with radioactive waste and did not know where the most trustworthy information could be found. Some people in states where nuclear electricity is produced feel that the national authorities and regulators were the most trusted

sources of information, other people that the EU is the more trustworthy, others non-governmental organisations and yet others scientists. However a consensus was apparent in the Eurobarometre opinion polls that whilst each Member state should be responsible for solving the problems of safe disposal of the waste produced within their country but that the Commission for the EU should monitor and harmonise national measures

In July 2011 Council Directive 2011/70/EURATOM was adopted to establish a Community framework for the responsible and safe management of spent fuel and radioactive waste.. The Radioactive Waste Directive included provisions to address the concern of the public about lack of knowledge. An obligation was included on the national governments to inform the public and enable public participation in the debates about radioactive waste disposal. The directive provided a framework for EU action by imposing obligations on the national governments to draw up national plans by 2015 (and subsequent reviews) which will include definite timetables for the construction of disposal facilities and how details their financing. Under the terms of the Directive two or more states may agree to use a deep disposal facility in located in one state. When the Directive was adopted in 2011 there were no deep geological repository sites anywhere in the EU. Commission estimates suggested they will take a minimum of 40 years to develop and build. But the importance of the legislation lay in the fact that “After years of inaction, the EU ...commits itself to the final disposal of nuclear waste...(and...)... becomes the most advanced region for the safe management of radioactive waste and spent fuel” (Oettinger, Commission Press release IP/11/906.)

Result of the introduction of these measures is to enhance the credibility of the Commission in the arenas of safety and radioactive waste management, issues where the public has high levels of concern and also feels that there is a role for the Commission to play in monitoring the actions of the national governments.

### **Full and frank debate amongst the Member States**

‘...I believe that the Member States cannot avoid the question of nuclear power (but) there has to be a full and frank debate about the issue’ (Commission President Barroso 2007)

Choice of resources to include in the national energy mix remains with the national governments. It is included in the energy chapter of the Lisbon Treaty and is clearly recognised within the Commission. In 2007 presenting the Energy for Europe strategy the Commission had highlighted the importance of an energy strategy which includes a role for all the electricity generating technologies. But it was concluded that “The new Energy Policy for Europe should.....fully respect Member States choice of energy mix”.<sup>16</sup> and the divergent national views”. Indeed for some states, such as Austria, the use of nuclear energy is “...not an option for the future”<sup>17</sup>. But there was an important change during the Barroso I Commission 2004-2009 with regard to support for the use of the technology. Levels of support within the Commission for

<sup>16</sup> Council of the European Union (2006:2) 2717<sup>th</sup> Meeting of Transport, Telecommunications and Energy Council, Brussels 14<sup>th</sup> March.

<sup>17</sup> Bartenstein M. (2006), Austrian Energy Minister in speech following the Extraordinary Energy Council meeting held in Brussels, 14<sup>th</sup> March.

the use of nuclear technology grew as the rhetoric of various Commissioners' statements demonstrated. It appeared that the Commission has moved from the former agnostic and neutral position to one which is in favour of its use. Although the recommendation is that a full and frank discussion of the issue takes place nuclear energy policy continues to be subject to the competences of the EURATOM Treaty, which undermines attempts to create an effective comprehensive EU energy policy. The nuclear sector continues to be in a 'privileged' position.

*e.g. Commission President Barroso,*<sup>18</sup>

'I believe that we are now standing on the brink of a Third Industrial Revolution – the Low Carbon Age...this will be driven by technology and new forms of energy...I believe that the Member States cannot avoid the question of nuclear power there has to be a full and frank debate about the issue' Speech 07/580 Commission President Barroso

*Commissioner for Energy Andris Piebalgs*

'Europe has so far always enjoyed leadership in the area of nuclear technology. We have mastered all aspects of the nuclear fuel cycle and we market equipment and services throughout the world. This is a non-negligible part of the EU competitiveness and surely a valid input to our Lisbon strategy on growth and job creation' Speech 07/564 Commissioner Andris Piebalgs<sup>19</sup>

And

"The European Commission is well aware of the renewed interest for nuclear energy we witness today....The Commission is therefore particularly attentive to the benefits ...Nuclear energy increases our energy independence and our security of supplies and contributes to the reduction of carbon dioxide emissions, but it is also still confronted by a number of outstanding issues that need to be tackled...'<sup>20</sup>

Finally a controversial statement in favour of the use of nuclear technology by *Commissioner for Competition Neelie Kroes* demonstrated a wider support within the Commission for nuclear energy<sup>21</sup>.

The discourse coalesced around a number of points – that nuclear energy could help to drive forward economic growth and provide jobs within the EU, that it could provide an opportunity to market nuclear technology globally and that nuclear energy had a role to play in enabling the EU to meet its greenhouse gas emissions targets.

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<sup>18</sup> Speech 07/580 Commission President Barroso "*Europe's energy policy and the third industrial revolution*" at Loyola de Palacio Energy Conference, Madrid, 01.10.2007

<sup>19</sup> Speech 07/564 Commissioner Andris Piebalgs "*The Energy Challenges in the EU – security of supply, sustainability and competitiveness – focus on nuclear*" at Sustainable Nuclear Energy Technology Platform, Brussels, 21.09.2007.

<sup>20</sup> Speech 07/599 Commissioner Andris Piebalgs "*The Euratom Treaty and development of the nuclear industry*" at the International Law Association Congress, Brussels, 03.10.2007

<sup>21</sup> 'On Monday, 1st October 2007 Commissioner Neelie Kroes stated at a high level energy conference in Madrid that she was completely in favour of nuclear power' Statement in letter from the Greens/European Free Alliance in the European Parliament to Commission President Barroso on 04.10.2007.

These statements were coupled with agreements to establish an EU High Level Group on Nuclear Safety and Security and enhanced co-operation between the Commission (on behalf of the EAEC) and the International Atomic Energy Agency (IAEA) <sup>22</sup> on issues such as non-proliferation and nuclear safety and security. Other developments during the Barroso I Commission included the launch of the Sustainable Nuclear Energy Technology Platform (SNETP) in September 2007 to contribute to research into the development of carbon-free sources of energy <sup>23</sup> and the agreement to co-host the European nuclear energy forum in Bratislava and Prague. The first meeting of this forum took place on 26-27<sup>th</sup> November 2007 in Bratislava with subsequent meetings alternating between the two capitals. In response to concerns about that the leadership of the EU states in nuclear technology was being challenged by initiatives from the US, Russia, China and India the strategy underpinning the SNETP was presented as a roadmap to ensure that high safety standards, waste management, and security of nuclear materials are maintained. The basis of the technology efforts outlined in the strategy being to enhance “...co-operation between national and industrial programmes while guaranteeing the most effective use of framework funding...also underlines the important research dimension of the nuclear sector...” <sup>24</sup>

### **Expansion of renewable energy must take place alongside other energy resources including nuclear**

‘...massive expansion of renewable energy will be needed (in particular to reach the 20% renewable energy target), alongside other low carbon energy sources including nuclear energy for Member States that choose to have this source in their energy mix’. (CEC 2010)

When the Barroso II Commission (2009-2014) came into office the initiatives of the second half of the Barroso I Commission were continued. The incoming Commissioner for Energy, *Gunther Oettinger* in his hearing before the European Parliament indicated support for the nuclear sector but reiterated the view of the Commission that it was the choice of the national governments to include the nuclear sector in their EU’s national energy mix. “Electricity is the key energy source in a low carbon energy mix...Europe has a duty to support the safe use of nuclear energy e.g by laying down common rules on waste management... (But) The individual Member States remain free to choose their own energy mix” <sup>25</sup>

In June 2010 the Commission launched a consultation on the development of a new energy strategy for the EU from 2011-2020. The core objectives of ensuring safe, secure, sustainable and affordable energy for all, fully compatible with the longer term objective of decarbonisation, the basis of the EPE, remained. Furthermore to achieve these objectives a “...key area will be electricity supply ...(and) if strategic investment decisions are taken rapidly nearly two thirds of European electricity generation could be low carbon in the early 2020s...(but)... massive expansion of renewable energy will be needed (in particular to reach the 20% renewable energy

<sup>22</sup> 12<sup>th</sup> October 2007 launch of the High Level Group on Nuclear Safety and Waste Management

<sup>23</sup> CEC (2007), “The Sustainable Nuclear Energy Technology Platform – a vision report”, D-G for Research, EURATOM, report no EUR 22842

<sup>24</sup> As note 23 CEC 2007:9

<sup>25</sup> Gunther Oettinger, Written answers to EP Committee on Industry, Research and Energy, submitted 22.12.2009

target), alongside other low carbon energy sources including nuclear energy for Member States that choose to have this source in their energy mix”.<sup>26</sup> (CEC, 2010:13)<sup>27</sup>

**‘The Commission is the guardian of the Treaty and must remain vigilant’** (Barroso 2010) – but what does this mean for the future?

‘European Commission remains the guardian of the Treaty and in that role the responsibility of the Commission is to raise the prominence of nuclear energy on the policy debate’.<sup>28</sup>

Safety continues to hold the position of hegemony in the discourse within the Commission supported not just by the current Energy Commissioner but also continues support from Piebalgs now handling the Development portfolio ‘The EU will continue to work steadfastly in the citizens’ best interests, making nuclear sites safe and preventing accidents’ (Piebalgs 2011).<sup>29</sup> The European Council gave the Commission the mandate during the European Council meeting 23/24<sup>th</sup> March 2011 to take forward the Nuclear Stress tests which were initiated following the INES Scale 7<sup>30</sup> incident at the Daiichi nuclear power plant, Fukushima, Japan. The criteria for the tests were defined and approved by the Commission and the European Nuclear Safety Regulators Group (ENSREG)<sup>31</sup> following consultation with the Western European Nuclear Regulators Association (WENRA)<sup>32</sup>. These groups were formed to co-ordinate the actions of the bodies responsible for monitoring the implementation of national nuclear regulatory bodies and work closely with the European Commission. Concerns have been raised amongst environmental groups that this close connection with the Commission may undermine the independence of these groups on advice they may give which was the rationale for their development.

But it is now accompanied by what is arguably a competing hegemonic discourse which links the climate change and the impact of the unsustainable use of energy sources and the role that nuclear energy may play in curbing greenhouse gas emissions. Not only is nuclear energy portrayed as being low carbon energy resource but Barroso returned to the question of the centrality of energy and climate issues and the role of nuclear energy in the development of growth, job creation and energy security in the EU meeting the climate change 2020 targets in his Kiev speech. The credential of the nuclear energy to make a significant contribution to the development of a low carbon energy resource for the EU has grown. But has it grown to the detriment of the renewable energy sector? According to EEA estimates 80% of the total energy subsidies in the EU are paid to coal and nuclear energy with only 19% going to renewables. The existence of the EURATOM Treaty coupled with the

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<sup>26</sup> CEC (2010:13), Stock taking document – Towards a new Energy Strategy for Europe 2011-2020

<sup>27</sup> CEC (2010) “Europe 2020 – a strategy for smart, sustainable and inclusive growth,” COM (2010) 2020, Brussels, 03.03.2010

<sup>28</sup> Barroso (2010) Speech at IAEA International Conference on access to civilian nuclear energy, Paris 08.05.2010

<sup>29</sup> Piebalgs (2011) Speech at Kiev Nuclear Safety Summit, Kiev, 18.04.2011

<sup>30</sup> INES International Nuclear Event Scale – most severe level being 7 – only used for Chernobyl, 1986 and Fukushima, 2011 to date

<sup>31</sup> ENSREG established 2007

<sup>32</sup> WENRA established 1999

competences of the Commission mean that nuclear technology remains a ‘privileged’ energy resource.

Commissioner Oettinger has supported weaker targets for support for renewable energy development than Commissioner Hedegaard<sup>33</sup> as have the governments of Poland and some other Central and Eastern European states. Thies, Greenpeace director of energy policy, cited in Harvey ‘... the Commission will be tempted to overplay the role of energy from coal or nuclear power to appease the likes of Poland and France...’ The divergent positions of the member states of the EU on the question of nuclear energy use have been thrown into stark relief since Fukushima. In the arena of other policies (eg climate action) it has been demonstrated (Barnes 2010) that if the Commission and its President find that they are able to exert influence on the national governments to introduce measures then they are in a strengthened position to take the leadership role in policy developments. The incident at Fukushima undoubtedly has had an impact in the EU but not perhaps as much as might have been expected in some EU states. See tables 1.2. Support continues for its use in France, UK and the Central and Eastern European states where it is considered in the Czech Republic for example to be . ‘...safety aside ...the most robust CO2 free technology... (and as the Czech Republic is able to produce only 15% of its electricity by RES and lacks the resource endowment to produce more) ...the Czech Republic cannot be CO2 free by 2020 without nuclear’.<sup>34</sup> (Svoboda 2012)

Oettinger has been critical of the German decision to abandon its nuclear power programme by 2022, commenting in a Spiegel interview that is ‘...only possible because Germany is networked with its neighbouring states (able to) take excess energy from Germany whenever too much is generated and supply Germany with energy whenever things get tight’. In the same interview Oettinger also criticised the German government for changing course without consulting the other member states<sup>35</sup> (Oettinger 2012b) He further proposed that EU legislation on safety standards related to the construction of nuclear power stations should be introduced.

The re-casting of the energy discourse in terms of de-carbonisation and development of a low carbon economy as in the Energy Roadmap 2050 appears to have taken attention away from the renewables . Although “RES should be the cornerstone of low carbon economy but nuclear power can complement the range of possibilities as it produces two-thirds of carbon free electricity.” (Barroso 2010) and “... the fact is the Commission are going for realistic in their work. Have to assume nuclear power will be playing a role in the electricity mix to 2050...” (Oettinger 2012b)<sup>36</sup>

The European Commission was given competence to negotiate international agreements on various aspects of EU nuclear energy policy. This has been used in the past to enable the Commission to establish close links and agreements with the IAEA and ensure that within the EU the member states have applied and implemented safety

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<sup>33</sup> Harvey F (2011) ‘EU energy chief calls for new renewable energy targets’, Guardian 15<sup>th</sup> December 2011

<sup>34</sup> Svoboda (2012), Speech at The Energy Roadmap 2050 High Level Stakeholders Conference, Brussels 07.02.2012

<sup>35</sup> Oettinger (2012b) Spiegel on line, 12<sup>th</sup> March, 2012

<sup>36</sup> Oettinger (2012a), Speech at The Energy Roadmap 2050 High Level Stakeholders Conference, Brussels 07.02.2012

standards which are consistent with those agreed globally. The introduction of the NSD in 2009 has brought those international standards into effect as a legally binding framework for the EU. In addition the Commission has in recent years concluded nuclear co-operation agreements with major nuclear materials suppliers - US, Canada, Australia, Kazakhstan, co-operation agreements with Uzbekistan, Ukraine and Japan, an agreement on research and technology development with China. Amongst the international agreements negotiated by the Commission following a mandate from the Council is that with Russia on peaceful uses of nuclear energy, particularly as some of the Central and Eastern European member states are operating Russian designed reactors and others are planned.

The Commission President has competence to act on an international level with the President of the European Council eg in Nuclear Security Summit in South Korea, March 2012 where Barroso identified ‘...safety, security and non-proliferation (as) absolute priorities for the European Union. They are clearly interlinked; there is no safety without security and vice-versa....the EU is totally committed to boosting nuclear safety and I urge the strongest possible, common and truly global approach’. (Barroso 2012b) <sup>37</sup> An issue which had formed the basis of his remarks in 2011 ‘Through our specific instruments, such as the EURATOM agreements or the Instrument for Nuclear Safety Co-operation (currently having an overall volume of half a billion euros) we have been aiming at ensuring worldwide the highest standards of nuclear safety and security, respect of non-proliferation commitments and adherence to relevant international conventions.’ (Barroso 2011) <sup>38</sup> Is this an arena of action, as climate change became, where Barroso feels that his ability to influence the policy making process has grown since the beginning of his first Presidency?

### **Conclusions – why does the change in the discourse matter?**

The title is a question – Danger or Answer? Commission President Barroso has stated that a full and frank debate about the nuclear sector is needed amongst the member states of the EU. However it is argued in this paper that this full and frank debate is undermined as tacit support for the use of nuclear technology is apparent from within the European Commission and from President Barroso. The changing nature of the discourse within the Commission is in effect ‘aiding and abetting’ those member states which wish to do so to retain the nuclear energy option. As a result the Commission appears to be abrogating the role assigned to it as an agnostic with regard to the use of nuclear energy. It is losing the opportunity to support an open and unbiased debate within the EU about the use of a technology which is associated with many emotionally charged concerns amongst the general public.

It must be acknowledged however that the competence for the Commission to act on nuclear energy comes from the competences conferred on the Commission by the EURATOM Treaty and the lack of willingness apparent amongst the national governments to repeal this Treaty. The continued existence of the EURATOM Treaty with a separate legal personality from that of the Treaty on the European Union (TEU) supports a privileged position for nuclear energy within the EU as it is searching for an Energy Policy which delivers the objectives of sustainable, competitive and accessible energy. However as there is no sustainable development

<sup>37</sup> Barroso (2012b) Speech at Nuclear Security Summit, Seoul, South Korea, 26-27<sup>th</sup> March

<sup>38</sup> Barroso (2011) Speech at Kiev Summit for safe and innovative use of Nuclear Energy, Kiev 19<sup>th</sup> April

objective included in the EURATOM Treaty as in the TEU the sector continues as one which is not subject to the same objectives as other energy sectors.

EURATOM provides the European Commission with a number of competences which it is using more extensively than in the past, including in the international arena where the Commission is at the forefront of deliberations with the International Atomic Energy Agency on proposals for global nuclear safety governance. The ability of the Commission to introduce and monitor nuclear safety measures is undoubted as is the necessity of such action within the EU27 because of the cross border implications of national breaches of safety. The requirement to ensure that there are high levels of safety promoted within the nuclear industry, at the reactors and ultimately of the public. The Commission has gained credential and credibility from the public as a result the exercise of its competences with regard to safety – public opinion polls suggest there is trust in the Commission to act. In turn this establishes a credential and credibility for the support being given by the Commission to the continued use of nuclear energy.

Increasingly this is coupled with the view expressed in the political discourse that nuclear energy is a low carbon energy resource which fulfils the climate change objectives and also has a potential to provide new employment opportunities and enable international co-operation. In this context the centrality of the use of energy and climate change has become a major catalyst within the Commission for action on both internal energy policy developments and external energy policy. But other energy policy developments which are taking place within the EU to establish the low carbon energy future create difficulties for those states where there is no nuclear programme nor do they wish to use nuclear energy. Electricity has a crucial role in the development of the low carbon economy. The focus of Energy Roadmap to 2050 is on building infrastructure and transnational exchange of energy. The issue thus becomes one about the transfer across borders of nuclear generated electricity. In this context the Commission's role to ensure that the EU's energy policy proposals do not affect the rights of the member states to determine their choice between differing energy sources may be undermined by the support apparent in the Commission for the nuclear industry.

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