

German energy companies are demanding compensation for the closure of nuclear power plants

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On 13 June, the German media reported that the largest energy companies in the country have brought a case to the Federal Constitutional Court for breach of property rights, following the federal government's decision to discontinue the use of nuclear power plants in Germany. If they win, the companies will call for compensation of an amount calculated on the basis of losses resulting from the closure of nuclear power plants. In June 2011, the German government decided to halt the use of nuclear energy throughout the country by 2022, which meant the immediate closure of the eight oldest nuclear power plants in Germany and reducing working hours for the other nine, which belong to the four largest German companies (E.ON, RWE, EnBW, Vattenfall), by an average of 12 years. Complaints regarding financial compensation for shutting down the power plants have so far been brought by the boards of E.ON (€10 billion) and RWE (€2 billion). If Vattenfall and EnBW also bring such claims, the total compensation for shutting down the nuclear plants will amount to €15 billion. The Federal Constitutional Court intends this week to ask the government, parliament, and numerous other institutions for their comments.

Commentary

- It is very likely that the companies will win the compensation they want, because in its decision the government violated their property rights to the nuclear power stations. In addition to E.ON and RWE, the management of the Swedish company Vattenfall has announced the submission of a similar claim for compensation. It is unclear whether EnBW, over 45% of whose shares belong to the federal *Land* of Baden-Württemberg (currently governed by a SPD/Green Party coalition), will decide to lodge a complaint with the Tribunal. The two governing parties support the energy transformation in Germany, and may oppose paying compensation to the companies.
- If the companies' appeals receive a positive response, the German government will be forced to cover their losses for the closure of the nuclear power plants, which will increase the cost of the energy transformation process in the country. Although the German companies are willing to implement the government-announced transformation programme, they will – contrary to the government's predictions – enforce their rights in relation to the negative effects of the policy's implementation. The companies have

already managed to win a court battle for partial refunds of the tax they paid on nuclear fuel. But the final decision on whether the tax is imposed will be taken by the Federal Constitutional Court. If all four corporations succeed in getting all the tax refunded, the German budget would have to pay out an additional amount of €7 billion by 2016, which would hinder the reduction of the federal budget deficit. The Tribunal's decisions will not be known until after the parliamentary elections in autumn 2013.

- Compensation for German companies is another problem for the government, after its current difficulties associated with developing the energy infrastructure which will be necessary to carry out the transition, and with the rising prices of energy from renewable sources, which have reached their highest-ever values in recent months. The government will have to verify its existing strategy for implementing its energy transformation policy, and devise a reliable financial plan to deal with these problems, because the debate on energy transformation is sure to be one of the key themes – next to the euro area crisis – in the campaign for parliamentary elections next year.