

# Act on the Nuclear Waste Management Fund (*Entsorgungsfondsgesetz*, "EntSorgFondsG")

EntsorgFondsG

Date of issue: 27/01/2017

Full citation:

"Act on the Nuclear Waste Management Fund of 27 January 2017 (Federal Law Gazette (*BGBI.*) I pp. 114, 1676), amended by Article 1 of the Regulation dated 16 June 2017 (Federal Law Gazette (*BGBI.*) I p. 1672)"

**As at:** Amended by Art. 1 V of 16 June 2017 I 1672

This Act entered into force on 16 June 2017 by virtue of its promulgation on 16 June 2017 I 1676.

## Footnote

(+++ Wording as at: 16 June 2017 +++)

The Act was adopted by the *Bundestag* as Article 1 of the Act of 27 January 2017 I 114 with the approval of the Federal Council *Bundesrat*. Pursuant to Art. 10 of this Act, it enters into force on the day on which the European Commission grants state aid approval, or states with binding effect that such approval is not necessary; the Federal Ministry of Economics and Energy will announce the date of entry into force in the Federal Law Gazette (*Bundesgesetzblatt*) (for entry into force, see as-at date).

## Section 1 Establishment, purpose and registered office

(1) There is hereby created an incorporated foundation under public law having the designation "Fund for the Financing of Nuclear Waste Management" (*Fonds zur Finanzierung der kerntechnischen Entsorgung*). This Fund comes into existence upon this Act entering into force.

(2) The Fund's purpose is the financing of the costs for the safe disposal of any existing or future radioactive waste from the commercial use of nuclear power for the generation of electricity in Germany.

(3) The Fund's registered office is Berlin.

## Section 2 Definitions

(1) The contributor is the operator of one or more of the installations listed in Schedule 1 for the fission of nuclear fuels for the commercial generation of electricity, even if the relevant installation is no longer in operation. The contributor in relation to the radioactive waste attributed to the nuclear power test plant in Kahl is RWE AG, Essen. The contributor in relation to the radioactive waste attributed to the multi-purpose research reactor in Karlsruhe is EnBW Energie Baden-Württemberg AG, Karlsruhe.

(2) Waste disposal costs are the costs of the interim storage and final storage of radioactive waste and any measures associated therewith that the Fund must reimburse pursuant to the provisions of the Nuclear Waste Management Transfer Act (*Entsorgungsübergangsgesetz*), the Repository Site Selection Act (*Standortauswahlgesetz*), the Nuclear Energy Act (*Atomgesetz*) and the regulations enacted under the Nuclear Energy Act. The waste disposal costs also include any payments made by the contributors to Endlager Konrad Stiftungsgesellschaft mbH.

(3) Cash denotes liquid funds.

## Section 3 Tasks and organisation of the Fund

(1) To achieve the purpose stipulated in Section 1(2) above, the Fund shall reimburse the German Federal Government for the costs incurred by the German Federal Government for the safe disposal of any existing or

future radioactive waste arising from the commercial use of nuclear power for the generation of electricity in Germany, from the time the disposal obligation under the Nuclear Waste Management Transfer Act (*Entsorgungsübergangsgesetz*) transfers, and shall invest the funds transferred for this purpose.

(2) The Fund's executive bodies are the board of trustees and the management board.

#### **Section 4 Board of trustees**

(1) The board of trustees resolves on any and all fundamental issues associated with the fulfilment of the foundation's purpose stipulated in Section 1(2) above and the Fund's tasks under Section 3(1) above. In doing so, the board of trustees may consult with the *Bundesbank*. The board of trustees supervises the activities of the management board. Further details are set out in the charter.

(2) The board of trustees is made up of representatives from the Federal Ministry of Finance, the Federal Ministry of Economics and Energy, and the Federal Ministry for the Environment, Nature Conservation, Construction and Nuclear Safety as well as members of the *Bundestag*.

(3) The number of representatives from the *Bundestag* shall be the lowest possible that would enable each parliamentary group to nominate at least one member while at the same time maintaining the requisite majority ratio and reflecting the composition of the plenum.

(4) The number of representatives from the *Bundestag* shall not exceed the number of representatives from the German Federal Government. The members of the board of trustees are appointed by the federal ministries specified in paragraph (2) above and the *Bundestag* for the duration of one legislative term. A deputy shall be appointed for each member in the same manner. Reappointment is permitted.

(5) The board of trustees elects a chairperson and a deputy chairperson. The board of trustees passes its resolutions with a simple majority vote of its members.

#### **Section 5 Management board**

(1) The management board implements the resolutions of the board of trustees and manages the foundation's business. The management board passes its resolutions with a simple majority vote of its members. The management board is entitled to engage external service providers. Further details are set out in the charter.

(2) The management board consists of three members who have significant experience in the investment and management of major asset portfolios. The members of the management board are appointed by the board of trustees. The members of the management board must not, at the same, time be members of the board of trustees.

(3) The management board represents the foundation in and out of court. Further details are set out in the charter.

(4) On the basis of the general market development, the management board presents the fundamental orientation of its investment decisions to the board of trustees for decision. The management board updates its investment policy at least once a year.

(5) The German Federal Government may, by way of directive, disallow specific investments proposed. The Fund's reporting obligations are set forth in Sections 11 and 12 below and in the charter.

#### **Section 6 Charter**

The board of trustees shall adopt a charter. Said charter shall lay down the specifics of the Fund's organisation and the performance of its tasks.

#### **Section 7 Fund assets**

(1) The Fund receives payments from the contributors for the discounted future waste disposal costs and the risk premium in accordance with the following provisions.

(2) Contributors are obligated to pay to the Fund in cash, on 1 July 2017, the amount specified in Schedule 2, which amount corresponds to the discounted future waste disposal costs (base amount). The amount specified in Schedule 2 shall bear interest at a rate of 4.58 per cent per annum as from 1 January 2017. Any waste disposal costs which a contributor incurs during the period between 1 January 2017 and the due date pursuant to sentence 1 will be deducted from the amount specified in Schedule 2 to the extent that the contributor proves such expenses to the Fund. Where the contributor is in default of payment, section 288(2) of the Civil Code (*Bürgerliches Gesetzbuch*) shall apply analogously, sentence 2 notwithstanding.

(3) The contributor may pay to the Fund, in cash, the risk premium specified in Schedule 2 plus interest at a rate of 4.58 per cent per annum, calculated for the period between the due date for payment of the base amount under paragraph (2) sentence 1 above and the day when said risk premium is paid in, up to the payment date pursuant to paragraph (2) above, no later however than by 31 December 2022.

Upon payment of said risk premium, the contributor's obligation to pay any additional contributions to the Fund pursuant to Section 8(2) below will end.

(4) For the total amount, consisting of the individual amounts pursuant to the preceding paragraphs (2) and (3), the Federal Ministry of Economics and Energy may, with the consent of the Federal Ministry of Finance, agree with the respective contributor on payment by instalments. The last instalment shall be paid no later than 31 December 2026. The amount outstanding at any one time shall bear interest at a rate of at least 4.58 per cent per annum. For the effectiveness of such instalment agreement, the respective contributor shall furnish collateral to secure its claim. The first instalment shall be at least 20 per cent of the entire amount. Offsetting against other claims and the assertion of any right of retention are excluded.

### **Section 8 Early payment by instalments; obligation to make additional contributions**

(1) Where, as a consequence of an instalment agreement, it appears likely, prior to payment of the last instalment, that the funds already available to the Fund will not suffice to cover, during the next two years, the costs that the Fund is obligated to reimburse pursuant to Section 10 below, the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*) shall request all contributors with whom an instalment agreement has been concluded to make early payments of individual or all outstanding instalments within a period that is fair to the contributors. The instalment agreement must contain an obligation to this effect. Where several contributors have entered into instalment agreements, the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*) shall request all contributors to make early payments to the extent required in each case.

(2) Where a contributor has paid in the full base amount for a nuclear power plant as per Schedule 2, but not the full risk premium for the same nuclear power plant, and it appears likely that the funds available to the Fund will not suffice to cover, during the next ten years, the costs to be reimbursed by the Fund in accordance with Section 10 below, the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*) will request that the respective contributor make an additional contribution to the extent required. The required extent shall be determined by putting the expected underfunding of the Fund in relation to the percentage share of the unpaid portion of the respective contributor in the total risk premium for all nuclear power plants listed in Schedule 2. Sentence 1 does not apply if the contributor enters into a valid instalment agreement pursuant to Section 7(4) above and has paid the first instalment. An additional contribution in accordance with sentence 1 may be demanded for the first time after the date specified in Section 7(2) sentence 1 above at the earliest.

(3) The Fund is not permitted to raise any loans. To ensure, from the onset, the Fund's ability to act, the German Federal Government may grant the Fund a one-off interest-bearing liquidity loan during 2017, which must be paid back the same year. Further payments to the Fund from the federal budget are not permitted.

### **Section 9 Investment of funds**

(1) The Fund shall set up separate accounts for each contributor. Any payments made in accordance with Section 7(2) to (4) above and Section 8(1) and (2) above shall be posted separately to these accounts. Until such time as the funds as per Section 10 below are used, the funds available to the Fund shall be invested in accordance with the following paragraphs (2) to (4).

(2) The Federal Ministry of Finance may, in agreement with the Federal Ministry of Economics and Energy and the Federal Ministry for the Environment, Nature Conservation, Construction and Nuclear Safety, adopt

investment guidelines for the Fund by way of a general administrative directive. Said investment guidelines shall be published in the Federal Gazette (*Bundesanzeiger*). By means of the investment guidelines, it must be ensured that the Fund's investment decisions comply with the general investment principles for capital investments pursuant to section 124(1) of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*). In addition, the investment guidelines may contain stipulations for:

1. the weighting of the various asset classes;
2. the regional orientation of new investment decisions; and
3. the maximum amount of individual investments.

(3) As to the permissible asset classes, the investment guidelines and the investment policy of the Fund shall be based on section 215(2) of the Insurance Supervision Act (*Versicherungsaufsichtsgesetz*).

(4) The Fund is not subject to corporate income tax or trade tax. No tax shall be withheld on any capital yields of the Fund. Where capital yields tax has nevertheless been withheld and paid, the party obliged to withhold tax must insofar amend the tax return. Payments and benefits of the Fund are not subject to any capital yields tax deduction. For the purpose of double taxation treaties, the Fund shall be deemed a German tax resident who is subject to German taxation.

### **Section 10 Use of funds**

(1) The funds of the Fund may only be used to fulfil the purpose of the Fund pursuant to Section 1(2) above and in accordance with Section 3(1) above.

(2) The Fund shall bear its own administrative expenses. Administrative expenses include, in particular, personnel costs, the costs of financial and economic planning pursuant to Section 11 below as well as the ongoing expenses of the board of trustees and the management board.

(3) The Fund shall bear any and all costs which the Federal Office of Economics and Export Control (*Bundesamt für Wirtschaft und Ausfuhrkontrolle*) incurs in order to perform its responsibilities under this Act and under the Act on Transparency regarding the Costs of Closing and Dismantling Nuclear Power Plants and of Conditioning Nuclear Waste (*Gesetz zur Transparenz über die Kosten der Stilllegung und des Rückbaus der Kernkraftwerke sowie der Verpackung radioaktiver Abfälle*).

### **Section 11 Financial and business planning**

(1) The Fund prepares a financial and business plan for each calendar year. Solely for the years 2017 and 2018, a combined financial and business plan shall be prepared. The financial and business plan shall always include:

1. short-term planning for the following calendar year;
2. medium-term planning for the following five calendar years; and
3. long-term planning for the following ten calendar years.

The financial and business plan must be updated on an annual basis.

(2) For the entire foreseeable investment and financing period, scenarios must be prepared, which must be updated every three years.

(3) The plans pursuant to the preceding paragraphs (1) and (2) are subject to the approval of the Federal Ministry of Economics and Energy in agreement with the Federal Ministry of Finance and the Federal Ministry for the Environment, Nature Conservation, Construction and Nuclear Safety. They include, in particular, a calculation regarding the appropriateness of the Fund's financial resources, based on past and future cost and interest trends.

(4) The German Federal Government will inform the Fund in good time about the planned cost implications of any future waste disposal measures, so that the Fund can use this as a basis for its investment planning and the timely liquidity management of its resources. Three months before the beginning of each calendar year, the

German Federal Government will inform the Fund about the waste disposal measures planned for the next three calendar years, and the expected costs, based on federal budget planning.

## Section 12 Financial reporting

(1) The provisions that apply to the federal administration shall apply analogously to the budgetary, treasury and accounting system as well as to the financial reporting of the Fund.

(2) The Fund shall regularly report to the Federal Ministry of Economics and Energy, the Federal Ministry of Finance, and the Federal Ministry for the Environment, Nature Conservation, Construction and Nuclear Safety on its current business development and prepare its annual accounts at the end of each calendar year.

(3) The annual accounts shall show the performance of the capital investments made under Section 9 above, the foundation's portfolio, including its receivables and liabilities as well as its income pursuant to Section 7 above and its expenses pursuant to Section 10 above. The obligations of the Fund as a direct federal legal entity under public law under sections 108 and 109 of the Federal Budgetary Regulations (*Bundshaushaltsordnung*) remain unaffected.

(4) The Fund's budgetary and business management will be audited by the Federal Audit Office (*Bundesrechnungshof*).

## Section 13 Supervision

The Fund is subject to the regulatory supervision of the Federal Ministry of Economics and Energy to be exercised in agreement with the Federal Ministry of Finance and the Federal Ministry for the Environment, Nature Conservation, Construction and Nuclear Safety.

## Section 14 Dissolution

(1) The Fund shall be dissolved if its funds have been exhausted or once its purpose has been achieved, whichever occurs earlier.

(2) Any assets remaining after the Fund's dissolution shall devolve to the German Federal Government.

## Section 15 Power to issue ordinances

(1) By way of an ordinance that does not require the approval of the Federal Council (*Bundesrat*), the Federal Ministry of Economics and Energy is hereby authorised, in agreement with the Federal Ministry of Finance and the Federal Ministry for the Environment, Nature Conservation, Construction and Nuclear Safety, to alter the payment amounts specified in Schedule 2, taking into account the difference between the expenses of the contributors calculated for the years 2015 and 2016 and the actual expenses of the contributors confirmed by a chartered accountant (*Wirtschaftsprüfer*) or a firm of chartered accountants (*Wirtschaftsprüfungsgesellschaft*).

(2) By way of an ordinance that does not require the approval of the Federal Council (*Bundesrat*), the Federal Ministry of Economics and Energy, in agreement with the Federal Ministry of Finance, will stipulate further details regarding the collection of payments under Section 7(2) to (4) above and Section 8 above.

## Schedule 1

(Source: Federal Law Gazette (*BGBl.*) I 2017, p. 118)

### Installations under Section 2(1)

Nuclear power plant	
Gundremmingen A nuclear power plant	KRB A
Obrigheim nuclear power plant	KWO
Würgassen nuclear power plant	KWW
Stade nuclear power plant	KKS

Biblis A nuclear power plant	KWB A
Biblis B nuclear power plant	KWB B
Philippsburg 1 nuclear power plant	KKP 1
Philippsburg 2 nuclear power plant	KKP 2
Brunsbüttel nuclear power plant	KKB
Neckarwestheim 1 nuclear power plant	GKN 1
Unterweser nuclear power plant	KKU
Krümmel nuclear power plant	KKK
Isar 1 nuclear power plant	KKI 1
Mülheim-Kärlich nuclear power plant	KMK
Grafenrheinfeld nuclear power plant	KKG
Grohnde nuclear power plant	KWG
Brokdorf nuclear power plant	KBR
Gundremmingen B nuclear power plant	KRB B
Gundremmingen C nuclear power plant	KRB C
Isar 2 nuclear power plant	KKI 2
Neckarwestheim 2 nuclear power plant	GKN 2
Emsland nuclear power plant	KKE
Lingen nuclear power plant	KWL

## Schedule 2

(Source: Federal Law Gazette (*BGBl.*) I 2017, p. 1672)

### Schedule 2 Payment amounts pursuant to Section 7

Nuclear power plant		Base amount	Risk premium	Total amount
		EUR (1)	35.47 per cent* EUR (2)	EUR (1)+(2)
Gundremmingen A nuclear power plant	KRB A	180,462,760	64,001,328	244,464,088
Obrigheim nuclear power plant	KWO	305,049,656	108,186,215	413,235,871
Würgassen nuclear power plant	KWW	365,304,281	129,555,588	494,859,869
Stade nuclear power plant	KKS	404,296,273	143,384,143	547,680,416
Biblis A nuclear power plant	KWB A	906,441,239	321,470,440	1,227,911,679
Biblis B nuclear power plant	KWB B	979,099,573	347,238,802	1,326,338,375
Philippsburg 1 nuclear power plant	KKP 1	678,670,670	240,691,342	919,362,012
Philippsburg 2 nuclear power plant	KKP 2	994,290,682	352,626,347	1,346,917,029
Brunsbüttel nuclear power plant	KKB	678,811,079	240,741,138	919,552,217
Neckarwestheim 1 nuclear power plant	GKN 1	609,939,458	216,315,738	826,255,196
Unterweser nuclear power plant	KKU	1,043,788,691	370,180,873	1,413,969,564
Krümmel nuclear power plant	KKK	1,003,223,216	355,794,280	1,359,017,496
Isar 1 nuclear power plant	KKI 1	672,667,592	238,562,344	911,229,936

Mülheim-Kärlich nuclear power plant	KMK	399,611,374	141,722,638	541,334,012
Grafenrheinfeld nuclear power plant	KKG	1,040,515,194	369,019,923	1,409,535,117
Grohnde nuclear power plant	KWG	1,079,587,631	382,877,009	1,462,464,640
Brokdorf nuclear power plant	KBR	1,079,567,213	382,869,768	1,462,436,981
Gundremmingen B nuclear power plant	KRB B	975,110,630	345,824,119	1,320,934,749
Gundremmingen C nuclear power plant	KRB C	1,001,112,021	355,045,542	1,356,157,563
Isar 2 nuclear power plant	KKI 2	989,138,467	350,799,108	1,339,937,575
Neckarwestheim 2 nuclear power plant	GKN 2	925,117,556	328,094,017	1,253,211,573
Emsland nuclear power plant	KKE	1,127,492,508	399,866,529	1,527,359,037
Lingen nuclear power plant	KWL	48,961,394	17,364,215	66,325,609
Kahl nuclear power test plant	VAK	33,888,524	12,018,605	45,907,129
Karlsruhe multi-purpose research reactor	MZFR	7,402,837	2,625,425	10,028,262
<b>Total</b>		<b>17,529,550,519</b>	<b>6,216,875,476</b>	<b>23,746,425,995</b>

\* The risk premium figure was calculated using the following formula: "23.3 / 17.2 - 100%". The calculation of the total amounts stated was based on the exact figure of the risk premium. The figure of "35.47 per cent" shown in the table has been rounded up to two decimal places.

