COUNCIL DECISION

of 2 March 1987

approving an amendment to the Statutes (articles of association) of the Joint Undertaking 'Société belgo-française d'énergie nucléaire mosane' (SEMO)

(87/165/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 50 thereof,

Having regard to the proposal from the Commission,

Whereas, by Decision 74/590/Euratom [1], the Council established the 'Société belgo-française d'énergie nucléaire mosane' (SEMO) as a joint undertaking;

Whereas the extraordinary general meeting of the Joint Undertaking held on 20 December 1985 decided to amend the Statutes in order to bring them into line with new provisions introduced into Belgian commercial law by the Laws of 5 December 1984 and 21 February 1985;

Whereas the amendment decided upon does not affect the provisions governing the Joint Undertaking;

Whereas they should consequently be approved,

HAS ADOPTED THIS DECISION:

Article 1

The amended Statutes of the 'Société belgo-française d'énergie nucléaire mosane' (SEMO), as they appear in the Annex, are hereby approved.

Article 2

This Decision is addressed to the Member States and to the 'Société belgo-française d'énergie nucléaire mosane' (SEMO).

Done at Brussels, 2 March 1987.

For the Council

The President

P. DE KEERSMAEKER

[1] OJ No L 325, 5. 12. 1974, p. 9.

ANNEX

(TRANSLATION)

Amendment of the Statutes (articles of association) of the 'Société belgo-française d'énergie nucléaire mosane' (SEMO) Joint Undertaking

The text of the Statutes is hereby replaced by the following:

TITLE I

FORM — NAME — OBJECTS — SEAT — DURATION

Article 1

A *société anonyme* is hereby set up with the name 'Société belgo-française d'énergie nucléaire mosane' and the abbreviated designation 'SEMO'.

The two designations may be used either together or in isolation.

Article 2

The objects of the company shall be, within the framework of the joint Franco-Belgian programme for the construction of nuclear electricity generating stations on both sides of the Franco-Belgian border, to construct in the territory of Belgium, Unit One of the Tihange (Liège) nuclear power station, to equip and operate that power station and, generally, to perform all commercial, industrial, real estate and financial operations, relating directly or indirectly to those objects and, in particular, to train specialists to operate nuclear power stations.

The objects of the company may be altered by a general meeting of the shareholders in the manner and subject to the conditions laid down by Article 70a of the 'lois coordonnées sur les sociétés commerciales' (coordinated laws on commercial companies).

Article 3

The company's registered office shall be situated at 1 000 Brussels.

It is currently located at 41, rue de la Pépinière.

It may be transferred to any other place in Greater Brussels by resolution of the Board of Directors.

Article 4

The company may establish, by resolution of the Board of Directors, administrative offices, works, operating premises, branches or agencies in both Belgium and abroad.

Article 5

The company shall be formed for an indefinite term.

It may be dissolved at any time by resolution of a general meeting acting in the manner and subject to the conditions laid down in respect of amendments to the Statutes.

TITLE II

CAPITAL

Article 6

The capital shall be 3 000 million francs.

It shall be divided into 300 000 shares carrying no indication of any nominal value, but each representing one/300 000th of the company assets.

Half of the capital shall be subscribed by the *société anonyme* 'Electronucléaire', situated in Brussels, or by natural or legal persons previously authorized by it, and half by the publicly-owned industrial and commercial body 'Electricité de France' (EDF), situated in Paris, or by natural or legal persons previously authorized by it.

When the company was set up, in accordance with an instrument formally drawn up by Maître André Scheyven, notary in Brussels, on 31 May 1968, the capital was fixed at 100 million francs, divided into 10 000 shares of 10 000 francs each, all subscribed in cash.

By a formal record drawn up by Maître André Scheyven, aforementioned notary, on 12 December 1968, the capital of the company was increased to 500 million francs by the creation of 40 000 shares of 10 000 francs each, all subscribed in cash.

By a formal record drawn up by Maître André Scheyven, aforementioned notary, on 6 November 1969, the capital was increased to 1 500 million francs, by the creation of 100 000 shares of 10 000 francs each, all subscribed in cash.

By a formal record drawn up by Maître André Scheyven, aforementioned notary, on 29 June 1973, the capital was increased to 2 500 million francs, by the creation of 100 000 shares of 10 000 francs each, all subscribed in cash.

By a formal record drawn up by Maître André Scheyven, aforementioned notary, on 6 December 1974, the capital

was increased to 3 000 million francs, by the creation of 50 000 shares of 10 000 francs each, all subscribed in cash.

By a formal record drawn up by Maître Jean-Luc Indekeu, notary in Brussels, on 20 December 1985, the nominal value of the shares was deleted.

Article 7

The capital of the company may be increased or reduced from time to time by resolution of a general meeting acting in accordance with the conditions required for amendments to the Statutes and in compliance with the provisions of the 'lois sur les sociétés commerciales' (laws on commercial companies).

New shares to be subscribed in cash shall be offered on a preferential basis to shareholders, in proportion to the stake in the capital that their shares represent. The general meeting shall stipulate the deadline for exercising the right to preferential subscription. It shall confer on the Board of Directors all the necessary powers for implementing the resolutions passed and laying down the conditions for exercising the right to preferential subscription.

Nevertheless, by way of derogation from the foregoing, the general meeting may, in the interests of the company, in accordance with the conditions required for amending the Statutes and in compliance with the applicable legal provisions, limit or suspend the right to preferential subscription.

Resolutions of a general meeting concerning any increase or reduction of capital referred to in this Article may not, under any circumstances or for any reason whatsoever, derogate from the principle of equal participation enshrined in the third subparagraph of Article 6.

Article 8

Payments in cash or in kind called for in respect of shares that are not yet fully paid up shall be made in the places and on the dates determined by the Board of Directors. Calls shall also apply to all the shares owned by the shareholder.

Calls not paid one month after the month in which they fall due shall bear interest, calculated for each day of delay after the due date, at the special rate fixed by the Banque Nationale de Belgique for current-account advances, increased by 1 %, without any formal notice being required.

The Board of Directors may also, where formal notice served by registered letter does not produce the desired result within one month, declare the forfeiture of the shareholder and, while respecting the equality of the shareholders, sell the shares upon which the calls have not been paid.

The net proceeds of sale shall be offset for the benefit of the company against what it is owed in principal and interest by the defaulting shareholder, without prejudice to the company's right to claim from him any amounts still owed and compensation for any damages.

Article 9

The Board of Directors may authorize shareholders to pay their shares in advance ; in such cases, it shall stipulate the conditions in which advance payments are allowed.

Article 10

Shares shall be, and shall continue to be, registered even after they have been fully paid up.

Article 11

Shares may be transferred only to natural and legal persons approved in advance by the Board of Directors, which shall not be required to give its reasons should it decide to withhold such approval.

Article 12

The Board of Directors may suspend the exercise of the rights attached to shares which are the subject of joint ownership, a usufruct or pledge, until a single person has been appointed as the holder of those shares with regard to the company.

Article 13

The company may issue mortage or other bonds, by a resolution of the Board of Directors which shall stipulate their type and rate of interest, the method and period of reimbursement and any other conditions of issue.

It may issue convertible bonds or bonds carrying a subscription right, in accordance with the conditions laid down by Articles 101a *et seq.* of the 'lois coordonnées sur les sociétés commerciales', by resolution of a general meeting acting in accordance with the provisions of Article 7 of the Statutes.

Where convertible bonds or bonds carrying a subscription right are issued, shareholders shall have a right to preferential subscription in proportion to the stake in the company capital represented by their shares ; exercise of the right to preferential subscription shall be organized in accordance with the applicable legal provisions.

A general meeting of shareholders may, in the interests of the company, limit or suspend the right to preferential subscription in accordance with the conditions laid down by law.

The provisions of Article 12 shall apply to bonds issued by the company.

TITLE III

ADMINISTRATION AND AUDITING OF THE COMPANY

Article 14

The company shall be administered by a Board composed of an even number of Directors, not less than four and not more than 16, who shall be appointed for a term of office of not more than six years by the general meeting of shareholders and may be dismissed by the latter.

Directors shall be eligible for re-election. They shall retire and be replaced in the order of their seniority of office, by drawing lots at a meeting of the Board.

The duties of retiring Directors who have not been re-elected shall cease as soon as the ordinary general meeting is closed.

The Board shall appoint from among its members a chairman and a vice-chairman, who may be elected for their full term of office as Directors, subject to resignation or dismissal.

Article 15

Should one or more Directorships fall vacant, the remaining members of the Board may temporarily fill such vacancies until the following general meeting, which shall elect permanent successors.

Article 16

Directors shall not enter into any personal obligation relating to the commitments of the company. They shall be responsible to the company for the execution of their duties and for any errors committed in their management, in particular any act that is *ultra vires* the objects of the company, these Statutes or resolutions passed by a general meeting.

Article 17

The Board of Directors shall meet at the company's registered office or at the place stated in the notice convening the meeting, which shall also contain a summary agenda.

It shall meet when convened by the chairman, or upon requisition by one third of its members, as often as the interests of the company so require.

Meetings shall be presided over by the chairman or, in the event of his absence, by the vice-chairman or, in the absence of the latter, by a Director appointed by his colleagues.

The Board shall also appoint a natural or legal person to act as Secretary, who need not be a shareholder.

Article 18

Resolutions shall be valid only if not less than half the members in office are present in person or by proxy; furthermore, there shall, in any event, be at least two Directors present in person.

Resolutions shall be passed by a majority of the votes of the members present in person or by proxy. However, resolutions relating to investment of available monies, authorization of loans and advances, sureties and guarantees of bills of exchange, borrowings by arranging of credit facilities or otherwise, methods of implementing loans, orders in excess of 50 million francs, acquisitions, exchanges of immovable property or rights therein, and the sale of such property and rights as may be considered to be no longer required, the formation of any company or firm and the contribution of assets to any company or firm already existing shall be valid only if passed by a majority of two thirds of the votes of members present in person or by proxy.

A Director may, exceptionally, vote by post on matters specified in advance. He may also, even by letter, telegram or telex, appoint one of his colleagues to act as his proxy at any meeting; a Director may not, however, act as proxy for more than one of his colleagues.

Each Director shall have one vote, save where he acts as proxy for one of his colleagues, in which case he shall have two votes. In the case of equality of votes, the chairman of the meeting shall have a casting vote. If, however, by reason of the number of Directors in office, the Board may pass valid resolutions with only two of its members present in person and no other Director has appointed a proxy, resolutions shall be passed by unanimous vote.

The entries in the minutes of each meeting and in the issued extracts thereof showing the names of the Directors present in person or by proxy and of those absent and not so represented, shall constitute adequate proof to third parties of the number and appointment of the Directors in office and of the powers of Directors who have been authorized by absent colleagues to represent them.

Article 19

Proceedings of the Board of Directors shall be recorded in minutes which shall be kept in a special minute-book and signed by the chairman of the meeting and the Secretary or by two Directors.

Copies or extracts of such minutes for production in a court of law or elsewhere shall be certified by two Directors, who need not have been present at the relevant meeting.

Article 20

The general meeting may award Directors a fixed allowance or attendance fees, to be charged against overheads.

The Board of Directors shall also be entitled to award Directors entrusted with special duties or tasks specific remuneration, to be charged against overheads.

Article 21

The Board of Directors shall have full power to act on behalf of the company and to perform or authorize any or all acts and transactions relating to the objects of the company, save as reserved by law or by these Statutes to the general meeting.

Article 22

The Board of Directors may set up a management committee, whose members may or may not be Directors. It shall appoint the chairman and vice-chairman thereof. It shall determine the powers and rules of procedure of such a committee and the remuneration of its members, to be charged against overheads.

The Board of Directors may also delegate the conduct of the day-to-day business of the company to one or two Managing Directors, chosen from among its members or otherwise, who shall be responsible for the execution of Board resolutions; it may appoint and dismiss such Managing Directors, determine their remuneration and allocate their duties.

It may also entrust the management of all, part or a special area of company business to one or more managers, chosen from among its members or otherwise, who may or may not be shareholders.

The Board of Directors and the Managing Directors, in the context of the day-to-day management of the company, may also delegate specific special powers to one or more persons of their choice.

Article 23

All documents concerning the company which have been resolved upon or authorized by the Board, including those involving a public or law official, and legal proceedings brought or defended by the company shall be signed either by the chairman of the Board, or by his vice-chairman, or by two Directors, acting jointly, who need not give proof to third parties of a resolution of the Board of Directors, or, within the limits of the powers delegated to them, by any agents who have received specific special powers.

Article 24

Auditing of the company's accounts shall be entrusted to at least one Auditor, who shall be appointed by the general meeting from among the members of the 'Institut des Réviseurs d'Entreprises' (Institute of Company Auditors) for a three-year term of office; auditors may be re-elected or dismissed by the general meeting.

Where, as a result of death or for any other reason, the company no longer has an Auditor, the Board of Directors shall convene a general meeting forthwith in order to fill the vacancy.

The duties of a retiring Auditor who has not been re-elected shall cease immediately after the ordinary general meeting.

The duties and powers of Auditors shall be those assigned to them by the 'lois coordonnées sur les sociétés commerciales'.

The general meeting shall determine the remuneration of Auditors according to the auditing services they perform. The Board of Directors may, however, award Auditors remuneration in respect of special tasks; in that case, it shall inform the following general meeting accordingly through the annual report.

Article 25

The general meeting may also elect an alternate Auditor for the same term as that of the regular Auditor, in accordance with the rules laid down for the election of the latter. In the event of death of the regular Auditor or as soon as the Board of Directors establishes that he is prevented from carrying out his duties, the alternate shall replace him for the duration of his unavailability. Should such unavailability be permanent, the alternate shall complete the term of office of the regular Auditor.

TITLE IV

GENERAL MEETINGS

Article 26

General meetings shall have the powers determined by the law and these Statutes.

Article 27

General meetings shall be held at the registered office of the company or at the place specified in the notice of meeting.

General meetings shall be convened at least once a year, at 3 p.m. on the last working day in June or, if that day is a Saturday, on the first working day thereafter.

Article 28

Ordinary and extraordinary general meetings shall be convened by the Board of Directors, or, where the latter fails to do so, by the Auditor.

A general meeting shall be convened at the request of one or more shareholders proving that they own one fifth of the capital of the company.

Article 29

General meetings shall be convened at not less than 15 days' prior notice by registered letter addressed to each of the shareholders, who shall all be known by name. This period may be reduced to eight days in cases where an ordinary meeting is convened extraordinarily or a second notice is given.

The notice shall state the agenda for the meeting.

Article 30

Persons who have held shares for not less than five days before the date of a meeting may, without any preliminary formalities, attend that meeting or appoint a proxy to represent them thereat.

Article 31

No person may represent a shareholder at a meeting unless he is himself a member of the meeting or the lawful representative of a member thereof.

A company or firm may validly be represented by any agent especially appointed for the purpose, who need not personally be a shareholder of this company.

The form of the power of attorney shall be determined by the body or person convening the meeting.

Article 32

An attendance list shall be drawn up, setting out the identity of the shareholders present in person or by proxy and the number of shares owned by each of them. It shall be duly signed by the shareholders present and by the agents of shareholders who have appointed proxies, certified by the officers and annexed to the minutes of the meeting.

Article 33

The meeting shall be presided over by the chairman of the Board of Directors or, in the event of his absence, by the vice-chairman of that Board or, in the absence of the latter, by a Director appointed for that purpose by the Board.

The duties of scrutineer shall be performed by two shareholders present and willing, chosen by the meeting on a proposal by the Chairman.

The chairman shall appoint the Secretary, who need not be a shareholder.

Article 34

Each share shall carry the right to one vote within the limits imposed by law.

Article 35

An ordinary general meeting (whether annual or convened extraordinarily) shall be validly held only if the number of shareholders comprising it represents not less than one quarter of the capital. This quorum shall be calculated by reference to the total shares forming the capital, less those in respect of which, pursuant to any law or regulation, there is no right of vote.

If the quorum of one quarter is not attained, the general meeting shall be convened afresh in the manner provided in Article 29.

The proceedings at the second general meeting shall be valid irrespective of the number of shares represented, but resolutions passed thereat shall relate only to items on the agenda for the first meeting.

Resolutions of an ordinary general meeting shall be passed by a majority of the votes of members present in person or by proxy, the number of votes to which each member is entitled being calculated as specified in Article 34.

Abstentions shall not be counted in the vote.

An extraordinary general meeting may be duly held, only if the resolutions to be proposed thereat are specially indicated in the notice of meeting and not less than one half of the capital is represented.

Failing such quorum, a second meeting shall be convened, at which the proceedings shall be valid irrespective of the proportion of the capital represented by the members present in person or by proxy.

In either case, resolutions shall be passed by a majority of two thirds of the votes cast.

Unless otherwise decided by the meeting, voting shall be by a show of hands or by roll-call.

In an election where no candidate gains a majority of votes, a second ballot shall be conducted between the candidates who have obtained the largest number of votes. In the event of an equality of votes at the second ballot, the older candidate shall be elected.

Article 36

Where a general meeting has to decide on an amendment to the Statutes, it may be duly held only if the persons present at the meeting represent not less than one half of the capital. Failing such quorum, a second meeting shall be convened at which the proceedings shall be valid irrespective of the proportion of the capital represented.

No amendment to the Statutes shall be accepted unless the relevant resolution is passed by a majority of three quarters of the votes.

Where discussion of such matters is subject by law to more stringent conditions, the meeting shall be duly constituted, and may validly act, only if the attendance and voting conditions required by the 'lois coordonnées sur les sociétés commerciales' are satisfied.

Article 37

The agenda shall be drawn up by the Board of Directors if the meeting is convened by it, or by the Auditor if the meeting is called by him.

It shall contain only proposals from the Board or the Auditor and proposals forwarded to the Board at least six days before the date of the notice convening the meeting by shareholders representing not less than one fifth of the capital.

The general meeting shall discuss only those items on the agenda.

Article 38

Whatever the items on the agenda, the Board of Directors shall be entitled, after discussions have begun, to prorogue for a maximum of three weeks any general meeting, whether ordinary or extraordinary.

Such prorogation, which shall be notified before the end of the meeting and mentioned in the minutes of the latter, shall annul any decisions taken. It may take place only once.

The shareholders shall be convened afresh before the date fixed by the Board of Directors with the same agenda.

Article 30 of these Statutes shall apply to such second meetings.

The second general meeting shall take final decisions on the items on the agenda.

Article 39

Proceedings of the general meeting shall be recorded in minutes which shall be kept in a special minute-book and signed by the chairman, the Secretary, the scrutineers and any shareholder who so requests.

Copies or extracts of such minutes for production in a court of law or elsewhere shall be valid if certified by the chairman or by two Directors.

TITLE V

SCHEDULES OF ASSETS AND LIABILITIES AND ANNUAL ACCOUNTS, PROFITS AND DISTRIBUTION

Article 40

The financial year shall run from 1 January to 31 December each year.

The Board of Directors shall draw up a schedule of assets and liabilities and, in accordance with the law, the annual accounts, which shall comprise a balance sheet, a profit and loss acount and an annex.

It shall also draw up an annual report. Not later than one month before the date of the general meeting, the annual report, together with the relevant documents, shall be handed to the Auditor, who shall draw up his own report.

Article 41

Fifteen days before the date of the annual general meeting, the shareholders may consult, at the company's registered office :

— the annual accounts,

— the list of government stock, shares, bonds and other securities that make up the portfolio,

— the list of shareholders who have not fully paid up their shares, showing their number of shares and fixed address,

— the annual report and the Auditor's report.

The annual accounts, the annual report and the Auditor's report shall be addressed to the shareholders at the same time as the notice of the meeting.

Article 42

After having taken note of the annual report and the Auditor's report, the general meeting shall discuss the annual accounts.

It shall then decide by a special vote whether to give a discharge to the Directors and the Auditor.

Article 43

The annual accounts, the annual report, the Auditor's report and the other document provided for by law shall be subject to statutory disclosure.

Article 44

Any credit on the profit and loss account shall constitute the net profit.

From this net profit there shall be deducted :

(1) 5 % to make up the reserve fund prescribed by law. This deduction shall cease to be compulsory when the reserve fund has reached an amount equal to one tenth of the capital. It shall be reintroduced if, for any reason whatsoever, the reserve has fallen below one tenth ;

(2) the sum required to pay the shareholders, by way of interim dividend, an amount of 500 francs for each share, reduced, where appropriate, in proportion to the extent to which it has been paid up. If the profit for any year does not permit such payment, the shareholders shall not be entitled to claim payment thereof out of the profits for subsequent years.

The ordinary general meeting may, by resolution on a proposal from the Board of Directors, dispose of the balance as it sees fit.

Article 45

Dividends shall be paid at the times and places fixed by the Board of Directors. The latter may decide to distribute an interim dividend to be set against a dividend distributed from the profits made in a financial year.

Article 46

Entitlement to any dividends and interest not claimed within five years of becoming liable for payment shall lapse.

TITLE VI

DISSOLUTION — WINDING UP

Article 47

In the event of dissolution of the company, the general meeting shall determine the method of winding up and appoint one or more liquidators, whose powers and remuneration it shall likewise determine. It shall retain the power to amend the Statutes should the needs of winding up the company so justify.

On appointment of the liquidators, the powers of the Directors and Auditor shall lapse.

Article 48

The general meeting shall be convened, constituted and held during the winding up in accordance with the provisions of Title IV of these Statutes, the liquidators enjoying the same privileges as the Board of Directors.

It shall be presided over by one of the liquidators ; should the liquidators be absent or unavailable, it shall itself elect a chairman.

Copies or extracts of the minutes of its proceedings for production in a court of law or elsewhere shall be certified by one or all of the liquidators.

Article 49

Unless the meeting has determined, by a resolution passed by the majority required for amendments to the Statutes, a different method of winding up, the proceeds of winding up shall, after payment or deposit of the amounts necessary for clearing the debts of the company, including the costs of winding up, be distributed among all the shares, once the latter have, where necessary, been paid up to an equal degree.

TITLE VII

GENERAL PROVISIONS

Article 50

Any disputes at law between the company and/or its shareholders, debenture holders, Directors, Auditor and liquidators concerning the affairs of the company and the execution of these Statutes shall be settled exclusively by the courts within whose jurisdiction the registered office of the company is situated ; however, if the case is brought by the company, it shall be entitled to bring the matter before any other competent court of law.

Article 51

The shareholders, debenture holders, Directors, Auditor and liquidators who are domiciled abroad shall be deemed to have as their address for service the registered office of the company, where any instruments may be validly communicated or notified to them, the company being under no obligation other than that of keeping them at the disposal of the addressee.

Article 52

The Statutes shall be drawn up in the French language.

TITLE VIII

TRANSITIONAL PROVISIONS

Article 53

This company having been set up as a Joint Undertaking within the meaning of the Treaty establishing the European Atomic Energy Community, it shall be subject, for the entire period of its activity as such, to the provisions of the Treaty, to acts adopted in implementation thereof and in particular to the Decision of the Council of the European Communities establishing it as a Joint Undertaking.

In particular :

'— amendments to these Statutes shall not enter into force until they have been approved by the Euratom Council pursuant to Article 50 of the Treaty,

— in accordance with Article 171 (3) of the Treaty, the company's profit and loss accounts and balance sheets relating to each financial year, shall, within one month after their approval by the general meeting of the company, be sent by the Board of Directors to the Commission of the European Communities, which shall place them before the Euratom Council and Assembly. The estimates of revenue and expenditure shall be submitted in accordance with the same procedure one month at the latest before the beginning of the financial year'.

Subject to the provisions of this Article, the company shall continue to be governed by Belgian law relating to 'sociétés anonymes' (joint stock companies).

Article 54

The provisions of the Statutes concerning the Auditor shall not take effect until after the ordinary general meeting of 1986. In the intervening period, the provisions concerning auditors of the 'lois coordonnées sur les sociétés commerciales' in force before the Law of 21 February 1985 relating to the auditing of businesses was adopted shall continue to apply to Auditors.