Headnotes

to the Judgment of the First Senate of 6 December 2016

1 BvR 2821/11

1 BvR 321/12

1 BvR 1456/12

1. **The Thirteenth Act Amending the Atomic Energy Act (*Dreizehntes Gesetz zur Änderung des Atomgesetzes* - 13th AtG Amendment) which aims to realise the acceleration of the nuclear phase-out is for the most part compatible with the Basic Law.**

2. **A legal person governed by private law, which is operated domestically for profit and entirely owned by a Member State of the European Union, can, by reason of the Basic Law's openness toward European law, as an exception, invoke freedom of property and file a constitutional complaint.**

3. **a) The electricity volumes allocated by law to the nuclear power plants in 2002 and 2010 do not constitute, in and of themselves, stand-alone property rights enjoying protection of property; given that they are significant parameters for the use of the power plants, the electricity volumes do, however, benefit from protection of ownership of the power plants.**

   b) A licence granted under public law does not generally constitute property.

4. **An expropriation under Article 14 sec. 3 of the Basic Law (*Grundgesetz* – GG) presupposes the deprivation of property through a change in the assignment of ownership and always also presupposes a process for the acquisition of goods. Accordingly, the provisions of the Thirteenth Act Amending the Atomic Energy Act of 31 July 2011 that are set out to accelerate the nuclear phase-out do not amount to an expropriation of property.**

5. **Insofar as restrictions of the power of use and disposition over property qualifying as determinations of content and limits within the meaning of Art. 14 sec. 1 sentence 2 GG lead to a deprivation of specific property interests without contributing to the acquisition of goods, enhanced requirements must be applied with regard to their proportionality. They then also always raise the question of a settlement provision.**

6. **The revocation, without compensation, of the prolongation of the operational lifetimes of the nuclear power plants by an average of twelve years that had been set down statutorily at the end of 2010, brought about by the challenged Thirteenth Act Amending the Atomic Energy Act is constitutional, given the repeated limiting of expectations with regard to preserving the additional electricity output allowances. The legislature was also entitled to use the reactor accident in Fukushima, even without any new findings as to dangers, as an opportunity to accelerate the nuclear phase-out for the protection of the health of the people and the environment.**

7. **Due to the statutorily fixed operational lifetimes of the power plants and due to the specifically established protection of legitimate expectations in this case, the Thirteenth Act Amending the Atomic Energy Act contains a determination of the contents and limits of property that is unreasonable insofar as it hinders two of the complainants from using up substantial parts of the residual electricity volumes of 2002 within their corporations.**

8. **Under certain conditions, Article 14 sec. 1 of the Basic Law protects legitimate expectation in the stability of a legal situation as a basis for investments in property and its use.**

FEDERAL CONSTITUTIONAL COURT

– 1 BvR 2821/11 –

– 1 BvR 321/12 –

– 1 BvR 1456/12 –

Pronounced
on 6 December 2016
Ms Langendörfer
Public Employee
as Registrar
of the Court Registry

IN THE NAME OF THE PEOPLE

In the proceedings
on
the constitutional complaints

I. of E.ON Kernkraft GmbH,
represented by its management,
Tresckowstrasse 5, 30457 Hannover,

– authorised representatives: Rechtsanwälte Gleiss Lutz,
Friedrichstrasse 71, 10117 Berlin –

against Article 1 no. 1 letter a, b und c and Article 1 no. 3 of the Thirteenth Act Amending the Atomic Energy Act (*Dreizehntes Gesetz zur Änderung des Atomgesetzes*) of 31 July 2011 (Federal Law Gazette, *Bundesgesetzblatt* – BGBl I p. 1704)

– 1 BvR 2821/11 –,

II. of RWE Power AG,
represented by its Managing Board members Matthias Hartung,
Dr. Frank Weigand, Dr. Lars Kulik, Roger Miesen, Erwin Winkel,
Huyssenallee 2, 45128 Essen,

– authorised representatives: Rechtsanwälte Freshfields Bruckhaus Deringer,
Potsdamer Platz 1, 10785 Berlin –

against the Thirteenth Act Amending the Atomic Energy Act of 31 July 2011 (BGBl I p. 1704)

– 1 BvR 321/12 –,

III. 1. of Kernkraftwerk Krümmel GmbH & Co. oHG,
represented by its managing partner Vattenfall Europe Nuclear Energy GmbH,
represented in turn by its managing directors Dr. Axel
Cunow, Dr. Ingo Neuhaus, Pieter Wasmuth,
Überseering 12, 22297 Hamburg,

2. of Vattenfall Europe Nuclear Energy GmbH,
represented by its managing directors Dr. Axel Cunow, Dr. Ingo Neuhaus,
Pieter Wasmuth, Überseering 12, 22297 Hamburg,

– authorised representatives: Rechtsanwälte Redeker, Sellner, Dahs,
Leipziger Platz 3, 10117 Berlin –

against Article 1 no. 1 letter a of the Thirteenth Act Amending the Atomic Energy Act of 31 July 2011 (BGBl I p. 1704)

– 1 BvR 1456/12 –

the Federal Constitutional Court – First Senate –

with the participation of Justices

Vice-President Kirchhof,

Gaier,

Eichberger,

Schluckebier,

Masing,

Paulus,

Baer,

Britz

held on the basis of the oral hearing of 15 and 16 March 2016:

Judgment:

1. **Article 1 no. 1 letter a (§ 7 sec. 1a sentence 1 Atomic Energy Act, *Atomgesetz* – AtG) of the Thirteenth Act Amending the Atomic Energy Act (*Dreizehntes Gesetz zur Änderung des Atomgesetzes – 13. AtG-Novelle* – 13th AtG Amendment) of 31 July 2011 (Federal Law Gazette, *Bundesgesetzblatt – BGBl* 2011 page 1704) is incompatible, as stated in the reasons of this judgment, with Article 14 sec. 1 of the Basic Law (*Grundgesetz* – GG), insofar as the Act does not ensure that the the volumes of electricity allocated to the nuclear power plants under Appendix 3 column 2 of the Atomic Energy Act can be used up completely or almost completely, and does not provide for appropriate settlement.**

2. **The Thirteenth Act Amending the Atomic Energy Act is incompatible with Art. 14 sec. 1 GG insofar as it does not include any provision for a settlement for investments that were made in legitimate expectation of the additional electricity output allowances allocated in 2010, but were devalued by the Amendment.**

3. **For the rest, the constitutional complaints are rejected.**

4. **The legislature must adopt new provisions no later than 30 June 2018. § 7 sec. 1a sentence 1 AtG is to remain applicable until the adoption of a new provision.**

5. **The Federal Republic of Germany is to reimburse each of the complainants in proceedings 1 BvR 321/12 and 1456/12 for one-third, and the complainant in proceeding 1 BvR 2821/11 for one-fourth, of the necessary expenses they have incurred in their constitutional complaint proceedings.**

[…]

Reasons:

A.

The constitutional complaints are directed against the Thirteenth Act Amending the Atomic Energy Act (*Dreizehntes Gesetz zur Änderung des Atomgesetzes*) of 31 July 2011 (BGBl I p. 1704; hereinafter: 13th AtG Amendment), which resolved to accelerate the phase-out of the peaceful use of nuclear energy. In the 13th AtG Amendment, the legislature tightened the fundamental decision made in 2002 in favour of what is known as the nuclear phase-out by legislating, for the first time, fixed dates by which the operation of nuclear power plants must end and at the same time revoking the prolongation of the operational lifetimes of nuclear power plants introduced in the autumn of 2010. The complainants are the nuclear energy subsidiaries of three of Germany’s four largest energy suppliers, as well as one nuclear power plant operating company. 1

I.

[…] 2-36

[*Excerpt from press release no. 88/2016 of 6 December 2016*]

The constitutional complaints challenge the acceleration of the phase-out of the peaceful use of nuclear energy enacted in 2011. The fundamental decision in favour of a phase-out was already taken in the Phase-Out Amendment Act (*Ausstiegsnovelle*) in 2002. Individual nuclear power plants were allocated a residual electricity volume that could be transferred to other, newer nuclear power plants. Once these were used up, the power plants were to be shut down. The 2002 Act on the phase-out did not contain a fixed end date. Following the 2009 parliamentary election, the new Federal Government put forth a modified energy policy in which nuclear energy should be used for a longer period of time as a "bridging technology". Accordingly, by means of the 11th AtG Amendment, the legislature granted nuclear power plants additional residual electricity volumes, and thus pursued the aim of prolonging the operational lifetimes of German nuclear power plants by an average of 12 years. As a result of the tsunami of 11 March 2011 and of the meltdown of three reactor cores this brought about at the Fukushima nuclear power plant in Japan, the legislature, for the first time, statutorily set down fixed end dates for the operation of nuclear power plants in the 13th AtG Amendment, and at the same time struck the prolongation of the operational lifetimes of the nuclear power plants undertaken in the 11th AtG Amendment in the autumn of 2010. The nuclear energy subsidiaries of three of Germany's four largest energy suppliers, as well as one nuclear power plant operating company, challenge this in their constitutional complaints. The fundamental decision taken in the Phase-Out Amendment Act of 2002 to end the peaceful use of nuclear power in Germany, however, is not the object of the constitutional complaints. The constitutional review of the challenged 13th AtG Amendment is thus based on a legal situation in which the end of the nuclear power plants' power production, given their allocated volumes of electricity, was already set down. The complainants principally challenge a violation of the freedom of property (Art. 14 sec. 1 GG).

[*End of excerpt*]

[…]

II.

1. The complainant in proceeding 1 BvR 2821/11 is E.ON Kernkraft GmbH (hereinafter: E.ON). The complainant's sole shareholder is E.ON Energie AG. The sole shareholder of E.ON Energie AG, in turn, is E.ON SE, which is listed on the exchange. By the complainant's own account, the shares of E.ON SE are largely in free float. 37

The complainant is the owner of the Unterweser, Isar 1 and Grafenrheinfeld nuclear power plants. For these plants it is likewise the holder of the nuclear power licence under § 7 sec. 1 AtG, the holder of the electricity volumes under Appendix 3 to the 38

AtG, the holder of the rights of use and consumption for nuclear fuel, and the operator. […]

2. The complainant directs its constitutional complaint against Art. 1 no. 1 letter a, letter b and letter c and against Art. 1 no. 3 of the 13th AtG Amendment. It complains of a violation of Art. 14 sec. 1, Art. 12 sec. 1 and Art. 3 sec. 1 in conjunction with Art. 19 sec. 1 sentence 1 GG. 39

[…] 40-77

III.

1. The complainant in proceeding 1 BvR 321/12 is RWE Power AG (hereinafter: RWE). The complainant's sole shareholder is RWE AG. The complainant is the owner of the Biblis A and B nuclear power plants and holds rights to the electricity volumes allocated to the Mülheim-Kärlich nuclear power plant. It furthermore holds the operating licences for blocks A and B at the Biblis nuclear power plant and is a shareholder of the operating companies of the Gundremmingen B and C nuclear power plants (holding 75%) and of the Emsland nuclear power plant (shares totalling 87.5%). 78

2. The complainant directs its constitutional complaint against Art. 1 no. 1 letter a, letter b, and letter c and Art. 1 no. 3 of the 13th AtG Amendment. It complains of a violation of its fundamental rights under Art. 2 sec. 1, Art. 3 sec. 1, Art. 12 sec. 1 and Art. 14 sec. 1 and 3 GG, each in conjunction with Art. 19 sec. 3 GG. 79

[…] 80-100

IV.

1. The complainants in proceeding 1 BvR 1456/12 are Kernkraftwerk Krümmel GmbH & Co. oHG (hereinafter: Krümmel) and Vattenfall Europe Nuclear Energy GmbH (hereinafter: Vattenfall). 101

The business object of Kernkraftwerk Krümmel GmbH & Co. oHG is operating the Krümmel nuclear power plant. It holds the operating licence, and as the holder of a leasehold for the land on which the nuclear power plant is built, is the owner of the plant situated there. 102

Vattenfall Europe Nuclear Energy GmbH is a 50% owner of Kernkraftwerk Krümmel GmbH & Co. oHG; the other 50% is held by the complainant in proceeding 1 BvR 2821/11, E.ON Kernkraft GmbH. The managing partner of Kernkraftwerk Krümmel GmbH & Co. oHG is Vattenfall Europe Nuclear Energy GmbH. The sole shareholder of Vattenfall Europe Nuclear Energy GmbH at the time when the constitutional complaint was lodged was Vattenfall Europe AG, which is operates as Vattenfall GmbH. Its sole shareholder was and is Vattenfall AB (Publikt Aktiebolag); the sole shareholder of Vattenfall AB is the Swedish state. Kernkraftwerk Krümmel GmbH & Co. oHG is the operator of the Krümmel nuclear power plant and holds the operating licence. 103

2. The complainants direct their constitutional complaint solely against Art. 1 no. 1 letter a of the 13th AtG Amendment. They complain that it violates Art. 14 sec. 1 and sec. 3, Art. 19 sec. 1 sentence 1 and Art. 3 sec. 1 GG. 104

3. The complainants' submission concerning admissibility primarily concerns their ability to lodge a complaint in light of the involvement of the Swedish state, which is indirect in both cases. As for the merits of the case, the complainants do not claim that there has been a violation of Art. 12 sec. 1 GG. Their submission concerning Art. 14 GG focuses on the property-specific review of equality with regard to the Krümmel nuclear power plant. 105

a) […] 106-108

b) They argue that the fact that the Swedish state holds indirect shares in each of them does not oppose their ability to lodge a complaint. First of all, they state, there can be no question that the Swedish State does exercise an influence over them that is relevant in constitutional law. Furthermore, they argue, the considerations on the basis of which entities predominantly held by German public bodies have generally been denied the ability to have legal personality with regard to fundamental rights do not apply to them. 109

[…] 110-161

V.

In preparation for the oral hearing, the Senate sent the complainants and the Federal Government questions about the possibility of using the residual electricity volumes allocated by the Phase-Out Amendment Act (*Ausstiegsgesetz*) of 2002, in column 2 of Appendix 3 to the AtG. 162

The notice makes clear in particular that some of the reactors that have already been shut down, namely Biblis A, Biblis B, Neckarwestheim 1 and Grafenrheinfeld, have used up the residual electricity volume allocated to them. Otherwise, all nuclear power plants that are still being operated, as well as the other plants that have already been shut down, still had electricity volumes. 163

1. In response to the question as to the extent to which the electricity volumes allocated in column 2 of Appendix 3 to the AtG had been used up by 31 October 2015 at each of the nuclear power plants, all answers referred to the notice of the Federal Office for Radiation Protection (Bundesamt für Strahlenschutz) dated 31 October 2015 concerning the information to be provided under § 7 sec. 1c AtG on electricity volumes produced, transferred and remaining. 164

Concerning the question about transfers of residual electricity volume up to 31 October 2015, both the complainants and the Federal Government also refer to the aforementioned notice of the Federal Office for Radiation Protection of 31 October 2015. 165

That notice reads as follows: 166

Federal Radiation Protection Office
Version: 31 October 2015

Notice of German nuclear power plants' electricity volumes (net) produced, transferred and remaining, pursuant to § 7 sec. 1c AtG

Electricity volumes produced, transferred and remaining from 1 January 2000 to 31 October 2015 (GWh net) under Appendix 3 column 2 to § 7 sec. 1a AtG

Nuclear power plant	Electricity volume from 1 Jan. 2000	1 Jan. 2000 to 31 Dec. 2013	1 Jan. to 31 Dec. 2014	Electricity volume transferred up to 31 Oct. 2016	Jan. 2015	Feb. 2015	Mar. 2015	Apr. 2015	May 2015	Jun. 2015	Jul. 2015	Aug. 2015	Sept. 2015	Oct. 2015	Nov. 2015	Dec. 2015	Total 2015	Residual electricity volume
Biblis A [1)4)]	62,000.00	64,591.29	0,00	4,785.53	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00			0,00	2,194.24
Neckarwestheim1 [4)]	57,350.00	57,350.00	0,00		0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00			0,00	0,00
Biblis B [3)4)]	81,460.00	81,737.52	0,00	8,100.00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00			0,00	7,822.48
Brunsbüttel [4)]	47,670.00	36,670.33	0,00		0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00			0,00	10,909.67
Isar 1 [4)]	78,350.00	76,325.88	0,00		0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00			0,00	2,024.12
Unterweser [4)6)7)]	117,980.00	106,777.14	0,00	-3,800.00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00			0,00	7,402.86
Philippsburg 1 [2)4)]	87,140.00	73,185.87	0,00	-5,499.89	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00			0,00	8,454.24
Grafenrheinfeld [4)7)]	150,030.00	136,338.68	9,853.99	500.00	917.11	804.14	261.23	872.50	759.66	475.88	0,00	0,00	0,00	0,00			4,090.52	246.81
Krümmel [4)]	158,220.00	69,974.89	0,00		0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00	0,00			0,00	88,245.11
Gundremmingen B [5)6)]	160,920.00	140,521.41	9,527.08	11,200.00	952.22	815.43	560.23	535.44	940.52	917.16	935.28	942.03	907.02	966.59			8,471.92	13,509.59
Philippsburg 2	198,610.00	147,774.70	9,631.53		1,016.64	920.57	1,011.31	982.54	994.35	541.60	241.39	995.06	963.39	1,015.48			8,682.33	32,521.44
Grohnde	200,900.00	150,326.00	9,481.18		966.43	892.52	960.66	297.84	853.41	894.57	904.97	914.68	912.17	394.87			7,992.12	33,100.70
Gundremmingen C [5)6)]	168,350.00	139,403.00	10,031.13	2,000.00	952.21	873.19	921.05	911.07	890.79	774.40	50.13	711.39	921.54	962.50			7,968.27	12,947.60
Brokdorf	217,880.00	154,885.07	10,974.17		950.24	904.81	995.53	970.76	933.18	253.82	944.02	965.77	953.47	990.40			8,862.00	43,158.76
Isar 2	231,210.00	160,880.92	10,794.90		996.68	923.93	1,002.34	972.03	999.09	942.02	79.57	598.63	967.24	1,032.69			8,514.22	51,019.06
Emsland	230,070.00	153,700.48	10,954.90		975.53	904.92	983.37	729.26	58.67	952.23	970.89	976.57	946.41	995.91			8,493.76	56,920.86
Neckarwestheim 2	236,040.00	146,941.20	10,588.09		964.84	886.59	979.24	942.47	957.19	931.58	954.76	950.92	706.62	345.31			6,619.52	69,891.19
Total	**2,484,180.00**	**1,897,384.38**	**91,836.97**		**8,691.90**	**8,691.90**	**8,691.90**	**8,691.90**	**8,691.90**	**8,691.90**	**8,691.90**	**8,691.90**	**8,691.90**	**8,691.90**	**0,00**	**0,00**	**71,694.66**	**440,549.63**
Stade [1)]	23,180.00	18,394.47		-4,785.53														0,00
Obrigheim [2)]	8,700.00	14,199.89		5,499.89														0,00
Mülheim-Kärlich [3)5)]	107,250.00			-18,000.00														89,250.00
Grand total	**2,623,310.00**																	**529,799.63**

The table takes account of the documents and certifications for calendar year 2014 required under § 7 sec. 1c AtG (column 4)

1) Transfer of residual electricity volume of 4785.53 GWh from Stade nuclear power plant to Biblis A nuclear power plant on 11 May 2010 (Column 5).
2) Transfer of 5499.89 GWh from Philippsburg 1 nuclear power plant to now-closed Obrigheim plant on 23 January 2003 (Column 5).
3) Transfer of 8100.00 GWh of residual electricity volume from closed Mülheim-Kärlich nuclear power plant to Biblis B nuclear power plant on 30 June 2010 (Column 5).
4) The Biblis A, Biblis B, Brunsbüttel, Neckarwestheim 1, Isar 1, Unterweser, Krümmel and Philippsburg 1 nuclear power plants are no longer entitled to produce power since the Thirteenth Act Amending the Atomic Energy Act took effect on 6 August 2011, and are exempt from the reporting obligation under § 7 sec. 1c sentence 1 no. 1 and 2 of the Atomic Energy Act (AtG). The KKG plant has been exempt from the monthly reporting obligation since 1 October 2015.
5) Transfer of 8400.00 GWh to the Gundremmingen B nuclear power plant and 1500.00 GWh to the Gundremmingen C nuclear power plant from the residual electricity volume allocated to the closed Mülheim-Kärlich nuclear power plant on 28 May 2015 (Column 5).
6) Transfer of 2800.00 GWh to the Gundremmingen B nuclear power plant and 500.00 GWh to the Gundremmingen C nuclear power plant from the residual electricity volume allocated to the closed Unterweser nuclear power plant on 28 May 2015 (Column 5).
7) Transfer of 500.00 GWh to Grafenrheinfeld nuclear power plant from the electricity volume allocated to the closed Unterweser nuclear power plant on 5 June 2015 (Column 5).

[…] 167-179

B.

The constitutional complaints are admissible. 180

I.[…] 181-183

II.

Complainants Krümmel and Vattenfall in proceeding 1 BvR 1456/12 also have the ability to lodge a constitutional complaint based on Art. 14 GG, even though a foreign state ultimately holds all shares of complainant Vattenfall (1) and 50% of the shares of complainant Krümmel (2). 184

1. The shares of complainant Vattenfall are indirectly held entirely by the Swedish state. Nevertheless, as an exception, it may lodge a constitutional complaint invoking Art. 14 GG against the 13th AtG Amendment. 185

a) Via a chain of ownership interests, the Swedish state holds and controls all shares of complainant Vattenfall. At the time when the constitutional complaint was lodged, the complainant's sole shareholder was Vattenfall Europe AG, whose sole shareholder was Vattenfall Deutschland GmbH. Since that time, Vattenfall Europe AG has been merged with Vattenfall Deutschland GmbH, which now operates as Vattenfall GmbH. Its sole shareholder was and is Vattenfall AB, a corporation under Swedish law. The sole shareholder of Vattenfall AB is the Swedish state. 186

b) aa) Domestic legal persons governed by public law cannot invoke substantive fundamental rights (cf. Decisions of the Federal Constitutional Court, *Entscheidungen des Bundesverfassungsgerichts* – BVerfGE 4, 27 <30>; 15, 256 <262>; 21, 362 <368 et seq.>; 35, 263 <271>; 45, 63 <78>; 61, 82 <100 and 101>). Consequently, they cannot challenge a violation of substantive fundamental rights by lodging a constitutional complaint either (cf. BVerfGE 45, 63 <78>; 68, 193 <206> with further references). 187

The Federal Constitutional Court (*Bundesverfassungsgericht*) has based this lack of legal personality with regard to fundamental rights on a number of different reasons, some of which are mutually complementary. In that respect, it has held that the state that is bound by the fundamental rights pursuant to Art. 1 sec. 3 of the Basic Law cannot be obliged by, as well as entitled to fundamental rights at the same time (cf. BVerfGE 15, 256 <262>; 21, 362 <369 and 370>). Even independent organisational units, when viewed from the perspective of humans and citizens as the original holders of fundamental rights, always only constitute a specific manifestation of a uniform state authority (cf. BVerfGE 4, 27 <30>; 21, 362 <370>). Legal persons can justifiably be viewed as holders of fundamental rights, and on that basis also included under the protection of certain substantive fundamental rights, only if the legal person's formation and operation are a manifestation of the free development of private, natural per- 188

sons, and in particular only if this appears to be appear reasonable and necessary in consideration of the human beings acting behind the legal persons (cf. BVerfGE 21, 362 <369>; 61, 82 <101>; 68, 193 <206>). The Court has held that in performing their public duties, legal persons governed by public law, unlike individual holders of fundamental rights, do not face the state from the same characteristic situation of danger to fundamental rights (cf. BVerfGE 45, 63 <79>; 61, 82 <102>).

189 However, this does not apply to those legal persons governed by public law that are directly categorised in a sphere of life protected by certain fundamental rights, or that inherently belong to that sphere because of their particular nature, such as broadcasters, universities and their faculties (cf. BVerfGE 31, 314 <321 and 322>; 74, 297 <317 and 318>; 93, 85 <93>; 107, 299 <309 and 310>) or churches and other ideological communities governed by public law (cf. BVerfGE 19, 129 <132>; 30, 112 <119 and 120>; 42, 312 <321 and 322>; 70, 138 <160 and 161>).

190 bb) On substantially the same considerations, the Federal Constitutional Court has also denied that legal persons governed by private law but entirely controlled by the state have legal personality with regard to substantive fundamental rights, in part because if this were not the case, the question of public bodies' legal personality with regard to such rights would depend to no small extent on their particular organisational form (cf. BVerfGE 45, 63 <79 and 80>; 68, 193 <212 and 213>). Equivalent considerations apply to what are commonly called "mixed-ownership" entities insofar as the state holds more than 50% of the shares of these legal persons governed by private law (cf. correspondingly, on the question of being bound by fundamental rights, BVerfGE 128, 226 <244, 246 and 247>).

191 c) However, the same considerations that are relevant to the denial of the ability to have legal personality with regard to fundamental rights that apply to legal persons governed by public law or by private law and that are completely or for the most part held by the German state, do not apply unreservedly to those domestic legal persons governed by private law that are held by a foreign state – like Vattenfall in the present case.

192 aa) Thus what is known as the "confusion argument", according to which the state cannot be both obliged by and entitled to fundamental rights, cannot be raised to argue that a legal person governed by private law and owned by a foreign state has no ability to have legal personality regarding fundamental rights. After all, a foreign state is inherently not obliged to guarantee the fundamental rights of people in Germany, nor to protect them accordingly. However, although the foreign state is not bound by fundamental rights, it does not necessarily follow that it is concomitantly entitled to assert those rights. Nor does anything to the contrary proceed from the Federal Constitutional Court's Fraport Judgment (BVerfGE 128, 226); there the Court concluded, solely for the converse case, that being bound by fundamental rights did not mean that there was an entitlement to assert fundamental rights (loc. cit., pp. 244, 246 and 247).

The fact that opening up the protection of fundamental rights to state entities might generally weaken and endanger the protection of citizens exercising their non-derivative, original freedom (cf. BVerfGE 75, 192 <196>; 128, 226 <244 and 245>) does not preclude granting protection of fundamental rights in situations like those at issue. The state entity is not relieved of an inherent duty to protect fundamental rights, for as an entity owned by a foreign state, it is not bound by the Basic Law's fundamental rights in the first place. Furthermore, the situation at issue here does not concern a multipolar relationship of fundamental rights, in which granting protection of fundamental rights to the state entity would directly affect the position of a different holder of fundamental rights exercising an original freedom, and thus weaken the constitutional protection of original freedom. 193

Legal persons governed by private law, held by a foreign state and acting entirely as a commercial subject, do not have domestic powers, whether direct or indirect, any more than any other purely private market participant does. Such legal persons, like complainant Vattenfall, furthermore are threatened with a specific situation of danger in that unlike all other market participants, if they are entirely denied the ability to invoke fundamental rights, they have no legal protection against state interference and statutorily initiated economic control measures. Purely private market participants have the option of lodging constitutional complaints. Neither are legal persons governed by public law and held by the Federation, a *Land*, or a municipality without protection, even though they cannot lodge a constitutional complaint due to the lack of legal personality in regard to fundamental rights. The sovereign authorities behind them can defend themselves against alleged unconstitutional restrictions of their business activities by means of protective mechanisms provided to protect areas of competence within the state. This option is not available to legal persons governed by private law and held by foreign states. If they are denied the right to lodge a constitutional complaint, they would have no possibility of claiming legal protection against direct legislative interference with their rights. The protection of legal interests that regular courts provide under administrative law usually cannot be directed against statutory acts (see B III 2 below, paras. 208 et seq.). 194

bb) However, in cases of foreign state entities, these organisational units also lack people behind them who are to be protected against sovereign encroachment and regarding whom the fundamental rights enshrined in the Basic Law ultimately intends to protect their ability to freely participate in and contribute to the community (cf. BVerfGE 61, 82 <100 and 101>). In any case, a "characteristic situation of danger to fundamental rights" does not result from the mere fact that property of a state entity is also configured under private law – i.e., as private property – and that the entities concerned are thus not entitled to rights that are farther-reaching than the rights private market participants are entitled to. After all, when property is owned by a state – even a foreign state – it does not serve the function for which it is protected by fundamental rights, namely to serve its owner "as the basis for private initiative and to be useful in the owner's autonomous private interest". As a fundamental right, Art. 14 195

GG does not protect property governed by private law, but the property of private persons (BVerfGE 61, 82 <108 and 109>).

d) Given the special circumstances of this case, the interpretation of Art. 19 sec. 3 GG, which is open in this regard, must also be undertaken in view of the freedom of establishment protected under EU law. In this way, inconsistencies between the German and EU legal systems can also be avoided. Here, considering the freedom of establishment, complainant Vattenfall can, as an exception, be provided with the means to lodge a constitutional complaint invoking Art. 14 GG (concerning the Basic Law's openness to European law cf. BVerfGE 123, 267 <354>; 126, 286 <303, 327>; 136, 69 <91 para. 43>). 196

The freedom of establishment is affected here. Although complainant Vattenfall is a *Gesellschaft mit beschränkter Haftung* under German corporate law (i.e., a limited liability company), it is nonetheless held by Vattenfall AB, a Swedish parent company. Vattenfall AB exercised its freedom of establishment in founding its German subsidiary (Art. 54 sec. 1 in conjunction with Art. 49 sec. 1 sentence 2 Treaty on the Functioning of the European Union (TFEU)). Complainant Vattenfall, as a subsidiary within the meaning of Art. 49 sec. 1 sentence 2 TFEU, can invoke the protection conferred on its parent company under the freedom of establishment (cf. European Court of Justice (ECJ), Judgment of 26 June 2008, Burda, C-284/06, EU:C:2008:365). It does not stand to oppose the applicability of freedom of establishment that the company is wholly owned by the Swedish state. The fundamental freedoms under EU law make no distinctions in this regard. Art. 54 sec. 2 TFEU expressly includes entities governed by public law within the protection of freedom of establishment, provided that they are operated for profit. 197

Art. 49 TFEU precludes national measures or regulations that, even though they are applicable without discrimination on grounds of nationality, are liable to hamper or to render less attractive the exercise by the Union nationals, of fundamental freedoms guaranteed by the Treaty on the Functioning of the European Union (see, fundamentally, ECJ, Judgment of 31 March 1993, Kraus, C-19/92, EU:C:1993:125, para. 32; established case-law). 198

Denying an entity the ability to invoke fundamental rights, and thus also the possibility of lodging a constitutional complaint under national constitutional procedural law, presumably does not in itself constitute a restriction of freedom of establishment. 199

However, given the special circumstances of this case, the denial of the ability to lodge a constitutional complaint here would have to be justified in light of the freedom of establishment. First of all, without the possibility of lodging a constitutional complaint against legislation complainant Vattenfall, under applicable German procedural law, could not claim legal protection against impairments associated with the 13th AtG Amendment (B III 2 below, paras. 208 et seq.). Second, the impairments associated with the 13th AtG Amendment are particularly significant, because the amendment forces complainant Vattenfall to carry out an early shutdown of the nuclear pow- 200

er plant in which it also ownership shares, and which is operated by complainant Krümmel, and thus precludes insofar the further exercise of the freedom of establishment. Finally, complainant Vattenfall would have to accept a substantial competitive disadvantage. Its private competitors, in turn, have the possibility to claim legal protection against the impairments associated with the 13th AtG Amendment, through a constitutional complaint against legislation. Even a competitor held by the German state has ways of protecting its interests, at least within the organisation of the state (B II 1 c aa above, para. 194).

The conditions justifying a mere restriction of freedom of establishment are lacking. 201
According to the established case-law of the Court of Justice of the European Union, restrictions on freedom of establishment which are applicable without discrimination on grounds of nationality may be justified by overriding reasons relating to the general interest, provided that the restrictions are appropriate for securing attainment of the objective pursued and do not go beyond what is necessary for attaining that objective (cf. ECJ, Judgment of 24 March 2011, Commission v. Spain, C-400/08, EU:C:2011:172, para. 73; established case-law). No such overriding reasons relating to the general interest are evident here. In and of itself, the fact that the complainant is a state entity does not as such amount to an overriding reason relating to the general interest, because the fundamental freedoms precisely do not distinguish within their personal scope of protection between state and non-state entities (concerning freedom of establishment, Art. 54 sec. 2 TFEU).

e) The European Convention on Human Rights (ECHR) and the case-law of the European Court of Human Rights (ECtHR) likewise imply that complainant Vattenfall should have the possibility to claim effective legal protection against the 13th AtG Amendment. They must be taken into account in the form of interpretative guidance when interpreting the fundamental rights and the principles of the Basic Law under the rule of law, although they do not demand that parallels should be drawn schematically (cf. BVerfGE 131, 268 <295 and 296> with reference to BVerfGE 111, 307 <315 et seq.> and 128, 326 <366 et seq.>). There is no need to decide here how the decision of the European Court of Human Rights on the ability of state-controlled entities to have human rights (cf. ECtHR, Islamic Republic of Iran Shipping Lines v. Turkey, Judgment of 13. December 2007, no. 40998/98, para. 79 et seq.) can be included within the German legal system. In any case, complainant Vattenfall can arguably claim that its right to property under Art. 1 of the Additional Protocol to the European Convention of Human Rights has been violated, a case for which Art. 13 ECHR requires a right of effective remedy before a national authority (cf. ECtHR, Lithgow and others v. United Kingdom, Judgment of 8 July 1986, no. 9006/80, para. 205; ECtHR, Leander v. Sweden, Judgment of 26 March 1987, no. 9248/81, § 77). While this does not compel a state to provide a remedy to challenge legislation (cf. ECtHR, Lithgow and others v. United Kingdom, Judgment of 8 July 1986, no. 9006/80, para. 206), it does require the availability of an avenue for a complaint (cf. ECtHR, Leander v. Sweden, Judgment of 26 March 1987, no. 9248/81, para. 77). 202

2. Ultimately, the other complainant in proceeding 1 BvR 1456/12 – Krümmel – is also entitled to invoke the fundamental rights under Art. 14 and Art. 3 GG that it claims have been violated. 203

The complainant Krümmel is owned 50% by complainant Vattenfall and 50% by E.ON Kernkraft GmbH, whose sole shareholder is E.ON Energie AG. The question of whether Kernkraftwerk Krümmel GmbH & Co. oHG should ultimately be viewed as a private entity because Vattenfall holds only 50% of it, or rather as an entity that is state-controlled as a whole because of possible state interests held in E.ON Energie AG does not need to be settled here. In any case, complainant Krümmel has legal personality with regard to the fundamental rights that it claims have been violated. 204

[…] 205-206

III.

1. The complainants in all three proceedings may lodge their constitutional complaints directly against the 13th AtG Amendment. Because that amendment revokes the additional electricity output volumes allocated by the 11th AtG Amendment (*11. AtG-Novelle*), and introduces fixed shut-down dates for all nuclear power plants, the complainants are individually, presently and directly affected in their fundamental rights (on these requirements, cf. BVerfGE 97, 157 <164>; 102, 197 <206>; 108, 370 <384>; established case-law). In particular, the challenged provisions do not require an administrative act of transposition. 207

2. The complainants are not compelled for the sake of subsidiarity of constitutional complaints to seek legal protection in the regular courts beforehand. 208

[…] 209

There is no avenue through which the complainants can reasonably be expected to seek legal protection in the regular courts against the challenged provisions of the 13th AtG Amendment. An action seeking a declaratory judgment handed down by the administrative courts is the only potentially available option here; however, although this type of action is not automatically ruled out when it comes to challenges brought against legislation, it does presuppose at least the possibility of a finding that there is a specific legal relationship (cf. Federal Administrative Court, *Bundesverwaltungsgericht* – BVerwG, Judgment of 23 August 2007 – BVerwG 7 C 13.06 –, *Neue Zeitschrift für Verwaltungsrecht,* NVwZ 2007, p. 1311 <1312 and 1313>; Judgment of 28 January 2010 – BVerwG 8 C 19.09 –, Decisions of the Federal Administrative Court, *Entscheidungen des Bundesverwaltungsgerichts* – BVerwGE 136, 54 <58 et seq.>; each with further references; see also BVerfGE 115, 81 <91 et seq.> on the necessity of recognising legal protection by regular courts under Art. 19 sec. 4 GG for sub-statutory provisions). However, it is not evident here that there is a meaningful application for a declaratory judgment that would go beyond the finding that the challenged provisions are unconstitutional – a finding which administrative courts are, in any event, not competent to hand down – while still making the question of constitu- 210

tionality the subject matter of the clarification of a specific legal relationship.

C. […]

211-212

The challenged provisions of the 13th AtG Amendment must be measured primarily against the fundamental right to property, with which they are essentially in line with yet not in all respects (I). Nor do any further consequences proceed from Art. 12 GG (II). There is no violation of the prohibition of laws that apply merely to a single case (Art. 19 sec. 1 sentence 1 GG) (III). 213

I.

The challenged provisions of the 13th AtG Amendment must be measured against Art. 14 GG, because they interfere in several respects with interests of the complainants that are protected by property law (1). However, they do not involve an expropriation (2). The determination of the content and limits of the complainants' property under the 13th AtG Amendment is for the most part but not on all points compatible with the Constitution (3). 214

1. The first standard against which the challenged provisions of the 13th AtG Amendment must be measured is Art. 14 GG. 215

a) Property is an elementary fundamental right, and its protection is of particular importance for a social state governed by the rule of law (cf. BVerfGE 14, 263 <277>). Within the framework of the fundamental rights, the guarantee of the right to property has the task of ensuring in particular that the holder of that fundamental right has freedom to act within the sphere of property rights. The constitutional guarantee of property is characterised by its nature of being of private benefit, and by the owner's general power of disposition over an owned object (cf. BVerfGE 31, 229 <240>; 50, 290 <339>; 52, 1 <30>; 100, 226 <241>; 102, 1 <15>; established case-law). It is intended to be of use as a foundation for private initiative and to serve people's autonomous private interest (cf. BVerfGE 100, 226 <241>). Insofar as safeguarding individuals' personal freedom is concerned, it enjoys particularly pronounced protection (cf. BVerfGE 50, 290 <340>; established case-law). Yet at the same time, property is supposed to be used in a way that serves the public interest (Art. 14 sec. 2 GG; cf. BVerfGE 134, 242 <290 and 291 paras. 167 and 168>). 216

The guarantee of the right to property protects the specific status quo of assets held by the individual owners (cf. BVerfGE 24, 367 <400>; 38, 175 <181, 184 and 185>; 56, 249 <260>) against measures taken by state authorities (cf. BVerfGE 72, 175 <195>; 83, 201 <208>). In the case of an expropriation that is compatible with the Constitution, the guarantee of the status quo of assets is replaced by a guarantee of value, which is oriented towards the granting of a compensation on a basis to be determined by the legislature (cf. BVerfGE 24, 367 <397>; 46, 268 <285>; 56, 249 <261>; 58, 300 <323>). However, this does not alter the fact that Art. 14 GG first and foremost protects the continued existence of property in terms of its function of protecting freedom, and not just its value (cf. BVerfGE 134, 242 <290 and 291 para. 217

168>).

The specific scope of protection under the guarantee of the right to property only results once the content and limits of property are determined, which is a matter for the legislature under Art. 14 sec. 1 sentence 2 GG. The legislature is not entirely free in this regard: it must create a balanced relationship between the individual's sphere of freedom and the public good, which is not only a point of orientation, but also the limit to restrictions of the right to property (cf. BVerfGE 25, 112 <118>). At the same time, the permissible scope of the social responsibility of property must also be derived from the property itself (cf. BVerfGE 20, 351 <361>; 50, 290 <340>). The guaranteed continued existence of property under Art. 14 sec. 1 sentence 1 GG, the regulatory task under Art. 14 sec. 1 sentence 2 GG, and the fact that, pursuant to Art. 14 sec. 2 GG, property entails the obligation to serve also social ends are inseparably linked. In that regard, the legislature's power to determine content and limits is all the more broad, the stronger the social dimension of the property involved; in that respect, the property's specific nature and function are of crucial significance (cf. BVerfGE 21, 73 <83>; 31, 229 <242>; 36, 281 <292>; 37, 132 <140>; 42, 263 <294>; 50, 290 <339 and 340>; 53, 257 <292>; 100, 226 <241>). 218

With regard to the nuclear power plants built by energy suppliers under the AtG, along with the various property interests related thereto, it must be taken into account that these constitute property with a particularly strong social dimension. On the one hand, in the Atomic Energy Act of 1959, the state deliberately decided in favour of the peaceful use of nuclear energy, and also gave rise to private investments through numerous support measures. On the other hand, the public has become increasingly aware over the past few decades that the peaceful use of nuclear energy is a high-risk technology which is encumbered with extreme risks of harm, among other issues, as well as still-unclarified problems of final disposal (cf., e.g., BVerfGE 49, 89 <142 and 143, 146 and 147>; 53, 30 <55 et seq.>). For that reason, the legislature has particularly broad leeway to design atomic energy laws, even in respect of existing property interests, without, however, completely depriving them of protection (cf. BVerfGE 49, 89 <145 et seq.>). 219

b) The terms of the 13th AtG Amendment impose burdens on the complainants in several respects (aa). They thereby affect the scope of protection under Art. 14 sec. 1 GG, which provides constitutional protection for property in various forms (bb). 220

aa) The 13th AtG Amendment's staggering of shut-down dates and its revocation of the additional output allowances allocated in 2010 adversely affect the complainants, as the owners and operators of the nuclear power plants, in different ways under the decision to phase out nuclear power ((1) – (4)). However, the decision made in 2000/2002 to phase out the commercial use of nuclear energy, together with the limitation at that time to use up specific residual electricity volumes, determined the complainants' property interests thus affected and the remaining possible uses considerably. 221

(1) With the new § 7 sec. 1a sentence 1 AtG, the 13th AtG Amendment establishes, for the first time, fixed dates for the expiry of the entitlement to produce power at the individual nuclear power plants. Upon the expiry of the entitlement to operate, the right, which proceeds from the ownership of the sites and installations, to use them for the purpose of producing electricity by means of atomic energy lapses. 222

This impairment goes further than the pre-existing impacts resulting from the nuclear phase-out legislated in 2002. Given that the end dates for production are now fixed, it will, in all likelihood, neither be possible to use up the residual electricity volumes originally allocated in 2002 will at the nuclear power plant to which it “belongs”, nor at the same corporations’ other nuclear power plants to which such volumes may be transferred (C I 3 c cc (2) (a) below, paras. 313 et seq.); this finding is true even when taking into consideration that the new version of § 7 sec. 1b sentence 4 AtG extends the possibilities for transferring electricity output volumes to other plants. In fact, the new § 7 sec. 1a AtG can lead to substantial losses of existing possibilities for using, these residual electricity volumes. 223

(2) Art. 1 no. 1 letter b aa, letter c aa and no. 3 letter a of the 13th AtG Amendment revoke the additional residual electricity volumes that had been allocated to the nuclear power plants only shortly before through the new column 4 of Appendix 3 to the Atomic Energy Act under the 11th AtG Amendment of 8 December 2010 (BGBl I p. 1814). Thus the legislature rescinds the prolongation of operational lifetimes of about 12 years per nuclear power plant that shortly after actually assigning this prolongation to the plants (*Bundestag* document, *Bundestag-Drucksache* – BTDrucks 17/3051, p. 6) and curtails their possible operating life accordingly. 224

(3) The fixed end dates that the new § 7 sec. 1a AtG introduces for the power production do not only limit the potential use of nuclear power plants through an inflexible end point; at the same time, they also restrict the entrepreneurial leeway - which still existed despite the already decided nuclear phase-out - to determine how long which nuclear power plant should continue to operate, as well as the leeway to determine downtimes or phases of reduced production where applicable. 225

(4) Finally, as the complainants have argued, the introduction of fixed shut-down dates, all by itself, but also in combination with the revocation of additional electricity volumes, can void investments undertaken on the basis of the expectation that the legal situation will not change. 226

bb) This affects the guarantee of property in various ways. Property rights that the legislature must observe in accelerating the nuclear phase-out under the 13th AtG Amendment relate to the existing plants and their use (1), and also – linked to the plant ownership – to the residual electricity volumes from 2002 (3) and 2010 (4), but do not concern the licences under atomic energy law as such (2). In this respect, the right to an established and exercised business itself, however, is not of any additional relevance here (5). The right to use and consume nuclear fuels under EU law does not affect national protection of property either (6). 227

(1) The protection of property under Art. 14 sec. 1 sentence 1 GG includes civil-law ownership of property, its possession, and the possibility of using it (cf. BVerfGE 97, 350 <370>; 101, 54 <75>; 105, 17 <30>; 110, 141 <173>). Accordingly, the complainants' property and possession enjoy constitutional protection of property for the plant sites and the power plant installations. The usability of these operating facilities is constitutionally protected, too. 228

If property is already subject to a regime of use governed by public law at the time when it is established, the constitutional protection of the use of property against later interference and configurations is limited in principle to what is allowed by that regime, yet the protection of allowed uses may vary, depending on the respective field of law. 229

[…] 230

(2) A licence awarded under atomic energy law to construct and operate a nuclear power plant, or a licence to produce power (§ 7 secs. 1 and 1a AtG), is not in and of itself a protected property right under Art. 14 GG. Such licences to operate dangerous plants are state permits which, depending on their configuration, overcome either repressive or preventive prohibitions that reserve the option of granting the permission to carry out the activity sought. Thus they are not comparable with those subjective public rights on which established constitutional case-law confers protection of the type provided to property. According to this case-law, such property-type protection is granted due to the fact that those rights provide individuals with a legal interest which is tantamount to that of an owner and strong enough to assume that depriving it without compensation would contradict the Basic Law in terms of its rule-of-law content (BVerfGE 40, 65 <83>). Such rights are characterised by a power of disposal – at least a limited one – and by the fact that they are obtained, to a significant extent, through an acquisition measure that is based an act accomplished by the owner itself (BVerfGE 14, 288 <293 and 294>; 18, 392 <397>; 30, 292 <334>; 53, 257 <291 and 292>; 69, 272 <300>; 72, 9 <19 and 20>; 72, 175 <193>; 97, 67 <83>). Licences under atomic energy law lack both of these features. 231

[…] 232

(3) The residual electricity volumes allocated to the individual nuclear power plants by the Phase-Out Amendment Act under a new § 7 sec. 1a AtG Appendix 3 column 2 Atomic Energy Act do not enjoy stand-alone protection under Art. 14 sec. 1 GG. They do, however, share in the constitutional protection of property that Art. 14 GG confers on the use of property in a licenced nuclear technology installation. 233

(a) The residual electricity volumes allocated to the nuclear power plants under the Phase-Out Amendment Act determine the use of the nuclear power plants covered by the protection provided by Art. 14 sec. 1 GG; however, they lack essential features of stand-alone property interests. 234

The residual electricity volumes, on the one hand, hallmark the restriction of plant 235

ownership resulting from the nuclear phase-out, because they established the expiry of the use of the power plants. At the same time, however, they are a significant factor in terms of power production, given that they are allocated to the individual nuclear power plants for the purpose of producing electricity and thus to generate profits, and therefore define the value of private benefits.

Pursuant to § 7 sec. 1b AtG, residual electricity volumes may be transferred to other nuclear power plants to a limited extent. However, they cannot be disposed of as freely as other property interests. Instead, transferability of residual electricity volumes is limited from the outset to the other German nuclear power plants, and is subject to further restrictions set out in § 7 sec. 1b AtG, particularly the principle of “old to new” in § 7 sec. 1b sentence 1 AtG. Besides, without a nuclear power plant at which residual electricity volumes can be produced, those residual electricity volumes are worthless. 236

Finally, the granting of residual electricity volumes under the Phase-Out Amendment Act is not immediately based on a significant contribution accomplished by the complainants themselves. The residual electricity volumes are not conceived as direct compensation for the investments rendered worthless by the phase-out, but are a decisive feature of the time limit the operation is subject to. However, under the Phase-Out Amendment Act the residual electricity volumes were also granted in order to maintain the principle of proportionality in view of the interference with fundamental rights associated with the phase-out (cf. BTDrucks 14/6890, pp. 15 and 16.). 237

(b) The residual electricity volumes allocated in Appendix 3 column 2 of the Atomic Energy Act to the Mülheim-Kärlich nuclear power plant, which had already been shut down at that time, are exceptional in that this allocation was made in the course of an amicable settlement, in return for the cessation of public liability proceedings initiated against the *Land* of Rhineland-Palatinate and for the withdrawal of an application for the issuing of a license under atomic energy law to operate that nuclear power plant. Thus there is no need to decide whether and to what extent these residual electricity volumes take on an autonomous position under property law in virtue of the fact that from the outset, they were not linked to the operation of a specific power plant, and thus were not the guarantee of a remaining operational lifetime, but rather a *quid pro quo* for waiving the assertion of a pecuniary claim. In any event, given their contractual basis, the Mülheim-Kärlich residual electricity volumes certainly do not enjoy any less protection as property than the other residual electricity volumes allocated in 2002. In fact, considering also their ability to be transferred to other nuclear power plants, they rather enjoy a more extensive degree of protection than the other residual electricity volumes. 238

(4) In view of the possibilities of use they opened up, the additional output allowances allocated by the 11th AtG Amendment at the end of 2010 obtain property-related protection tantamount to the protection accorded to residual electricity volumes of 2002. The fact that they do not reflect a form of consideration of the nuclear 239

power plant operators' property in terms of its respective status quo, but are actually the result of a legislative energy, climate and economic policy decision (cf. BTDrucks 17/3051, p. 1), broadens the legislature's leeway in structuring property (for more details see C I 3 c cc (1) (b) below, paras. 295 et seq.). It does not, however, alter the fact that protection of property is generally also available to this type of guaranteed use by the nuclear power plants.

(5) Protection of property provided with regard to the operating sites and nuclear power plants, as well as with regard to their use, particularly as concretised in the residual electricity volumes, covers all material property interests of the complainants. Farther-reaching constitutional property protection against the accelerated termination of nuclear power plant operations under the 13th AtG Amendment could not be conferred on them by way of the legal concept of an established and exercised business either. Such protection is definitively not broader than the protection the business's economic basis enjoys (BVerfGE 58, 300 <353>) and covers only the specific inventory of rights and goods (BVerfGE 123, 185 <259>); in contrast, mere revenue and profit prospects, or actual circumstances, are not covered by the guarantee of property relating to an established and exercised business (BVerfGE 105, 272 <278>). […] 240

(6) Insofar as the nuclear fuels used at the nuclear power plants are property of the Community under Art. 86 of the Treaty establishing the European Atomic Energy Community (hereinafter: EAEC Treaty) and insofar as energy production companies have an unlimited right to use and consume those fuels pursuant to Art. 87 of the EAEC Treaty, this has no significant impact on the requirements of property law the German legislature must observe in the acceleration of the nuclear phase-out at issue here. Art. 194 sec. 2 subsec. 2 TFEU determines that a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources, and the general structure of its energy supply remains unaffected. In a given case, the right to use nuclear fuels under EU law therefore goes only so far as the use of those fuels is factually and legally possible under national law. In that sense, European ownership of and rights to use nuclear fuels are accessory to the national system governing use. In that respect, Arts. 86 and 87 of the EAEC Treaty do not affect the protection of property with regard to the owners and operators of nuclear power plants under Art. 14 GG. 241

2. The challenged provisions of the 13th AtG Amendment do not result in an expropriation of the complainants' property. 242

An expropriation under Art. 14 sec. 3 GG (a) presupposes the deprivation of property through a change in the assignment of ownership (a aa) and always also presupposes an acquisition of goods (a bb). In contrast, restrictions of the power of use and disposition over property qualify as determinations of content and limits within the meaning of Art. 14 sec. 1 sentence 2 GG; if they lead to a deprivation of specific property interests without contributing to the acquisition of goods, enhanced requirements 243

must apply with regard to their proportionality. They then also raise the question of a settlement provision (a cc). The provisions of the 13th AtG Amendment neither change the assignment of ownership nor do they constitute a process for the acquisition of goods (b).

a) Through an expropriation, the state seizes the property of individuals. It deprives them of their property and obtains it for itself or for third parties in the public interest. 244

aa) Expropriation is directed at the complete or partial deprivation of specific subjective property interests guaranteed by Art. 14 sec. 1 sentence 1 GG, for the purpose of fulfilling certain public tasks (cf. BVerfGE 101, 239 <259>; 102, 1 <15 and 16>; 104, 1 <9>; 134, 242 <289 para. 161> established case-law). An indispensable feature of expropriation under Art. 14 sec. 3 GG, for which compensation is mandatory, in contrast to determinations of content and limits under Art. 14 sec. 1 sentence 2 GG, which are generally not subject to compensation, is the criterion of the complete or partial deprivation of property interests and the resulting loss of rights and assets (cf. BVerfGE 24, 367 <394>; 52, 1 <27>; 83, 201 <211>). Thus, restrictions of an owner's power to use and dispose of its property cannot amount to an expropriation (cf. BVerfGE 52, 1 <26 et seq.>; 58, 137 <144 and 145>; 70, 191 <200>; 72, 66 <78 and 79>), even if they entirely or almost entirely devalue the use of the property (cf. BVerfGE 100, 226 <240>; 102, 1 <16>). Nor does the concept of a "quantitative partial expropriation" (Ossenbühl, *Verfassungsrechtliche Fragen eines beschleunigten Ausstiegs aus der Kernenergie*, 2012, p. 45), which is put forward by the complainants, turn a restriction of use into an expropriation, unless it results in a change in the assignment of a property right or of a separable part thereof. 245

bb) Expropriation within the meaning of Art. 14 sec. 3 GG further makes it a mandatory requirement that the sovereign seizure of a property right at the same time constitutes an acquisition of goods for the benefit of the public authorities or another beneficiary of the expropriation. 246

(1) Thus far, the question of whether a the expropriation requirements under Art. 14 sec. 3 GG are only met in the case of an acquisition of goods has not been answered uniformly in the case-law of the Federal Constitutional Court. […] 247

(2) Under the most recent case-law of the Federal Constitutional Court, acquisition of goods continues to be a constitutive element of expropriation under Art. 14 sec. 3 GG. 248

(a) The wording and historical background of the fundamental right to property do not provide an unequivocal answer. […] 249

[…] 250

(b) Functional reasons of protecting property in particular argue for an adherence to the classic concept of expropriation, which requires an acquisition of goods. 251

The expansion of the constitutional concept of property that began during the 252

Weimar Republic already has continued under the Basic Law (cf. BVerfGE 25, 371 <407> shares; BVerfGE 31, 229 <239> copyrights; BVerfGE 36, 281 <290 and 291> patent rights; BVerfGE 53, 257 <288 et seq.> entitlements under social insurance law; BVerfGE 53, 336 <348 and 349> reimbursement claims under public law; BVerfGE 89, 1 <5 et seq.> tenant's right of possession; cf. in this respect Ossenbühl/ Cornils, *Staatshaftungsrecht*, 6th ed. 2013, pp. 157 et seq.). This extension of the guarantee of property to very different configurations of subjective legal interests is associated with multi-layered requirements for the statutory design of a fair property system, which must appropriately balance concerns of the public good and subjective legal interests (C I 3 below, paras. 267 et seq.). To that end, the legislature needs broad leeway, which the Basic Law confers for the determination of the content and limits of property, but not for expropriations, which are subject to strictly established prerequisites and legal consequences. Therefore, an expropriation is thus restricted to its classic scope of application, which is characterised by a specific deprivation of property and an acquisition of goods.

A particular argument in favour of limiting expropriation to procedures for the acquisition of goods is that the practical need for a mere dispossession of property that does not entail at the same time the transfer of its ownership to the state or a third beneficiary arises specifically in cases where the property right is flawed in a broad sense, or is otherwise perceived as a burden on the public interest. In such cases, the state thus has no inherent interest in acquiring the object in question for the public good (see, for example, the deprivation of wrongfully obtained property as an incidental consequence of a criminal conviction – BVerfGE 110, 1 <24 and 25>; the prohibition of importing and transporting certain breeds of dogs – BVerfGE 110, 141 <167>; the securing and confiscation of items for evidential purposes – Chamber Decisions of the Federal Constitutional Court, *Kammerentscheidungen des Bundesverfassungsgerichts* – BVerfGK 17, 550 <557>). It is consistent with the general social obligations that property entails (Art. 14 sec. 2 GG) that such cases of deprivation of property not be considered expropriations requiring compensation, but rather as a determination of the content and limits of property, which requires compensation only in exceptional cases, even when property is deprived. […] 253

(b) Objections put forward against the narrow interpretation of expropriation fail to convince. […] 254-255

[…] 256-257

cc) If the state deprives an owner of property for reasons of the public good, but does not actually expropriate the act does not entail an acquisition of goods, the legislature is always faced with the question of whether, in the light of Art. 14 GG, such a determination of content and limits can remain valid only if appropriate provisions are made for settlement. 258

Even in cases of hardship, the legislature is not generally prohibited from asserting determinations of content and limits that restrict property and that it considers neces- 259

sary in the public interest, provided it takes compensatory precautions to avert disproportionate burdens on the owner or burdens contrary to equality requirements, and provided it takes due account of legitimate expectations that are worthy of protection (cf. BVerfGE 58, 137 <149 and 150>; 79, 174 <192>; 83, 201 <212 and 213>; 100, 226 <244>). In certain groups of cases, such a settlement can ensure constitutionality within the meaning of Art. 14 sec. 1 sentence 2 GG of a determination of contents and limits that would otherwise be disproportionate or contrary to equality requirements (BVerfGE 100, 226 <244>).

However, the possibility under Art. 14 sec. 1 sentence 2 GG of ensuring the constitutionality of an otherwise disproportionate determination of content and limits by way of a financial settlement to be set out by the legislature exists only for those cases in which the public interest ground pursued through the determination of limits generally justifies the interference as such, but additionally requires, for proportionality reasons, a settlement provision (cf. BVerfGE 100, 226 <244 et seq.>). Nevertheless, a determination of content and limits for which it is necessary to provide a financial settlement is an exceptional case. Within the limits of what is possible, the protection of property anchored in Art. 14 GG primarily requires that provisions that interfere with property should be designed proportionately, without recourse to compensatory settlement payments; such proportionate designs can be based on exceptions and exemptions, for example, or on transitional provisions (cf. BVerfGE 100, 226 <244, 246 and 247>). Conversely, and by the same token, the owner does not need to accept disproportionate interference with property, and consequently must seek legal protection against such interference by challenging the interfering measure and seeking its elimination or limitation. The Constitution does not give owners the right of opting to accept a disproportionate determination of content and limits and demanding an appropriate settlement instead. 260

By limiting expropriation to cases where goods are acquired, however, burdens on property cannot be categorised as expropriations requiring compensation if they only consist of a deprivation by the state of specific property interests, and thereby give particular weight to the interference. In such cases, the legislature must examine particularly carefully whether such a deprivation is only compatible with Art. 14 sec. 1 GG if the owner is provided with an appropriate settlement. In the review of reasonableness that is required here, in each instance it will be of particular importance to what extent the owner is responsible for the reasons that legitimate the deprivation of property, or to what extent those reasons are at least attributable to the owner (cf. in this respect BVerfGE 102, 1 <17 and 18, 21>). 261

b) The challenged provisions of the 13th AtG Amendment do interfere with the complainants' property, but do not establish an expropriation. They do not deprive the complainants of any specific stand-alone property rights, nor are they associated with an acquisition of goods. 262

[…] 263-266

3. The challenged provisions of the 13th AtG Amendment largely satisfy the requirements for the determination of content and limits of property under Art. 14 sec. 1 sentence 2 GG (a). The statute does not prove to be unconstitutional because of violations of formal requirements for legislation (b). The design of the content and limits is largely proportionate, albeit not in every point (c). It does not meet the requirements of the principle of equality in every respect either (Art. 3 sec. 1 GG) (d). 267

a) The legislature that determines the content and limits of legal interests protected by the fundamental right to property must take due account of both the constitutional recognition of private property under Art. 14 sec. 1 sentence 1 GG and also the social obligations property entails (Art. 14 sec. 2 GG). The public good that must serve the legislature for orientation in this task represents not only the reason, but also the limit for restricting an owner's powers (cf. BVerfGE 25, 112 <118>; 50, 290 <340 and 341>; 100, 226 <241>). The legislature must find a fair equilibrium and a balanced relationship between owner's interests that are worthy of protection and the public good (cf. BVerfGE 100, 226 <240>), and in so doing, must maintain consistency with all other constitutional provisions. In particular, any determination of content and limits must comply with the principle of proportionality (cf. BVerfGE 75, 78 <97 and 98>; 110, 1 <28>; 126, 331 <359 and 360>). However, the limits of the legislature's powers of design are not the same for all matters. First of all the scope of protection of the property guarantee is measured according to what powers an owner specifically has at the time of the legislative measure. Insofar as the property safeguards an individual's personal freedom in the economic sphere, it enjoys particularly strong protection. Second, the legislature's power to determine content and limits becomes all the broader, the more the owned object has a social dimension and a social function (cf., e.g., BVerfGE 50, 290 <340 and 341>; 70, 191 <201>; 102, 1 <16 and 17>; each with further references from the case-law). The legislature's leeway is shaped in particular by the respective economic and social circumstances (cf. BVerfGE 24, 367 <389>; 52, 1 <30>; 70, 191 <201>; 112, 93 <110>; 126, 331 <360>). Furthermore, in the context of the constitutional guarantee of property, due account must be taken of the principle of legitimate expectation under the rule of law, a principle which is distinctly refined under Art. 14 sec. 1 GG with regard to financial assets (cf. BVerfGE 36, 281 <293>; 72, 9 <23>; 75, 78 <105>; 95, 64 <82>; 101, 239 <257>; 117, 272 <294>; 122, 374 <391>). Still more, the legislature is also bound by the principle of equality under Art. 3 sec. 1 GG in determining the content of an owner's powers and duties (cf. BVerfGE 21, 73 <84>; 34, 139 <146>; 37, 132 <143>; 49, 382 <395>; 87, 114 <139>; 102, 1 <16 and 17>; 126, 331 <360>). 268

The legislature may not only assign a new content to property rights under Art. 14 sec. 1 sentence 2 GG. Just as it may introduce new rights, it may also prevent new rights that were possible under former law from arising in the future. The guarantee of property does not require that once legal interests are established, their content must remain untouched forever after (cf. BVerfGE 31, 275 <284 et seq., 289 and 290>; 36, 281 <293>; 42, 263 <headnote 4 and p. 294>; 58, 300 <351>). Even the complete 269

elimination of legal interests that formerly existed and were protected by the guarantee of property may be permissible under certain circumstances (cf. BVerfGE 78, 58 <75>). However, here the legislature is subject to special limits under constitutional law (cf. BVerfGE 83, 201 <212>; 102, 1 <16>). Interference with rights that existed under former law must be justified by reasons of public interest, taking due account of the principle of proportionality (cf. BVerfGE 31, 275 <290>; 70, 191 <201 and 202> with further references). The reasons of public interest that argue in favour of such an interference must be so serious that they take priority over citizens' legitimate expectation of the continuance of their right, which is safeguarded by the protection of the status quo inherent in Art. 14 sec. 1 sentence 1 GG (cf. BVerfGE 42, 263 <294 and 295>; 58, 300 <351>). The permissible scope of the interference also depends on the weight of the underlying public interest (cf. BVerfGE 83, 201 <212>). In any case, a complete elimination of a legal interest, without transition or replacement, may be considered only under special circumstances (cf. BVerfGE 83, 201 <213>; referring to the foregoing, BVerfGE 102, 1 <16>).

With regard to the protection of corporate investments, Art. 14 GG provides no lesser guarantees for companies than it does for other owners. In general, the same limits from Art. 14 GG result here for the legislature as have been developed in the Federal Constitutional Court's case-law on the protection of property in general. If the legislature wishes to expropriate a company's property for sufficiently weighty reasons of the public good, it is bound by the requirements of Art. 14 sec. 3 GG. In contrast, if the legislature determines the content and limits of corporately held property by changing the legal situation, it must adhere to the principles of proportionality, legitimate expectation and equality. The legislature must respect in an appropriate manner company assets and the investments undertaken in reliance on the legal situation. For the rest, however, Art. 14 sec. 1 GG does not guarantee companies that a legal situation that ensures favourable market opportunities for them will be preserved; neither do any other fundamental right provide such a guarantee (cf. BVerfGE 105, 252 <277 and 278>; 110, 274 <290>; likewise on Art. 12 GG, BVerfGE 121, 317 <383>). 270

b) The definition under the 13th AtG Amendment of the content and limits of property in nuclear power plants does not prove to be unconstitutional on grounds that the law purportedly suffers from radical procedural or formal defects. 271

Requirements for investigating facts and stating reasons that the complainants claim to have been violated, considering the speed and the sources of information of the legislative procedure, in fact do not exist in this form as a matter of principle, nor do they apply to the 13th AtG Amendment as an exception. 272

aa) The Basic Law does not give rise to an obligation to investigate facts in the sense that such a duty exists independently from the requirements for the substantive constitutionality of legislation. 273

[…] 274-277

bb) There is also no constitutionally-based special procedural obligation to state reasons for legislation here. 278

[…] 279-280

c) The challenged provisions of the 13th AtG Amendment largely – although not on all points – satisfy the requirements of constitutional law for the determination of content and limits under Art. 14 sec. 1 sentence 2 GG. The amendment pursues a legitimate objective (aa). Its provisions are suitable and necessary in order to achieve that objective (bb). Proportionality requirements, in the strict sense, including the requirements it must meet in terms of legitimate expectations and equality (cc), are satisfied as far as the deprivation of the additional electricity volumes allocated in 2010 are concerned (cc (1)). However, setting fixed shut-down dates proves to be unconstitutional insofar as it has the result that to different extents some of the companies concerned are unable to use up, at least for the most part, the residual electricity volumes allocated in 2002, within the same corporation (cc (2)). The 13th AtG Amendment is also deficient in that it contains no provisions for an appropriate settlement with regard to devalued investments made for the additional output allowances allocated in 2010 (cc (3)). Other than that, however, further burdens on the complainants associated with the shut-down dates, above and beyond the ability to use the residual electricity volumes, must be tolerated (cc (4)). 281

aa) The 13th AtG Amendment pursues the objective of “terminating the use of nuclear energy at the earliest possible date” (BTDrucks 17/6070, p. 1) by setting fixed end dates for power production at the individual nuclear power plants and by revoking the additional output allowances allocated in 2010. The background for the decision to accelerate the nuclear phase-out that had already been introduced in the Atomic Consensus (*Atomkonsens*) of 2000/2001 was the legislature’s “reassessment of the risks associated with the use of nuclear energy”, prompted by the events in Japan (BTDrucks 17/6070, p. 5). 282

The legislature is pursuing a legitimate regulatory objective in accelerating the nuclear phase-out with the underlying intent of thus minimising, in time and scope, the associated residual risk. This generally applies irrespective of varying assessments as to the size and probability of the danger that this residual risk might materialise, and thus also irrespective of the conclusions that may be derived from the reactor disaster in Japan concerning the safety situation at German nuclear power plants. The legislature’s objective of eliminating, as quickly and to the greatest possible extent, the residual risk that must inevitably be accepted together with the use of nuclear energy is constitutionally unobjectionable – even if it were to be founded solely on a political reassessment of the willingness to accept this residual risk. On the contrary, the acceleration of the nuclear phase-out intended by the legislature within its broad leeway in choosing what objectives of the common good to pursue (cf. in this respect BVerfGE 121, 317 <350>; 134, 242 <292 and 293 para. 172>) serves to protect the life and health of the people (Art. 2 sec. 2 sentence 1 GG) and to achieve the task im- 283

posed on the state under Art. 20a GG of protecting the natural foundations of life, in part as a responsibility towards future generations.

bb) The provisions of the 13th AtG Amendment are suitable ((1)) and necessary ((2)) for achieving that objective. 284

(1) The Federal Constitutional Court's review of a law's objective fitness to achieve its purpose is limited to determining whether the employed means are plainly or objectively unsuitable (cf. BVerfGE 126, 331 <361> with further references). To establish suitability, it is sufficient if the provision can further the desired results, and consequently there is simply a possibility of achieving the purpose (cf. BVerfGE 121, 317 <354> with further references). 285

Measured by that standard, setting fixed shut-down dates and revoking the additional output allowances allocated in 2010 are undoubtedly suitable to bring about the final termination of the use of nuclear energy faster than under the previous legal situation. […] 286

The fact that Germany remains exposed to a residual nuclear risk from the operation of nuclear power plants near the border in other countries does not affect the finding that shortening operational lifetimes is suitable to minimise risk domestically. The assessment of a law's suitability depends primarily on the furtherance of the achievement of an objective within the country's own territory. 287

Equally, potential impacts of the accelerated nuclear phase-out on the security of the energy supply in Germany are of no relevance to suitability for achieving the legislative purpose, because – unlike the legislative energy package of 2011, of which the 13th AtG Amendment is a part (cf. BTDrucks 17/6070, p. 5) – it is not aimed at security of the energy supply, but aims to minimise risk associated with the use of nuclear energy. 288

(2) A determination of the content and limits of property that interferes with property rights is necessary if no other means are available that are equally effective but less restrictive of property (cf. in general BVerfGE 121, 317 <354>; 126, 331 <362> with further references). 289

[…] 290

cc) The provisions of the 13th AtG Amendment prove to be largely, although not in all points, a reasonable determination of the content and limits of property, and therefore also one that satisfies the requirements of the protection of legitimate expectations and the principle of equal treatment. 291

(1) The deprivation of the additional output allowances allocated to the nuclear power plants in Appendix 3 column 4 of the Atomic Energy Act under the 11th AtG Amendment in 2010 is consistent with Art. 14 secs. 1, 2 GG. The interference with Art. 14 GG is, to be sure, rather extensive from a quantitative perspective ((a)); yet the property interests concerned are limited in several ways in their worthiness for 292

protection ((b)), so that in the overall balance with the public good, which favours the interference ((c)), the interference is proportionate.

[…] 293

(a) By striking column 4 from Appendix 3 of the Atomic Energy Act in the 13th AtG Amendment, the legislature deprived the nuclear power plants of an electricity production capacity of more than 1,804 TWh. This is equivalent to an average of approximately 12 years' worth of electricity production per nuclear power plant (cf. statement of reasons for the legislative proposal of an Eleventh Act Amending the Atomic Energy Act, BTDrucks 17/3051, p. 1). This figure is just short of twice the amount of residual electricity that was still available to the nuclear power plants from the original allocation in the Phase-Out Amendment Act of 2002 when the 11th AtG Amendment entered into force on 14 December 2010 […]. The magnitude of the cancelled electricity production capacity, and thus the restriction on the possibility of using the nuclear power plants, is therefore very large. 294

(b) However, the property interests concerned are limited in several ways in their worthiness for protection. 295

Art. 14 sec. 1 GG protects not only the physical existence of property, but also the possibility of using it (C I 1 b bb (1) above, paras. 228 et seq.). Since the use of nuclear power plants has been rationed with electricity volumes that can still be produced, corporately held property in the nuclear power plants is embodied not only by the installations and land, but substantially by the power of use as represented in the electricity volumes. If they are uncoupled from the rights to produce electricity, the installations cannot be used in a way that is consistent with their actual purpose of generating profits. The constitutional protection of the electricity volumes allocated under the 11th AtG Amendment shares, in its origins, the special features of the protection of property in nuclear plants in general ((aa)), but in addition has other distinct features, resulting from the reason for the creation and the circumstances of these residual electricity volumes, which reduce the degree to which such property interests are worthy of protection ((bb)). 296

(aa) In the case of nuclear plants, there are limits on how worthy of protection property, as an individual fundamental freedom, can be. Because of its particular nature and function, this type of property serves an individual's personal freedom only to a small degree. Rather, it is corporately held property, with a particularly strong social dimension. On the one hand, the peaceful use of nuclear energy has served, and still serves, to supply the population with energy; on the other hand, it is a high-risk technology which is linked not only to extreme risks of harm, among other issues, but also to still-unresolved problems of final disposal (C I 1 a above, paras. 218 and 219). Both of these factors determine the strong social dimension of the ownership of nuclear power plants, and leave particularly broad leeway for the legislature in designing atomic energy law. 297

In light of these special characteristics of the use of nuclear energy, the Federal Constitutional Court already emphasised in its Kalkar Decision that the normative decision of principle for or against the legal permissibility of the peaceful use of nuclear energy is a matter reserved for the parliamentary legislature (BVerfGE 49, 89 <127>) and that atomic energy law has an exceptional position that justifies diverging from constitutional principles that are recognised in other fields of law (loc. cit., p. 146). It follows that the legislature has great leeway in deciding on whether and how nuclear energy is to be used for peaceful purposes. Yet this does not entail a complete exemption from the settlement provisions that are otherwise required. 298

(bb) Beyond the already strong social dimension of property in nuclear power plants (C I 3 c cc (1) (b) (aa) above, paras. 297 and 298), the protection of property with regard to the use of nuclear plants, insofar as it relates to the additional electricity output allowances allocated by the 11th AtG Amendment at the end of 2010, is further limited against state influence. 299

The allocation of this very large volume of additional output allowances is not based on any act accomplished by the affected companies themselves. These additional output allowances, in contrast with the residual electricity volume allocated in 2002 (C I 3 c cc (2) (b) (bb) (γ) below, paras. 344 and 345), do not constitute compensation for limitations imposed elsewhere on the complainants' property. Nor are they based in any other way on a specific act accomplished by the complainants; in particular, they are not granted in return for specific investments and expenditures that the complainants made out of their own resources, and regarding which the use now would have to be protected by a corresponding increase in the allowances. At the end of 2010, when the legislature decided to allocate the additional residual electricity volumes, it was not because it believed that the operational lifetimes remaining after the Phase-Out Amendment Act of 2002 would otherwise be incompatible with the property rights of the nuclear power plant operators. Rather, granting these additional volumes was the result of an energy, climate and economic policy decision by the Federal Government and the legislature (cf. BTDrucks 17/3051, p. 1). Under the "Energy Concept 2010" of the new Federal Government backed by the CDU/CSU and FDP (Christian Democratic Union, Christian Social Union and Free Democratic Party) political parties, nuclear energy was temporarily to be reinforced further, as a bridging technology, by significantly prolonging the operational lifetimes with the additional output allocations (cf. BTDrucks 17/3049, pp. 8 and 9); the underlying intent was to realise, during a transitional period, the Federal Government's three energy-policy goals of climate protection, cost-effectiveness, and energy supply security in Germany (cf. BTDrucks 17/3051, p. 1). 300

Therefore, although the additional output allowances allocated in 2010 directly structure the exercise of ownership of the nuclear power plants, they are a result of this plant ownership only to a very limited extent. As a politically motivated grant by the legislature, conferred independently of the operators' legal interests, they therefore participate only to a small degree in the protection of the continued existence of 301

property under property law. […]

Finally, the nuclear power plant operators were also unable to obtain a stronger interest in protection of property by claiming a special legitimate expectation, worthy of protection, of the continued existence of the additional output allowances. Leaving aside the question of whether the legislature enacting the 13th AtG Amendment should have included compensation provisions or transitional provisions for frustrated investments specifically made during, and in reliance on, the statutory applicability of the additional output allowances – a matter which must be examined separately (see C I 3 c cc (3) below, paras. 369 et seq.) – the nuclear power plant owners could not develop the general expectation that these additional output allowances would remain unaltered in terms of their status quo, and cannot claim that they relied on this status quo throughout a longer period and focused their business policy accordingly. The 11th AtG Amendment was promulgated in the Federal Law Gazette (*Bundesgesetzblatt*) on 13 December 2010; the so-called “Moratorium” was then declared as early as March 2011, and the 13th AtG Amendment entered into force on 6 August 2011. That period of time is too short to justify a general assumption that the nuclear power plant operators had already adjusted on a lasting basis to the average twelve-year prolongation of operational lifetimes, and had already invested to a corresponding extent. 302

(c) The public interests pursued by the 13th AtG Amendment are of high value and, in the specific implementation of the 2010 revocation of the prolongation of the operational lifetimes, they carry great weight. In the 13th AtG Amendment, the legislature wished to accelerate the phase-out, decided in 2002, of the peaceful use of atomic energy by introducing fixed shut-down dates and by revoking the prolongation of operational lifetimes that had only been introduced late in 2010 with the 11th AtG Amendment (cf. C I 1 b aa (1)-(2) and 3 c aa above, paras. 222 et seq. and 282 et seq.). Accelerating the nuclear phase-out, with its intended purpose of protecting the life and health of the people (Art. 2 sec. 2 GG) and the natural foundations of life (Art. 20a GG), serves constitutional interests of high value. By revoking the prolongation of operational lifetimes from 2010, with the resulting shutdown of nuclear power plants an average of 12 years earlier, the legislature realises a very considerable risk reduction. 303

This is the case irrespectively of whether it was not or is not possible, according to now largely unanimous opinion, to derive new findings from the reactor disaster at Fukushima about other risks to German nuclear power plants, or risks significantly increased when compared to earlier assumptions […]. Furthermore, the reasons for the legislative proposal for the 13th AtG Amendment as stated by the CDU/CSU and FDP parliamentary groups do not actually suggest that any such new findings exist, but refer in this respect only to a reassessment of the risks associated with the use of nuclear energy as a result of the events in Japan (cf. BTDrucks 17/6070, p. 1, 5). In any case, the existing residual risk, even though it was known previously, must accordingly be tolerated for 12 years less than planned, and the extent of the disposal problems 304

necessarily associated with the peaceful use of nuclear energy is reduced accordingly.

(d) In the overall balance with the public good pursued with the challenged provision, the interference with the complainants' property as a result of the revocation of the additional output allowances of 2010 proves to be proportionate. The public interest, which is substantial in both quality and quantity, in reducing the nuclear power plants' operational lifetime by an average of twelve years (C I 3 c cc (1) (c) above, paras. 303 and 304) clearly outweighs the associated burdens on property for the complainants (C I 3 c cc (1) (a) above, para. 294). 305

This result is not opposed by the complainants' contention that the legislature acted self-contradictorily and irrationally. They argue that first of all, believing that the known residual risk associated with the peaceful use of nuclear energy was still acceptable over a rather extended period in light of the high safety standards of German nuclear power plants, the legislature extended their operational lifetime by an average of twelve years at the end of 2010. Yet it revoked this decision only a few months later, with no substantive new findings as to danger. In so arguing, the complainants fail to recognise the legislature's decision-making leeway and its permissible reasons for action. 306

Given an adequate knowledge of the existing risks, whether and under what conditions the legislature may permit a high-risk technology such as the peaceful use of nuclear energy is first of all a political decision, which it may regulate in a manner linked significantly to and dependent on society's acceptance of this technology. To that extent, the legislature is not generally precluded from amending, for the future, a decision that originally favoured the use of nuclear energy, even if there are no substantively new findings about its dangers and manageability. Regarding constitutional organs like the Federal Government and the legislature, who under their democratic responsibility decide considerably on the basis of political aspects, there is no doubt that in such a situation – like those at issue here – they may also respond to events like the reactor disaster in Japan, and derive consequences from heightened fears amongst the population or a change in risk tolerance. 307

However, it is not possible to define in general the extent to which a mere change in political values or increased public concerns or fears can also sustain measures that – like the acceleration of the nuclear phase-out – significantly interfere with the fundamental rights of the persons concerned, nor what weight is to be attributed to them. In any case, any substantial interference with fundamental rights must be justified by sufficiently weighty reasons relating to the public interest, based on an assessment of the dangers or risks that are realistically recognisable amongst such fears and values. At any event, if existing legally protected interests resulting from legitimate expectations – namely investments whose continued existence is protected – are thus devalued, the mere political desire to respond to changes in values amongst the population will often not sustain sudden changes of policy. But if, as here (C I 3 c cc (1) 308

(c) above, paras. 303 and 304), there are weighty public interests substantiating the associated interference, and if the matter concerns the evaluation of a high-risk technology whose risks of causing damage, in light of an extremely low probability of occurrence, on the one hand, but an extremely extensive scope of possible damage, on the other hand, are particularly dependent on political assessment and specifically also on public acceptance (cf. previously BVerfGE 49, 89 <127>), this may also ascribe a weight to events that only change the public's awareness of such risks without bringing new dangers to light. Consequently it is not objectionable that the legislature was reacting to the events in Fukushima even though no new finding as to dangers could be derived from them.

The additional output allowances granted in 2010 are worthy of protection to only a small degree, for lack of an act accomplished by the companies themselves and for lack of a legitimate expectation that those allowances would continue. This justifies their revocation even without compensation. […] 309

(2) The determination of the content and limits of property under the 13th AtG Amendment cannot, however, reasonably be imposed insofar as it means that Vattenfall and RWE are unable to use up, within their corporations, substantial parts of the residual electricity volumes from 2002 (electricity volumes under Appendix 3 column 2 AtG) at their plants due to the statutorily fixed operational lifetimes, while E.ON and EnBW, in contrast, have more electricity production capacity than they need in order to use up their residual electricity volumes from 2002. 310

Neither Vattenfall nor RWE will be able to use all – or almost all – of the residual electricity volumes allocated to them in 2002 by the time when they shut down all the power plants that belong in whole or in part to their corporations ((a)). The interference with property weighs heavily, especially in light of the legal background of the residual electricity volumes allocated in 2002 and the unequal treatment in comparison to competing enterprises ((b)). It is true that the interference faces weighty public interests ((c)). Ultimately, however, the interference with property is not reasonable ((d)). 311

The prevention of the production of the residual electricity volumes from 2002 is the relevant point of reference in assessing whether the burdens imposed on the complainants by the 13th AtG Amendment are reasonable. However, the assessment here no longer depends solely on the figure of a 32-year operational lifetime that is important in amortising the plants and ensuring an adequate profit, as was assumed as a basis for the Atomic Consensus Agreement (*Atomkonsensvereinbarung*) and the Phase-Out Amendment Act implementing that agreement. The 32-year operational lifetime was already included as a conversion factor in calculating the reference volumes in the original phase-out decision, and has been reflected ever since in the residual electricity volume (see A I 2 a aa and b above, paras. 5 and 8 et seq.). Therefore, since this system was introduced, appropriate amortisation and reliable profit from a nuclear power plant no longer depends primarily on 32 years of operation, but 312

instead on the possibility of generating electricity in the amount of the residual electricity volumes.

(a) As a consequence of the introduction of the fixed shut-down dates for the nuclear power plants (§ 7 sec. 1a sentence 1 AtG), in combination with the limited possibilities of transfer (§ 7 sec. 1b AtG), two of the complainants will no longer be able to produce all of the residual electricity volumes allocated by the Phase-Out Amendment Act at their own corporations' nuclear power plants. 313

(aa) […] 314

(bb) The parties' arguments and the oral hearing showed that in all probability, all nuclear power plants that are allowed to operate beyond 6 August 2011 will be able to use up all the residual electricity volumes allocated to them in 2002 before their respective binding shut-down dates under § 7 sec. 1a sentence 1 no. 2 – 6 AtG. 315

However, this does not apply to the nuclear power plants in the group under § 7 sec. 1a sentence 1 no. 1 AtG, which lost their entitlement to produce electricity when the 13th AtG Amendment entered into force, nor to the residual electricity volumes allocated to the Mülheim-Kärlich nuclear power plant. […] The table below provides details of the residual electricity volumes allocated to the individual nuclear power plants belonging to the first group under § 7 sec. 1a sentence 1 no. 1 AtG and to the Mülheim-Kärlich nuclear power plant, and not yet used on 6 August 2011. […] 316

Nuclear power plants under § 7 sec. 1a sentence 1 no. 1 AtG	**Residual electricity volume remaining at 6 August 2011 (in GWh)**
Biblis A	2.194,24
Biblis B	7.822,48
Brunsbüttel	10.999,67
Isar 1	2.024,12
Unterweser	11.202,86
Philippsburg 1	8.454,24
Krümmel	88.245,11
TOTAL	130.942,72
Mülheim-Kärlich	99.150,00
GRAND TOTAL	230.092,72

(cc) A projection of the extent to which these residual electricity volumes can be used up within the remaining operating periods after being transferred to still-operable nuclear power plants, on top of those plants' own volumes, must be based 317

on the corporation's own and internal estimation ((α)). This Senate's respective inquiry was not answered uniformly by the parties to the constitutional complaint proceedings ((β)).

(α) Projections of the possible consumption of residual electricity volumes depend on the corporations' own and internal estimations. 318

As part of the review of their property's determination of content and limits in terms of proportionality, the complainants must note that they may transfer electricity volumes that are no longer usable at one nuclear power plant, because that plant's shut-off date has been reached, to another nuclear power plant within their own corporation, or proportionally to one in which they hold at least a share of the ownership. It is reasonable to assume that the transferring nuclear power plant can obtain an adequate selling price, as all parts of the corporation ultimately have the same interests. Even if the selling power plant obtains only an inadequate price – measured in terms of the profit attainable by producing electricity itself – the normally equivalent increase in profit from producing electricity at the recipient nuclear power plant will still remain within the corporation, so that a uniform consideration is justified also in that respect. 319

Other conditions, however, apply with regard to transfers beyond the corporation's sphere. According to the parties' largely coinciding projections, which substantially agree in this regard (C I 3 c cc (2) (a) (cc) (β) below, para. 327), there will be only two potential buyers (E.ON and EnBW) to take over the residual electricity volumes no longer usable within the corporation. Of these, E.ON holds two-thirds to three-quarters of the buyer power, depending on the projection. Here both buyers have only limited additional electricity production capacity, which does not fully cover the supply, and they will thus only take over residual electricity volumes if this pays off for them economically; they can therefore largely determine the price themselves. Under these circumstances, from the selling entities' viewpoint, a transfer of residual electricity volumes is not an entirely reasonable exploitation option. 320

(β) The discrepancies in the parties' projections concerning the electricity volumes that can still be produced depend on their different assumptions as to the degree of utilisation that can realistically be expected from the individual nuclear power plants on which they based their calculations. All parties rightly assume that a 100% utilisation rate, over a longer period of time, has so far not yet materialised at a nuclear power plant, and therefore projections of future consumption cannot be based on such an assumption either, especially because in addition to the typical uncertainty factors, such as technically required downtime or the evolution of the electricity market, unpredictable shut-down-related factors such as the cost-effectiveness of nuclear fuel replacements or other measures to enhance fitness come increasingly into play in light of impending shut-down dates. 321

[…] 322-327

(dd) There is no need to decide here which of the different projection approaches 328

should govern the review of the legislative decision. While the complainants, as well as Greenpeace, base their projections on an extrapolation of statistically calculated levels of utilisation, the Federal Government takes as a basis the annual reference volumes, which are statistically calculated as a starting point, with reference to the annual utilisation between 1990 and 1999, but are otherwise set by law; the government figure furthermore pursued the goal of establishing a rather generous calculation basis for the Atomic Consensus – at that time, in favour of the operators of nuclear power plants. Even if one adopts the Federal Government's relatively optimistic utilisation assumptions, this leads to the conclusion that the residual electricity volume which RWE and Vattenfall will lo longer be able to use up within their own nuclear power plants would be so substantial that the determination of content and limits proves to be unreasonable (C I 3 c cc (2) (d) below, paras. 364 et seq.) in light of the special legitimate expectation to which the nuclear power plant operators are entitled here (C I 3 c cc (2) (b) (bb) below, paras. 334 et seq.) and the detriment that results in comparison to the other companies (C I 3 c cc (2) (b) (cc) below, paras. 347 et seq.).

(b) The interference with the property of complainants Vattenfall and RWE because of the inability to use up the residual electricity volumes from 2002 that can no longer be produced within the corporation, owing to the fixed shut-down dates, is significant. It is substantial in quantity ((aa)) and because of the special circumstances of its creation, it affects an ownership interest that enjoys elevated protection against change ((bb)). Furthermore, it places these complainants at a disadvantage in relation to competing companies ((cc)). 329

(aa) The volume of electricity allocations that cannot be used within the corporation is substantial in Vattenfall's and RWE's case. 330

(α) Depending on the projection, complainant Vattenfall will not longer be able to produce either 46,651 GWh or 45,890 GWh of the residual electricity volumes allocated in 2002. Based on the information about electricity volumes generated at still-operating nuclear power plants for 2000 through 2014 in columns 3 and 4 of the notice of the Federal Radiation Protection Office of 31 October 2015 (A VI 1 above, para. 166), this is equivalent to an average of approximately four and a half years' worth of production at a nuclear power plant. Thus about 30% of the originally allocated residual electricity volume can presumably not be produced within the corporation. If one sets this production deficit in relation to the residual electricity volume of 70,273 GWh that was still available to complainant Vattenfall at the end of 2010, the share of the electricity volume that can no longer be produced even amounts to about 66%. The interference caused by the 13th AtG Amendment in complainant Vattenfall's use authorisation for its nuclear power plants, as certificated with the residual electricity volumes from 2002, is therefore serious even in quantitative terms. 331

It cannot ultimately be argued against this conclusion that the projected production deficit was caused by downtime at the Krümmel nuclear power plant for which com- 332

plainants Krümmel and Vattenfall were responsible, and therefore should not have been taken into account when the legislature set the shut-down dates. This argumentation is not convincing with regard to the relevant period at issue here, i.e. the period prior to the entry into force of the 13th AtG Amendment in August 2011. After the nuclear phase-out under the 2002 legislation, the nuclear power plant operators were acting within a legal situation that set the end of the phase-out, barring further notice, by means of the residual electricity volumes, rather than with specific shut-down dates. It was permissible for the operators to orient their business operations to that situation and therefore they also did not have to carry out the production of the residual electricity volumes allocated to them under any particular time pressure. Within the limits thus established they could also allow for technically occasioned downtime. Ultimately, neither the oral hearing nor the parties' arguments suggest that complainants Krümmel and Vattenfall deliberately undermined the legislation's objective of terminating the peaceful use of nuclear energy as soon as possible.

(β) For complainant RWE, the residual electricity volume that presumably cannot be produced within the corporation amounts to at least 35,821 GWh, and at most 42,079 GWh, depending on the projection. This too is equivalent to approximately four years' worth of production at a nuclear power plant. Measured against the residual electricity volume allocated to the corporation in 2002, however, this represents only between 5% and 6%, yet measured against RWE's residual electricity volume remaining at the end of 2010, it amounts to between 19% and 22%. Therefore the interference with property for complainant RWE is not inconsiderable either. 333

(bb) The inability to use up the residual electricity volumes from 2002 that cannot be produced within the corporation because of the fixed shut-down dates affects property interests that are particularly protected against interference here because of special circumstances. As a specific embodiment of the right to use the nuclear power plants, the residual electricity volumes allocated in 2002 do originally share the general character of property in nuclear plants, which in virtue of its particular nature and function does not primarily serve the personal freedom of the individual, but is characterised by a strong social dimension (C I 1 a and C I 3 c cc (1) (b) (aa) above, paras. 216 as well as 297 and 298). As far as the residual electricity volumes under the Phase-Out Amendment Act are concerned, the complainants' ownership for use, unlike the additional output allowances allocated in 2010 under the 11th AtG Amendment (C I 3 c cc (1) (b) (bb) above, paras. 299 et seq.), enjoys particular protection because these residual electricity volumes are the core matter of a transitional provision. 334

In general, a transitional provision adopted by the legislature for reasons of protecting legitimate expectations can be amended only under special conditions ((α)). The residual electricity volumes are part of a transitional provision intended to provide a special degree of protection with regard to legitimate expectations ((β)). The expectation that the regulated residual electricity volumes will continue is also especially worthy of protection because those volumes have the function of compensating for re- 335

strictions of property elsewhere ((γ)). This particularly applies to the electricity volumes at Mülheim-Kärlich ((δ)).

(α) If the legislature frustrates the legitimate expectation of the continuance of a limited transitional provision that it adopted to protect legitimate expectations, and eliminates that provision before its originally intended scope is exhausted, to the detriment of the entitled persons, it can in any case do so only subject to special requirements from the viewpoint of protecting legitimate expectation under the rule of law. Such a case is not a matter of protecting citizens' legitimate expectation of the continuation of applicable law in general. Here the citizen instead relies on the continuity of a provision according to which old law, or a particular transitional provision, continues to apply for a certain time to a limited group of persons upon the finding that such continuance is compatible with the public interest. By adopting such a provision, the legislature has established a special situation of legitimate expectation. To revoke it prematurely, or amend it to the detriment of the persons concerned, it does not suffice that a political assessment of the associated and tolerated dangers, risks or disadvantages to the general public has changed. Instead – provided the concerned persons' interest in the continuance of the provision is worthy of protection and is of sufficient weight – it is also necessary that keeping the applicable transitional provision in force must be expected to cause serious detriment to important common interests (cf. BVerfGE 102, 68 <97 and 98>; likewise BVerfGE 116, 96 <131>). 336

(β) The residual electricity volumes allocated in 2002 are part of a transitional provision which, according to the historical development, reasons and design of the Phase-Out Amendment Act of 2002, were intended to provide a special protection of legitimate expectations. The historical development, reasons and design of the residual electricity volume provision leave no doubt that both the Federal Government and the legislature intended to guarantee that energy suppliers in the sector of nuclear power plants would have a reliable basis for their economic activities during the period of use remaining after the phase-out decision, and this included the continuance of the residual electricity volumes granted in 2002. 337

[…] 338-339

In the Phase-Out Amendment Act of 2002, the legislature resolved on a phase-out of nuclear energy, and at the same time declaredly implemented the core points of the Consensus Agreement (cf. statement of reasons for the legislative proposal from the SPD and BÜNDNIS 90/DIE GRÜNEN parliamentary parties, BTDrucks 14/6890, p. 1; A I 2 b aa above, para. 9). The statement of reasons for the legislative proposal expressly reproduces the passage from the Consensus Agreement in which the Federal Government guarantees the undisturbed operation of the plants during the remaining term, subject to the conditions stated therein (BTDrucks 14/6890, p. 13). 340

The statement of reasons for the legislative proposal views the design of the residual electricity volumes as a proportionate structuring of the concerned companies' property. It was said to ensure that the operators would be able to amortise their in- 341

vestments and furthermore obtain an adequate profit. All in all, together with certain other clarifications, the measures thus contributed “significantly towards protecting legitimate expectation” (cf. BTDrucks 14/6890, p. 16).

The mention in the statement of reasons for the legislative proposal that “the exact date of expiry of the entitlement to produce power at a nuclear power plant (…)” did not need to be “rigidly set at the present time” (cf. BTDrucks 14/6890, p. 13) at most reveals a reservation of the option to set fixed end dates later, but cannot undermine the legitimate expectation of the guarantee of value of the residual electricity volumes, which according to the concept of the legislative provision would also have to be taken into account if a time limit were set later. 342

[…] 343

(γ) The expectation of a temporally unlimited and generally undiminished possibility of using the residual electricity volumes from 2002 is also especially worthy of protection because of its compensatory nature. These residual electricity volumes were supposed to compensate for the loss that the Phase-Out Amendment Act caused to the hitherto non-time-limited possibility of using the nuclear power plants, to an extent that would ensure the amortisation of the plants and an adequate profit, and thus help preserve the proportionality of the phase-out decision (cf. BTDrucks 14/6890, pp. 15 and 16). 344

Ownership of the plants and the possibility of their use that existed until that time were founded substantially on acts accomplished by the power plant owners themselves, who bore the investments and maintenance, and thus enjoyed protection of property. The fact that the peaceful use of nuclear agency was subsidised by large amounts of public funding for decades did not stand to prevent the development of ownership of the plants for private benefit, any more than it did with other technologies subsidised by the state. Such support can in many regards give the legislature greater leeway in structuring the content and limits of this property, but it does not devalue the property and the associated authority to use the plants for profitable ends. The residual electricity volumes are a form of compensation for the termination of the previously non-time-limited possibility of using this property, and therefore – unlike the politically motivated allocation of additional output allowances in the 11th AtG Amendment (C I 3 c cc (1) (b) (bb) above, paras. 299 et seq.) – enjoy the same quality of protection of property in the plants and of the possibility of use that existed until 2002. 345

(δ) The residual electricity volumes allocated to the Mülheim-Kärlich nuclear power plant enjoy all the more a protection of trust in their continuation and protection of legitimate expectations. They too were allocated by the 2002 Phase-Out Amendment, even though the nuclear power plant had already been permanently shut down in 2001. The volumes were allocated in the course of an amicable settlement in return for the cessation of public liability proceedings against the *Land* of Rhineland-Palatinate and for the withdrawal of an application for the issuing of an authorisation 346

under atomic energy law for that nuclear power plant (A I 2 a bb above, paras. 6 and 7). Unlike the other residual electricity volumes, this allocation could thus not be the subject matter of a guarantee of a remaining operational lifetime for the Mülheim-Kärlich nuclear power plant, within which the power plant would be amortised. Instead, this residual electricity volume was granted – in a way not linked to the operation of a particular power plant – in return for a waiver of asserting a pecuniary claim. Therefore this residual electricity volume has a somewhat distinct nature (C I 1 b bb (3) (b) above, para. 238).

(cc) The fact that some of the residual electricity volume from 2002 can no longer be used within the corporation because of the fixed shut-down dates imposes an additional burden on complainants RWE and Vattenfall because without a sufficient justifying reason, they are thereby placed at a disadvantage against the competing firms E.ON and EnBW, which can use up all of their residual electricity volumes within the operational lifetime of their power plants. 347

(α) In determining the content of owners' powers and obligations under Art. 14 sec. 1 GG, the legislature is also bound by the principle of equality under Art. 3 sec. 1 GG (cf. BVerfGE 21, 73 <84>; 34, 139 <146>; 37, 132 <143>; 49, 382 <395>; 87, 114 <139>; 102, 1 <16 and 17>). Therefore, burdens that structure ownership must be distributed equally if their circumstances are essentially the same, and differentiations are always in need of justification by objective reasons that are appropriate to the objective and scope of the unequal treatment (cf. BVerfGE 126, 400 <416>; 129, 49 <69>; 132, 179 <188 para. 30>). 348

(β) The staggering of the residual operating times of the nuclear power plants places Vattenfall and RWE at a disadvantage in terms of the ability to produce the residual electricity volumes. The staggered timing of the end of the licence to produce power according to the six power plant groups in § 7 sec. 1a sentence 1 AtG, in conjunction with the provisions on the possibilities for transferring electricity volumes in § 7 sec. 1b AtG, has the result that in all probability, only Vattenfall and RWE will be unable, to any extent worth mentioning, to produce the residual electricity volumes allocated to their power plants in 2002. 349

Accordingly it had to be assumed that E.ON, at its nuclear power plants still licenced to operate after 6 August 2011, would indisputably not only be able to use up all the residual electricity volumes allocated to those plants and left over from the nuclear power plants already shut down at 6 August 2011, but in addition would in any case have more than 35,000 GWh of further electricity production capacity available. Equivalent considerations apply to EnBW, with an expected capacity surplus of at least 9,000 GWh. 350

Vattenfall, in contrast, according to concurring projections, will be unable to generate approximately 46,000 GWh of this electricity volume at power plants belonging to the corporation. This figure amounts to approximately 30% of the residual electricity volume allocated in 2002, or more than 60% of the volumes still remaining at the end 351

of 2010.

Complainant RWE is also to a significant extent placed in a poorer position than its competitors E.ON und EnBW with regard to the scope of the expected ability to produce the residual electricity volumes allocated to it. After the operational lifetimes of its nuclear power plants end, RWE will have residual electrical volume from 2002 that cannot be used within the corporation, in amounts that vary between nearly 36,000 GWh and more than 42,000 GWh, depending on the projection calculation. Although these figures represent only 5% to 6% of the residual electricity volume allocated in 2002 (C I 3 c cc (2) (a) (cc) (β) above, para. 327), in absolute figures the adverse position of RWE compared to E.ON and EnBW is considerable, equivalent to approximately four years' worth of production at a nuclear power plant, speaking only of the residual electricity volumes that can no longer be used. 352

(γ) No adequate objective reason is evident for the unequal treatment of RWE ((αα)) and Vattenfall ((ββ)) in comparison to E.ON and EnBW with regard to the electric production deficits. These do not merely constitute acceptable forecasting inaccuracies either ((γγ)). Nor is the unequal treatment supported by legislative powers to categorise and consolidate ((δδ)). 353

(αα) The electricity production deficit that can be expected for complainant RWE has its primary cause in the substantial Mülheim-Kärlich electricity volume allocated to RWE (C I 3 c cc (2) (a) (bb) above, para. 316). Even in 2000/2002, this electricity volume was not matched by any operable RWE-owned nuclear power plant to which the volume could originally have been allocated. The legislature enacting the 13th AtG Amendment should have taken this into account in allocating the respective volume of electric production capacity for each corporation, which was ultimately carried out by staggering the shut-down dates. It is true that when all nuclear power plants wholly or partially held by RWE are taken together, this staggering yields both an operational lifetime surplus well beyond the 32-year limit (Table C I 3 d below, para. 387), and also – if the Mülheim-Kärlich volumes are set aside – a surplus of electricity production capacity. However, these are able to absorb only about half of the Mülheim-Kärlich electricity volumes available at the time when the 13th AtG Amendment was enacted. In contrast, there is no evident objective reason why E.ON and EnBW should ultimately be able to use up all their electricity volume and even have surplus capacity available. At any rate, the objective of accelerating the nuclear phase-out pursued by the legislature with the 13th AtG Amendment (C I 3 c aa above, paras. 282 and 283) does not justify this unequal treatment. Neither the legislative background materials nor the arguments put forward by the parties to the proceedings show that the intended acceleration objective was supposed to be achieved precisely through this placement of RWE at a disadvantage. Considering the extensive capacity surpluses identified in the case of E.ON and EnBW, respectively (C I 3 c cc (2) (a) above, paras. 313 et seq.), there is also nothing in this matter that argues that placing RWE at a disadvantage would have been the only way to accelerate the phase-out. 354

(ββ) Equivalent considerations apply to Vattenfall. In absolute figures (approximately 45,000 GWh), its disadvantage against E.ON and EnBW in terms of the expected electricity production deficit is approximately the same as that of RWE. The principal reason for the residual electricity volumes that will presumably not be usable within the corporation is the categorisation of the Krümmel nuclear power plant under the first shut-down group as set out in § 7 sec. 1a sentence 1 no. 1 AtG. Vattenfall has no other nuclear power plants with noteworthy surplus capacity. 355

As far as the Krümmel nuclear power plant is concerned, there is no reason to believe that assigning it to the first shut-down group, with the associated placement of Vattenfall at a disadvantage against E.ON and EnBW, was necessary in order to achieve the acceleration objective of the 13th AtG Amendment, or that the detriment could not have been avoided by grouping the nuclear power plants differently, or compensated in some other way, without reducing the acceleration effect (D II 2 below, paras. 403 et seq.). 356

Assigning the Krümmel nuclear power plant to the first group under § 7 sec. 1a sentence 1 AtG terminated its licence to produce power as early as the end of the day on 6 August 2011, and therefore limits its operational lifetime to only 27.36 years. That is 4.5 years less than the 32 years that were promised to operators under the Atomic Compromise. The full term has largely been maintained otherwise under the legislative provisions for all other nuclear power plants, and according to the legislative intent of the 13th AtG Amendment was still supposed to be maintained even after the introduction of fixed shut-down times (cf. statement of reasons for the legislative proposal, BTDrucks 17/6070, p. 6). 357

On the evidence of the statement of reasons for the legislative proposal, the staggering of operational lifetimes under § 7 sec. 1a sentence 1 AtG was intended not only to support the actual purpose of acceleration, but also to ensure that the companies concerned were not affected disproportionately in their fundamental right under Art. 14 sec.1 GG; the standard operational lifetime of 32 years was meant to ensure that this objective can be met (cf. BTDrucks 17/6070, p. 6). Furthermore, the staggering was supposed to guarantee security of energy supply (loc. cit., p. 7). Neither aspect can justify assigning the Krümmel nuclear power plant to the first group. This nuclear power plant is the only one that falls well short of the 32-year standard operational lifetime. It is not evident to what extent the idea of guaranteeing security of supply is supposed to require shutting down the Krümmel plant earlier. It is not evident, nor has it been argued, that the Krümmel power plant had to be included in the first group because this was the only way to ensure security of supply in certain regions of Germany through the longer operation of other nuclear power plants, while at the same time maintaining the general objective of accelerating the nuclear phase-out. 358

Nor can the assignment to the first shut-down group be explained by reasons of operating safety at the Krümmel nuclear power plant, which were in fact not put forward by the Federal Government in particular before the constitutional complaint proceed- 359

ings. Granted, recourse to reasons for differentiation that are adduced only later is not precluded by the fact that these reasons were not yet recognisable clearly enough from the legislation itself. Only for steering legislation has the Federal Constitutional Court required that the steering purpose must be supported by a recognisable decision of the legislature, especially in tax law (cf. BVerfGE 117, 1 <32> with referral to BVerfGE 93, 121 <147 and 148>; 99, 280 <296>; 105, 73 <112>; 110, 274 <293>) but also elsewhere (cf. BVerfGE 140, 65 <85 para. 45> with referral to BVerfGE 118, 79 <101>). Otherwise it is sufficient if a law ultimately proves to be constitutional (cf. BVerfGE 140, 65 <79 and 80 para. 33>). However, the 13th AtG Amendment is not a law with such a steering purpose.

However, in point of fact, the safety aspect does not justify the unequal treatment. No specific, current safety shortcomings at the Krümmel nuclear power plant have been mentioned. It has not been contended in a substantiated form that specific security concerns would have conflicted with the resumption of operation at the Krümmel nuclear power plant that was planned, according to the arguments of complainants Krümmel and Vattenfall, to take place at the end of 2011. Moreover, concerns of that nature should have been met using the instruments provided for such purposes in the Atomic Energy Act. The age of the nuclear power plant in and of itself also does not support inclusion in the first group, because the Krümmel nuclear power plant started operation on 28 March 1984, and therefore later than, for example, the Grafenrheinfeld nuclear power plant that appears in § 7 sec. 1a sentence 1 no. 2 AtG. Finally, the placement of Krümmel at a significant disadvantage cannot be explained by the fact that the Krümmel nuclear power plant still belongs to the 69 line of boiling water reactors, all other still-operating members of which also lost their entitlement to produce power in August 2011 by inclusion in the first group. Merely the statistically higher number of reportable events for this type of reactor, without specific findings of inadequacies in the particular reactor concerned, does not justify placing Krümmel at a disadvantage with such adverse consequences for its electric production capacity. 360

(γγ) Neither do the complainants concerned have to accept unequal treatment in terms of the ability to produce electricity within the corporation as an inevitable projection inaccuracy of the legislature. […] 361

(δδ) Nor are the electricity production deficits that are imposed only on complainants Vattenfall and Krümmel justified from the viewpoint of legislative powers to categorise and consolidate (cf. in this respect BVerfGE 84, 348 <359 and 360>; 126, 268 <278 and 279>; 133, 377 <412 and 413 paras. 86 et seq.> each with further references). […] 362

(c) […] 363

(d) In an overall balance with the public good, which favours the accelerated shut-down of the nuclear power plants, interferences with the property of complainants Krümmel/Vattenfall and RWE linked to the fixed shut-down dates and the expectable 364

production deficit for the residual electricity volumes from 2002, proves to be untenable.

The expected interferences in these complainants' property affect interests particularly worth protecting in terms of existing legitimate expectations; what is more, they were granted to the complainants even before the 13th AtG Amendment was adopted, not least so as to protect such legitimate expectations. Furthermore, the burdens, amounting to a combined total of between approximately 81,000 and 88,000 GWh of residual electricity volume from 2002 that can no longer be produced, are high both in absolute figures and in relation to the residual electricity volumes still available under the legislative decision on the 13th AtG Amendment, and furthermore in proportion to the residual electricity volumes originally allocated to them by the Phase-Out Amendment Act (Table in C I 3 c cc (2) (a) (cc) (β) above, para. 327). Furthermore, the competing companies are not equally affected by these factors; only Krümmel/Vattenfall and RWE are encumbered with ultimately inadequate electricity production capacity, lacking adequate objective reasons. 365

Then again, there are concerns relating to the fundamentally high-value protected interests of the life and health of the people (Art. 2 sec. 2 sentence 1 GG) and the natural foundations of life (Art. 20a GG), which the acceleration of the nuclear phase-out contributes to. Nonetheless, a provision that avoided the electricity production deficits would have had only a relatively minor adverse effect on these public interests – even if a solution had been sought by way of a corresponding prolongation of the operational lifetimes of individual nuclear power plants of the complainants concerned. The volume of electricity involved is approximately eight and a half years' worth of a nuclear power plant's production – a volume which will presumably go unproduced under the challenged legal situation. In contrast, the total residual electricity volumes of 2,623,310 GWh (Table in C I 3 c cc (2) (a) (cc) (β) above, para. 327) allocated to the nuclear power plants in 2002 under the Phase-Out Amendment Act were equivalent to […] about 262 years' worth of output, assuming a nuclear power plant's average annual production to be 10,000 GWh. Here it must also be borne in mind that according to the staggered remaining operational lifetimes set in the 13th AtG Amendment, plants of E.ON and EnBW can legally be operated longer than will presumably be the case in practice, given the remaining residual electricity volumes within their corporations. Measured against this framework that the legislature itself, in the 13th AtG Amendment, set for its intended public-interest objective by way of the total remaining operating lifetimes, the detriment to the public interest resulting from a provision that would allow the production of RWE and Vattenfall' residual volumes would therefore even be significantly less. Furthermore, the production deficits could also have been avoided by staggering the specific shutdown dates differently for the individual power plants, even without calling the intended overall phase-out date into question. 366

Ultimately, however, the electricity production deficit likely to arise in the case of the complainants Vattenfall and Krümmel is especially high, both in absolute terms and in relation to the residual electricity volumes originally allocated, and particularly when 367

measured by the residual electricity volume that was left at the end of 2010. It is therefore so substantial in quantity that in an overall balance between protection of property and particular protection of legitimate expectation, as well as between the disadvantaged position against competing companies, on the one hand, caused by the deficit, and the reasons of public interest that argue in favour of the provision, on the other hand, it cannot reasonably be imposed on the owners.

The electric production deficit for RWE is significantly lower in proportion to the original residual electricity volumes, but it is nevertheless considerable in absolute terms. […] 368

(3) The 13th AtG Amendment violates Art. 14 sec. 1 GG insofar as it does not provide for any transitional periods, compensation clauses or other settlement provisions for cases in which investments in nuclear power plants were devalued through the revocation of the additional electricity output allowances allocated in 2010. 369

However, the energy corporations' payments under the Development Fund Agreement (*Förderfondsvertrag*) (A I 3 b bb above, para. 21), adduced by the complainants in this context, are not expenditures frustrated by the 13th AtG Amendment for which a settlement provision should have been provided by that legislation. Whether, to what extent, and under what conditions the complainants' payments made in that connection must be refunded is a question that must be clarified first of all within the underlying contractual relationship. 370

Subject to certain conditions, Art. 14 sec. 1 GG protects the legitimate expectation that the legal situation serving as a basis for investing in, and using, property will not change ((a)). Settlement provisions for frustrated investments ((b)) did not have to be provided in respect of the 2002 residual electricity volumes ((b) (aa)), but they should have been provided in respect of investments for the 2010 additional output allowances ((b) (bb)). 371

(a) In Art. 14 sec. 1 GG, the principle under the rule of law of protecting legitimate expectations with regard to financial assets is distinctly refined (cf. BVerfGE 58, 81 <120>). It protects trust in the reliability and predictability of the legal system created under the applicability of the Basic Law, and of the rights acquired on the basis of that system (cf. BVerfGE 101, 239 <262>; 132, 302 <317>; 135, 1 <21 para. 60>). The fundamental right to property therefore also protects a legitimate expectation of the continuance of the legal situation as a foundation for investments in, and the use of, property. Whether and to what extent such an expectation is legitimate depends on the circumstances of the particular case. There is no guarantee that all investment expectations will be fulfilled. In particular, Art. 14 sec. 1 GG generally provides no protection against changes in the legal environment for commercial activity, or the effects of that environment on market opportunities. However, if the legislature directly suppresses or significantly restricts the further use of property, investments in such property made on the basis of the legitimate expectation that the legal situation will not change call for appropriate consideration, under the principle of proportionality, 372

with regard to both whether and how a settlement should be provided. In this regard, the legislature has broad leeway in designing transitions for existing legal situations, entitlements, and legal relationships. In particular, when changing systems and restructuring legal situations, the Constitution does not require the legislature to spare concerned persons from all burdens or to address every special burden with a transitional provision (cf. BVerfGE 131, 47 <57 and 58>). In any case, a compensating settlement for devalued investments in property is not necessary if the legislature compensates for the restriction of usability of the property in some other way; double compensation is not permissible.

(b) Measured against this standard, the 13th AtG Amendment is unconstitutional insofar as it does not provide for any settlement with regard to frustrated investments. 373

(aa) However, insofar as investments were made in reliance on the ability to produce essentially all of the 2002 residual electricity volumes, there is no need for a separate settlement provision. To that extent, in regard to the deficit in electricity production, the legislature must already provide adequate compensation, a prolongation of operational lifetimes, or some other form of settlement (C I 3 c cc (2) (a) above, paras. 313 et seq.) that also appears adequate, from the viewpoint of proportionality, as compensation also for frustrated investments. As there will be electricity production or a legal surrogate for these volumes, investments made cannot be regarded as frustrated. Double compensation for both residual electricity volumes that cannot be used up as well as for frustrated investments is constitutionally impermissible. 374

(bb) The 13th AtG Amendment should have provided an appropriate settlement for investments that were made in the nuclear power plants with a view to producing the additional output allowances allocated at the end of 2010, and that were devalued by the revocation of these volumes at the beginning of August 2011. 375

(α) In principle, the circumstances were such that legitimate expectations worthy of protection could arise. It is true that there was no constitutional impediment for the legislature to eliminate the additional residual volumes granted under the 11th AtG Amendment without at the same time providing compensation for the fact that the additional volumes cannot be used (C I 3 c cc (1) above, paras. 292 et seq.). All the same, the power plant operators' expectation of the benefits from power plant investments they made to produce these amounts of electricity deserves protection in general. The declared basis for the 11th AtG Amendment was the legislature's political decision to continue using nuclear energy as a bridging technology for a longer period of time. The power plant operators were entitled to feel encouraged as a consequence to undertake investments in their plants, and did not have to expect that within the same legislative period, the legislature would again distance itself from its fundamental decision in energy policy matters under the 11th AtG Amendment. 376

Legitimate expectations could arise, however, only within the short period between the *Bundestag* resolution on the 11th AtG Amendment on 28 October 2010 and the notice from the Federal Ministry for the Environment, Nature Conservation and Nu- 377

clear Safety (*Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit*) of 16 March 2011 on the Nuclear Energy Moratorium. Contrary to the opinion advanced by some of the complainants, legitimate expectations of the prolongation of operational lifetimes could not already arise upon the corresponding declaration of intent in the Coalition Agreement between the CDU/CSU and FDP parliamentary groups of 26 October 2009, nor at the time of the submission of the legislative proposal for the 11th AtG Amendment in the German *Bundestag* on 28 September 2010. While the formal submission of a legislative proposal for an amendment may indeed undermine trust in the existing legal situation (C I 3 c cc (2) (b) (bb) (α) above, para. 336 and BVerfGE 132, 302 <324 paras. 55 and 56>), legitimate expectations regarding a new legal situation whose subsequent frustration might have to be compensated with an entitlement to compensation cannot be established until the parliament resolves on the new legislation. Before that time, investors act at their own risk. Given the special circumstances of events at the time, once the notice from the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety of 16 March 2011 was released, the operators of nuclear power plants could no longer have had legitimate expectations in terms of investments made on the basis of the legal situation then in force.

However, it is not prejudicial to the development of a legitimate expectation worthy of protection that the constitutionality of the 11th AtG has been in dispute for years with regard to the fact that it came about without the consent of the *Bundesrat*. Debate about the constitutionality of a law is not rare. Given that only the Federal Constitutional Court is empowered to decide on the constitutionality of legislation, such debates do not generally call into question a law's suitability to provide a basis of trust for acts of the legal community. 378

(β) The public interest grounds that prompted the legislature to amend the extensive prolongations of operational lifetimes under the 11th AtG Amendment and to accelerate the nuclear phase-out are of particular weight (C I 3 c cc (1) (c) and (2) (c) above, paras. 303 and 304 as well as 363). Furthermore, the expectation that the additional output allowances allocated at the end of 2010 would be maintained is not highly worthy of protection (C I 3 c cc (1) (b) (bb) above, paras. 299 et seq.). All the same, the paramount public interest grounds for an accelerated nuclear phase-out cannot absolve the legislature of the consequences of those investments that were undertaken during the short period of validity of the 11th AtG Amendment and in the legitimate expectation that the legislature itself had brought about in view of the prolongation of operational lifetimes. 380

(γ) The inclusion of such an entitlement in the 13th AtG Amendment was not dispensable simply because there were no apparent cases in which it would apply. For example, complainants E.ON and RWE have furnished substantiated arguments that in view of the prolongation of operational lifetimes under the 11th AtG Amendment, investments were made for the Isar 1 and Unterweser nuclear power plants, and that the Biblis A nuclear power plant would have been shut down as early as mid-2011,

with no further retrofitting investments, if the 11th AtG Amendment had not entered into force.

(δ) However, it is not the task of this constitutional complaint proceeding to investigate the details of whether and to what extent an adequate compensation is constitutionally required in the investment cases cited by the complainants. 381

It falls within the legislature's decision-making discretion to define the further details of the requirements and the scope of such an entitlement to compensation. The possibility of granting individual prolongations of operational lifetimes as compensation for frustrated investments also falls within the legislature's decision-making discretion. Insofar as the legislature chose not to consider this latter possibility, in light of the paramount importance the legislature attached to the acceleration objective, it was nevertheless not allowed to refrain from providing at least an entitlement to adequate compensation for frustrated investments. The required compensation does not affect the legislative objective of an acceleration. 382

(4) Insofar as the complainants claim further interference from the 13th AtG Amendment, including economically relevant impairments, these instances concern constitutionally acceptable determinations of the content and limits of property, when measured against the weighty public interest grounds that favour an acceleration of the nuclear phase-out (C I 3 c aa and cc (1) (c) and (2) (c) above, paras. 282 and 283; also 303 and 304 as well as 363). 383

[…] 384-385

d) Because of the resulting electric production deficits, determinations of the content and limits of the complainants' property in the nuclear power plants defined by a staggering the shut-down dates in § 7 sec. 1a sentence 1 AtG violates, to the detriment of Krümmel and Vattenfall and to the detriment of RWE, the principle that legislative provisions governing property must be designed consistently with Art. 3 sec. 1 GG (C I 3 a, para. 268 above). Other than that, however, nothing suggests that further violations of equality have occurred. 386

[…] 387

The operational lifetimes of different lengths for the individual nuclear power plants, as a result of the staggering of expiry dates of the licence to produce power, violate equality standards with regard to the Krümmel nuclear power plant only. However, in terms of significance, the violation of equality in property law does not extend beyond the unreasonableness that has already been found with regard to the inability to produce the residual electricity volumes dating from 2002 (C I 3 c cc (2) (b) (cc) (γ) (ββ) above, paras. 355 et seq.). 388

II.[…] 389

The terms of the 13th AtG Amendment not only structure and restrict property rights in the nuclear plants; they also indirectly interfere with the complainants' occupational 390

freedom in that they accelerate the termination of their business activity in the field of the peaceful use of nuclear energy. Those terms must therefore also be measured against Art. 12 GG (on the joint applicability of freedom of property and occupational freedom cf. BVerfGE 50, 290 <361 and 362>; 110, 141 <166 and 167>; 128, 1 <36 et seq.>).

However, there is no need here to review the challenged legislation more closely in light of Art. 12 GG, because this would yield no further constitutional consequences concerning these provisions than have already been found in addressing the parties' various positions in terms of property law. In this case, the protection of occupational freedom for business activity goes no further than the protection of property rights for the occupational exercise of those rights. 391

III.

The 13th AtG Amendment, specifically § 7 sec. 1a sentence 1 AtG, is not a law that applies merely to a single case, which would be prohibited under Art. 19 sec. 1 sentence 1 GG. 392

[…] 393

Art. 19 sec. 1 sentence 1 GG provides that insofar as, under the Basic Law, a basic right may be restricted by or pursuant to a law, such law must apply generally and not merely to a single case. This does not exclude governing a single case if the matter is of such a nature that there is only one case of its kind, and governing this singular matter is supported by objective reasons. Ultimately, Art. 19 sec. 1 sentence 1 GG specifies the general principle of equality, according to which the legislature may not select a single case from amongst a number of matters of the same nature, and subject it to a special rule (cf. BVerfGE 85, 360 <374>; 134, 33 <88 and 89>; 139, 148 <176 para. 53>). 394

Measured against this standard, § 7 sec. 1a sentence 1 AtG does not violate the prohibition of laws that apply merely to a single case and limit fundamental rights. […] The act also does not select a single case or a specific group from amongst a plurality of cases of similar nature, but conclusively governs all remaining cases. The requirement of the arbitrary nature of a statutory provision on a single case, against which Art. 19 sec. 1 sentence 1 GG is intended to protect, is not met here. 395

D.

I. […] 396-398

II.

§ 7 sec. 1a sentence 1 AtG must be declared incompatible, to the extent found above, with Art. 14 sec. 1 GG. It must be ordered to remain in effect until the adoption of a new version of the Atomic Energy Act correcting the objected violations of the Constitution. The legislature must draw up new provisions no later than 30 June 399

2018.

1. The violations of the Constitution identified do not result in a declaration that § 7 sec. 1a sentence 1 AtG is void, but merely in a finding that it is incompatible with the Basic Law, together with the order that it will continue to apply until new provisions are enacted. 400

This is indicated because the legislature has various options for correcting the violations of the Constitution (on this group of cases cf., particularly for violations of equality, BVerfGE 99, 280 <298>; 105, 73 <133>; 107, 27 <57>; 117, 1 <69>; 122, 210 <245>; 126, 400 <431>; established case-law). Furthermore, declaring § 7 sec. 1a sentence 1 AtG void would result in a legal situation that would be even less consistent with the situation that the legislature intended, which as such is compatible with the Constitution, than would a time-limited continuation of the legal situation that is found to be unconstitutional (on this case group cf. BVerfGE 83, 130 <154>; 92, 53 <73>; 111, 191 <224>; 117, 163 <201>). 401

The violations of the Constitution found here do not impinge on the core of the principal objective of the 13th AtG Amendment, the acceleration of the nuclear phase-out. The revocation of the additional output allowances extensively allocated at the end of 2010, the introduction of fixed end dates for the operation of the individual nuclear power plants, and the staggering of the shut-down dates have been found, in principle, to be compatible with the Basic Law. The constitutionally objectionable shortcomings may not be insignificant, yet measured against the overall regulatory scheme they affect only marginal aspects. Therefore to eliminate the entire regulatory scheme by voiding § 7 sec. 1a sentence 1 AtG would lack justification. 402

2. The legislature has various options for correcting the violations of the Constitution found here. 403

a) The primary reason why the electricity production capacities available to complainants Krümmel and Vattenfall and to complainant RWE are incompatible with Art. 14 sec. 1 GG is that it is entirely unlikely that essentially all the electricity from the residual electricity volumes allocated to them in 2002 can be produced, within the shut-down periods set by § 7 sec. 1a sentence 1 AtG, at nuclear power plants that are wholly or partially owned by the corporation concerned. This might, for example, be taken into account with a corresponding prolongation of the operational lifetimes of individual nuclear power plants that the corporations own. However, the Constitution confers no priority on this possibility; like other possibilities for a settlement, it lies within the political decision-making discretion of the legislature. A compensation for the electricity production deficits might also be provided by ensuring, statutorily, a possibility of transferring, on economically reasonable terms, electricity volumes that can no longer be produced to companies that have surplus electricity production capacity. In particular, however, the legislature is also free to provide an appropriate financial settlement for residual electricity volumes that cannot be produced anymore because of the legislative provision, especially because the legislative decision to 404

support the nuclear phase-out specifies the abandonment of the inventory of nuclear power plants anyway. The settlement also need only achieve a size necessary to meet adequacy requirements; it does not necessarily have to correspond to the full equivalent value.

A new provision that in essence completely remedies the electricity production deficits of complainants Krümmel and Vattenfall and of RWE also remedies their placement at a disadvantage in violation of equality. 405

b) A legislative basis for settlement claims for frustrated investments is in need of more detailed definition by the legislature (C I 3 c cc (3) (b) above, paras. 373 et seq.). 406

III. […] 407

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