



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 2 March 2012

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ATO 28

OUTCOME OF PROCEEDINGS

from: Working Party on Atomic Questions
on 22 February 2012

Subject:

- IAEA-Euratom High Level Liaison Committee (HLLC) meeting
- Euratom - South Africa cooperation agreement
- Proposal for a Council Directive laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation
- Proposal for a Council Regulation on Union support for the nuclear decommissioning assistance programmes in Bulgaria, Lithuania and Slovakia
- Proposal for a Council Regulation establishing an Instrument for Nuclear Safety Cooperation

1. IAEA-Euratom High Level Liaison Committee (HLLC) meeting, January 11, 2012

- Debriefing by the Commission and exchange of views

The Commission's representative reported on the last HLLC meeting held in Vienna on 11 January 2012 and provided an overview of the EC-IAEA LC and working groups.

The HLLC addressed the main subject of the EC IAEA cooperation on the implementation of safeguards in the 25 EU NNWS. It was recalled that a Reflection Group was established in July 2010. Five areas for enhanced cooperation were identified and a proposal and a general implementation plan are to be presented by the end of March 2012.

The HLLC also made a review of the 2011 results of the working groups on planning, implementation and support on (i) notification times for random inspections and Complementary Access; (ii) report on equipment needs and costs sharing plan; (iii) report on joint training; (iv) report on the progress with Subsidiary Arrangements

The Commission also announced agenda of a meeting with the Member States on Implementing Euratom Treaty Safeguards to be held in Luxembourg on 21 - 22 March 2012.

BE/FR/IT welcomed the work progress achieved by the HLLC. FR noted its support that the Facility Attachments should have a more simplified format and invited the Commission to be involved in discussions of this issue. In reply to IT, the Commission's representative noted that a possible arrangement of a pool of inspectors is currently not discussed.

2. Euratom - South Africa cooperation agreement

- Presentation by the Commission
doc. 6104/12 ATO 11

The Commission's representative presented its recommendation and the content of the agreement, noting that the proposal is in conformity with the negotiating directives issued by the Council on 8 October 2010; demonstrates clear commitment of the two Parties in favour of non-proliferation and a high level of nuclear safety in order to guarantee the peaceful and safe use of nuclear energy; is in line with the Community's policy on energy security of supply; and further strengthens the good relations between the EU and South Africa in the field of energy policy cooperation.

The Commission noted that South Africa has large uranium reserves and starts to play a growing role in the civil nuclear field, the medical applications of nuclear energy and the medical radio-isotopes production. The proposed agreement results from the mutual interest to establish a stable legal framework for cooperation in the nuclear field and will help fostering the scientific cooperation between the Community and South Africa.

FR noted that the proposal is largely in line with the mandate and congratulated the Commission on excellent results of the negotiations. FR noted that while it is very keen to have Euratom agreements concluded with third countries, this should not affect Member State's right to conclude bilateral agreements.

FR invited to align text in Art. 5(4) with the provisions set in the Euratom - Australia agreement; revise too restrictive provisions set in Art. 5(7); and delete reference to "including video and software" in Annex A, paragraph III(a).

NL noted the importance to conclude such agreements. FI invited working party on research to have a look into this agreement, even if the WPAQ is leading this dossier. UK noted that all such bilateral agreements should aim for consistency and welcomed possibility for Member States to conclude bilateral agreements with South Africa. UK informed that it has a new agreement with South Africa.

The Presidency set a deadline to submit written comments on the draft proposal by **29 February**, with a view to have a draft Council decision for the conclusion of the agreement by Euratom prepared for endorsement by the WPAQ at its meeting on 23 March and to be submitted to Coreper/Council for adoption as an I/A item afterwards.

3. **Proposal for a Council Directive laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation**

- Exchange of views on Chapters VI and VII
doc. 14450/11 ATO 112 SOC 791 SAN 183

The Commission's representative informed that the ECOSOC has voted on its opinion at the plenary session on 22 February 2012. Afterwards the Commission will make an official proposal to the Council.

The Presidency invited to continue discussions Article by Article on Chapters VI and the delegations made the following comments:

CHAPTER VI

- Harmonise use of references to "undertaking", "employer", "outside undertaking", "employer of outside workers" in Art. 30 and 34, but also in other articles with the terminology used in Directive 89/391/CEE. The Commission's representative invited to retain terminology of the current BSS Directive 96/29.
- Art. 30, reference to responsibilities of workers might be added;
- Art. 31, should be made consistent with Art. 17 of Directive 96/29 and include radiological classification of the working areas.
- Art. 32, should provide more flexibility to the Member States regarding implementation of this provision or for setting exemptions for installations of very low radiological risk, possibly by adding a reference to "where appropriate".
- Art. 33, need further clarification regarding radon exposure.
- Art. 33(2), set exposure limits at 1 mSv per year also for workers in the NORM industries, while others asked for a grade of flexibility regarding requirements to be applied.
- Art. 37(1) and 38(3), invited to justify why a reference to "where appropriate" is made.
- Art. 38, considering that ICRP and the IAEA have decided not to recommend the classification of exposed workers in 2 categories, this option should be also considered at the Euratom level.
- Art. 39(1), the primary responsibility to identify category A workers should be with the Undertaking.
- Art. 39(3), should allow to use EPCARD methodology for assessing doses to air crew as part of alternatives to individual dosimetry requirements.
- Art. 40, keep the existing Art. 26 of Directive 96/29, as a requirement to apply this provision to all exposed workers is a significant change and will have implications for dosimetry service record keeping.
- Art. 41(5), delete reference to "an existing exposure situation namely".
- Art. 42(1)(d), noted that this provision might be difficult to implement.
- Art. 43 has no title.
- Art. 47, provisions of this article should apply to all workers and not only to category A.
- Art. 48(2) and Art. 52(1) & (2), invited to justify the new limit for an annual effective dose at 50 mSv in a year to the current limit of 20 mSv. The Commission's representative noted that Art. 31 experts have preference to 50 mSv in a year dose limit as below this level there is no benefit of medical surveillance.
- Art. 50, reference to responsibilities of workers might be added;
- Art. 51(3), replace "space crew" with "spacecraft crew".

- Art. 52, the IAEA's recommended dose values for emergency workers in case of actions to prevent severe deterministic effects and actions to prevent the development of catastrophic conditions that could significantly affect people and environment are < 500 mSv. It is a big difference between Directive and IAEA's recommendations and it might be considered to equalise those dose values.
- Art. 52(2), replace "volunteers" with a more appropriate term.
- Art. 53(2), replace "workplaces located on the ground floor or at basement level" with "underground workplaces". Besides, this might be not a proportional requirement.
- Art. 53, replace reference to "1000 Bq m-3" by "6 mSv". Besides, this article seems to set too detailed requirements. This reference can be revised at a later stage in view of the ICRP recommendation expected in June 2012.

In response to some calls for expert meetings, the Commission's representative noted that Art. 31 group of experts has already reached a scientific compromise which is reflected in the current proposal. Thus, discussions of the same nature should not be repeated in a different setting. However, issues related to regulatory provisions could be discussed also by experts.

The Presidency apologised that due to time constraints Chapter VII will not be discussed at this WPAQ meeting.

The Presidency concluded by inviting delegations to send written comments on the chapters discussed, including Chapter VII, while also welcoming comments on any other part of the proposal, by **7 March**. The Presidency expects to have a (partial) revision of the first chapters of the draft BBS prepared for the WPAQ meeting on **13 April**, where a presentation of the Council Legal Service's contribution on chapter IX (Environment) is also expected.

4. Proposal for a Council Regulation on Union support for the nuclear decommissioning assistance programmes in Bulgaria, Lithuania and Slovakia

- Examination of the text
doc. 6094/12 ATO 9 CADREFIN 60

The Presidency's invited LT/ BG/SK to make a targeted presentation of an overview of the past results and the need for funding further decommissioning work.

LT representative made a presentation on the decommissioning strategy, progress and costs of the Ignalina NPP. Ignalina NPP has safety-approved/cost-effective plan for immediate dismantling using its own staff. Progress by Ignalina NPP staff is generally satisfactory but serious delays are occurring in some externally contracted works. Total decommissioning costs has been calculated using best available methods and it compares well to Greifswald NPP. Operation of Ignalina NPP since Lithuania's independence was inadequate to fund its decommissioning costs. Funding currently identified falls € 1480 mio short of cost and this amounts to about 4.6% of Lithuania's GDP. The 'draft regulation' funding of € 230 mio does not address this shortfall. Besides, Ignalina NPP decommissioning can provide valuable European experience in dismantling large graphite-moderated reactors.

BG representative made an overview of the progress made in the decommissioning activities of the Kozloduy NPP Units 1-4 and presented the main challenges remaining now and ahead. During 2014-2020 the decommissioning of Units 1-4 of KNPP will enter the most hazardous phase of activities from the point of view of nuclear safety - including decontamination activities, isolation of contaminated systems and equipment in reactor buildings. Thus, a significant financing is needed to implement these activities.

BG recalled that as a result of the premature closure of KNPP Units 1-4, the overall cost increase for the final consumer for 1 kWh electric power today is about 24%. Any increase of the contributions to the national decommissioning fund at present stage will deepen the negative social consequences as it will result in further rise of the electricity price or additional burden to the central budget.

SK representative made an overview of the work progress achieved and presented estimated work plans and costs for the Bohunice NPP V1 decommissioning until 2025.

In reply to UK, LT noted that it is seeking € 770 mio Community's contribution for the next financial perspective. Lithuanian national contribution would amount to € 100 mio. In reply to FR, LT noted that while there are some delays in certain projects, it is still feasible to maintain decommissioning end date in 2029. Decommissioning fund was established in 2001.

The Presidency recalled that questions concerning funding, which is part of the overall Multiannual Financial Framework exercise, will be addressed by the 'Friends of the Presidency' WP dealing with the MFF.

Based on the intervention of the Council Legal Service's representative on ex-ante conditions set in Art. 4, it was concluded that ex-ante conditions may be set, but not as currently proposed by the Commission as they cannot be assessed against evidence and therefore introduce uncertainty for the beneficiaries of the financing. Thus, these clauses should be redrafted in a way that would allow for their testing in an objective way, e.g. reference could be made to infringements proceedings having been launched or not.

Besides, it was recalled that there are already an infringement procedure and sanctions in place. SE/FR noted that it is for the European Court of Justice to judge Member State's compliance with Union's acquis. It is up to the Commission, as guardian of the Treaties, to bring Member States to the Court for non-compliance.

Besides, FR recalled that conditionality set in Art. 4(1)(b) does not exist in Union's acquis and this instrument should not provide for such a legal precedent.

SE pointed out that the general objective to reach "an irreversible state" does not give a proper message demonstrating lack of trust in the recipient countries and, thus, need to be revised.

On the European Court of Auditors report on EU Financial assistance for the decommissioning of NPPs in BG/LT/SK (doc. 6425/12), the Presidency recalled that this special report is a) addressed to the Commission, b) its recommendations are not binding on any Institution.

The Commission's representative noted that the CoA recommendations are already taken into its new proposal under discussion, e. g. in Art. 4 as ex-ante conditions. LT delegation, while being open to discuss the CoA special report, invited not to interpret its results unilaterally.

The Presidency noted that this proposal will be again addressed with a view to be discussed and preliminary concluded at the next WPAQ meeting on **23 March**. Possible text changes could be developed in time for that meeting.

5. **Proposal for a Council Regulation establishing an Instrument for Nuclear Safety Cooperation**

- Examination of the text
doc. 6095/12 ATO 10 RELEX 83 PESC 108 FIN 71

Based on oral comments made at the last WPAQ meeting, written comments received from AT/NL/SK/DE/FR/CZ, and further advice of the legal service, on 16 February the Presidency distributed to the delegations a revised draft proposal (doc. 6095/12).

The Presidency recalled that the financial matters will be addressed by the Budget or Financial Counsellors working party and horizontal programming provisions will have to be consistent with what comes from the horizontal Regulation (18725/11).

The Presidency noted that the section on the 'Specific support measures' was moved from the Annex (p. 13-14) to the end of Art. 1(1), p. 5-6, while its last sentence was moved to a new recital 10a, p. 4.

Article 7, p. 12 and recital 16, p. 4, (reference to the EAEA) is kept in brackets, as the legal services are looking for a horizontal solution to this issue.

Art. 2(5), p. 8 and Art. 3(4), p. 9, reference to "Article 15(3) of the CIR" is still under review by the legal services.

Before the discussion started, the Legal Service of the Council presented its point of view on the issue of the Regulation establishing common rules, which has no Euratom legal basis. While the common Regulation doesn't fall under the Euratom and the Union cannot regulate Euratom issues, the INSC instrument may refer to these common rules.

Thus, the legal service of the Council, supported by the legal service of the Commission, proposed to exclude completely reference to the INSC from the CIR, only keeping a reference to the CIR in the INSC Regulation (Article 4). From the legal point of view this solution implies that Euratom Community decides to refer to a Union's legal act as applicable to it. This solution is compatible with the case law (case C-328/85 Babcock).

Given the specific nature of the institutional procedures connected to the Euratom Treaty, the FR authorities believe that the implementation procedures for the INSC should be reintegrated into the Regulation extending this instrument.

Afterwards, delegations were invited to discuss this proposal Article by Article, starting with Art. 3, and the Commission to respond.

Art. 3 (Multiannual Indicative programmes), p. 9.

Art. 3(1), CZ proposed to delete "normally" and to shorten the mentioned period to two years.

Art. 3(2), CZ proposed to make the new text into a separate paragraph.

Art. 3(3), FR questioned the need to reference "in principle".

Art. 3(4), legal service of the Council proposed to replace reference to CIR with reference to Art. 6 of this Regulation.

Art. 3(5), UK welcomed the deletion, while the Commission, supported by FR, maintained that some flexibility should be left and a revised text should be proposed in this regard.

Art. 3a (Annual action programs), p. 10.

The Commission's representative noted that this Article is imported from CIR and reserved further analysis of the implications of such a transfer.

Art. 3a(1), CZ proposed to add "multiannual indicative programmes". FR suggested to add text on the Commission's cooperation with the Member States when adopting action programs.

In reply to CZ, the Commission explained that a standard terminology is used with regard to "operations", "measures" and "projects".

Art. 3a(3), NL pointed out that it should be clarified what it refers "the above-mentioned thresholds". AT suggested a new text on this paragraph.

Article 4a (Report), p. 11.

The Commission's representative pointed out that the report should be biannual.

FR noted that the last sentence of this paragraph is a part of horizontal issues.

Article 5 (Modification of the Annex), p. 11.

According to the Legal Service of the Council, questioned by the Legal Service of the Commission, it is not possible to modify delegated acts by implementing acts. Thus, Art. 5 on the Modification of the Annex has to be deleted.

Article 6 (Committee), p. 12.

The Legal Service of the Council noted that under Art. 6 it should be specified which type of Committee is chosen for implementation. The option is between a consultative and an examination Committee, with the legal service supporting the choice of DE/CZ/LT for the latter. Once the choice is made, the legal linguists will insert an applicable standard clause in this article.

DE underlined that a reference to Art. 5 or Regulation (EU) 182/2011 should be introduced.

FR invited not to let commitology gain influence within Euratom and to replace Art. 5 with the text of Art. 19 of the current INSC.

AT proposed that a new article should foresee special measures for approval of funds exceeding € 5 mio.

UK enquired about designed and practical modalities for such a committee.

Article 7 (European External Action Service), p. 12,

AT stated that Council Decision 2010/427/EU is not the right legal basis and asked the Legal Service of the Council to give his opinion on that.

Article 8 (Financial Reference Amount), p. 12,

It was noted that only the financial reference amount should be in the brackets.

In reply to AT, the Commission's representative noted that the relevant Commission services calculated the financial reference amount.

Article 9 (Entry into force), p. 12,

AT suggested that the proposal shall apply from 1 January 2014 until 31 December 2020.

The Commission noted that that there is no time limit foreseen in order to provide flexibility to extend the Instrument beyond 2020.

Annex, p. 13-17,

Part 1

2nd intent, NL questioned the rationale for the given flexibility, while FR/ES supported the universal nature of this instrument. While there is a priority for the Neighbouring Countries and Pre-Accession Countries, the international approach should be kept.

5th intent, with regard to the relevant Conventions within the IAEA framework, BE/NL/AT/LT underlined their support for stricter adherence to membership of these conventions as a criterion for support. However, the Commission, supported by ES/FR, noted that some flexibility should be allowed for example to support efforts to join relevant IAEA conventions.

In reply to SE, the Commission's representative noted that the first sentence is quoted from the Council Conclusions and that assistance should not be denied to any country in case of an emergency.

Part 3

LT invited to better define "realistic financing plan" as a precondition for assistance, including requirement for financial plan covering also decommissioning stage. FR noted that INSC should not ask more than what is required from the Member States.

ES/FR called the Commission to verify that references are made to safety and not security. The Commission reassured delegations that it aims not to promote nuclear energy, but nuclear safety.

Delegations could then be invited to provide written comments by **29 February**. On this basis, the text could be revised with a view to be discussed and preliminary concluded at the WPAQ meeting on **23 March**.

6. Other business

- Information from the Commission on Radioisotopes Observatory: the Commission's representative reported to the WPAQ that a meeting between AIPES and the Commission services to discuss the creation of the Observatory was held on 12 January 2012 in Brussels. It was agreed that DG ENER will coordinate the activities of the Observatory and Mr A. Janssens (Head of Radiation Protection Unit) will be a Chairperson. The structure, operating modalities and allocation of the tasks were discussed. It was also agreed to establish four working groups to deal with (i) global reactor scheduling and Mo-99 supply monitoring; (ii) cost recovery mechanisms for the EU; (iii) management of HEU, LEU and target production for the EU; (iv) capacity and infrastructure development.

The next Steering Committee meeting will be held in Luxembourg in the second quarter of 2012. DG ENER has already sent the note asking to arrange for the timely official nomination of representatives of all stakeholders to the relevant Working Groups.

In reply to CZ, the Commission's representative reassured that the "cost recovery" working group will cooperate and not duplicate the work of the NEA. In reply to FR, the Commission's representative noted that establishment of the Observatory provides first steps towards a Joint Undertaking in the future. DG COMP is informed on the plans and is looking into possibilities to grant an exemption for this structure. SE was reassured that safety is a fundamental priority in the work of the Observatory.

- Co-sponsorship of the International Basic Safety Standards (IBSS): the Commission's representative presented the WPAQ legal grounds for sponsoring of the IBSS. The IAEA has adopted IBSS in September 2011 and the Euratom was invited to co-sponsor them. The sponsorship of IBSS is an action to ensure and maintain appropriate relations with the IAEA as a specialised agency of the UN and the other co-sponsoring organisations and falls under the Commission's obligations under Article 199. This sponsorship should be regarded as a moral endorsement, which has no other implications, but gives a strong signal to the international community to follow these standards.

In reply to BE, the Commission's representative noted that the IAEA plans to publish the IBSS with signatures of all co-sponsors this summer and the Euratom's decision should be taken before that time. In reply to UK, the Commission's representative noted that in order to give a strong message the IBSS should be supported by the Euratom and not only the Commission. The Presidency invited to send any written comments by 29 February 2012.

- IPPAS mission to Sweden, 16-27 May 2011: SE informed the WPAQ on the International Physical Protection Advisory Service (IPPAS) mission to Sweden and the final report of the mission, which provided a highly valued independent expert views and recommendations.
- Implementation of the Euratom-USA NCA: the Commission's representative informed on the 26 January 2012 consultation meeting to discuss US visits to the EU facilities. Minutes of the meeting are under preparation and, once ready, will be sent to the delegations. The Commission's representative noted that if such visits are to continue, the Commission should be at least informed or invited to participate. Such visits should be neither regular nor frequent.
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- Euratom - Canada: the Commission's representative informed that its latest contact with the Canadian authorities confirmed that the Canadian government first has to make a fundamental decision on the non-proliferation policy and only then can look at the Euratom's suggestions.
- Import of Food/ radioactive contamination in Japan: the Commission's representative informed delegations that the current DG SANCO recommendation to analyse food and feed from Japan for radioactivity expires on 31 March 2012. It will be proposed to extend its application for the next six months, but with reduced frequency of the recommended checks. In the meantime, Japan has announced plans to reduce the maximum permitted levels of radioactive contamination by a factor of five, which is much lower than in the existing Euratom's regulation or Codex Alimentarius. Euratom's decision to stay with the current levels may create negative reactions in the media, but such levels could not be justified by radioprotection reasons. Thus, further consultations on this issue with the Member States will be necessary.

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The next WPAQ meeting will take place on **23 March**.
