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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 17 October 2013

to: Mr Uwe CORSEPIUS, Secretary-General of the Council of the European
Union

No Cion doc.: SWD(2013) 424 final

Subject: Commission Staff Working Document
- Implementation plan accompanying the document Proposal for a Council
Directive amending Directive 2009/71/EURATOM establishing a
Community framework for the nuclear safety of nuclear installations

Delegations will find attached Commission document SWD(2013) 424 final.

Encl.: SWD(2013) 424 final



Brussels, 17.10.2013
SWD(2013) 424 final

COMMISSION STAFF WORKING DOCUMENT

Implementation Plan

Accompanying the document

Proposal for a Council Directive

amending Directive 2009/71/EURATOM establishing a Community framework for the nuclear safety of nuclear installations

{ COM(2013) 715 final }
{ SWD(2013) 422 final }
{ SWD(2013) 423 final }
{ SWD(2013) 425 final }

Implementation Plan¹

1. Title of the document for the proposed act

Implementation Plan for Proposal for a Council Directive amending Directive 2009/71/EURATOM establishing a Community framework for the nuclear safety of nuclear installations

2. Contact point

The responsible service is the unit ENER D.1 "Nuclear safety architecture and multilateral & international cooperation" within Directorate-General for Energy. Functional mailbox: ener-lux-euratom-article-33@ec.europa.eu

3. Deliverables and implementation challenges

The overall objective of the legislative revision is to maintain and promote the continuous improvement of nuclear safety and its regulation at EU level.

The proposed amendments aim at enhancing the regulatory framework for nuclear safety in the EU in several areas. Member States have to ensure that the new provisions are properly and promptly transposed into national law within the prescribed deadline.

The implementation of the amended Directive should be significantly facilitated by the fact that the draft text of the legislative proposal had been consulted in advance with the main stakeholders and could benefit for their input and expertise. In this regard, a special role was given to ENSREG, which represents a unique focal point of expertise, as it reunites high-level representatives of the national competent nuclear regulatory authorities from all the EU Member States, nuclear and non-nuclear alike.

3.1. Flexible implementation of the Directive by Member States

When transposing and implementing the amended Directive, Member States should take advantage of the flexibility it provides, taking into consideration in particular that:

- (i) The Directive expressly acknowledges that it does not prevent Member States from taking more stringent safety measures.
- (ii) The non-prescriptive, goal-setting approach to regulate technical safety issues laid down in the Directive allows a dynamic and flexible implementation by the Member States reflecting the state of the art progress in nuclear safety.

¹ This Implementation Plan is provided for information purposes only. It does not legally bind the Commission on whether the identified actions will be pursued or on the form in which they will be pursued.

- (iii) In line with the principle of proportionality, the applicability of the technical requirements of the Directive depends on the type of nuclear installations on the territory of a Member State. Therefore, when implementing these provisions in national law, Member States should take account of the risks posed by the specific types of nuclear installations they plan or operate. In particular, the proportionality principle will concern those Member States that keep only a small inventory of nuclear and radioactive materials, e.g. linked to the operation of smaller research reactor facilities, which in case of a severe accident would not engender consequences comparable to those generated by nuclear power plants.

3.2. Effective cooperation and coordination among all actors and in particular the Member States to achieve full implementation of the amended Directive

A proper implementation of the Directive can only be ensured and the envisaged improvements in nuclear safety can be achieved if all relevant actors fulfil their new obligations requiring close cooperation and coordination among them. Such close cooperation and coordination is essential when the Directive provides for a joint or coordinated action of the Member States themselves and the European Commission, such as the new provisions establishing a European system of topical peer reviews of nuclear installations or the provisions introducing a mechanism for developing and establishing, by the Member States, EU-wide non-binding harmonised nuclear safety guidelines.

The implementation of these new provisions is however to a large extent facilitated by the fact that they fully build upon the valuable experience that was gained from the EU nuclear Stress Tests exercise. The stress tests can therefore serve as a model for their implementation.

Moreover, the representatives of the national nuclear regulatory authorities reunited in ENSREG consider the European topical peer reviews to be an important inter-regulatory instrument to ensure high quality nuclear safety regulation across Europe. They also see it as an effective way to ensure a consistent transposition of the newly introduced nuclear safety objectives into concrete technical improvements in the EU installations. Consequently, as the national nuclear regulators proposed such peer reviews, it can be concluded that they are a viable instrument that can and will be effectively implemented.

Finally, the national nuclear regulators are also given a formal role by the amended directive to support the Member States in implementing the new provisions on peer reviews and EU-wide non-binding technical guidelines. Given their unique expertise and experience in the field of

nuclear safety, the national nuclear regulators reunited in ENSREG seem to be best placed to be directly involved in the implementation of those provisions of the Directive, i.e. in carrying out the peer reviews and developing the technical guidelines.

3.3. Early dissemination of information related to implementation

National authorities should as soon as possible share information with the licence holders on the new legislative provisions and their possible effects in order to anticipate any potential problems with their implementation on the ground at a later stage. For instance, the possibility of future costs related to technical safety improvements in a nuclear installation as a result of the application of the Directive should be taken into account by the licence holder sufficiently in advance to allow an appropriate planning.

4. Support Actions

4.1. Specific workshop

In order to assist Member States to comply with their legal obligation about a timely and correct transposition, the Commission is willing to provide Member States with "technical assistance" in transposing legislative texts. The organisation of a specific workshop could be used to examine with Member States any problems that they might be encountering in transposing the amended Directive.

The workshop would aim at establishing a harmonised approach and facilitating a timely transposition of the Directive into national legislation by providing a forum for sharing information on transposition difficulties encountered or expected by Member States.

It is suggested that the workshop could be held in Luxembourg around 9 months before the transposition deadline expires. Member States would be invited to nominate experts from bodies in charge of the transposition or implementation of the Directive (e.g. legislators, Ministries' or competent authorities' representatives, etc.).

4.2. ENSREG Group – a body specific to nuclear safety

As an **expert body specific to the field of nuclear safety** and waste management, bringing together 27 Member States of the EU and representatives of the European Commission, ENSREG will be a privileged forum to discuss aspects related to the implementation of the amended Directive as it is already the case for the current Directive 2009/71/Euratom.

ACTIONS EXPRESSLY DEFINED IN THE DIRECTIVE

4.3. Notification of draft transposing measures (Article 33 Euratom Treaty obligation)

This notification obligation, specific to the Euratom Treaty, provides the Commission with the possibility to orient the transposition efforts of the Member States in the right direction before the national legislation is formally adopted.

Concretely, in accordance with the Commission Recommendation 91/444/Euratom on the application of the third and fourth paragraphs of Article 33 of the Euratom Treaty, the draft national transposing measures (n.b. laws, regulations and administrative provisions) should be notified by the Member States to the Commission "after completion of the consultation procedure provided for in the national decision-making process and, in any event, at the last three months before their adoption".

Subsequent to this communication, according to the fourth paragraph of Article 33 of the Euratom Treaty, the Commission may issue recommendations within three months of the date on which such provisions are notified to it. Member States shall refrain from adopting the proposed provisions before the Commission has formulated its recommendations to them or before the three months' period has elapsed.

Ideally, the draft transposing measures for the amended Directive should be notified sufficiently in advance of the end of its transposition deadline.

4.4. Regular reports on the implementation of the Directive

Member States shall submit a report to the Commission on the implementation of this Directive for the first time by 22 July 2014 and every three years thereafter, taking into account the timing for reporting and regular review meetings under the IAEA Convention on Nuclear Safety. On the basis of the Member States' reports, the Commission shall submit a report to the Council and the European Parliament on the progress made with the implementation of this Directive. Guidelines to facilitate and harmonise reporting were developed in the context of ENSREG for the current directive and with the support of the Commission services. Similar actions will be undertaken once the amendment is adopted by the Council.

OTHER CONNECTED EVENTS

4.5. Review meetings on the Convention on Nuclear Safety (IAEA)

As the main innovative and dynamic element of the Convention, Parties are obliged to submit reports on the implementation of their obligations for "peer review" at meetings of the Parties to be held at the IAEA. According to the Directive provisions, these reviews and reporting cycles will be in liaison with the regular report obligation under the Directive.

Likewise, according to an attached Declaration, the Euratom Community possesses competences, shared with Member States, in a variety of fields covered by the Convention. A thorough coordination between Member States and the Commission should be established in the framework of those areas in the light of the new Directive.

Support Actions for identified implementation challenges

<i>Implementation challenge</i>	<i>Support action</i>	<i>Institution Body</i>	<i>Timing</i>
<u>Flexible implementation by Member States</u>			
BEFORE THE EXPIRY OF THE TRANSPOSITION DEADLINE			
	<i>Letter to Member States (MS) - request for outlining problematic issues expected in course of the transposition that could be used as a basis for discussion during a possible workshop</i>	<i>Commission</i>	<i>11 months before the expiry of the transposition deadline</i>
	<i>Workshop on the transposition, aiming to help MS to find solutions to potential or encountered difficulties</i>	<i>Commission</i>	<i>9 months before the expiry of the transposition deadline</i>
	<i>Submissions Art. 33 ET - draft transposing measures</i>	<i>Member States</i>	<i>3 months before the adoption of the transposing legislation = at the latest 3 months before the expiry of the transposition deadline</i>
	<i>Analysis of submissions Article 33 ET and possible issue of recommendations</i>	<i>Commission</i>	<i>In the last 3 months before the expiry of the transposition deadline</i>
AFTER THE EXPIRY OF THE TRANSPOSITION DEADLINE			
	<i>Submission of a report on implementation of the directive</i>	<i>Member States</i>	<i>22 July 2014</i>
	<i>First general report on the implementation to the Council and the EP</i>	<i>Commission</i>	<i>December 2014</i>

	<i>ENSREG recommendations on a unified structure for national reports on the implementation of the amended directive</i>	<i>ENSREG</i>	<i>First half of 2015</i>
	<i>Submission of a second report on the implementation of the directive</i>	<i>Member States</i>	<i>22 July 2017</i>
	<i>Second general report on the implementation to the Council and the EP</i>	<i>Commission</i>	<i>December 2017</i>
BEFORE AND AFTER THE EXPIRY OF THE TRANSPOSITION DEADLINE			
	<i>ENSREG - forum to discuss all aspects related to the implementation of the amended Directive</i>	<i>ENSREG</i>	

<i>Implementation challenge</i>	<i>Support action</i>	<i>Institution Body</i>	<i>Timing</i>
<u><i>Effective cooperation and coordination</i></u>			
BEFORE THE EXPIRY OF THE TRANSPOSITION DEADLINE			
	<i>Workshop on the transposition, aiming to help MS to find solutions to potential or encountered difficulties</i>	<i>Commission</i>	<i>9 months before the expiry of the transposition deadline</i>
BEFORE AND AFTER THE EXPIRY OF THE TRANSPOSITION DEADLINE			
	<i>ENSREG - forum to discuss aspects related to the implementation of the amended Directive as for its provisions requiring joint or coordinated action</i>	<i>ENSREG</i>	

Implementation challenge	Support action	Institution Body	Timing
<u>Early dissemination of information</u>			
BEFORE THE EXPIRY OF THE TRANSPOSITION DEADLINE			
	<i>Early sharing of the information on the expected impacts with the license holders and other relevant actors</i>	<i>Member States</i>	

Amended NSD – Tentative Implementation Timeline

