



**COUNCIL OF
THE EUROPEAN UNION**

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ATO 8

OUTCOME OF PROCEEDINGS

from: Working Party on Atomic Questions
on 25 January 2012

Subject: - Stress tests – State of play (track 1 + 2)
- 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
- 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

1. Stress tests – State of play (track 1 + 2)

On the safety track the Commission's representative reported that the pilot phase of the peer reviews was completed in December 2011 and helped to prepare for the peer review process.

All national reports from 15 Member States and reports from Ukraine and Switzerland were delivered by the set deadline. This enabled to start a desktop review process, where around 100 people are fully involved in reading national reports and preparing questions on those reports. This process will continue until the end of January with a view to prepare for topical review meetings to be held in Luxembourg on 6 - 17 February.

The expected outcomes of the Phase 1 - Topical Reviews are:

- A coordinated view on the three topics covered in the national reports: earthquake, flooding and other external events; loss of power, loss of UHS and combination of loss of power + loss of UHS; severe accident management issues.
- Reports by subjects will serve as input for Phase 2 - Country Reviews process, which will be organised during 12 March - 5 April 2012 period.

The Commission's representative also noted that Japan, the UAE and Croatia are participating as observers in the peer review process.

On involvement of third countries, the Commission's representative informed that:

- Ukraine and Switzerland are fully participating in the process;
- Croatia is participating as an observer and has a special status in relation to the NPP in SI;
- Armenia undertook to carry out stress-tests, but would need financial support;
- Russian Federation signed a Joint Declaration on 23 June 2011, but did not agree to deliver a national report as UA/CH;
- Belarus and Turkey do not have operating plants and, as the EU Member States agreed to peer review only those NPPs that were under construction by June 2011, are do not have to undertake peer reviews.

The Commission informed on its intentions to set up in spring 2012 a follow-up meeting with all the signatories (Ukraine, Switzerland, Russia, Belarus, Armenia, Turkey) of last year's Joint Declaration.

Besides, the Commission's representative noted that the Commission is in contact with the Belarus authorities, which delivered under the CNS convention an impact assessment of the planned NPP and on which the Commission is preparing a reply.

It was also recalled that within the EU-Russia Energy-Dialogue a new group on nuclear safety is established and discussions are planned to start in spring 2012. As for the 'stress tests', Russian authorities have limited their efforts to verifying that all their NPPs fulfil Russian Federation's legal requirements and Russian authorities are not willing to link with the EU led 'stress tests' exercise organised outside an international context, like the IAEA.

The Commission's representative also debrief on the peer review Board's public meeting with the stakeholders (representatives of the civil society) on Stress Tests and Peer Reviews, held on January 17, 2012. The Agenda included Presentation of the Stress Tests and Peer Review Process; Topics and perspective of peer reviews; Perspectives on the Stress Tests and Peer Reviews; Moderated Q&A: What to expect out of the Peer Review?

A request by at least one NGO was made at the Stakeholder meeting calling for a "third" track focusing on emergency preparedness (plans, cross-border cooperation, etc.) to be opened, possibly after the European Council meeting in June 2012. This option was also identified as one of actions in the Commission's report to the December 2011 European Council meeting.

Stakeholders also made a call for openness and transparency and in this regard the Commission extended invitation to pose questions on the stress tests process.

LU representative, who also serves as the Chairman of the peer review Board, added that the stakeholder's meeting helped to take concerns of the public into consideration and conveyed the feeling that the public is being listened to.

The Board is planning to organise a second meeting with stakeholders after conclusion of the peer review process and before the European Council meeting in June 2012.

NL informed that its national report is publicly available in Dutch and English languages and was already reported by the national media. FR recalled that all the national reports are available in English and that the 'stress tests' process is exceptionally transparent. UK noted that results of public consultations should be fully taken into account in deciding on the follow-up measures after the European Council meeting in June 2012.

In reply to FR/UK, the Commission's representative recalled that public consultation is one of the steps that the Commission follows in proposing legislation. The European Commission is currently assessing areas where the existing Euratom nuclear safety regulatory framework could be further reinforced. The public consultation period is from 21/12/2011 to 29/02/2012. The next step will be to prepare an impact assessment, which will take into account results of the public consultation.

The Commission's work plan of the third quarter of 2012 foresees a proposal for a revised Directive on Nuclear Safety. However, this deadline is not strictly set, because the Commission should first wait for the results of the 'stress tests', including peer review process, and feedback from the European Council in June 2012 and also take into account public opinion. Besides, the ENSREG should prepare a paper on the revision of the Directive on Nuclear Safety and WENRA could also make a contribution. Only after these steps will the Commission decide what is appropriate for a revised Directive on Nuclear Safety.

On the security track the Presidency briefed on the AHGNS meeting that took place on 23 January and which addressed cyber-crime, engagement with neighbouring countries and discussed the structure of the final report in addition to presenting the AHGNS work plan. One of the issues discussed was also aircraft crash. The next meeting will take place on 20 February.

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

Presentation by the Commission and exchange of views
doc. 17752/11 ATO 149 CADREFIN 159

The Commission presented its proposal for a Council Regulation on Union support for the nuclear decommissioning assistance programmes in BG/LT/SK at WPAQ on 14 December.

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.

The Commission's representative presented additional information regarding decommissioning funding for 2014 - 2020, including financial overview and a fact sheet on past decommissioning activities; table on financial support split by year and country; specific objectives for further support and ex-ante conditions.

In reply to SE, the Commission's representative noted that financial support to LT/SK was provided as a pre-accession funding until 2004, while decommissioning funding for financial perspectives in 2004-2006 and 2007 - 2013 was set in the respective Accession Agreements. Support for BG followed the principle of equal treatment. As for the next financial perspective, it is the budgetary authority that decided on the available amounts. While there is no strict definition of what is an adequate solidarity measure, the Commission considered that the Community share at over 50% of total funds should be seen as an adequate contribution.

SK recalled that the first stage of decommissioning support was funding provided for restructuring of the energy sector.

Afterwards, the Presidency invited delegations to discuss ex-ante conditionalities.

BG/LT/SK objected ex-ante conditionality, including compliance with the newly adopted Waste Management and Nuclear Safety Directives and especially requirement to provide adequate provisions for the timely accumulation of national financial resources as operators could not meet such requirements due to obligations for early closure of those plants.

LT noted that appropriate mechanisms are already established to oversee implementation of the decommissioning programmes administered by the EBRD, through an Assembly of Contributors chaired by the representative of the EC, and the national Central Project Management Agency, where all 27 Member States are involved in the steering committee. Besides, the Commission is also participating in bilateral talks with contractors.

LT also pointed out that the precise conditions for suspension of financial assistance are not clearly defined and the Union's *acquis* applies in any case.

SK noted that it could show some flexibility as regards a compromise text for Art. 4(1)(a) and Art. 4(1)(c). However, Art. 4(1)(b) should be deleted as the concerned NPPs are already closed down and can not contribute any funds. SK recognises that the concerned states will have to invest in the decommissioning process, but conditions for such contributions cannot be too prescriptive.

BG noted its support for SK written proposal to add a recital recognising that the premature shutdown and consequent decommissioning of the NPPs caused the concerned countries a financial burden of direct as well as indirect costs.

The Council Legal service recalled that all Member States have to comply with the Union's *acquis* and the drafting of Art. 4(1)(a) is inappropriate, as these two Directives set their own implementation procedures. It is up to the Commission, as guardian of the Treaties, to bring Member States to the Court for non-compliance.

FR, while recognising economic impact of early decommissioning on BG/LT/SK, noted FR support for BG/LT/SK position on ex-ante conditionality:

- it is inappropriate to condition financial support on implementation of the Union's *acquis* in Art. 4(1)(a);
- conditionality set in Art. 4(1)(b) is not requested for any other country;
- conditionality set in Art. 4(1)(c) should be maintained in order to ensure effective use of decommissioning support and the need to keep the Commission properly informed.

DE noted its support for ex-ante conditionality and reminded that the concerned Member States have to take responsibility for decommissioning and waste management, in particular in respect of new nuclear power plants.

AT, while reserving its position on the text, made a proposal to allow the concerned Member States to present their achievements in the decommissioning programmes and funding needed in the coming years. LT/BG reassured that they are ready to make such a presentation upon request.

SE/NL noted their initial support for the Commission's proposal for Art. 4, but reserved their position for further clarification.

The Commission's representative pointed out that conditionality in Art. 4 do not add another layer of control, but is intended to ensure that when the EU funds are spent they should provide value added at the Community level. The EU funding is not sufficient for the entire decommissioning programmes. Thus, only those projects that have high nuclear safety impact were identified for the Community's financial support. There should be a detailed decommissioning plan and an established legal framework, where these two directives on Nuclear Safety and Waste Management are a crucial part.

In reply to AT, the Commission's representative noted that Art. 5(2) will be implemented in a joint management procedure and reference to the proper Regulation will be clarified.

The Presidency set a deadline to submit written comments on the draft proposal by **8 February**, so that they can be addressed at the next WPAQ meeting on **22 February** and possible text changes could be developed in time for that meeting.

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

- Presentation by the Commission and exchange of views
doc. 18450/11 ATO 159 RELEX 1328 PESC 1642 FIN 1043

The Commission presented its proposal for a Council Regulation establishing an Instrument for Nuclear Safety Cooperation on 6 January 2012.

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).

Delegations made the following comments:

- Art. 1(1)(a), replace "highest nuclear safety..." with "high nuclear safety and radiation protection standards and their continuous improvement".
- Art. 1(1)(c), "safeguards for nuclear material in third countries" should be moved to the Instrument for Stability. The Commission's representative considers that flexibility should be provided for the competent committee to decide which instrument to use.
- Art. 1(2)(a), a reservation was put on reference to the IAEA peer review missions, which limits the universality of this instrument.
- Art. 1(4), this paragraph should allow full involvement of the national regulatory bodies of the EU Member States in defining the specific measures supported by this Regulation.
- Art. 2(2), need to clarify that the INSC is complementary to the IAEA's work.
- Art. 2(4), this paragraph seems to be redundant.
- Art. 2(5), exceptions should not be allowed, including for updates of the strategy foreseen in the last sentence of this paragraph. Besides, it should foresee involvement of the Member States and the ENSREG in preparation of the strategy papers.

Some delegations suggested to move parts of the Annex to Art. 1, e.g. eligibility criteria including support for improving security and safety of operators, and to drop the Annex completely. The second sentence of Annex 1.4.4., p. 21, could also be moved to Art. 1.

There was a call to include a 'suspension clause' in order to provide protection of the EU interests in case a project is a failure.

Some delegations requested that Art. 2 specifically refers to nuclear safety. The Commission replied that it is a very generic article.

There was a proposal to have one strategy paper for the whole period and action plans more often. Besides, there should be a reference that the Commission will be assisted by the Committee foreseen in Art. 6 in preparing strategy papers. There was also a request for further clarification between the 'strategy paper' and 'strategy papers'. The Commission's representative replied that each strategy paper will aim to provide for the same objectives, while the Committee should be given flexibility to decide for how many years a given strategy paper is to be prepared.

The Common Regulation (18725/11) is based exclusively on the TFEU, even though where nuclear issues are concerned, Euratom is relevant as a legal basis. A number of delegations requested a legal clarification on the possibility of the Common Regulation on the implementation of external assistance instruments to have the TFEU as its sole legal basis. Some delegations would prefer this Regulation to be a stand alone text.

The Commission's representative noted that support to the operators was provided where the necessary skills to ensure safety had to be developed, while in the future support to operators would be limited to the 'stress-test' exercises. This will help to promote European approach to the 'stress-tests'.

Some delegations entered a reservation on the reference in Art. 2, 3, and 5, to the examination procedure referred to in Art. 15(3) of the Common Implementing Regulation for further legal clarification.

The Commission's representative reassured that the Commission will conduct regular evaluations of the projects and their impact on the recipient countries and the prepared reports will be published and made available.

The Commission's representative noted that an option to increase or reduce the size of the budget by less than 20 % of the initial budget, as provided for in Art. 3(6) of this text and in the Art. 2(2) of the Common Implementing Regulation, already existed in the past for all instruments, but was not as directly expressed.

The Presidency invited delegations to send written comments by **8 February**. The WPAQ will continue discussions of the text at the next WPAQ meeting on 22 February.

4. 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 IV and V, and VI
doc. 14450/11 ATO 112 SOC 791 SAN 183

The Presidency invited to continue discussions Article by Article on Chapters IV and V. The Commission recalled that it provided a draft Euratom BSS table of correspondence with a disclaimer that it should serve as a background document to allow easy comparison of the text in the Commission proposal COM(2011)593 with requirements in existing Council Directives and that the document may contain typing errors and mistakes.

Delegations made the following comments:

CHAPTER IV

- Art. 15, 2nd para., replace "shall establish" with "shall ensure" in order to allow for a regional solution on provision of educational and training services. Besides, the Commission clarified that "recognition" refers to a national recognition of experts and services. There was a suggestion to create an annex where uniform training practices would be listed and which would form a basis for mutual recognition of such training.
- Art. 16(3), reference to "personnel" should explicitly state if students are included.
- Art. 16(4), reference to "security" should be deleted or replaced by "physical protection".
- Art. 17, replace "shall ensure" with the language used in the HASS Directive, "shall provide encouragement to ensure".
- Art. 18(1), reference to "any other persons" is too broad and would be impossible to implement in a major emergency. This reference could be replaced with "for those people who might be foreseen to be involved" or could be deleted as the whole relevant scope is defined in "emergency worker" in Art. 4(45). Reference to "regularly" should be deleted, as it is already referred to in Art. 15. The Commission's representative noted that the language used is the same as of the public information regulation, which need to be implemented.
- Art. 19, should be clarified if it applies to veterinary field.
- Art. 19(4), this paragraph should be better justified and less prescriptive.
- Art. 19(5), reference to "schools" should be broadly interpreted and include not only universities but also nurse schools where it deals with radiology.

CHAPTER V

The Commission's representative noted that this Chapter, compared to the existing BSS, includes NORM workers, uses more gradual approach and clearance levels are updated in line with the international practices.

The Commission's representative recognised that further clarification will be needed on how to harmonise justification practices and their lists at the EU level. However, it should be recalled that justification of practices is and will remain a national responsibility and there are no plans to go for an EU level justification mechanism.

The Commission's representative pointed out that justification of NORM industries should take into account that some practices already exist.

- Art. 20(2), clarify if all the approved practices should be listed or only new ones, or alternatively list only prohibited practices. An annex with listed good practices could also be considered. A list of practices could also be made available in a separate recommendation in order to avoid fixing a list which is difficult to amend later on. The Commission's representative noted that "authorised", "approved" and "allowed" practices should have the same meaning and the use of those terms can be further streamlined.
- Art. 20(3), use "may" instead of "shall".
- Art. 21, need to ensure that there is no double request for justification of practices.
- Art. 21(1), need to clarify whether "import or export" refers to trade within the EU or with the third countries. Explain what "a new type" means and clarify how this paragraph relates to pharmaceutical legislation. Besides, relationship of reference to medical equipment legislation and EC marking should be further verified.

- Art. 21(2), there was a call to establish an EU wide mechanism in order to avoid a possibility that something is justified in one country and not in another.
- Art. 21(3), further clarification is needed on who should be informed on the decisions.
- Art. 22, it was clarified that irradiation of precious metals is currently considered as addition of radioactivity. Besides, reference to animal feed and electronic detection should be added.
- Art. 23(2), delete reference to "special" or justify it and deleted reference to "in advance" in para. (a).
- Art. 23(2)(d), replace "competent authority" with "Member States" and explain what "non-medical imaging" refers to.
- Art. 23(3), further clarification is needed.
- Art. 23(3)(d), replace "medical staff using" with "the operators of".
- Art. 23(3)(f), the meaning of this provision should be further clarified. Regarding airport screening, the Commission's representative noted that experts felt this issue as very important and that on ethical grounds passengers should have an option for alternative search methods and passengers should be well informed.
- Art. 25(1)(c), language used should be clarified.
- Art. 25(3), need to clarify who should provide the required information.
- Art. 25(4), language should be consistent with the forthcoming Council Directive with regard to radioactive substances in water intended for human consumption.
- Art. 25(6), exchange of information on individual practices with all the Member States seems to be an excessive requirement. As an alternative, it could be limited to establishing a system for exchange of information on methodology.
- Art. 26, there is no definition for "regulatory control".
- Art. 26(1), add reference to "radiological safety of installations".
- Art. 26(3), add reference to "column 3".
- Art. 27, it should be made clear that everything authorised under Art. 27 would not require notification under Art. 26.
- Art. 27(1), the Commission's representative clarified that, in line with the graded approach, the current proposal defines those types of practices which are subject to registration, but not licencing. The regime for regulatory control is now presented as a three-tier system (notification, registration, licensing), replacing the earlier two-tier system of 'reporting' and 'prior authorisation'.
- Art. 27(2)(e) and (3)(e), delete references to "6 mSv" and "1mSv" respectively.
- Art. 28, graded approach is welcomed, but further consideration is needed on the appropriateness of the more detailed minimum requirements and a number of technical issues still need to be resolved.
- Art. 28(1) and (2), paragraphs are very prescriptive and provide little flexibility, especially if all the practices listed in Art. 27(2) are required to follow requirements set in Art. 28. The Commission's representative noted that Art. 28(2) applies only to licenced practices and not to registered practices.
- Art. 28(2)(f), further clarification is needed.
- Art. 29, replace "disposal" with "storage".

The Presidency concluded by inviting delegations to send written comments on the chapters discussed, while also welcoming comments on any other part of the proposal.

The WPAQ will continue discussions of the text at the WPAQ meeting on 22 February.

5. Other business

- Implementation of the Euratom-USA NCA: the Commission's representative recalled that the US asked to carry out verification of the facilities for export to the EU of a highly enriched uranium (HEU) for research purposes and asked individual facilities that utilise HEU to report their accountancy to the US, which could mean a violation of the internal market rules. The coordination meeting with the concerned MS and the Commission, held on 12 January, helped to identify the existing situation regarding those issues. These concerns will be addressed at the planned meetings with the US counterpart.
- HLLC meeting on 11 January 2011: the Presidency informed that the meeting took place as planned and a more detailed debriefing will be made by the Commission's representative at the next WPAQ meeting on 22 February.
- Euratom - Canada, Joint Committee meeting on January 19, 2012: Commission's representative informed that the issue of the agreement under negotiation has been raised at the meeting, but there is neither a reply nor a date when a reply to the Euratom's concerns is expected. The Presidency noted that it is necessary to identify first when a reply can be expected from Canada in order to proceed further. FR delegation noted its readiness to support the Commission's efforts in communicating with the Canadian side.
- PALLAS, the new nuclear reactor in the Netherlands: NL informed that the Dutch authorities view positively building the new PALLAS reactor and the investment in the Higher Education Reactor in Delft. Thus, an important condition for further progress on the project to replace high flux reactor in Petten has been fulfilled.
- CPPNM ratification process: the Commission's representative reminded that the EEAS is preparing for a joint deposit in Vienna and that a timely conclusion of all national ratifications is of great importance in order to meet a call of the last security summit in Washington and the AHGNS conclusions calling for an urgent completion of the CPPNM ratification. FR/IT/CY/IE informed that their national ratification process remains at the same stage as last reported at the WPAQ meeting in December 2011.
- CNS extraordinary review conference: The extraordinary meeting is foreseen to take place on 27-31 August 2012. National reports and views on strengthening or revising the CNS Convention will have to be submitted by 13 April 2012.

The Euratom intends to base its report on the results of the "stress-tests", including conclusions of the peer review process, which would constitute the most valuable contribution to the CNS review conference. It will be difficult to meet the set deadline for submission of the national reports. Thus, the ENSREG's meeting in February will consider to ask for a derogation from the set deadline.

In reply to FR, the Commission's representative reassured that in case the Euratom wants to participate in the revision of the CNS, it will need to have a mandate. However, the Commission's representative noted that for the time being the Commission would prefer not to promote revision of the CNS Convention and would prefer to keep its position open on this issue.

In reply to LU and IT, the Commission's representative noted that the usual procedure, where the report is prepared by the Commission, and then discussed and noted by the Council, will be followed for preparation of the Euratom's report.

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The next WPAQ meeting will take place on **22 February**.