



**COUNCIL OF
THE EUROPEAN UNION**

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ATO	10
RELEX	83
PESC	108
FIN	71

NOTE

from: General Secretariat of the Council
to: Delegations
No. Cion prop.: 18450/11 ATO 159 RELEX 1328 PESC 1642 FIN 1043
Subject: Proposal for a Council Regulation establishing an Instrument for Nuclear Safety
Cooperation

Based on the suggestions received, the Presidency prepared the attached text to be discussed at the next WPAQ meeting on 23 March 2012.

The changes are in **bold underline**; deletions are marked with ~~strikethrough~~.

Based on the advise of legal service and taking into account views of the delegations, the Presidency proposes to remove all references to the INSC from the Common Implementing Regulation (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.

Proposal for a
COUNCIL REGULATION
establishing an Instrument for Nuclear Safety Cooperation

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 203 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament¹,

[]

Whereas:

- (1) This Regulation constitutes one of the instruments providing direct support for the European Union's external policies, it will replace Regulation No 300/2007 [] of the Council of 19 February 2007 establishing an Instrument for Nuclear Safety Cooperation² which expires on 31 December 2013.
- (2) The European Union is a major provider of economic, financial, technical, humanitarian and macroeconomic assistance to third countries. The present Regulation is part of the framework devised for the planning of cooperation and provision of assistance aimed at supporting the promotion of a high level of nuclear safety; **and** radiation protection ~~and the application of efficient and effective safeguards of nuclear material~~ in third countries.
- (3) The Chernobyl accident in 1986 highlighted the global importance of nuclear safety. The Fukushima Daiichi accident in 2011 confirmed the need to continue the efforts to improve nuclear safety to the highest standards. To create the conditions of safety necessary to eliminate hazards to the life and health of the public, the European Atomic Energy Community (the 'Community') should be able to support nuclear safety in third countries.
- (4) By acting within common policies and strategies with its Member States, the European Union alone has the critical mass to respond to global challenges and is also best placed to coordinate the cooperation with third countries.

¹ OJ C , , p. .

² OJ L 81, 22.3.2007, p. 1–10

- (5) By Commission Decision 1999/819/Euratom³ the Community acceded to the 1994 Convention on Nuclear Safety. By Commission Decision 2005/510/Euratom⁴ the Community also acceded to the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.
- (6) In order to maintain and promote the continuous improvement of nuclear safety and its regulation, the Council adopted Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for nuclear safety of nuclear installations⁵. The Council also adopted Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste⁶. These Directives and the high standards of nuclear safety and radioactive waste and spent fuel management implemented in the Union are examples to [] be used to encourage third countries to adopt similar high standards.
- (7) The promotion of regulatory and other forms of cooperation with emerging economies and the promotion of Union approaches, rules, standards and practices are external policy objectives of the Europe 2020 strategy.
- (8) The Union Member States are signatory parties of the Non Proliferation Treaty and the Additional Protocol.
- (9) The Community already pursues a close cooperation, in accordance with Chapter 10 of the Euratom Treaty, with the International Atomic Energy Agency (IAEA), ~~both in relation to nuclear safeguards (in furtherance of the objectives of Chapter 7 of Title Two of the Euratom Treaty) and~~ in relation to nuclear safety.
- ~~(10) There is a particular need for the Community to continue its efforts in support of the application of effective safeguards of nuclear material in third countries, building on its own safeguard activities within the Union.~~
- (10a) The measures supporting the objective of this Regulation should also be supported by exploiting further synergies with the direct and indirect actions of the Euratom Framework Programmes in nuclear research and training.
- (11) It is understood that the responsibility for the safety of the installation shall rest with the operator and the State having the jurisdiction over the installation.

³ OJ L 318, 11.12.1999, p. 20.

⁴ OJ L 185, 16.7.2005, p. 33.

⁵ OJ L 172, 2.7.2009, p. 18.

⁶ OJ L 199, 2.8.2011, p. 48.

- (12) While Union external assistance has increasing financing needs, the economic and budgetary situation of the Union limits the resources available for such assistance. The Commission must therefore seek the most efficient use of available resources through, in particular, the use of financial instruments with leverage effect. Such leverage effect is increased by allowing the possibility to use and re-use the funds invested and generated by the financial instruments.
- (13) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission.
- (14) The implementing powers relating to the programming and financing of the actions supported under this Regulation should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers⁷. Taking into account the nature of those implementing acts, in particular their policy orientation nature or their financial implications, the examination procedure should in principle be used for their adoption, except for technical implementing measures of a small financial scale. The Commission should adopt immediately applicable implementing acts where in duly justified cases **of a nuclear or radiological accident, relating to the need for a swift response from the Union to mitigate its consequences, imperative grounds of urgency so require.**
- (15) Common rules and procedures for the implementation of the Union's instruments for external action are laid down in Regulation (EU) No .../... of the European Parliament and of the Council of
- (16) **The European Union and the European Atomic Energy Community continue to be served by a single institutional framework. It is therefore essential to ensure consistency between the external action of both. The European External Action Service should be involved, where appropriate, in the programming of this instrument in accordance with Article 9 of the Council Decision 2010/472/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service.** ~~The organisation and functioning of the European External Action Service are described in Council Decision 2010/427/EU.~~

⁷ OJ L 55, 28.2.2011, p. 13.

HAS ADOPTED THIS REGULATION:

TITLE I OBJECTIVES

Article 1

Subject matter and scope

The European Union shall finance measures to support the promotion of a high level of nuclear safety, **and** radiation protection ~~and the application of efficient and effective safeguards of nuclear material in third countries~~, in line with the provisions of this Regulation.

1. The following specific objectives shall be pursued:

(a) promotion of an effective nuclear safety culture and implementation of the highest nuclear safety standards and radiation protection standards and their continuous improvement, **in particular** through the following measures:

- i. continuous support for regulatory bodies, technical support organisations, and ~~the reinforcement of the regulatory framework~~, notably concerning licensing activities, including the review and follow-up of effective and comprehensive risk and safety assessments ('stress tests');
- ii. ~~the promotion of effective regulatory frameworks, procedures and systems to ensure adequate protection against ionising radiations from radioactive **sources** materials, in particular from high activity radioactive sources, and their safe disposal;~~
- iii. the establishment of effective arrangements for the prevention of accidents with radiological consequences as well as the mitigation of such consequences should they occur (for example, monitoring the environment in case of radioactive releases, design and implementation of mitigation and remediation activities), and for emergency-planning, preparedness and response, civil protection and rehabilitation measures.
- iv. support to nuclear operators, in exceptional cases, under specific and well justified circumstances in the framework of follow-up measures of the comprehensive safety and risk assessments;

- (b) responsible and safe management of spent fuel and radioactive waste (**i.e. transport, pre-treatment, treatment, processing, storage and disposal**), decommissioning and remediation of former nuclear sites and installations, **in particular** through the following measures:
- i. radioactive waste management (i.e. transport, pre-treatment, treatment, processing, storage and disposal), including development of specific strategies and frameworks for the responsible management of spent nuclear fuel and radioactive waste;
 - ii. development and implementation of strategies and frameworks for decommissioning existing installations, for the remediation of former nuclear sites and legacy sites related to uranium mining, and for the recovery and management of sunken radioactive objects and material at sea;
- ~~(c) establishment of frameworks and methodologies for the application of efficient and effective safeguards for nuclear material in third countries.~~
- ~~i. the establishment of the necessary regulatory framework and methodologies (including nuclear forensics methods) for the implementation of nuclear safeguards, including for the proper accounting and control of fissile materials at State and operators' level;~~
- ~~(d) measures to promote international cooperation (including in the framework of relevant international organisations, notably IAEA) in the above fields **listed under (a) and (b)**, including implementation and monitoring of international Conventions and Treaties, exchange of information, capacity building and training in the area of nuclear safety and research.~~
- ~~(e) establishment of effective arrangements emergency planning , preparedness, response and civil protection.~~

The measures listed under (a) to (e) above shall include a substantial element of know-how transfer in order to reinforce sustainability of the results achieved. They shall be implemented through cooperation with third countries' authorities, nuclear regulators and their technical support organisations and, in specific cases, with nuclear operators.

2. The overall progress in achieving the above specific objectives shall be assessed, respectively, through the following performance indicators:
 - (a) number and importance of issues identified during relevant safety assessments and peer reviews [];
 - (b) status of development of the spent fuel, nuclear waste and decommissioning strategies, the respective legislative and regulatory framework and implementation of projects;
 - ~~(c) number and importance of issues identified in relevant IAEA nuclear safeguards reports if any.~~

The Commission shall adopt by means of implementing acts the sSpecific indicators shall be defined in accordance with the procedure referred to in Article 6(2), prior to implementation of projects, having in mind the particularities of each action.

3. The Commission shall ensure that the measures adopted are consistent with the Union's overall strategic policy framework for the partner country and in particular with the objectives of its development and economic cooperation policies and programmes.
4. **The Commission shall consult the European Nuclear Safety Regulators Group (ENSREG) prior to the preparation of strategy papers, multiannual indicative programmes, annual action programmes and the report.** ~~The Committee referred to in Article 6 and the Commission shall make full use of the European High Level Group on Nuclear Safety and Waste Management established by the Commission Decision 2007/530/Euratom, as regards the preparation of strategy papers and multiannual indicative programmes.~~ []
5. The financial, economic and technical cooperation provided under this Regulation shall be complementary to that provided by the Union under other development cooperation instruments.

TITLE II
PROGRAMMING AND INDICATIVE ALLOCATION OF FUNDS

Article 2

Strategy papers

1. Union cooperation under this Regulation shall be implemented on the basis of **a general multi-annual strategy papers for the Instrument and specific strategy papers for the partner countries or regions concerned (strategy papers)**.
2. ~~The multi-annual strategy paper~~ **Strategy papers** shall constitute the general basis for the cooperation and shall be established for a period up to seven years. ~~It~~ **They** shall set out the Union's strategy for cooperation under this Regulation, having regard to the needs of the countries concerned, the Union's priorities, the international situation and the activities of the main partners. ~~Especially the strategy paper shall describe the added value the Regulation is aiming at, how the added value will be reached, and how duplications are avoided as compared to other programmes and initiatives.~~
3. Strategy papers will aim at providing a coherent framework for cooperation between the Union and the partner countries or regions concerned, consistent with the overall purpose and scope, objectives, principles and policy of the Union.
4. The preparation of strategy papers shall apply principles of aid effectiveness: national ownership, partnership, coordination, harmonisation, alignment to recipient country or regional systems, mutual accountability and results orientation.
5. The **Commission shall adopt by means of implementing acts** strategy papers **in accordance with the examination procedure referred to in Article 6(2)**. ~~shall be approved by the Commission in accordance with the examination procedure referred to in Article 15(3) of the Common Implementing Regulation.~~ Strategy papers **shall** ~~may be reviewed and if necessary updated~~ at mid-term or whenever necessary **following** ~~in accordance with~~ the same procedure. []

Article 3

Multiannual Indicative programmes

1. Multiannual indicative programmes shall be drawn up on the basis of the strategy papers mentioned in Article 2. Multiannual indicative programmes shall ~~normally~~ cover a period of 2 to 4 years.
2. Multiannual indicative programmes shall set out the priority areas selected for financing, the specific objectives, the expected results, the performance indicators and the indicative financial allocations, both overall and per priority area, and including a reasonable reserve of unallocated funds; this may be given in the form of a range or a minimum, where appropriate. Multiannual indicative programmes shall set out **rules** ~~how arrangements have been made or are made~~ to avoid duplications and **to ensure the** ~~how value for taxpayers money and proper use of available funds are ensured~~.
3. Multiannual indicative programmes shall, ~~in principle,~~ be based on a dialogue with the partner countries or region(s) which involves the stakeholders, so as to ensure that the country or region concerned takes sufficient ownership of the process and to encourage support for national development strategies. **These multiannual indicative programmes shall take into account the IAEA work programme.**
4. **The Commission shall adopt by means of implementing acts the m**Multiannual indicative programmes shall be adopted in accordance with the examination procedure referred to in Article ~~6(2)~~ 15(3) of the Common Implementing Regulation. ~~5.~~ The multi annual indicative programmes shall be revised and **if necessary** updated ~~as necessary,~~ taking into account any review of the relevant strategy papers, **following** ~~in accordance with the same procedure.~~
[~~However, the examination procedure shall not be required for modifications to multiannual indicative programmes, which make technical adjustments, reassign funds within the allocations per priority area, or increase or decrease the size of the initial indicative allocation by less than 20%, provided that these modifications do not affect the initial priority areas and objectives set out in the document. Any such technical adjustments shall be communicated within one month to the European Parliament and to the Council.~~]

Article 3a

Annual action programs

1. The Commission shall adopt **annual** action programmes (**action programmes**), which in exceptional cases may exceed one year period, drawn up on the basis of the strategy papers and **multiannual** indicative programmes referred to in Article 2 and 3. These action programmes, normally drawn up on an annual basis, shall set out the specific details concerning the implementation of assistance **provided** under this Regulation.
2. These action programmes shall specify the objectives pursued, the fields of intervention, the measures **and projects** envisaged, the expected results, the management procedures and total amount of financing planned. They shall contain a summary description of the operations to be financed, an indication of the amounts allocated for each operation and an indicative implementation timetable. Where relevant, they may include the results of any lessons learned from previous assistance.
- 2a. The Commission shall by means of implementing acts adopt the action programmes in accordance with the examination procedure referred to in Article 6(2). Any revision or extension of the action programmes shall be done following the same procedure.**
3. That procedure shall not be required for action programmes and measures below the above-mentioned thresholds, and for non substantial amendments thereto. Nonsubstantial amendments are technical adjustments such as extending the implementation period, reassigning funds within the forecast budget, or increasing or reducing the size of the budget by less than 20 % of the initial budget, provided these amendments do not substantially affect the objectives of the initial action programme or measure. In such case, action programmes and measures and non-substantial amendments thereto shall be communicated to the European Parliament and to the Council within one month of their adoption.
4. The action programmes shall be based on a consultation, where relevant, with the national regulatory bodies of the Member States, and on a dialogue with the partner countries.
5. On duly justified grounds of urgency, related to the need for a swift response from the Union to mitigate consequences of a nuclear or radiological accident, the Commission shall adopt or amend the action programmes by means of immediately applicable implementing acts in accordance with the procedure referred to in Article 6 (3). [Those acts shall remain in force for the period...]⁸

⁸ Article 8(2) of the "Comitology" Regulation indicates 6 months unless the basic act provides otherwise.

TITLE III IMPLEMENTATION

Article 4

Implementation

This Regulation shall be implemented in accordance with **Articles 4, 5, 7, 8, 19], 12 and 16 of the Regulation No /....of the European Parliament and of the Council of ... establishing common implementation rules for external relations financing instruments, hereinafter referred as 'the Common Implementing Regulation', unless specified otherwise in this Regulation.**

Article 4a

Report

The Commission shall examine progress achieved in implementing the measures undertaken pursuant to this Regulation and shall submit to the European Parliament and the Council a biannual report on the implementation of the assistance. The report shall contain information relating to the previous **two** years on the measures financed, information on the results of monitoring and evaluation exercises and the implementation of budget commitments and payments, broken down by country, region and **type of** cooperation. ~~The report shall be submitted to the Committee referred to in Article 15 of the Common Implementing Regulation' for discussion and possible actions.~~

TITLE IV
FINAL PROVISIONS

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Article 6

Committee

1. The Commission shall be assisted by the Nuclear Safety Cooperation Committee **established by Article 19 of Regulation No 300/2007 of the Council of 19 February 2007 establishing an Instrument for Nuclear Safety Cooperation**. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. **Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.**
3. **Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.**

~~Article 7~~

~~***European External Action Service***~~

~~The application of this Regulation shall be in accordance with Council Decision 2010/427/ EU, establishing the organisation and functioning of the European External Action Service.~~

Article 8

Financial reference amount

4. The financial reference amount for the implementation of this Regulation over the period 2014 to 2020 is EUR [631 100 000]⁹.
2. Annual appropriations shall be authorised by the budgetary authority within the limits of the multi-annual financial framework.

⁹ *To be addressed by the FoP-MFF group.*

Article 9
Entry into force

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2014.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the Council
The President

ANNEX

[] Criteria ¹⁰ applying to nuclear safety cooperation

This Regulation supports the promotion of a high level of nuclear safety, **and** radiation protection ~~and the application of efficient and effective safeguards~~ in third countries worldwide that are seeking cooperation in these fields. This Annex defines [] the criteria for cooperation, including the priorities.

[]

Cooperation should be based on the following criteria and fulfilment of conditions by third countries.

1. General criteria

- Cooperation may cover all ‘third countries’ (non-EU Member States) worldwide.
 - Priority will be given to Accession Countries and countries in the European Neighbourhood region. Regional approaches will be favoured.
 - High income countries should be included only in order to allow exceptional measures to be undertaken, for example following a major nuclear accident, if necessary and appropriate
 - A common understanding and a reciprocal agreement between the third country and the European Union should be confirmed through a formal request to the Commission, committing the respective Government.
 - Third countries wishing to cooperate with the European Union should fully subscribe to the principles of non-proliferation. They should also be parties to the relevant conventions, within the framework of the IAEA, on nuclear safety and security or have taken steps demonstrating a firm undertaking to accede to such conventions.
- Cooperation with the European Union could be made conditional on accession or the completion of steps towards accession to the relevant conventions. In cases of emergency, flexibility should, exceptionally, be shown in the application of this principle.

¹⁰ The criteria take into account the Council Conclusions on assistance to third countries in the field of nuclear safety and security (2913th Transport, Telecommunications and Energy Council meeting, Brussels, 9 December 2008).

- In order to ensure and monitor compliance with the cooperation objectives, the third country beneficiary must accept the principle of evaluation of the actions undertaken. Evaluation would make it possible to monitor and verify compliance with the agreed objectives and could be a condition for continued payment of the Community contribution.
- Cooperation in the fields of nuclear safety ~~and safeguards~~ under this Regulation is not aimed at promoting nuclear energy.

2. Countries with installed nuclear generating capacity

In the case of countries which have already benefited from Community financing, additional cooperation should depend on the evaluation of actions funded by the Community budget and on proper justification of new needs. The evaluation should make it possible to determine more precisely the nature of the cooperation and the amounts to be granted to those countries in the future.

In the case of countries requiring rapid cooperation, consideration should be given to:

- a) the degree of urgency of intervention in a given country, in the light of the situation as regards nuclear safety and security; and
- b) the significance, in certain countries where an ambitious programme for developing nuclear generating capacity is planned, of stepping in at the appropriate moment so as to ensure that a nuclear safety and security culture is fostered in parallel with that process, in particular as regards the deployment or strengthening of the regulatory authorities and technical support organisations and the development and implementation of strategies and frameworks for the responsible and safe management of spent fuel and radioactive waste.

The use of the Integrated Regulatory Review Service (IRRS) and the IAEA Operational Safety Review Team (OSART) missions would be viewed favourably, although this would not constitute a formal criterion for EU cooperation.

3. Countries without installed nuclear generating capacity:

In the case of countries which have research reactors but do not wish to develop nuclear generating capacity, cooperation will depend on the degree of urgency in the light of the situation as regards nuclear safety and security.

In the case of countries that wish to develop nuclear generating capacity, whether or not they have research reactors and for which the issue arises of intervention at the appropriate moment to ensure that a nuclear safety and security culture is fostered in parallel with the development of the nuclear generating programme, especially as regards strengthening the regulatory authorities and technical support organisations, cooperation will take into account the credibility of the nuclear power development programme, the existence of a government decision on the use of nuclear energy, a realistic financing plan and the drawing up of a preliminary road map¹¹.

For countries in this category, cooperation should be primarily aimed at developing the required regulatory infrastructure, the technical competence of the nuclear regulator and the respective technical support organization(s). The development of strategies and frameworks for the responsible and safe management of spent fuel and radioactive waste should also be considered and, if appropriate, supported, including in countries which do not envisage developing or have decided not to develop nuclear generating capacity.

In the case of countries which do not fall into the above categories, cooperation may be provided in the case of emergency situations as regards nuclear safety and security. These countries should be able to benefit from a certain degree of flexibility in the application of the general criteria.

Priorities

In order to create the safety conditions necessary to eliminate hazards to the life and health of the public, and to ensure that nuclear materials are not diverted to purposes other than those for which they are intended, cooperation is directed primarily at the nuclear regulators (and their technical support organisations). The objective is to ensure their technical competence and independence and the reinforcement of the regulatory framework, notably concerning licensing activities, including the review and follow up of effective and comprehensive risk and safety assessments ('stress tests').

¹¹ This should take into account the Milestones in the Development of a National Infrastructure for Nuclear Power (IAEA Nuclear Energy Series Document NG-G-3.1)

Other priorities of the cooperation programmes to be developed in the context of this Regulation include:

- the development and implementation of responsible strategies and frameworks for the responsible and safe management of spent fuel and radioactive waste;
- decommissioning of existing installations, the remediation of former nuclear sites and legacy sites related to uranium mining, as well as the recovery and management of sunken radioactive objects and material at sea, when these constitute a danger to the public.

Cooperation with operators of nuclear installations in third countries will be considered in specific situations in the framework of follow-up measures of the 'stress tests'. Such cooperation with nuclear installations operators will exclude supply of equipment.

Coordination

The Commission should coordinate its cooperation with third countries with organisations pursuing similar objectives, in particular international organisations, including in particular the International Atomic Energy Agency (IAEA). This coordination should enable the European Union and the organisations concerned to avoid any duplication of actions and funding in relation to third countries. The Commission should also involve the competent authorities of Member States and European operators in the fulfilment of its task, thereby harnessing the quality of European expertise in the field of nuclear safety ~~and safeguards~~.