



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 3 April 2012**

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<b>RELEX</b>	<b>83</b>
<b>PESC</b>	<b>108</b>
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**NOTE**

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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

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Based on the suggestions received, the Presidency prepared the attached text to be discussed at the next WPAQ meeting on 13 April 2012.

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

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 Parliament<sup>1</sup>,

[]

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 Cooperation<sup>2</sup> 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 [] 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.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ L 81, 22.3.2007, p. 1–10

- (5) By Commission Decision 1999/819/Euratom<sup>3</sup> the Community acceded to the 1994 Convention on Nuclear Safety. By Commission Decision 2005/510/Euratom<sup>4</sup> 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 installations<sup>5</sup>. The Council also adopted Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the ~~responsible and safe~~ **and responsible** management of spent fuel and radioactive waste<sup>6</sup>. 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), [] in relation to nuclear safety.

[]

**(10) The Commission should consult the European Nuclear Safety Regulators Group (ENSREG) prior to the elaboration and adoption of strategy paper and multiannual indicative programmes. The action programmes should be based on a consultation, where relevant, with the national regulatory bodies of the Member States, and on a dialogue with the partner countries.**

(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.

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<sup>3</sup> OJ L 318, 11.12.1999, p. 20.

<sup>4</sup> OJ L 185, 16.7.2005, p. 33.

<sup>5</sup> OJ L 172, 2.7.2009, p. 18.

<sup>6</sup> OJ L 199, 2.8.2011, p. 48.

- (11) It is understood that the responsibility for the safety of the installation ~~shall~~ **should** rest with the operator and the State having the jurisdiction over the installation.
- (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 powers<sup>7</sup>. 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. []

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<sup>7</sup> OJ L 55, 28.2.2011, p. 13.

HAS ADOPTED THIS REGULATION:

**TITLE I**  
**OBJECTIVES GENERAL PROVISIONS**

*Article 1*

~~*Subject matter and scope*~~ **General objective**

The European Union shall finance measures to support the promotion of a high level of nuclear safety [ ] and radiation protection [ ] in third countries, in line with the provisions of this Regulation.

**Article 1a**

**Specific objectives**

**Cooperation under this Regulation shall pursue** ~~t~~The following specific objectives shall be pursued:

- 1) 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:~~
- 2) ~~responsible and safe~~ **and responsible** 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:~~

**Article 1b**

**Specific measures**

1. **With respect to the objective set out in Art. 1a(1), it should be pursued through, in particular, the following measures:**
  - a) continuous support for regulatory bodies, technical support organisations, and [ ] promotion of effective regulatory frameworks, procedures and systems to ensure adequate protection against ionising radiations from radioactive sources [ ], in particular from high activity radioactive sources, and their safe disposal;

- b) 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, **medical assistance** ~~civil protection and rehabilitation measures~~;
- c) 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.~~

2. **With respect to the objective set out in Art. 1a(2), it should be pursued through, in particular, the following measures:**

- a) [ ] development of specific strategies and frameworks for the **safe and** responsible management of spent nuclear fuel and radioactive waste;
- b) 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; [ ]
- ~~(d) — measures to promote international cooperation in the 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 **(1) to (2)** 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.

## Article 1c

### Compliance, coherence and complementarity

- 1. Progress towards achievement of the** ~~The overall progress in achieving the above specific objectives set out in Art. 1a 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; []

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

**The indicators shall be used for monitoring, evaluation and review of performance, as appropriate.**

- 2.** 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. []~~
- 3.** 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 **wich includes** and **specific sections** strategy papers for the partner countries **and** or regions concerned (~~strategy papers~~).
2.  Strategy papers shall constitute the general basis for the cooperation and shall be established for a period up to seven years.  ~~They~~ **It** 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 partner **countries**.
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).  Strategy papers shall  be reviewed and if necessary updated at mid-term or whenever necessary following  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 [] 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 [] to avoid duplications and to ensure the [] proper use of available funds [].
3. Multiannual indicative programmes shall [] 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 **in the field of nuclear safety and waste management**.
4. The Commission shall adopt by means of implementing acts the multiannual indicative programmes [] in accordance with the examination procedure referred to in Article 6(2) [] The multi annual indicative programmes shall be revised and if necessary updated [], taking into account any review of the relevant strategy papers, following [] the same procedure. []

*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 [] 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 shall~~ **may include, if appropriate, the results of any lessons learned from previous cooperation 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~~ **and projects** [] for non substantial amendments []. 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 programmes and measures~~ **and projects**. In such case, ~~action programmes and measures~~ **and projects** 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...]<sup>8</sup>

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<sup>8</sup> 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, [9], [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 **cooperation** 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. []

### TITLE IV FINAL PROVISIONS

#### *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 8*

***Financial reference amount***

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

*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*

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<sup>9</sup> *To be addressed by the FoP-MFF group.*

## ANNEX

### **Criteria<sup>10</sup> applying to nuclear safety cooperation**

This Regulation supports the promotion of a high level of nuclear safety and radiation protection 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, **such as the Convention on Nuclear Safety and the Joint Convention on the safe management of spent fuel and radioactive waste**, ~~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.

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<sup>10</sup> 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 [] 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~~ **and responsible** 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 map<sup>11</sup>.

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~~ **and responsible** 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').

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<sup>11</sup> 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~~ **and responsible** 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 [ ].