



**COUNCIL OF
THE EUROPEAN UNION**

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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.

Reserve of a horizontal nature, e. g. with respect to comitology and timeframe for the Regulation, are duly noted.

As it stands, the Annex to the Regulation only sets indicative criteria. Should (some) of these criteria be made binding, then it is suggested that the part of the Annex to this Regulation comprising these binding criteria may be modified in accordance with the examination procedure referred to in Article 6(2).

The attached text includes a new article 4b on 'Eligibility'. An article 14 on 'Rules of participation and origin' could also be inserted based on either the current INSC instrument or the equivalent in the CIR regulation.

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

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 and the European Atomic Energy Community (the 'Community') 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 ('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 [] Community [] should be able to support nuclear safety in third countries.
- (4) By acting within common policies and strategies with its Member States, the [] 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 Community [] 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 Community [] 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.
- (9a) There are a number of international organisations and programmes pursuing objectives similar to those of this Regulation, such as the IAEA, OECD/NEA, EBRD and NDEP.**
- (9b) The Instrument for Stability (Regulation EU/...) addresses specific global and transregional security threats, including illicit traffic of nuclear materials. 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, under this Regulation, building on its own safeguards activities within the Union in accordance with the provisions of the Chapter 7 of the Euratom Treaty.**

[]

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.

- (10) The Commission should consult the European Nuclear Safety Regulators Group (ENSREG) prior to the elaboration and adoption of strategy paper, [] multiannual indicative programmes, annual action programmes and report. 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 objectives 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 [] rests 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 adoption of specific indicators, strategy paper, multiannual indicative programmes, annual action programmes with the exception of the non-substantial amendments, [] 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 relating to [] a nuclear or radiological accident (including accidental exposure), [] to the need for a swift response from the Community [] to mitigate its consequences, imperative grounds of urgency so require.

⁷ OJ L 55, 28.2.2011, p. 13.

(15) Some of the 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. []]⁸

⁸ FoP agreed to use text on the EEAS in an Article as originally proposed by the Commission.

HAS ADOPTED THIS REGULATION:

TITLE I
□ GENERAL PROVISIONS

Article 1

□ General objective

The □ 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.

Article 1a

Specific objectives

Cooperation under this Regulation shall pursue the following specific objectives □:

- 1) promotion of an effective nuclear safety culture and implementation of the highest nuclear safety ~~standards~~ and radiation protection ~~standards~~, and ~~their~~ continuous improvement of nuclear safety. □
- 2) 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.
- 3) **Establishment of frameworks and methodologies for the application of efficient and effective safeguards for nuclear material in third countries.**

Article 1b

Specific measures

1. □The objective set out in point 1 of Article 1a □ shall be pursued through, in particular, the following measures:
 - a) □ support for regulatory bodies, technical support organisations, and □;
 - aa) reinforcement of the regulatory framework, notably concerning review and assessment, licensing and oversight activities for nuclear power plants and other nuclear installations⁹;

⁹ Reference to NPPs and other nuclear installations could be replaced by a reference to 'nuclear installations' as defined in Art. 3(1) of the Council Directive 2009/71/Euratom.

- ab) promotion of effective regulatory frameworks, procedures and systems to ensure adequate protection against ionising radiations from radioactive **materials** sources, in particular from high activity radioactive sources, and their safe disposal;
- b) 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** ~~medical assistance~~ and rehabilitation measures;
- c) support for **ensuring safety of** nuclear installations and sites regarding practical protective measures designed to reduce existing radiation risks to the health of workers and of the general public []

2. []The objective set out in point 2 of Art. 1a shall be pursued through, in particular, the following measures:

- aa) support for regulatory bodies, technical support organisations, and the reinforcement of the regulatory framework, notably concerning the responsible and safe management of spent nuclear fuel and radioactive waste;
- a) [] development **and implementation** of specific strategies and frameworks for the responsible and safe 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; []

3. **The objective set out in point 3 of Art. 1a shall be pursued through, in particular, the following measures:**

establishment of the necessary regulatory framework and methodologies for the implementation of nuclear safeguards, including for the proper accounting and control of fissile materials at State and operators' level;

4. The measures [] referred to in paragraphs 1, 2 and 3 shall **include actions to promote international cooperation, including implementation and monitoring of international Conventions and Treaties. They and shall also** include a substantial element of knowledge [] transfer (exchange of information, capacity building and training in the area of nuclear safety and research) in order to reinforce sustainability of the results achieved. They shall be implemented through cooperation **between European and** with third countries' authorities, nuclear regulators and their technical support organisations and, **relevant international organizations, notably the IAEA and,** in specific **and duly justified** cases **concerning** set out under **paragraphs 1(b) and 1(c)** above, with **European and third countries'** [] operators of nuclear installations and sites.

Article 1c
Compliance, coherence and complementarity

1. Progress towards achievement of the [] specific objectives set out in Article 1a shall be assessed, respectively, through the following performance indicators:
- (a) number and importance of issues identified during the implementation of the cooperation;
 - (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.**

Prior to the implementation of the projects and taking into account the particularities of each action, the Commission shall adopt by means of implementing acts the specific indicators [] for monitoring, evaluation and review of performance, as appropriate. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 6(2).

[]

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.

[]

3. The financial, economic and technical cooperation provided under this Regulation shall be complementary to that provided by the Union under other [] instruments.

TITLE II
PROGRAMMING AND INDICATIVE ALLOCATION OF FUNDS

Article 2

Strategy paper^[]

1. Community ^[] cooperation under this Regulation shall be implemented on the basis of a general multi-annual strategy paper^[] for the Instrument ^[].
2. The Strategy paper^[] shall constitute a general basis for the cooperation and shall be established for a period up to seven years. ^[] It shall set out the Community's ^[] strategy for cooperation under this Regulation, having regard to the needs of the countries concerned, the Community's ^[] priorities, the international situation and the activities of the **respective third** ^[] **countries. The Strategy paper shall also indicate** the added value of the cooperation and how to avoid duplications with other programmes and initiatives **in particular those of major international organizations pursuing similar objectives and main donor countries** ^[], ~~inter alia the work of the IAEA, OECD/NEA, EBRD and NDEP.~~ ^[]
3. The Strategy paper^[] shall ^[] aim at providing a coherent framework for cooperation between the Community ^[] and the third ^[] countries or regions concerned, consistent with the overall purpose and scope, objectives, principles and policy of the Community ^[].
4. Preparation of **the Strategy** paper^[] shall **apply** ~~be subject to~~^[] the 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, the Strategy paper^[], in accordance with the examination procedure referred to in Article 6(2). ^[] The Commission shall review ^[] and, if necessary, update strategy papers 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 paper[] referred to [] 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 guidelines [] to avoid duplications and to ensure the [] proper use of available funds [].
3. Multiannual indicative programmes shall [] be based on a requests **from** of and 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 current and planned international cooperation **with relevant international organizations and major donors** ~~, inter alia with IAEA, OECD/NEA, EBRD and NDEP,~~ [] in the fields set out in Article 1a [].
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 Commission shall, following the same procedure, revise [] and, if necessary, update those acts [], taking into account any review of the implementing acts referred to in Article 2(5). []

TITLE III IMPLEMENTATION

Article 3a

Annual action programmes

1. The [] annual action programmes ('action programmes') [] shall be drawn up on the basis of the strategy paper[] and multiannual indicative programmes referred to in Articles 2 and 3, respectively. The[] action programmes [] shall **be set out for each third country or region and shall specify** the specific details concerning the implementation of cooperation [] provided under this Regulation.
2. The[] 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. []They shall [] include, if appropriate, the results of any lesson learned from previous cooperation [].
- 2a. The Commission shall adopt, by means of implementing acts, [] the action programmes in accordance with the examination procedure referred to in Article 6(2). The Commission may review and extend those implementing acts [] following the same procedure.
3. By derogation from paragraph 2a, the Commission may adopt [] non substantial amendments [] to ~~measures and projects~~ referred to in paragraph 2. Non substantial amendments are technical adjustments such as extending the implementation period **for less than 6 months**, reassigning funds within the forecast budget, or increasing or reducing the size of the budget by less than [20 %] of the initial budget [of the project], provided that those amendments do not substantially affect the objectives of the initial [] measures and projects. [] The Commission shall communicate those non-substantial amendments [] to the European Parliament, [] to the Council and to the Committee referred to in Article 6(1) within one month of their adoption. []
5. On duly justified imperative grounds of urgency relating to the need for a swift response from the Community [] 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). []

Article 4
Implementation

This Regulation shall be implemented in accordance with Articles¹⁰ 1(2), 1(3), 4, 5, 7, 8, 9, [] 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 an [] annual report on the implementation of the cooperation []. The report shall contain information relating to the previous []year 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. []

Article 4b
Eligibility

- 1. Tenderers, applicants and candidates from the following countries shall be eligible for funding under this Regulation:**
 - (a) Member States, candidate countries and potential candidates as recognised by the Union, members of the European Economic Area and partner countries covered by the European Neighbourhood Instrument, and**
 - (b) donor countries for which reciprocal access to external assistance is established by the Commission under the conditions laid down in Article 9(1)(e) of the Common Implementation Regulation.**
- 2. Tenderers, applicants and candidates from non eligible countries or goods from non eligible origin may be accepted as eligible by the Commission in case of urgency or unavailability of products and services in the markets of the countries concerned, or other duly substantiated cases where the eligibility rules would make the realisation of a project, a programme or an action impossible or exceedingly difficult.**

¹⁰ *Referred articles should be checked with the latest version of the CIR regulation, once available.*

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]¹¹.
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

¹¹ *To be addressed by the FoP-MFF group.*

ANNEX

Criteria¹² 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 of nuclear material** in third countries [] 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 ~~in case of emergency~~.
- Priority would [] be given to Accession Countries and countries in the European Neighbourhood region, **first of all by using a country approach**. Regional approaches [] **would** ~~shall~~ be favoured **for countries in other regions**.
- 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 Community [] should be confirmed through a formal request to the Commission, committing the respective Government.

¹² 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).

- Third countries wishing to cooperate with the Community [] 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, [] or have taken steps demonstrating a firm undertaking to accede to such conventions. This commitment will be evaluated annually, on the basis of which a decision will be taken with regard to continuation of the cooperation. Cooperation with the Community [] 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.
- In order to ensure and monitor compliance with the cooperation objectives, the third country [] shall [] 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.

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, **priority of** cooperation shall be 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').

Other priorities of the cooperation programmes to be developed in the context of this Regulation shall 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 **between European and third countries'** with operators of nuclear **power plants** installations in third countries shall be considered in the specific situations **cases set out in Articles 1a and 1b, in particular** in the framework of follow-up measures of the **a comprehensive risk and safety assessment 'stress tests'**. Such cooperation with nuclear installations operators shall exclude supply of equipment.

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 [] 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
- b) the significance [] of stepping in at the appropriate moment so as to ensure that a nuclear safety [] culture is fostered [], 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 **nuclear installations as defined in Art. 3(1) of the Council Directive 2009/71/Euratom** ~~research reactors~~ but do not wish to develop nuclear generating capacity, cooperation shall [] depend on the degree of urgency in the light of the situation as regards nuclear safety [].

In the case of countries that wish to develop nuclear generating capacity, whether or not they have **nuclear installations as defined in Art. 3(1) of the Council Directive 2009/71/Euratom** ~~research reactors~~ and for which the issue arises of intervention at the appropriate moment to ensure that a nuclear safety [] 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 shall [] 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 map¹³.

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 []. These countries should be able to benefit from a certain degree of flexibility in the application of the general criteria. []

¹³ 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)

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 Community [] 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 [].
