



**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 (INSC)

Delegations will find attached the draft Council Regulation establishing an Instrument for Nuclear Safety Cooperation (INSC) as agreed at the AQWP of 18 October. All necessary changes and alignments related to the Common Implementation Regulation (CIR) have been included in the text and are underlined. Changes in art. 3a (2a) and (3) correspond to a reorganisation of the text between the two paragraphs while leaving the content unchanged. The change on p.19 was introduced for linguistic clarity.

DRAFT

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, radiation protection and the application of efficient and effective safeguards of nuclear material in third countries

¹ OJ C , , p. .

² OJ L 81, 22.3.2007, p. 1–10

- (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.
- (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.

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.

- (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), 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
- (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.
- (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) In the application of this Regulation the Commission should consult the European Nuclear Safety Regulators Group (ENSREG) prior to the elaboration and adoption of the 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.
- (10b) 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 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, which should apply for the purpose of this Regulation, even though it does not mention Article 106a of the Euratom Treaty. 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) the need for a swift response from the Community to mitigate its consequences, imperative grounds of urgency so require.
- (15) The rules and procedures laid down in Regulation (EU) No ../... of the European Parliament and of the Council of establishing common rules and procedures for the implementation of the Union's instruments for external action, should apply for the implementation of this Regulation as appropriate.

⁷ OJ L 55, 28.2.2011, p. 13.

- (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 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service.
- (17) The Union should seek the most efficient use of available resources in order to optimise the impact of its external action. This should be achieved through coherence and complementarity between Instruments for external action, as well as the creation of synergies between the present Instrument, other Instruments for external action and other policies of the Union. This should further entail mutual reinforcement of the programmes devised under these Instruments.

TITLE I

GENERAL PROVISIONS

Article 1

General objective

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

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 and radiation protection standards, and 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 installations;
 - ab) promotion of effective regulatory frameworks, procedures and systems to ensure adequate protection against ionising radiations from radioactive materials, in particular from high activity radioactive sources, and their safe disposal;
 - b) establishment of effective arrangements for the prevention of accidents with radiological consequences (including accidental exposure), 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 cooperation with national and international organisations in the case of accidental exposure), and for emergency-planning, preparedness and response, civil protection 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 will be limited to the technical aspects to ensure that ores, source material and special fissile material are not diverted from their intended uses as declared by the users⁸, it shall be pursued through, in particular, the following measures:
- a) establishment of the necessary regulatory framework, methodologies, technology and approaches for the implementation of nuclear safeguards, including for the proper accounting and control of fissile materials at State and operators' level;
 - b) support for the infrastructure and training of personnel.
4. The measures referred to in paragraphs 1 and 2 may include actions to promote international cooperation, including implementation and monitoring of international Conventions and Treaties. They 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 with competent authorities of Member States of the EU and/or with third countries' authorities, nuclear regulators and their technical support organisations and/or, relevant international organizations, notably the IAEA. In specific and duly justified cases the measures concerning paragraphs 1(b) and 1(c) above, shall be implemented through cooperation with operators and/or competent organizations from the Member States of the EU and third countries' operators of nuclear installations, as defined in Art. 3(1) of the Council Directive 2009/71/Euratom, and sites.

⁸ Article 77 (a) of the Treaty establishing the European Atomic Energy Community.

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 nuclear safeguards reports.Prior to the implementation of the projects and taking into account the particularities of each action, specific indicators for monitoring, evaluation and review of performance will be defined as referred to in article 3a(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 international organizations pursuing similar objectives and major donors.
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 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 approve the strategy paper, in accordance with the examination procedure referred to in Article 5(2). The Commission shall review and, if necessary, update the strategy paper 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.

3. Multiannual indicative programmes shall be based on a request from 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. For complementarity and to avoid duplications, the multiannual indicative programmes shall take into account the current and planned international cooperation, in particular with international organizations pursuing similar objectives, and major donors in the fields set out in Article 1a. The multiannual indicative programmes shall also indicate the added value of the cooperation.
4. The Commission shall adopt, the multiannual indicative programmes, in accordance with the examination procedure referred to in Article 5(2). The Commission shall, following the same procedure, revise and, if necessary, update those indicative programmes, taking into account any review of the strategy paper referred to in Article 2.

TITLE III

IMPLEMENTATION

Article 3a

Annual action programs

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 details concerning the implementation of cooperation provided under this Regulation. Exceptionally, in particular where an action programme has not yet been adopted, the Commission may, on the basis of the indicative programming documents, adopt individual measures under the same rules and procedures as for action programmes.
In the event of unforeseen and duly justified needs, circumstances or commitments, the Commission may adopt special measures not provided for in the indicative programming documents.

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, an indicative implementation timetable and specific indicators for monitoring, evaluation and review or performance, as appropriate. They shall include, if appropriate, the results of any lesson learned from previous cooperation.
- 2a. The Commission shall adopt, the action programmes, individual measures and special measures [...] in accordance with the examination procedure referred to in Article 5(2). The Commission may revise and extend the action programmes and the measures following the same procedure.
3. By derogation from paragraph 2a, the [...] examination procedure referred to in Article 5(2) shall not be required for:
- (i) individual measures for which the Union's financial assistance does not exceed EUR 5 million,
 - (ii) special measures for which the Union's financial assistance does not exceed EUR 5 million,
 - (iii) technical amendments to action programmes, individual measures and special measures.
- Technical amendments are adjustments, such as
- extending the implementation period,
 - reassigning funds [...] between actions contained in annual action programmes, individual and special measures and projects by not more than 20 % of the initial budget, but not exceeding EUR 5 million, or
 - increasing or reducing the budget of the annual action programmes, individual or special measures by not more than 20 % of the initial budget and not exceeding EUR 5 million, provided [...] these amendments do not substantially affect the objectives of the initial measures and action programmes.
- Measures adopted under this paragraph shall be communicated [...] to the European Parliament, to the Council and to the Committee referred to in Article 5(1) within one month of their adoption.

4. 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 or measures by means of immediately applicable implementing acts in accordance with the procedure referred to in Article 5(3).
5. The Commission may also decide to join any initiative launched by the international organisations and major donors pursuing similar objectives as far as it complies with the general objective set out in Article 1. The corresponding financing decision shall be taken in accordance with the procedure referred to in paragraph 2 and 2a of this article.

Article 3b

Coherence and complementarity

Any programming or reviews of programmes taking place after the publication of the Mid-term report referred to in Article 17 of the Common Implementing Regulation (EU No ../..) shall take into account the results, findings and conclusions of it.

Article 4

Implementation

This Regulation shall be implemented in accordance with Articles 1(3), 1(4), 3, 4, 5, 7, 8, 9, 12 and 17 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.

TITLE IV

FINAL PROVISIONS

Article 5 *Committee*

1. The Commission shall be assisted by the Nuclear Safety Cooperation Committee. 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 5b *European External Action Service*

The application of this Regulation shall be in accordance with Article 9 of the Council Decision 2010/427/ EU, establishing the organisation and functioning of the European External Action Service.

Article 6 *Financial reference amount*

1. The financial reference amount for the implementation of this Regulation over the period 2014 to 2020 is EUR 225,321. [...]
2. Annual appropriations shall be authorised by the budgetary authority within the limits of the multi-annual financial framework.

Article 7
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 until 31 December 2020.

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

Criteria ¹ applying to nuclear safety cooperation

This Annex defines the criteria for cooperation, including the priorities.

Cooperation should be based on the following criteria.

1. General criteria and priorities**(a) General criteria:**

- Cooperation may cover all ‘third countries’ (non-EU Member States) worldwide.
- Priority should be given to Accession Countries and countries in the European Neighbourhood area, preferably by using a country approach. The regional approach should be favoured for countries in other regions.
- Cooperation with high income countries is intended to facilitate relations between their respective stakeholders competent on nuclear safety and radiation protection. Such relations shall exclude any Community funding to high income countries through this Regulation. However special measures may 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.
- 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 should be evaluated annually and on this basis 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.

¹ 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 shall accept the evaluation of the actions undertaken. This evaluation should allow to monitor and verify compliance with the agreed objectives and could be a condition for continued payment of the Community contribution.
- Cooperation provided by the European Union in the field of nuclear safety and safeguards under this Regulation is not aimed at promoting nuclear energy and should therefore not be interpreted as a measure to promote that energy source in third countries.

(b) Priorities

In order to create the safety conditions necessary to eliminate hazards to the life and health of the public 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 with third countries' operators of nuclear power plants shall be considered in the specific 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. Such cooperation 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 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 the 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 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 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 and the drawing up of a preliminary road map, which 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).

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.

4. 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 and safeguards.

The Commission shall ensure that there will be no duplication [...] between the cooperation in the field of safeguards, through the measures which may be undertaken in accordance with article 1b paragraph 3 of this Regulation, and [...] the cooperation which may take place in the fields of security and non-proliferation under the Instrument contributing to Stability and Peace.