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Delegations will find attached the partially declassified version of the above-mentioned document.

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EUROPEAN
COMMISSION

Brussels, 8.9.2014
COM(2014) 566 final

Proposal for a

COUNCIL DECISION

**issuing directives to the Commission for the negotiation of amendments to the
Convention on Nuclear Safety (CNS) in the framework of a Diplomatic Conference**

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on 23 OCT 2014

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EXPLANATORY MEMORANDUM

1. INTRODUCTION

The Convention on Nuclear Safety (CNS) was negotiated and adopted under the auspices of the International Atomic Energy Agency (IAEA) of the United Nations in Vienna, on 17 June 1994. It entered into force on 24 October 1996.

Euratom acceded to the Convention after the Decision of the European Commission of 16 November 1999 (OJ L 318, 11.12.1999, p.2) on the basis of Article 101 of the Euratom Treaty, following a Decision of the Council of 7 December 1998. The instrument of accession was deposited with the Director General of the IAEA on 31 January 2000 and the Convention thus entered into force for Euratom on 30 April 2000, in accordance with Article 31(2) of the Convention. All Member States of Euratom are Parties to the Convention, as well as all countries operating nuclear power plants.

The objective of the CNS is, in particular, to commit participating States operating land-based nuclear power plants to maintain a high level of safety by setting international benchmarks to which States would subscribe. Nevertheless, the Convention is an incentive instrument. It is not designed to ensure fulfilment of obligations by Contracting Parties through control and sanction, but is based on their common interest to achieve higher levels of safety, which are developed and promoted through regular meetings of the Parties. Moreover, the Convention has not been amended since its entry into force in 1996, thus its provisions are not in line with the latest International safety standards.

2. THE REVIEW PROCESS OF THE CONVENTION ON NUCLEAR SAFETY

The lessons learned from the Fukushima accident following the Tōhoku earthquake and tsunami on 11 March 2011 led the international community to take steps for the strengthening of nuclear safety throughout the world. At the occasion of the 55th IAEA General Conference on 19-23 September 2011, an Action Plan on Nuclear Safety was endorsed, providing also for the improvement of the effectiveness of the international legal framework, including, if necessary, the amendment of the CNS, which is the cornerstone of the global nuclear safety regime.

Furthermore, the Contracting Parties to the Convention agreed to hold an Extraordinary Meeting in August 2012 wherein, in response to the necessity to further improve the overall Convention review process, they decided to establish and "effectiveness and transparency" working group (hereinafter referred to as "the CNS WG"), open to all Contracting Parties, with the task of reporting to the 6th Review Meeting on a list of actions to strengthen the CNS and on proposals to amend, where necessary, the Convention.

It has been decided to hold four meetings during 2013 (4-6 February, 21-23 May, 2-4 September and 4-6 November). To the CNS WG Final Report delivered in November 2013, a recapitulatory list of 68 actions was annexed.

In accordance with the Convention provisions and rules of procedure, the UK, supported by all the Member States and the Commission on behalf of the Euratom Community, submitted proposals to amend the CNS Guidance documents INFCIRC/571, 572 and 573, and to make Recommendations for Action to other bodies for their consideration at the 6th Review Meeting held in Vienna from 24 March to 4 April 2014. Finally agreed by consensus, they provide

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clearer guidance on actions to be taken by the Contracting Parties to meet the objectives of the Convention, enhance preparation of National Reports, improvements to the review process, enhancement of international cooperation and more transparency towards the public.

In addition, the Swiss Confederation considered that making the principle of "avoiding off-site contamination" legally binding in the Convention would be a vital step towards improved global nuclear safety and decided to formally submit an amendment to Article 18 of the CNS. Given the lack of consensus on the Swiss amendment proposal at the 6th Review Meeting, the Contracting Parties decided by a two-thirds majority to submit the proposal to a Diplomatic Conference to be convened before April 2015, for further consideration. Thanks to a previous coordination work between the Commission and the Member States, the support by all Euratom Member States to the convening of a Diplomatic Conference was determining.

3. EURATOM COMPETENCES IN THE FRAMEWORK OF THE CNS

The scope of competences of the Community within the framework of the CNS has been defined in 2002 by the Court of Justice (Case C-29/99 ECR 2002, p. I-11221). The amended declaration of Community competences in the framework of the CNS, deposited on 12 May 2004 pursuant to Article 30 paragraph 4(iii) of the Convention, was based on the principles established by the Court of Justice in the above judgment and indicated that the following Articles of the Convention apply to Euratom:

"The Community declares that Articles 1 to 5, Article 7 and Articles 14 to 35 of the Convention apply to it.

The Community possesses competences, shared with the Member States, in the fields covered by Article 7 and Articles 14 to 19 of the Convention as provided for by the Treaty establishing the European Atomic Energy Community in Article 2(b) and the relevant Articles of Title II, Chapter 3, entitled "Health and Safety".

Therefore, the scope of the amendment proposed by the Swiss Confederation falls within matters covered by Euratom competences.

4. CONCLUSIONS

[REDACTED]

Hence, there is a need to seek a mandate from the Council under Article 101 of the Euratom Treaty, which provides that: "The Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with a third State, an international organisation or a national of a third State. Such agreements or contracts shall be negotiated by the Commission in accordance with the directives of the Council; they shall be concluded by the Commission with the approval of the Council, which shall act by a qualified majority" (paragraphs 1 and 2).

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The negotiating directives should enable the Commission to negotiate during the Diplomatic Conference, with regard to matters covered by the Community competence, the amendment to the text of the Convention in conformity with the directives attached to it.

Therefore, the Commission recommends that the Council adopts the Decision hereafter.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 101 thereof,

Whereas:

- (1) Article 2(h) of the Treaty requests to establish with other countries and international organisations such relations as will foster progress in the peaceful uses of nuclear energy.
- (2) The European Atomic Energy Community ("Euratom") is a Contracting Party to the Convention on Nuclear Safety ("the Convention") which was adopted on 17 June 1994 by a diplomatic conference convened by the International Atomic Energy Agency at its headquarters from 14 to 17 June 1994 and which entered into force on 24 October 1996. In particular, Euratom acceded to the Convention after the Commission adopted Decision 1999/819/Euratom of 16 November 1999¹. The instrument of accession was deposited with the Director General of the International Atomic Energy Agency on 31 January 2000 and the Convention entered into force for Euratom on 30 April 2000, in accordance with Article 31(2) of the Convention.
- (3) All Member States of Euratom are also Parties to the Convention.
- (4) The Convention has not been amended since its entry into force in 1996.
- (5) In response to the observed necessity to strengthen its effectiveness, the Contracting Parties to the Convention agreed in 2012 to start a review process with the aim of improving the overall Convention review process and, if needed, updating the provisions of the Convention.
- (6) Pursuant to Article 32(3) of the Convention, the Swiss Confederation submitted a formal proposal to amend Article 18 of the Convention on Nuclear Safety for consideration at the 6th Review Meeting held in Vienna from 24 March to 4 April 2014.
- (7) Contracting Parties decided by a two-thirds majority to submit the proposal to a Diplomatic Conference to be convened before 2015, for further consideration.
- (8) The scope of the amendment proposed by the Swiss Confederation falls within matters covered by Euratom competences.

¹ OJ L 318, 11.12. 1999, p. 20.

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(9)

[REDACTED]

HAS ADOPTED THIS DECISION:

Sole Article

The Commission shall negotiate during the Diplomatic Conference of the Contracting Parties to the Convention on Nuclear Safety, with regard to matters covered by Euratom competences, the amendment to the text of the Convention in conformity with the directives set out in the Annex.

Done at Brussels,

*For the Council
The President*

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Annex remains Restreint UE