



EU Enlargement Watch¹

London
28th April 2003

Comments on

Proposal for a

COUNCIL (Euratom) DIRECTIVE

Setting out basic obligations and general principles on the safety of nuclear installations

Proposal for a

COUNCIL DIRECTIVE (Euratom)

On the management of spent nuclear fuel and radioactive waste.

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Summary

The publication of the original draft of the nuclear package, the legislation concerning the implementation of common nuclear safety principles and the introductions of timetables for the disposal of radioactive waste in November 2002 raised serious concerns in most Member States and large parts of civil society. Since then, the proposals have been redrafted and although there have not been many changes they appear very significant and increase the concerns of many parties.

The Commission have stated that the directive would result in common nuclear safety standards within an enlarged EU. However, this was never the case, but in the November 2002 draft it was stated that this was a framework directive and that other directives, which would set specific safety standards would follow. But in the more recent draft, of January 2003, even this has been removed and it now suggests that there won't be any further directives on safety standards. Consequently, what is left is a directive that requires the introduction of common nuclear safety principles. This will not result in any significant increase in nuclear safety, as all countries in the EU and accession countries that have nuclear power plants are already party to the International Atomic Energy Agency's Nuclear Safety Convention, which has a similar remit. Furthermore, as there will be no surprise inspections to nuclear facilities with the only independent verification being undertaken on the regulators and with the contents of these reports unlikely to be made public, there is little confidence that the new EU regulations will enhance safety.

The proposal to increase transparency and separate the decommissioning and radioactive waste management funds from the utilities is welcomed. However, by effectively making the proposals optional, the whole initiative is undermined. Unless the directive is compulsory for all utilities and is strictly enforced and monitored, then it will fail both to secure funding for future radioactive waste management activities and to reduce market distortions with utilities using decommissioning funds for market acquisitions.

As the Economic and Social Committee note in their opinion, the directive on radioactive waste creates a timetable for the disposal of high-level radioactive waste, which is unrealistic for Member States. Creating a timetable, which reduces the opportunity for, detailed public consultation and careful scientific analysis benefits no one. Despite the clear problems of the proposed dates there are a number of other concerns. Firstly, that the proposal claims that there is close to consensus of the need for deep geological disposal, which there isn't. Secondly, that the directive may encourage the export of waste outside the EU, namely to Russia or other states in the former Soviet Union. Such trade must be banned and the directive must lead the way to ensure that this occurs.

Introduction

At the end of April 2002 the EU's Vice-President Loyola de Palacio announced in the European Parliament that the time had come for *"common [nuclear] standards and control mechanisms which will guarantee the application of the same criteria and methods in the whole of enlarged Europe"*.

On 6th November the Commission's college finally discussed and adopted what became known as the 'nuclear package' which encompassed legislation on safety standards, uranium imports and radioactive waste management strategies. At the time of the publication the Commission stated that *'to avoid any difference of treatment between the current Member States and the new Member States, the legal regime will need to be operational on the date of the enlargement of the Union, i.e. 1st January 2004'*. However, this is not realistic or necessary and by placing such an arbitrary and unachievable timetable the Commission will totally undermine the the legislation.

A memo *'Towards A Community Approach to Nuclear Safety'* which seeks to explain to the public the necessity and requirements of the directives accompanied the launch of the package. However, for whatever reason this memo does not reflect the legislation but rather portrays what might have once been the intention behind the nuclear package but is now no longer required. In particular it should be noted that: -

'This directive will introduce common safety standards': This is not true as the directive will only require the establishment of common safety principals.

'Decommissioning funds set up by operators must be managed separately from their other financial resources': This is not true as operators may under justified circumstances manage their funds.

These errors and other problems proposed by the directives will be discussed in the accompanying text. Furthermore, in January 2003 the Commission published revised versions of the directives, following consultation with the Article 31 expert group. The subsequent drafts, although not substantially reformed do contain important changes that are also discussed in this paper.

The European Commission is attempting in this package to significantly increase the powers of the EU to regulate nuclear facilities. While everyone would like to see measures introduced that would lead to a significant increase in safety standards across the EU, it is important to assess what the changes the proposals will actually require and what impact they will have.

Article 31

The Commission has chosen article 31 for its legal base of the package. This article comes under in Chapter 3, on Health and Safety and requires that the draft directives be discussed both by a special Scientific and Technical Committee (commonly known as the Article 31 Expert Group) as well as the Economic and Social Committee.

There is a requirement for consultation with the European Parliament (although no co-decision) and adoption by qualified majority. This last point is important, as many other parts of the Euratom Treaty require adoption by unanimity. In particular, article 203, which states that *'If action by the Community should prove necessary to attain one of the objectives of the Community and this Treaty has now provided the necessary powers, the Council shall, acting unanimously.. take appropriate measures'*.

Many see that parts, if not all, of the nuclear package should have as its legal base, article 203 as the Commission is seeking new powers under Euratom, which do not wholly correspond to health and safety. However, it is unlikely that the package would have been adopted under article 203 as it is unlikely to get the unanimous support of Member States.

Article 31 Expert Group

In December 2002 the group meet and gave their opinion to the proposed directives. In their opinion related to nuclear safety measures the expert group notes that *'The Group recognizing that in its present composition, its expertise is primarily in the field of radiation protection as specified in Articles 30 to 32 of the Euratom Treaty, and in conformity with its Code of Ethics has focused its opinion on those aspects of the draft directive which would enhance the overall objectives of radiation protection.*

The four point opinion of the expert group is listed below. As can be seen there is not indications as to the comments that have been made to the proposed directives and whether or not these recommendations have been put into place.

1. The document submitted to the Group needs improvement and the Commission has been made aware of the points that should be amended or clarified.
2. However, the Group wishes to commend the Commission for its objective of promoting the highest standard of nuclear safety within the enlarged European Union and recommends that the Commission should take advantage of all existing initiatives in this direction (e.g. Nuclear Safety Convention, IAEA safety standards...)

3. The Group supports the initiative of the European Commission to propose an appropriate framework setting out basic obligations and general principles on the safety of nuclear installations. This initiative should promote the conditions necessary to enhance harmonisation of nuclear safety within the enlarged European Union.
4. Considering the variety of technical aspects that are likely to arise from any such future framework initiative on the Community health protection policy, the Group recommends that the Commission consults with the STC to establish the most appropriate mechanism for obtaining "Article 31 opinion" by experts under Chapter 3 of the Euratom Treaty.

Of equally great concern is the potential independence of the expert group. It is possible to review the history of particular word files. The file obtained with the opinion of the Expert Group of the Safety Directives, actually gives the name of Stephen Kaiser as the author. He is unit head in DG TREN of the Radiation Protection division.

The full opinions of the Article 31 expert Group on both directives are included as an annex.

Economic and Social Committee

In March 2003 the Economic and Social Committee gave its opinion on the package. The opinion made public gives more details than that of the Article 31 group and despite its overall endorsement of the proposal makes a number of important recommendations and comments, including: -

- ?? That the proposed action on decommissioning funds does not have implications for health practicalities and thus its inclusion under article 31 is more to do with administration or organisational advantages.
- ?? The proposed timetable for the operation of facilities for the final disposal of radioactive waste might be too tight for some Member States

The full text of the Committee's opinion is annexed to this document.

Nuclear Safety Principles Directive

The November 2002 draft clearly stated that the directive on nuclear safety principals would be a framework directive and therefore that further, presumably, more far reaching daughter directives would be introduced that would lead to the original intention of Ms de Palacio, namely EU wide nuclear safety standards. However, the January 2003 draft removed this suggestion. The exact changes are shown in the text box below.

November 2002 Draft Submitted to Article 31 Expert Group	Final Proposal Adopted by Commission January 2003
<p>Recital 10: In order to attain the Community objectives regarding radioprotection mentioned above, it is essential as a first stage to define the basic obligations and general principles on the safety of nuclear installations in this framework Directive. This will at a later stage be complemented by the establishment of common standards and control mechanisms in order to guarantee a high level of safety which takes account of technological changes.</p>	<p>Recital 10: In order to attain the Community objectives regarding radioprotection mentioned above, it is essential as a first stage to define the basic obligations and general principles on the safety of nuclear installations.</p>

It still unclear whether this deletion reflects a fundamental change in position by the Commission or if the redrafting is designed purely to minimise opposition from Member States at the current time.

It is therefore clear that the directive will not require the setting of even basic EU nuclear safety standards, but rather *'setting out basic obligations and general principals guaranteeing a high level of safety of nuclear installations on the basis of which common safety standards will be adopted in due course'*. The draft directive then states that *'Each Member State shall take appropriate steps to ensure that in the course of all practises directly related to nuclear installations due priority is given to nuclear safety'*. The main mechanisms that the Commission proposes to guarantee a high level of safety is by: -

- ?? Each Member State must ensure it has a safety authority which is independent from bodies that promote or utilise nuclear energy – this is an interesting contradiction from the Euratom Treaty, which both promotes and regulates nuclear activities-
- ?? The safety authority shall regulate and supervise safety of nuclear installations.
- ?? Each Member State shall require the operator to run the facility in accordance with 'common safety standards'
- ?? Each Member State shall take the appropriate steps to ensure adequate financial resources are available to support the safety of facilities.

One of the key issues for the directive is how it will be verified. Article 14 clarifies this issue. It states that Member States shall submit to the Commission lists of experts who may then be called upon to inspect only the activities of the nuclear regulator. However, even these experts must have prior approval from the safety authority in the Member State in which the inspection is taking place. Furthermore, the Commission shall inform the Member State concerned prior to the inspection, *'the subject matter, the purpose of the inspection and the date on which it is to begin and the names of the authorised persons'* – so no surprise visits. Finally, it is unclear if the inspection reports will be made public –early drafts of the draft directive said they would remain confidential, but this was deleted in the final version and it doesn't state if they will be made public or not – . The formal reporting to the Parliament and Council is restricted to a report every two years on the application of the directive.

It can be concluded that the draft directive does not offer any significant demands on Member States. Furthermore, all Member States and Accession countries, who have operating nuclear power facilities are already Members of the International Atomic Energy Agency's Convention on Nuclear Safety, which makes the same requirements as that of the proposed directive, namely: -

- ?? There should be sufficient separation between the regulator and any other body or organisation that promotes or operates nuclear power plants.
- ?? The regulator framework shall establish applicable national safety requirements and regulations
- ?? Each contracting party shall ensure that all organisations relating to nuclear installations shall give priority to nuclear safety.
- ?? Each contracting party shall ensure that there are adequate financial resources to support the safe operation of nuclear installations.

It is therefore clear that the draft framework directive makes few significant additional requirements on Member States or accession countries than that of the Nuclear Safety Convention. The main difference being that the Safety Convention applies only to nuclear power plants, while the Commission's draft directive applies to all civilian nuclear facilities. Despite this, the directive is likely to receive little support from those Member States that operate nuclear power plants as they may well see the directive as only repeating the demands of the Safety Convention. Non-nuclear Member States are unlikely to support the proposal as it fails to introduce binding standards for nuclear power plants as they had hoped.

Decommissioning Funds

For a number of years the Commission has been considering legislation to regulate the use of decommissioning funds. In a 1998 Commission publication it was stated: -

“Different situations exist among the Member States for the financing of decommissioning, e.g. simple provision in the accounts allowing reinvestment of the collected funds for other than decommissioning purposes, segregation of collected funds outside the sphere of the company, or a complete State organisation and management of decommissioning by separate specialised, mostly publicly owned companies. Moreover, the amount of yearly funding required, the requirements as to when and how decommissioning has to be accomplished, and the applied calculation methods and discount rates differ substantially between Member States. This situation could lead to distortion and discrimination between now competing nuclear electricity producers from different Member States. Decommissioning costs are clearly seen as part of the electricity production costs.”²

The key issue is accessibility to these funds. In some Member States such as France and Germany, the nuclear operators retain control of the funds they must set aside for decommissioning and waste management. While in others, such as Spain, Finland and Sweden, the funds are managed by a separate legal entity. Therefore in some countries decommissioning funds may be used by the utility for investments, either in their existing facilities or for market acquisitions. It is already clear that the same companies which could have access to their decommissioning funds are also those that are most active in purchasing other electricity or energy companies. Therefore the European Parliament, in its first reading of the Electricity Market Directive in March 2002, proposed an amendment which sought to address the market distortion. The amendment, was passed in the Plenary by 442 to 81 and stated: -

In order to ensure the availability of funds for future decommissioning and to avoid obstacles to fair competition in the energy market, Member States must adopt separate accounting for the financing of future decommissioning or waste management activities. These funds must be reviewed and audited annually by an independent body, such as the regulator or regulatory bodies, to verify that the revenues and the associated interest raised for these future activities shall only be used for these purposes, that is for decommissioning or waste management activities and not used directly or indirectly to fund activities in the market.

The Commission rejected the Parliament's amendment claiming that they agreed on the importance of the issue, but rejected the intention of inclusion of this issue within the electricity market directive. Rather they stated that a directive specifically addressing this issue would be prepared.

² Nuclear Safety and the Environment, Decommissioning of nuclear installations in the European Union. Supporting document for the preparation of an EC Communication on the subject of decommissioning nuclear installations in the EU, EUR 18860 1998, page 30

Instead of this, the issue has finally been addressed in an annex of the directive on nuclear safety guidelines. In this it states: -

The assets of the funds are to be used only to cover the costs set out in paragraph 2 [decommissioning and spent fuel management costs] above in line with the decommissioning strategy and may not be used for other purposes. To this end the decommissioning funds shall be duly established with their own legal personality, separate from the operator of the installation. If exceptional and duly justified reasons make such legal separation impossible, the fund could continue to be managed by the operator.

While the first part of the paragraph goes some way to meet the requirements of the Parliament's amendment, the second sentence completely undermines the whole intent. There is no definition of what 'exceptional' circumstances are and no indication who shall judge the justification for the exception. Such a loophole totally undermines the whole purpose of restriction on the use of decommissioning funds.

Under these circumstances it is likely that the European Parliament will, given the support for the amendment in the first reading, re-introduce the amendment in the Parliament's second reading.

Radioactive Waste

The draft directive on the management of spent nuclear fuel and radioactive waste is clearly the most demanding of the two proposed pieces of legislation. There are two main areas that are addressed.

Firstly, the directive proposes clear timetables for the disposal of radioactive waste, namely: -

- ?? Authorisation for the development of appropriate disposal sites should be granted no later than 2008
- ?? Authorisation for the operation of sites to dispose of low level radioactive waste should be completed by 2013
- ?? Authorisation for the operation of sites to dispose of high level radioactive waste should be completed by 2018.

However, it should be noted *‘the council may decide, on a proposal from the Commission, to modify these dates in the interest of enhanced nuclear safety within the European Union’*.

On nuclear waste export the draft directive states *‘the [waste management] programme may include the exports of radioactive material of spent fuel to another Member State or third country, if such exports are fully in compliance with existing EU legislation’*. Many fear that this will result in the construction of regional radioactive waste dumps in the EU or the export of waste to Russia or Kazakhstan. In Kazakhstan the Parliament is proposing to approve changes in the law to allow the importation of nuclear waste, similar to the changes in the Russia law in 2001. The Kazakh authorities hope that the importation of waste will earn around €30 billion.

The key change between November 2002 and January 2003 versions of the directive relate to the general requirements for radioactive waste management. As can be seen in the text box below high environmental and human health protection requirements have been withdrawn.

November 2002 Draft Submitted to Article 31 Expert Group	Final Proposal Adopted by Commission January 2003
4.1 Member States shall take all necessary measures to ensure that spent nuclear fuel and radioactive waste are managed without endangering human health or the environment, in particular without using processes or methods that could result in the radioactive contamination of the water, soil or airspace.	Member States shall take all necessary measures to ensure that spent nuclear fuel and radioactive waste are managed in such a way that individuals, society and the environment are adequately protected against radiological hazards.

It is clear that a decision has been taken that deep geological disposal for high level radioactive waste is the most appropriate route to ensure the containment of long lived radio-nuclides. However, the basis of this opinion remains unclear. Furthermore, there appears no justification for the timetables proposed which could both potentially endanger public consultation processes and scientific analysis into the potential movement of radio-nuclides through geological formation over time.

Recommendations for Action

- I. The Euratom Treaty should be abandoned. The world has moved on since 1957 when the Treaty was signed and it is no longer appropriate for the EU to have a stand alone Treaty which claims that nuclear power is essential for the economic well-being of the EU. Furthermore, the expiry of the European Coal and Steel Community (ECSC) in 2002, highlights the need to end the Euratom Treaty, at the latest by 2007, fifty years after it began – to mirror the life-time of the ECSC.
- II. Some of the functions of the Euratom Treaty should remain under the responsibility of the EU, such as health and safety, safeguards and the uranium supply agency, while others can be abandoned. However, whatever functions remain must have the same democratic checks and balances as other legislation, namely qualified majority voting in the Council and co-decision with the Parliament.
- III. No new powers on nuclear issues should be given to the EU until an agreement to abandon the Euratom Treaty has been reached.
- IV. The introduction of EU nuclear safety criteria will only bring benefits if it results in an increase in nuclear safety. The current proposals do not do this, they make no additional requirements on Member States and only mirror the demands of the IAEA's nuclear safety convention, thus increasing reporting and monitoring with no additional benefits. Furthermore, the danger of the directive is that it will be interpreted as the introduction of EU nuclear safety standards. This is not true and should not be used to claim that the issue of nuclear safety has now been addressed.
- V. The proposal for the requirement for decommissioning and radioactive waste management funds to be separated from the utility is welcome. However, the opt out, which allows utilities to still manage the decommissioning fund, under 'exceptional circumstance' makes a nonsense of the whole proposal. The current language, with the potential opt out clause, is worse than having no EU legislation on this issue.
- VI. The directive on waste management needs significant changes. Firstly, there is no justification for requiring a universal date for the construction of repositories for high level radioactive wastes. The proposed dates, if adopted, would require the curtailing of scientific analysis and public consultation in many Member States. There is insufficient justification for the timetables proposed. Furthermore, the proposal allows the export of radioactive waste to third countries. By proposing a very rapid timetable for the disposal of all classification of waste while accepting the export of waste as a valid disposal option, the Commission is increasing the likelihood that the unacceptable practise of dumping nuclear waste in other countries will occur. This option must instead be excluded.

Annex 1:

**Opinion
of the Group of experts referred to in Article 31 of the Euratom Treaty**

on

Draft proposal for a Council framework Directive (Euratom)

setting out basic obligations and general principles on the safety of nuclear installations

The Group of experts referred to in Article 31 of the Euratom Treaty has noted that :

- the legal basis chosen by the Commission for this Directive is Title II Chapter 3 of the Euratom Treaty;
- the European Court of Justice stated that “it is not appropriate in order to define the Community’s competencies, to draw an artificial distinction between the protection of the health of the general public and the safety of sources of ionizing radiation”;
- this legal basis has been disputed but this Group does not regard itself as competent to give an opinion on the appropriateness of the legal basis.

The Group recognizing that in its present composition, its expertise is primarily in the field of radiation protection as specified in Articles 30 to 32 of the Euratom Treaty, and in conformity with its Code of Ethics has focused its opinion on those aspects of the draft directive which would enhance the overall objectives of radiation protection.

Having considered, that

Council Directive 96/29/Euratom lays down the Basic Safety Standards and Member States ensure, in compliance with the said Directive, the safety of nuclear facilities from the design to the decommissioning ;

The International Convention on Nuclear Safety, which entered into force on 24 October 1996 and to which all Member States are parties, lays down fundamental principles for ensuring the safety of civil nuclear power plants. The European Atomic Energy Community acceded to the Convention on 31 January 2000.

The impending enlargement of the European union may require additional measures relating to the safety of nuclear installations.

Issues the following opinion to the European Commission:

5. The document submitted to the Group needs improvement and the Commission has been made aware of the points that should be amended or clarified.
6. However, the Group wishes to commend the Commission for its objective of promoting the highest standard of nuclear safety within the enlarged European Union and recommends that the Commission should take advantage of all existing initiatives in this direction (e.g. Nuclear Safety Convention, IAEA safety standards...)
7. The Group supports the initiative of the European Commission to propose an appropriate framework setting out basic obligations and general principles on the safety of nuclear installations. This initiative should promote the conditions necessary to enhance harmonisation of nuclear safety within the enlarged European Union.
8. Considering the variety of technical aspects that are likely to arise from any such future framework initiative on the Community health protection policy, the Group recommends that the Commission consults with the STC to establish the most appropriate mechanism for obtaining "Article 31 opinion" by experts under Chapter 3 of the Euratom Treaty.

Issued in Brussels on 19 December 2002

Chairman of the plenary meeting

**Opinion
of the Group of experts referred to in Article 31 of the Euratom Treaty
on**

Draft proposal for a Council Directive (Euratom)

on the management of spent nuclear fuel and radioactive waste

The Group of experts referred to in Article 31 of the Euratom Treaty has noted that:

- the legal basis chosen by the Commission for this Directive is Title II Chapter 3 of the Euratom Treaty;
- the European Court of Justice stated that “it is not appropriate in order to define the Community’s competencies, to draw an artificial distinction between the protection of the health of the general public and the safety of sources of ionising radiation”
- this legal basis has been disputed but this Group does not regard itself as competent to give an opinion on the appropriateness of the legal basis.

Having considered, that

Council Directive 96/29/Euratom lays down the Basic Safety Standards for the health protection of the general public and workers against the dangers of ionising radiation and requires that Member States ensure the safe management of spent nuclear fuel and radioactive waste, in compliance with the said Directive;

Directive 92/3/Euratom establishes a supervision and control system of shipments of radioactive waste between Member States and into and out of the Community, including a compulsory and common notification procedure for shipments of such waste, and limitations and criteria regarding the third countries to which radioactive waste may be exported;

The International Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, which entered into force on June 18 2001, to which all Member States are or intend to be a party, aims at achieving and maintaining a high level of safety world-wide in spent nuclear fuel and radioactive waste management through the enhancement of national measures and international co-operation;

All Member States produce spent fuel and/or radioactive waste to a varying degree;

Whereas spent nuclear fuel and radioactive waste pose potential threats to human health and the environment, both now and in the future, that may have consequences beyond national borders;

Whereas it is therefore necessary to take measures at the Community level to ensure a high level of radiation protection throughout the European Union.

Issues the following opinion to the European Commission:

The document submitted to the Group needs improvement and the Commission has been made aware of the points that should be amended or clarified. In particular, concerns were expressed that the document, as written, may limit the policy options and planning flexibility of Member States.

However, the Group wishes to commend the Commission for its efforts to enhance radiation protection by requiring Member States to develop appropriate programmes for the safe long-term management of all spent nuclear fuel and radioactive wastes under their jurisdiction.

The Group of experts supports the initiative of the European Commission to propose a common approach to the management of spent nuclear fuel and radioactive waste that strengthens the Community health protection policy as it is established under Chapter III of the Euratom Treaty. This initiative should promote the conditions necessary to enhance harmonisation of the management of spent nuclear fuel and radioactive waste within the enlarged European Union.

Considering the variety of technical aspects that are likely to arise from any such initiative on the Community health protection policy, the Group recommends that the Commission consults with the Scientific and Technical Committee to establish the most appropriate mechanism for obtaining “Article 31 opinion” by experts under Chapter III of the Euratom Treaty.

Issued in Brussels on 19 December 2002

Chairman of the plenary meeting

TEN/128

Nuclear safety

Brussels, 26 March 2003

OPINION

of the European Economic and Social Committee
on the

Draft proposal for a Council Directive (Euratom) setting out basic obligations and general principles on the safety of nuclear installations

and the

Draft proposal for a Council Directive (Euratom) on the management of spent nuclear fuel and radioactive waste

COM(2003) 32 final – 2003/0021 (CNS) – 2003/0022 (CNS)

On 30 January 2003 the Commission decided to consult the European Economic and Social Committee, under Article 31 of the Euratom Treaty, on the
Draft proposal for a Council Directive (Euratom) setting out basic obligations and general principles on the safety of nuclear installations

and the

Draft proposal for a Council Directive (Euratom) on the management of spent nuclear fuel and radioactive waste

COM(2003) 32 final – 2003/0021 (CNS) – 2003/0022 (CNS)¹.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 March 2003. The rapporteur was **Mr Wolf**.

At its 398th plenary session on 26 and 27 March (meeting of 26 March 2003) the European Economic and Social Committee adopted the following opinion by 88 votes to one with one abstention.

1. Introduction

1. Nuclear energy currently accounts for about 15% of primary energy consumption (and 35% of electricity consumption) in the EU and does not produce any climate-harming gases. But its use is controversial owing to concerns about radioactive contamination resulting from industrial accidents and final disposal, and the Member States have differing views on the matter. The safety of nuclear installations and disposal of radioactive waste are therefore key tasks, also with a view to public health protection. The importance of this issue has already been mentioned in the Commission's Green Paper "Towards a European strategy for the security of energy supply"² and in the Committee's opinion on that Green Paper³.
2. One aim of the Euratom Treaty signed in 1957 (which founded the European Atomic Energy Community) was to provide the (European) Community with an alternative source of domestic energy and to counteract the growing dependence on oil imports from the Middle East.⁴ Under the Euratom Treaty, the Community must among other things establish uniform safety standards to protect the health of the general public and workers, and ensure that these are applied (Article 2b and Article 30). The current provisions on protection of health of workers and the general public against the dangers of ionising radiation are set out in Council Directive 96/29 Euratom⁵.
3. Following on from the above obligation and in the run-up to future EU enlargement, the Commission has presented the current draft proposals for two directives (Euratom) of the Council, one concerning the safety of nuclear installations and the other the management of spent nuclear fuel and radioactive waste.
4. The Committee has been asked to give its opinion on these directives under Article 31 of the Euratom Treaty.

2. Objectives and content of the Commission's draft directives

1. Establishment of basic obligations and general principles on the safety of nuclear installations.

The purpose of this directive is to provide for a package of measures that will enable the Community to ensure - by extending and supplementing existing agreements and regulations - that each Member State respects common principles, and regulations based on those principles, and to oversee their monitoring by the Member States. The Member States are still to be free to apply more rigorous rules themselves if required. The package proposed by the Commission also requires that adequate financial resources be made available by the Member States so that measures can be taken to ensure the safety of nuclear installations during their active life and to cover the costs of subsequent decommissioning. Decommissioning is to be financed through decommissioning funds.

2. Management of spent nuclear fuel and radioactive waste

The aim of this directive is to require Member States to ensure the use of best practice – with respect to protection of the general public – for sustainable disposal of radioactive waste from spent nuclear fuel and other sources. The directive also contains proposals for setting a mandatory timetable, under which all the Member States must provide so-called permanent disposal sites; this does not exclude the possibility of joint measures by several Member States. With current know-how, this means storage in special geological formations, which enclose the radioactive waste with its very long life for the requisite length of time, thereby keeping it away from people and the biosphere, in order to ensure protection of public health. The Commission also emphasises that research and development in this area must be continued and stepped up by the Community and the Member States, and that maximum transparency is called for in identifying solutions in order to build public confidence.

3. General comments

1. Both (a) energy supply and its integration into the single market, politically endorsed by the Member States, and (b) by the very nature of things, the consequences of any accidents involving nuclear installations and radioactive contamination, are cross-border issues that affect the interests of all the Member States and have even broader implications. It is therefore sensible and logical to treat the two issues as Community responsibilities. The Committee accordingly also fundamentally welcomes the Commission's initiative with respect to safety of nuclear installations and the disposal of radioactive waste, and the objectives of the proposed directives. The Committee attaches particular importance to the safety of nuclear installations in the accession countries and their integration into a European regulatory framework. However, the Committee is very critical of some points of substance of the proposed directive, and feels that certain questions need to be clarified.
2. The Committee has on several occasions⁶ drawn attention to the energy problem for which no long-term solution has been found, stressing the important role of nuclear energy. Because people have enjoyed a satisfactory energy supply for decades, public awareness of the importance of having a long-term, sustainable energy supply may decline. The risks and effects of a future energy shortage may also be underestimated.
3. Even though the safety level of nuclear installations in the current Member States is high, Community rules on the safety of nuclear installations and disposal of nuclear waste and spent fuel are particularly important not least because of the divergent positions of the individual Member States on the use of nuclear energy.
4. The Committee therefore recommends that given the importance of this matter and despite possible conflicts, the Commission should show determination and persistence, while remaining sufficiently flexible and allowing sufficient time⁷ for discussion among stakeholders in society as well as between the Community institutions and between the Member States. It should also be made clear that the measures proposed by the Commission do not affect the differing basic stances of the individual Member States on nuclear energy – and their mutual respect for those stances.

5. There could be disagreement over the legal basis for the measures proposed by the Commission as a Community responsibility, namely the existing treaties and in particular Article 2b⁸ and Article 30 of the Euratom Treaty. Although in its ruling of 10 December 2002⁹ the European Court of Justice supports the line taken by the Commission and the Committee also fully endorses it, the Committee recommends that Community responsibility for the safety of nuclear installations and disposal of spent nuclear fuel should also be explicitly laid down at an appropriate point.

1. However, the Committee is not convinced that the Community's responsibility for financial reserves for decommissioning nuclear installations can also be derived therefrom. The Commission's proposal on this matter is simply an administrative and organisational arrangement that sets out the way in which decommissioning is to be financed and therefore does not have implications for the practicalities of health protection.

4. Specific comments

Although the Committee, as made clear above, endorses the Commission's basic concerns, it would like to clarify certain points and make some critical comments.

1. As far as the safety of nuclear installations is concerned, the Committee recommends that no new, separate definitions and rules be drawn up, but that the definitions and rules of the Vienna-based International Atomic Energy Agency (IAEA) be used as a general reference framework and that the Community should check that these are fully and rigorously applied (in accordance with the Commission's proposed measures) by the Member States. However, the Committee also recommends that the Community be involved in further developing these IAEA guidelines with expertise and commitment. This would also represent a welcome contribution to the global concern about safe and responsible use of nuclear energy. The Committee also welcomes the Commission's intention to take into account the findings of WENRA¹⁰ and NRWG¹¹, too.
2. The Committee believes that the directives on safety of nuclear installations and their monitoring procedures should make it clear that the current remit of Member States' safety authorities will remain unchanged and that the operators of nuclear installations will also continue to bear sole responsibility for safety. This last requirement is also consistent with the polluter-pays principle, which the Committee considers to be very important.
3. Also the checks provided for by the Commission are not to result in the inspections of nuclear installations becoming more onerous, but should focus on checking and establishing whether the Member States and their authorities have carried out their monitoring tasks properly, in line with common safety standards when these come into force. The Commission could, when it deems necessary, carry out prior verifications.¹² The Committee thus recommends adding the following to Article 12(1) of the draft directive: "In order to ensure the maintenance of a high level of nuclear safety in the Member States, the Commission shall monitor safety authorities in line with the common safety standards set out in Article 7(1), when these come into force.

4. As regards implementing the procedures provided for in the directive or recommended by the Committee and the timetable for implementation, it is still necessary to clarify and ensure that nuclear installations in the Member States already in operation or planned will not be unfairly restricted, discriminated against or impeded, provided they meet the very high standards currently laid down in the current Member States. A balance must be struck between the principles of maintaining acquired rights and providing planning and legal certainty on the one hand and ensuring maximum safety on the other. The Committee notes that the Commission proposal is not clear or definite on this important point. The Committee recommends that another sentence be added to Article 7(1) of the draft directive, as follows: "Member States shall require the undertakings responsible for the nuclear installations to operate them in accordance with the common safety standards *The timetable for introducing common safety standards and implementing provisions shall be set out in future updates of the present Directive.*"
5. In addition, the resulting technical provisions are to be formulated and monitored in such a way as to stimulate and promote (i) the innovative further development of nuclear installations and their safety concepts and (ii) competition based on the principles of the single market in the search for the best technical solutions and concepts. The objective is both to maintain the safety standards referred to in point 4.3 and to ensure ongoing scientific and technological development of nuclear installations, their safety concepts and disposal procedures, in order to guarantee optimum protection of public health and to minimise risk.
 1. In this connection the Committee thinks that the vague "adequately protected" used in Article 1(1)(a) should be made more specific by adding "in accordance with the objectives of Council Directive 96/29/Euratom¹³".
6. The Committee basically endorses the Commission's concern to ensure that the necessary funding is available for decommissioning nuclear installations. However, it feels that most of the Member States already have effective systems for achieving this. Moreover, the decommissioning funds proposed by the Commission may leave operators or the Member States too little flexibility in choosing the most economical way of achieving this goal.
 1. Notwithstanding the uncertain legal basis (cf. 3.5.1) for Community responsibility in respect of this specific matter of funding, the Committee recommends also for the sake of the subject-matter that Member States continue to have sole responsibility. Furthermore, it recommends that operators be allowed to choose the most economical method of obtaining sufficient and secure funding within the Member States in line with Community competition law. In this context, the decommissioning funds proposed by the Commission should be seen as only one option. The Committee also notes that here too, as mentioned in point 4.4, a balance between the principles of maintaining acquired rights and providing planning and legal certainty on the one hand and ensuring maximum safety on the other must be taken into account.

2. The Committee supports the Commission's proposal with regard to Article 2(10) that "conventional waste", i.e. non-radioactive waste from decommissioning work, should be treated and disposed of in accordance with relevant existing provisions. The Committee therefore considers the disposal of such waste not to be covered by points 4.6 and 4.6.1.
7. The Commission's proposed directives for disposal of nuclear waste envisage definite timetables for authorisation of the various sites; in particular, they stipulate that in Member States where spent fuel has to be disposed of, authorisation for operation of the final storage facility must be granted by 2018 at the latest. The Committee shares the Commission's view that indefinite surface or near-surface storage of (highly radioactive) spent nuclear fuel that is not to be reprocessed cannot be regarded as a suitable or sustainable alternative to underground final storage..
8. The Committee nevertheless thinks that, despite the apparently generous time frame (2018), the timetable proposed by the Commission might be too tight for the Member States, including the accession countries, to not just find a solution but also win political acceptance for it. Finding a satisfactory solution quickly will increase the level of safety attainable. Basically, every Member State operating nuclear installations should provide at least one suitable final storage site on its own territory, although there is no reason to exclude the possibility of a voluntary joint undertaking or voluntary establishment of a final storage facility by one or more neighbouring Member States. Such joint undertakings should be included in the programmes for the management of radioactive waste by both or all partner states concerned. In this connection the Committee refers to Council Directive 92/3/Euratom¹⁴, which stipulates that imports of radioactive waste into a Member State are permitted only with the permission of that Member State. While this provision relates to supervision and control of shipments of radioactive waste, the Committee recommends, for the sake of full clarity, that Article 4(1) state explicitly that no Member State shall be obliged to import or export radioactive waste if this is in breach of its national legislation.
9. As noted in point 4.1 above, the Committee also feels with respect to the question of disposal that the definitions of the individual Member States should be harmonised, but that if at all possible, the definitions and technical regulations of the IAEA should be resorted to. Before introducing technical definitions or regulations that diverge from the IAEA system, the priority should be to try and close or eliminate any shortcomings of the IAEA system.
10. The Committee believes that it is necessary to ensure, by applying minimum procedural standards, that authorisation procedures are transparent and that they adequately involve those potentially concerned. The Committee is pleased to note that this is already set out in Council Directive 97/11 EC¹⁵ (of 27 March 1997) and recommends that the Member States follow this procedure if they are not already doing so.¹⁶
11. The Committee explicitly welcomes the fact that the Commission also intends to continue providing support for research on the safety of nuclear installations and

disposal of radioactive waste and coordinating research across the Community. It stresses once again¹⁷ that these programmes should be promoted adequately and on a broad basis. It considers that they make an important contribution to achieving optimum protection of public health and therefore also calls upon the Member States to address this issue properly and more thoroughly in their national research programmes.

5. Conclusions

The Committee:

- ?? reaffirms the basic obligation of the Member States and the Community to guarantee the safety of nuclear installations and the disposal of radioactive waste;
- ?? fundamentally endorses the Commission's initiative to achieve this, in particular also with a view to harmonising regulatory systems and in anticipation of enlargement;
- ?? does not question the remit of the Community in this area, which at present is implicitly legitimised by its responsibility for protecting the health of the general public and workers, but does question its responsibility for the proposed decommissioning funds;
- ?? recommends that the current remit of the Member States and their safety authorities should remain unchanged, and that operators of nuclear installations should also continue to bear sole responsibility for their safety (polluter-pays principle);
- ?? recommends that no new technical regulations and definitions be introduced, but rather that respect for IAEA guidelines be ensured and that the Community contribute to the further development of those guidelines;
- ?? recommends that rules be interpreted and monitoring of their application prescribed in such a way as to: stimulate and promote innovative development of the various safety and disposal concepts and competition between them;
- ?? agrees with the Commission's view that the highly radioactive waste produced in each Member State should if possible be permanently stored in suitable geological formations, without excluding the possibility of a voluntary sharing of tasks with neighbouring Member States. However, it recommends that the timetable for authorisation of such final storage sites by the Member States should be made more flexible and be adapted to the specific circumstances of the Member States;

- ?? supports the Commission's objective of ensuring that sufficient funding is available from the Member States for decommissioning nuclear facilities, but recommends that the Member States retain sole responsibility for this task;

- ?? recommends clarifying and ensuring, by amending Articles 7(1) and 12(1), that the implementation of the procedures provided for in the directive or recommended by the Committee and the timetable for implementation will not unfairly restrict, discriminate against or impede nuclear installations already in operation or planned insofar as they satisfy the current Member States' high safety standards, and that the principles of maintaining acquired rights and providing planning and legal certainty are therefore also respected on a balanced basis;

- ?? supports the Commission's intention to vigorously promote research relating to safety of nuclear installations and disposal of radioactive waste in the future and to coordinate such research across the Community and considers this to be a very important factor for optimum protection of public health in the future. It also calls on the Member States to address this issue properly and more thoroughly.

Brussels, 26 March 2003.

The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

Roger Briesch

Patrick Venturini

¹ The Commission documents also contain a Communication from the Commission to the Council and the European Parliament on nuclear safety in the European Union, which because of its importance has also been taken into account in the Committee's opinion.

² COM(2000) 769 final

³ CES 705/2001

⁴ Green Paper, COM(2000) 769 final, p. 40

⁵ OJ L 159 of 29.06.1996, p. 1

⁶ See opinions on the Green Paper (CES 705/2001) and on research needs (CES 838/2002)

⁷ The Committee regrets the fact that the Commission has given it an unreasonably tight deadline to produce an opinion on this important matter.

⁸ "In order to perform its task, the Community shall, as provided in this Treaty ... establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied."

⁹ Case C-29/99

¹⁰ Western European Nuclear Regulators Association

¹¹ Nuclear Regulators' Working Group

¹² In line with prevailing safety practice, particularly in the case of the accession countries.

¹³ OJ L 159 of 29/6/1996, p. 1

¹⁴ OJ L 35 of 12.02.1992, p. 24

¹⁵ OJ L 73 of 14.03.1997, p. 5

¹⁶ The Committee also refers to the Espoo Convention of 25.2.1991, in force since 10 .9.1997, a UN convention that is binding under international law,

¹⁷ See CES 921/2001 and CES 838/2002

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