

**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))<sup>(1)</sup>

(2003/C 133/15)

On 30 January 2003 the Commission decided to consult the European Economic and Social Committee, under Article 31 of the Euratom Treaty, on the above-mentioned draft proposals.

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 2003 (meeting of 26 March) the European Economic and Social Committee adopted the following opinion by 88 votes to one with one abstention.

## 1. Introduction

1.1. 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’<sup>(2)</sup> and in the Committee’s opinion on that Green Paper<sup>(3)</sup>.

1.2. 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<sup>(4)</sup>. 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/Euratom<sup>(5)</sup>.

1.3. 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.

1.4. 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

2.1. *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

(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) OJ C 221, 7.8.2001, p. 6.

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

(5) OJ L 159, 29.6.1996, p. 1.

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.

### 2.2. *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**

3.1. 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.

3.2. The Committee has on several occasions<sup>(1)</sup> 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.

3.3. 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.

3.4. 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 time<sup>(2)</sup> 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 there mutual respect for those stances.

3.5. 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 2b<sup>(3)</sup> and Article 30 of the Euratom Treaty. Although in its ruling of 10 December 2002<sup>(4)</sup> 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.

<sup>(1)</sup> See opinions on the Green Paper (OJ C 221, 7.8.2001, p. 6) and on research needs (OJ C 241, 7.10.2002, p. 3).

<sup>(2)</sup> The Committee regrets the fact that the Commission has given it an unreasonably tight deadline to produce an opinion on this important matter.

<sup>(3)</sup> '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.'

<sup>(4)</sup> Case C-29/99.

3.5.1. 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.

4.1. 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 WENRA <sup>(1)</sup> and NRWG <sup>(2)</sup>, too.

4.2. 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.

4.3. 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 <sup>(3)</sup>. 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'.

4.4. 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.'

4.5. 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.

4.5.1. 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/Euratom <sup>(4)</sup>'.

(1) Western European Nuclear Regulators Association.

(2) Nuclear Regulators' Working Group.

(3) In line with prevailing safety practice, particularly in the case of the accession countries.

(4) OJ L 159, 29.6.1996, p. 1.

4.6. 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.

4.6.1. 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.

4.6.2. 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.

4.7. 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.

4.8. 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/Euratom <sup>(1)</sup>, 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.

4.9. 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.

4.10. 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/EC <sup>(2)</sup> (of 27 March 1997) and recommends that the Member States follow this procedure if they are not already doing so <sup>(3)</sup>.

4.11. 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 again <sup>(4)</sup> 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.

<sup>(1)</sup> OJ L 35, 12.2.1992, p. 24.

<sup>(2)</sup> OJ L 73, 14.3.1997, p. 5.

<sup>(3)</sup> 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.

<sup>(4)</sup> OJ C 260, 17.9.2001, p. 6 and OJ C 241, 7.10.2002, p. 3.

## 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*

Roger BRIESCH

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