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NUCLEAR  
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BULLETIN No. 55

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June 1995  
Nuclear Energy Agency  
Organisation for Economic Co-operation and Development

# ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Pursuant to Article 1 of the Convention signed in Paris on 14th December 1960, and which came into force on 30th September 1961, the Organisation for Economic Co-operation and Development (OECD) shall promote policies designed

- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy,
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development, and
- to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations

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*The OECD Nuclear Energy Agency (NEA) was established on 1st February 1958 under the name of the OEEC European Nuclear Energy Agency. It received its present designation on 20th April 1972, when Japan became its first non-European full Member. NEA membership today consists of all European Member countries of OECD as well as Australia, Canada, Japan, Republic of Korea, Mexico and the United States. The Commission of the European Communities takes part in the work of the Agency.*

*The primary objective of NEA is to promote co-operation among the governments of its participating countries in furthering the development of nuclear power as a safe, environmentally acceptable and economic energy source.*

*This is achieved by*

- *encouraging harmonization of national regulatory policies and practices, with particular reference to the safety of nuclear installations, protection of man against ionising radiation and preservation of the environment, radioactive waste management, and nuclear third party liability and insurance,*
- *assessing the contribution of nuclear power to the overall energy supply by keeping under review the technical and economic aspects of nuclear power growth and forecasting demand and supply for the different phases of the nuclear fuel cycle,*
- *developing exchanges of scientific and technical information particularly through participation in common services,*
- *setting up international research and development programmes and joint undertakings.*

*In these and related tasks, NEA works in close collaboration with the International Atomic Energy Agency in Vienna, with which it has concluded a Co-operation Agreement as well as with other international organisations in the nuclear field.*

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## ***FOREWORD***

*This fifty-fifth issue of the Bulletin is accompanied by an Analytical Index which covers all the Bulletins published and supersedes the previous Index. The Secretariat wishes to take this opportunity to warmly thank the Bulletin correspondents for their long-standing assistance with its publication.*



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# ARTICLES AND STUDIES

## *ARTICLES*

### **Vienna Convention Revision : A Review of the exercise and the insurance implications in the provisions under discussion**

**by G C. Warren\***  
**General Manager, British Insurance (Atomic Energy) Committee**

#### *INTRODUCTION*

Since 1989 the IAEA Standing Committee on Civil Liability has been engaged upon the task of revising the Vienna Convention so as to improve the compensatory regime for the benefit of victims of nuclear accidents and to attract a wider degree of participation - especially from countries which utilise nuclear energy for electricity generation

From the outset it was envisaged that the exercise would incorporate a degree of Supplementary Funding in addition to compensatory funds available from insurance or other financial guarantees.

Many differing proposals have been tabled with little evidence of a consensus view prevailing on any proposal for any amendment. Various drafts have been submitted to cater for Supplementary Funding and have included proposals to incorporate Supplementary Funding within the revised Vienna Convention itself as well as proposals to introduce an independent Convention supplementary to Vienna or supplementary to both Vienna and Paris or, most recently, an American proposal for a "free standing" Convention (known as the "Umbrella Convention") to be supplementary to all Conventions and domestic legislation even in non-Convention territories.

Except for, possibly, this most recent US proposal, none of the previous Supplementary Funding proposals have appeared likely to achieve sufficient acceptability to command consensus support and although they have taken up the greater part of the Standing Committee's time over recent years, it seems to have been at least tacitly accepted by most of the delegates that adoption is unlikely to be a practical possibility. The Umbrella Convention may yet prove capable of achieving sufficient support to be considered viable - certainly, the USA has exhibited considerable flexibility in answering the various criticisms which have so far been levelled against it - but, in the light of progress (or, rather, the lack of it) on other proposals, its adoption must remain problematic at the moment.

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\* Responsibility for the ideas expressed and the facts given rests solely with the author

During the early years of the revision exercise, discussion on the Convention itself proceeded hand-in hand with Supplementary Funding, clearly a commonality of provisions is essential in many areas, whether or not Supplementary Funding is incorporated in the Convention itself or by means of a separate instrument and many delegates have taken the view that, whatever solution is eventually adopted, it is essential that some form of Supplementary Funding be incorporated so as to increase the amount of compensation available to victims on this understanding a number of compromises have been accepted in some of the revision proposals to the primary Convention if Supplementary Funding were now to be abandoned or even deferred, one likely consequence could be to push negotiations on the existing instrument to even greater difficulty - possibly to deferral of the whole venture

Despite the compromises which have been agreed, there remain major areas of disagreement on many substantive issues The Standing Committee has expressed the intention of bringing its revision exercise work to a close with a Diplomatic Conference at which the revised terms can be agreed and a new instrument implemented such a Conference is envisaged for 1996 although, at the present moment, it is difficult to see how the current impasse can be broken

As one of the likely sources of compensatory funding, insurers specialising in the nuclear field are naturally concerned at any modification which might impinge upon the scope or amount of liability to be insured Many of the proposals which have been advanced would greatly extend the nuclear operator's potential liability exposure and in a number of instances would deter insurers from providing cover

## *II THE VIENNA CONVENTION*

### **Article I - Definitions**

Article I comprises the definitions utilised in the Convention, almost certainly the Definitions section will have to be amended generally in the light of the new provisions of the Convention when these have been agreed In the meantime, however, work has been concentrated on four of the existing Definitions

### **Article I 1 (k) - Concept of Nuclear Damage**

The existing text is permissive in that it leaves to the competent court of the Contracting Party how nuclear damage should be defined The intention in the revision exercise is to remove a degree of this flexibility by specifying that nuclear damage should include - inter alia - impairment to the environment, loss of profits arising from such impairment and the costs of preventive measures. A number of problems may be envisaged impairment to the environment is not a precise term - minimum levels of radioactivity might be suggested but the effects - and the acceptability or otherwise - of radioactive contamination is not invariable, "pure economic loss" is not considered a valid head of damages within many jurisdictions, provision of payments for environmental damage may impinge upon amounts available for the compensation of death or bodily injury Many States may be expected to view the existing text as preferable in that - being permissive - it allows for the incorporation of these more specific definitions within domestic legislation if so required There is general agreement only that the costs of preventive measures should, in principle, be included as falling within the sphere of the operator's liability

Insurers have expressed the view that until more exact terms have been agreed it is impossible to be definitive about the insurance position However, environmental damage cover would not be universally available and even where available, would at least be subject to a restriction to "sudden, fortuitous and unforeseen" damage with the specific exclusion of alleged damage arising from releases of radioactive materials within authorised limits as part of the day-to-day operations of the nuclear operator Insurers are increasingly concerned that they might be obliged to meet liabilities incurred as a result of a build-up of gradual

contamination over a period of years and it would be quite likely that insurers would exclude this coverage from their policies altogether, leaving this aspect of the operator's liability to be met by Government, or left uninsured

As regards the inclusion of preventive measures within the scope of the operator's liability, the insurability of such a provision would require a limitation to the cost of those measures which had been determined by the competent authorities

The new text of Article I 1 (k) retains the use of the words "personal injury" Insurers would prefer to see these replaced with "bodily injury" Over recent years, some courts have been prepared to admit stress, nervous dispositions, mental trauma and the like within the ambit of personal injury, whereas in a regime of limited compensation benefits it might be more realistic to set the minimum requirement as actual bodily harm or injury If the existing wording of I 1 (k) (ii) were to be reinstated, - "in any other loss or damage to the extent that the law so provides" - then Contracting Parties would retain the option of extending liability to include personal injury if so desired There is at least one example in nuclear liability of insurers' restricting cover to bodily injury despite a legislative requirement of personal injury in this case the Government of the country concerned has adopted a supplementary plan to provide compensation for uninsured liabilities

#### **Article I 1 (k) (ii) - Damage to property**

Although no proposal has been made to amend the definition of "damage to property", it might be considered appropriate to expand the wording so as to specifically exclude damage to any property owned by the operator liable and to any other property on the site of the nuclear installation where the damage was caused. It would be necessary to provide an exception for the means of transport where the nuclear incident occurred during transit.

#### **Article I 1 (l)**

This is a further expansion upon the earlier sub-Article and requires no specific comment.

#### **Article I 1 (m) - Preventive measures**

This is a new sub-paragraph including a definition for "preventive measures" Insurers have taken the view that this definition is unacceptable and incapable of attracting insurance support. Acceptability would depend upon removal of the words "by any person" in the first line and replacing them with "on the order of the competent authorities" The danger here is that if not so ordered, there could well be problems in proving causality and there is the risk of speculative claims from people who might take any manner of action (including going on holiday) on the grounds that their action was "reasonable" Although actual compensation payments under such circumstances might not be significant, the cost of defending such actions could well be

Although the proposed revision is consistent with the maxim of legal purism that "every person has the right to defend himself", in reality "every person" does not necessarily possess sufficient knowledge to make an assessment of what might constitute an appropriate measure and may unwittingly expose himself to greater peril The competent authorities, on the other hand, are much better placed to order appropriate measures - one could well dispense with the word "reasonable" in that any measure so ordered could almost by definition be deemed "reasonable", moreover the authorities have a duty stemming from the decision to license the use of nuclear power, to safeguard the population in the case of accident or impending danger

#### **Article I I (n) - Nuclear incident**

This is a revision of the original text of Article I 1 (l) which has now been expanded to include "grave and imminent threat" Such a phrase is difficult to define, but insurers have no particular problem with the concept, although it does reinforce their opposition to the preventive measures clause unless restricted to "on the order of the competent authorities"

#### **Article I (A) - Geographical scope**

This is a new Article which has been proposed for inclusion The essential disagreement is whether States which decline to ratify the Convention can be expected to benefit from its provisions There are obvious difficulties if Supplementary Funding provisions are expected to include contributions from countries which do not directly utilise nuclear power, but on the other hand all countries can be said to benefit to some extent from the development of nuclear industries in others.

A compromise which has been tacitly accepted is that non-nuclear non-contracting parties may be expected to benefit but not nuclear states which decline to participate This has led, of course, to a further problem in the definition of what is a "non-nuclear" country There are no quantifiable implications for the insurance industry

#### **Article I (B) - Installations used for non-peaceful purposes**

This is again a new Article where the debate has been somewhat confused by the suspicion that some states were using the expression *non-peaceful installation* as a euphemism for nuclear weapons Many countries feel that the inclusion of military installations in any form is inappropriate in a Convention on Civil Liability whereas others would be prepared to see included research facilities, fuel manufacturers and the like provided weapons themselves were excluded The inclusion of military installations could alienate some potential adherents to the Convention The insurance position is relatively straightforward, there is very little capacity available from the insurance industries of the world for military nuclear installations generally and practically none at all for those concerned with nuclear weapons The insurance position is that any compensation required to meet such an extension to the Convention would have to be made available by government

#### **Article II - Liability of nuclear operator**

The only alteration proposed to this Article concerns Article II 6 which it has been agreed should be considered in conjunction with the revised Article I 1 (k) This is, in effect, an editing revision and required no further comment.

#### **II 7 - Right of direct action**

There has been considerable discussion as to whether a right of direct action by third parties against the insurer should be compulsory, rather than left to the discretion of the Contracting Parties It is difficult to see an advantage in a compulsory regime and as it would entail certain countries adopting different legal precepts to those found in their normal juridical practice, such a clause could alienate some potential adherents There are no direct insurance implications involved as insurers already operate under both systems however there would be a reluctance to become involved in claims-settlement procedures which did not conform to normal practice and there are implications in the areas of priority of settlement arrangements (if these should be adopted) as well as the operation of an independent Claims Tribunal

### **Article III - Certificate of financial security**

A minor revision has been proposed obviating the need for certificates of insurance/financial guarantee for transits wholly within the territory of the Installation State. This is in accordance with the procedures agreed some years ago for the Paris Convention and has no implications for the insurance industry.

### **Article IV - Exoneration**

#### **IV.3 - Grave natural disaster**

The substantive revision here is to delete reference to an optional exoneration of the nuclear operator for damage arising as result of a grave natural disaster of an exceptional character. The principal exoneration which has been permitted under a number of domestic laws is for liability following earthquake damage. The insurance position here is that where the grave natural disaster in question is considered uninsurable, the question of a liability exoneration is largely academic: the provision of compensation will not change - it will need to be provided by government, as it is at present, calling for liability to fall on the operator will not induce insurers to provide cover for risks they consider uninsurable.

A drafting revision has been proposed for the first part of Article IV 3. The new wording is considerably less elegant than the original yet achieves no discernible benefit. The burden of proof has not changed - it has always lain on the operator by virtue of his absolute liability: this appears to be merely change for the sake of change.

#### **IV.5 - Damage on-site**

The existing Article IV 5 paragraph (a) has been split into two parts and the wording has been expanded. Here again the change proposed appears to be cosmetic. Although the wording proposed has been taken from the Paris Convention, the original Vienna wording is more terse. Perhaps a more elegant solution would be to incorporate the restriction within the definition of "damage to property" (see comments under Article I 1 (k) supra). If the intention is to exclude compensation being paid to (another) operator of a neighbouring nuclear installation or in respect of another installation in course of construction it may be expected to fail, since such further installations would normally be situated on separate, independent (albeit adjoining) sites.

#### **IV 6 - Damage to the means of transport**

The revised Article IV 6 embraces the second half of the existing Article IV 5, together with the existing Article VI, at present Article IV 6 is permissive as to whether or not any portion of the liability compensation could be made available in respect of the means of transport under transit risks, it is now tacitly assumed that the means of transport will be so covered and the provision is otherwise unaltered except that no minimum figure has yet been included (the existing Convention calls for a minimum of US \$5m as being retained for compensation to the public). It is difficult to foresee why any Contracting Party should wish to legislate to exclude the payment of compensation for damage to the means of transport, but equally difficult to understand why this prerogative should have been removed.

It is normal for insurers specifically to include damage to the means of transport within transit liability insurances and there do not appear to be any implications for insurers other than, possibly, the amount of the minimum figure which is yet to be agreed.

## **Article V - Amounts**

The minimum level of compensation to be paid under the revised Convention is still to be settled since many countries are reluctant to commit themselves. There is no total agreement as to the relation between on the one hand the legal liability of the operator - and any financial limitation to that liability - and on the other hand the amounts of compensation to be provided as well as by whom such amounts should be provided. The question of Supplementary Funding is also bound up in this problem.

However, there seems to be at least tacit acceptance of the OECD Steering Committee for Nuclear Energy's recommendation of 150 million Special Drawing Rights (SDR) as a reference amount, and from a compensation viewpoint this amount would normally fall within the maximum worldwide nuclear liability insurance capacity available.

The problem with stipulating an insurance limit is that the figure is not a constant - both the strength of the domestic insurance market and legislative requirements of the country concerned will be of paramount importance. Thus even a relatively homogenous economic and social area like Western Europe will contain countries capable on the one hand of attracting nearly twice the NEA/OECD recommended limit, whereas on the other hand some will find it difficult even to reach that limit.

Particular concern must, therefore, be expressed as to the viability of such a limit in Central and Eastern Europe. Their newly developing private insurance industries are economically weak by comparison with their counterparts in the West and the legislative requirements envisaged in many of the Convention Revision proposals are unattractive to insurers and in some instances unacceptable. It must be considered unlikely that many of these countries would succeed in attracting more than a fraction of the reference figure.

Doubts and reservations have been expressed about the safety of some of the operational nuclear plants in Central and Eastern Europe, but this is a quite separate issue. The acceptability or otherwise of any plant can only be determined by extensive on-site inspection surveys - insurance limits are not reduced or increased by reference to the technical merits of the installation in question - it either meets insurers' criteria or it does not and, in the latter case, no cover will be offered until plant improvements are carried out to raise standards to those criteria demanded. Once technical acceptability has been achieved, the degree of support will however reflect the political, social and - of primary importance - the judicial climate of the country concerned. It is for this reason that insurers have expressed so many reservations about the direction the IAEA revision exercise appears to be taking.

## **Article VI - Prescription periods**

This Article is one which could produce serious difficulties for Contracting Parties if they wish the operators' liability to be protected by insurance or financial guarantees from the private commercial market.

The present Convention caps the operators' liability in time at ten years but permits an extension of that time limitation only to the extent that insurance/financial guarantors or the provision of State funds is available to cover that time extension. The new proposal is to extend that period of limitation from 10 years to 30 years as regards loss of life/personal injury claims with permission to extend beyond that new figure if insurance/financial guarantee or State funding is available.

Insurers have maintained that coverage beyond the 10 year prescription period is not possible and that is the case also under the Paris Convention. Although under Paris, many States have increased the prescription period from 10 years to 30 in their domestic legislation, insurers have maintained a 10 year period in the policy coverage. Claims arising outside that period have to be submitted to Government.

The argument is that the insurance protection is intended to cater for the catastrophic effects of a serious nuclear accident and that because of the limitation in amount of the operators' liability, insurance funds will be utilised in any event within that 10 year period. Claims in respect of solid tumours appearing 20, 30 or even 40 years after an incident - irrespective of whether or not the incident is a major nuclear accident or simply alleged damage arising from minor incidents or normal every day operations - will be indistinguishable from naturally occurring tumours which might be expected to be suffered by 30% or more of the population. Insurers' arguments are that the treatment of such cancers, howsoever caused, are a question to be addressed by society as a whole (in the form of government) rather than by private insurers acting on behalf of a very small section of industrial society (the nuclear operators).

It should be mentioned that in the United States of America there is no 10 year limitation period in the insurance coverage. However, one must look to the liability regime in the United States as a whole and not simply to one small part of the legislation. Thus, in the United States, the plaintiff is required to prove not merely causation but also negligence except in the case of a major nuclear accident (an extraordinary nuclear occurrence) because the Price-Anderson regime is a tort-based legislative measure. Because insurers would most certainly have to deal with many claims of a speculative nature the policy limits are permitted to include not merely compensatory amounts but also legal and defence costs and finally, insurers are permitted in the U S A to establish tax free premium reserves (amounting to approximately 75% of all premiums paid) to meet nuclear third party liability claims.

Although there is a similarity of effect underpinning both Price-Anderson and Convention-based legislation, the routes by which this effect is achieved are significantly different and do not lend themselves to transference from one regime to another.

#### **Article VII - Insurance or other financial security**

No revision has been proposed to the existing Article VII but if the proposed amendments to the other Articles are to proceed then some amendment to Article VII might be required to cater for the lack of availability of private insurance or other financial security coverage will only be capable of provision by governments themselves through public funds. Article VII 2 permits the State - as a nuclear operator - to forego the requirement to insure. This might be extended to apply to all operators provided the State incorporates alternative equivalent provisions from public funds.

#### **Article VIII - Priorities**

The existing Article VIII is reproduced as Article VIII 1 and already gives rise to problems as to how an equitable distribution of compensation from limited resources is to be made. The new Article VIII 2 adds to the present uncertainty by including a stipulation that compensatory funds shall be distributed in accordance with a priority basis under which loss of life and personal injury claims will take priority over all other claims. As this priority is the almost exact reversal of the order in which claims would be lodged, it provides insurers with an almost impossible task in claims management and settlement and one which could probably only be resolved by the appointment by the State of a Claims Commission to which all insurance funds could be paid for subsequent distribution by that Commission on a basis which at present is far from certain. Insurers would, of course, be prepared to assess and agree settlements of claims on behalf of such a Commission. This would constitute a practical response to the problem of physically handling a large number of claims over an extended period of time, insurers could provide their services to the Commission on a fee-earning basis.

The Standing Committee has noted that additional consideration might need to be given to this section as regards consistency of its wording in relation to other draft provisions. Insurers would urge that a great deal of practical thought be given to this entire area of claims settlement procedures if mandatory provisions are to be incorporated within the Convention.

Insurers will not be prepared to meet the total cost of claims administration where they are providing only a percentage of the compensation although, in most countries, the insurance industry would seem to be the appropriate mechanism for undertaking this work and indeed, in some countries, third parties will have a right to bring their claims directly against the insurer concerned. It is difficult to foresee a universally acceptable solution to these problems and perhaps, therefore, a more permissive regime would be preferable

#### **Article XI - Jurisdiction**

The existing Article XI is proposed to be amended to include a further provision to ensure that only one of its courts shall have jurisdiction in relation to a nuclear incident, thus obviating the possibility that various actions will be brought under various courts. This is in accordance with the provisions of the Paris Convention and also that of the Price-Anderson legislation in the United States of America. There would appear to be no adverse implications for insurers in this proposal

#### **Article XI A and XI B - Claims Commission**

These new Articles relate to the optional establishment of a national or international claims tribunal which many perceive as an elegant solution to the problem of maintaining equity between victims. The proposal has received strong backing from the Netherlands, which country already possesses a similar mechanism for handling of claims where it appears likely that the predetermined insurance limit will not be sufficient to provide full compensation to victims. Under these circumstances insurers would be required to pay over the full policy proceeds to the claims tribunal for the latter body to arrange distribution of funds. In practice it could well be that the claims tribunal would appoint insurers to act as its agents in the assessment of damages and agreement of settlement terms

The payment of compensation represents only a part of the insurer's obligation. The actual physical settlement of claims required a not insubstantial commitment of human resources - of claims' specialists who could meet the victims, assess damages and agree settlement. In all probability - in the event of a major nuclear incident - comparatively few claims would need to be decided by the courts as neither liability nor causation would be an issue. However with the passage of time, inevitably over the years claims would arise of a speculative nature many of which would need to be defended in the courts. It was this area which would be of particular concern to the providers of Supplementary Funding because by this time the primary insurance limits would have been exhausted and the claims settlement facilities of insurers would not be available - except on a fee-paying basis

Claims settlement cost, legal fees, interest awards and defence costs, represent a problem which has not in the past been adequately addressed. As legal regimes and insurance practice vary so greatly in different parts of the world it is inappropriate to attempt to include a solution within the Convention itself. The option to establish a claims tribunal represents at least an attempt to find a partial solution to this problem and to address the dual question of equity of payment and priority of claimants. What is not addressed is the cost of *establishing and operating this claims tribunal - presumably this will fall to the government or governments* responsible for their establishment.

#### **Other Articles**

The amendments proposed in respect of further Articles and also to the optional Protocol concern the settlement of disputes, and review and revision procedures and other procedures of a general nature and have no implications for insurers or other providers of financial guarantees



## *CONCLUSIONS*

The original International Conventions - both Paris and Vienna - provided for liability on a basis linked very firmly to the availability of insurance. The proposed revisions have, to a large extent, disregarded the views of insurers without attempting to address the question of what alternative funding sources might be available.

Undoubtedly it would be possible to devise compromise solutions where the scope of the operator's potential liability was covered partially by insurance and partially from other sources - presumably public funds. Such a position obtains already in some of the Paris Convention countries as regards the difference in prescription periods between insurance and legislation, but it might be considered that the difference in conditions under the current proposals would be so great that many countries would prefer not to adopt the provisions. Similarly, many insurers would likely prefer not to be associated with the regime at all, and even where some insurance capacity were made available, it would be unlikely to be sufficient to provide an adequate limit of compensation.

The views expressed in the Standing Committee on all substantive points are more of a dichotomy than a consensus yet this is perhaps not surprising given the quest for a common regime applicable to so many different countries, in differing stages of social and economic development.

Rather than concentrate upon the introduction of so many mandatory provisions, perhaps the Standing Committee should consider revising the Vienna Convention as a Framework Convention, in other words, it should be a permissive instrument with a minimum number of predetermined criteria - Strict Liability - liability channelled to the operator - liability limited in scope, time and amount - liability to be protected by guaranteed compensatory arrangements - and within that framework the Contracting Parties could develop domestic legislation appropriate to their own social, economic and juridical development.

This might not achieve the best possible Convention but it could achieve the best Convention possible.

## *STUDIES*

### **Problems raised by the application of the Conventions on nuclear third party liability to radioactive waste repositories\***

#### *INTRODUCTION*

During the preparatory discussions on the drafting of an international Convention on the safety of radioactive waste management, the question was raised of the scope of this instrument and, in particular, its application to radioactive waste repositories. These points are listed in the inventory of the questions brought up at the meeting which was held in Vienna on 20-23 February 1995.

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\* Responsibility for this note rests solely with its author, the NEA Secretariat.

This same question is presently being studied at the OECD Nuclear Energy Agency in a different context namely the application of the special nuclear third party liability and insurance regime to radioactive waste repositories. In fact, certain problems raised concerning the application of the nuclear third party liability regime are likely to be met both in the context of the more general safety obligations of operators of radioactive waste repositories and those of States acting as the supervisory authorities for such repositories. The main problem lies in how to extend a legal regime created for governing the current activities of a nuclear operator to cover the inordinately lengthy period of time appropriate for the disposal of radioactive waste.

## **I Are radioactive waste repositories nuclear installations within the meaning of the Paris and Vienna Conventions?**

### **A Historical background**

When the Paris and Vienna Conventions were drafted<sup>1</sup>, the question of hazards linked to radioactive waste disposal was not yet fully understood. Therefore, while both Conventions cover installations for the processing of nuclear substances explicitly, neither refers specifically to radioactive waste repositories<sup>2</sup>. On the other hand given that the definition of "nuclear substances" ("nuclear material" in the Vienna Convention) does cover radioactive waste<sup>3</sup> the two Conventions were interpreted as applying to installations for the disposal of radioactive waste<sup>4</sup>.

The lack of provisions on radioactive waste disposal in the Conventions is due to the fact that when they were drafted the development of nuclear energy was in its infancy, and there was little concern about activities at the back end of the fuel cycle. Perhaps also, the question of compensation for damage likely to be caused by radioactive waste when disposed of was not raised due to the considerable difference in the time scale between the risk of an accident linked to the operation of a nuclear installation and that same risk linked to radioactive waste disposal. As compared to day-to-day radioactive waste management (which is considered as included in the current operation of a nuclear installation), its storage in the very long term and especially its disposal implies operations of a different nature. In particular, the risk linked to such operations, however low may exist for an almost unlimited period of time and any damage might be discovered only long after the occurrence of the event having caused the damage.

### **B Recent developments**

In 1984, in the context of a study prepared by the OECD Nuclear Energy Agency on the long term management of radioactive waste<sup>5</sup>, the Agency's Group of Governmental Experts on Nuclear Third Party Liability had considered the question of the liability regime for radioactive waste disposal.

In effect, the Experts had decided to focus their study on the conditions for applying the Paris Convention to the pre-closure phase of waste repositories<sup>6</sup> since this aspect was of more immediate concern. They decided that the activities involved were sufficiently similar to those arising from the other phases of the nuclear fuel cycle to justify their being expressly included in the normal scope of the nuclear third party liability regime.

The Experts' conclusions are set out in a Decision adopted by the OECD Steering Committee for Nuclear Energy on 11 April 1984<sup>7</sup>. As a result, the provisions of the Paris Convention apply to the operator of a radioactive waste repository during the pre-closure phase. In taking this Decision the Steering Committee stressed that it did not wish to prejudge the question of the applicability of the Paris Convention to the post-closure phase of radioactive waste repositories<sup>8</sup>.

In 1992, the NEA Group of Experts agreed to resume study of this question in the context of the preparatory work on the possible revision of the Paris Convention, which would follow adoption of a revised Vienna Convention. The significance of this question is based on the fact that radioactive waste repositories are being built or planned in an increasing number of Member countries and it would be regrettable if future amendments of the Conventions did not take into account the specific needs for cover of the risks involved.

It remained to be seen whether the Paris Convention could apply satisfactorily to the post-closure phase of radioactive waste repositories in its present form or subject to agreed amendments, or whether a special liability regime was more appropriate (preferable to simply reverting to tort law).

In 1995, the NEA Secretariat presented the Experts with a study on the overall subject. The study found that, from a strictly legal viewpoint, the third party liability regime laid down by the Paris Convention could well apply to damage due to radioactive waste once it has been disposed of. However, concretely, this should imply some minor changes to the Paris Convention, either as straightforward amendments or as decisions or recommendations by the Steering Committee for Nuclear Energy. The study has not yet been debated at length and therefore, the following comments should only be attributed to the Secretariat.

## **II The nuclear operator and the Paris and Vienna Conventions**

### **A The legal regime established by the Conventions**

The Nuclear Third Party Liability Conventions provide that the operator is the person designated or recognised by the competent public authority as the operator of that installation<sup>9</sup>. This proceeding identifies the person liable in the event of an incident occurring in the installation concerned, and also places the operator under obligation to take out financial security to a given amount. It has a declaratory status. In practice, the condition of operator within the meaning of the Nuclear Third Party Liability Conventions coincides with that of a duly licensed operator of a nuclear installation in accordance with regulations on nuclear safety. In most countries, both procedures are coupled, in that the delivery of an operating licence is subject to the operator providing proof that he has taken out insurance to cover his liability.

Let us recall here that the nuclear operator is absolutely and exclusively liable as opposed to tort law based on fault or negligence. The Conventions contain no provisions enabling the operator to put an end to his liability on his own, except in the case of transport where liability is transferred to the operator of the consignee installation. Also, liability is limited in amount and in time.

As regards limitation in time, the normal rule is that the right to compensation is extinguished if the victim does not bring an action within ten years from the date of the nuclear incident<sup>10</sup>. Although there are plans to extend this period to thirty years for death or bodily injury in the context of the Vienna Convention revision exercise, this limitation in time might generate difficulties concerning the application of the Conventions should damage be attributed to radioactive waste once it has been disposed of. In this latter case, it will not always be possible to establish the date of the incident accurately. This difficulty stems from two main reasons: the first is of a practical nature and the second is legal. Practically, the moment where the radioactive release causing the damage occurs remains undetermined. Also, even if the initial and final dates of the release can definitely be determined, legally, the "date of the incident" in this particular context must still be determined. Since the Paris and Vienna Conventions are silent on this point, it will be up to the competent courts to decide on this question on a case-by-case basis. However, a harmonised application of the Conventions at a national level can only be achieved if a precise and univocal meaning is given to the term "date of the incident". In particular, in the case of damage due to radioactive waste disposal, whose characteristic is that it is produced through a gradual and progressive process, it would probably be preferable to mention that, in the event of a succession of occurrences having the same origin, "the date of the incident" should be computed as from the last occurrence.

Finally the extension of the operator's obligation to take out and maintain insurance or other form of financial security approved by the State for cover of damage due to radioactive waste disposed of, also creates difficulties. Clearly, the insurance sector would be unable to cover a risk extending over hundreds or even thousands of years. Therefore, the only possible solution would be to provide that past a certain period to be determined, liability for such damage should be transferred to the State<sup>11</sup>

## **B Existence of the nuclear operator**

These considerations lead to the crucial question of the perennality of the existence of an operator for each repository since neither the Paris nor the Vienna Convention provide a clear answer in this respect

As regards the Paris Convention, it was decided in 1984 that a radioactive waste repository ("an installation for the disposal of nuclear substances") was a nuclear installation, at least during the pre-closure phase. Therefore within the meaning of the Paris Convention, each repository must have a nuclear operator liable with financial coverage of his liability without the Convention setting a time-limit on that operator's obligations.

The question raised at this stage is to determine who in this system must ensure that there will be the effective and continuous presence of an operator liable. Here again, the Paris Convention<sup>12</sup> provides no explicit answer to this question however, the very definition of a nuclear operator entails a specific obligation for States namely they must designate or recognise an operator for any nuclear installation. It would be reasonable to consider by extension, that this provision also includes the obligation to ensure that someone will always remain liable for the waste disposed of. One possibility envisaged is that this liability be transferred to the State or a public agency it has designated failing which, victims would have no other recourse but to claim compensation directly from the State where the radioactive waste repository is located for damage occurring after disposal of the waste.

We may note a certain analogy between the problems raised regarding the question of liability and the application of a nuclear safety regime which would cover radioactive waste repositories. We could assume that when this regime is established at international level it will not be possible to ignore the question of the arrangements to enable the regime to be applied effectively throughout the considerable period of time which will elapse until the waste disposed of no longer presents a significant risk for the public and the environment irrespective of whether obligations in this field will lie with the original nuclear operator or whether they are in all likelihood transferred to the State.

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The above explanations have highlighted the technical difficulties which are raised in connection with the application of the Nuclear Third Party Liability Conventions to the specific case of compensation for nuclear damage occurring after the disposal of radioactive waste. Nevertheless, from a strictly legal viewpoint there is no obstacle to that regime continuing to govern any possible liability for the waste disposed of without determining in advance how long the regime will continue to apply. It would be desirable, however to make a series of minor amendments to the present text of both Conventions. Although the very notion of adapting the regime of the Paris and Vienna Conventions to cover damage likely to occur only thousands of years hence might seem theoretical the purpose of this exercise is the same as that which motivated adoption of the Conventions namely the protection of victims of a nuclear incident. It is clear that when damage occurs the victim does not care whether or not the damage is due to a long-term risk what matters is that his/her right to compensation be satisfied.

Even if we may assume that the safety regime aiming to ensure the integrity of radioactive waste sites in the very long term will be based mainly on "passive" methods and technologies we cannot obviate the need to apply certain systems providing for some form of control and "institutional memory" perhaps only because the public might be concerned if the waste disposed of were purely and unequivocally abandoned<sup>13</sup>. If this were the

case, and if the future Convention on the Safety of Radioactive Waste Management were to cover this aspect, it might be useful to take into account the arrangements envisaged to solve this particular problem in the framework of the Nuclear Liability Conventions, so as to ensure the desired co-ordination between these different international instruments<sup>14</sup>

## *Notes and References*

- 1 Third party liability in the nuclear field is governed by two international instruments the Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention) of 29 July 1960, adopted under the auspices of the OECD Nuclear Energy Agency, which has a regional vocation (it covers most Western European countries), and the Convention on Civil Liability for Nuclear Damage (Vienna Convention) of 21 May 1963, adopted under the auspices of the International Atomic Energy Agency which has a worldwide vocation
- 2 PC Article 1(a)(ii) VC Article I 1(j)(iii)
- 3 PC Article 1(a)(v), VC, Article I 1(g)
- 4 It should be noted in this respect that the definition of nuclear installation in the Nuclear Third Party Liability Conventions differs from that in the Convention on Nuclear Safety on one essential point While the former cover installations (power reactors) during decommissioning (as regards the Paris Convention, this interpretation was confirmed by Decision of the OECD Steering Committee for Nuclear Energy of 28 April 1987), the Convention on Nuclear Safety of 17 June 1994 excludes them from its scope [Article 2(i)] In view of the fact that installations being decommissioned are not nuclear installations within the meaning of the Convention on Nuclear Safety we may assume that they could be covered by the future Convention on the Safety of Radioactive Waste Management
- 5 Long Term Management of Radioactive Waste Legal Administrative and Financial Aspects OECD/NEA, Paris 1984
- 6 At that time, the Experts had drawn a distinction between the pre-closure phase of a repository and its post-closure phase Therefore according to their definition the operational or "pre-closure" phase of waste disposal is deemed to last for as long as operations - in particular filling up - are carried out on the disposal site and that the latter is not closed whereas the passive or "post-closure phase" begins once operations are completed the repository closed and the waste no longer subject to active surveillance
- 7 This Decision (reproduced in the brochure Paris Convention, Decisions, Interpretations, Recommendations, p 6, OECD/NEA, Paris, 1990) states "Installations for the disposal of nuclear substances shall for the pre-closure phase, be considered as 'nuclear installations within the meaning of Article 1(a)(ii) of the Paris Convention' The term "nuclear substances" was preferred to "radioactive waste" since the Paris Convention excludes nuclear fuel from the definition of "radioactive products or waste" in Article 1(a)(iv) The term nuclear substances on the other hand covers nuclear fuel (apart from natural and depleted uranium) and radioactive products or waste
- 8 It should be noted in this connection that since the IAEA Board of Governors is not vested with the same powers as the OECD Steering Committee no similar decision regarding the Vienna Convention was adopted
- 9 PC, Article 1(a)(vi), VC Article I 1(c)

- 10 The Paris and Vienna Conventions have a special provision in case of damage caused by nuclear fuel or radioactive products or waste which have been stolen, lost jettisoned or abandoned. In that event the time limit for submitting a claim always computed from the date of the nuclear incident may be extended to twenty years from the date of the theft, loss, jettisoning or abandonment [PC Article 8(b) VC Article VI 2]. It should be noted in this respect that this particular time-limit is designed to apply to fortuitous or emergency situations which are quite clearly different from radioactive waste disposal which is a deliberate and duly authorised action.
- 11 A distinction should be made between this mandatory insurance cover for the legal obligations in various countries providing for the constitution of funds for advance financing of the costs of decommissioning nuclear installations and radioactive waste disposal. These are obligations which are calculable and spread over time whereas compensation of damage depends on mainly unforeseen manifestations.
- 12 The approach applied for the Paris Convention could easily be applied to the Vienna Convention which at present simply covers installations for the storage of radioactive waste.
- 13 Even if this aspect is outside the framework of this note and has therefore not been dealt with it should be pointed out that the problem of extending a legal regime for managing a risk such as that of radioactive waste disposed of, to a very remote future, also raises ethical questions regarding future generations. Irrespective of whether the problem is dealt with from the viewpoint of liability or from that of safety. This question is also dealt with in a recent report containing the Collective Opinion of the NEA Radioactive Waste Management Committee on the environmental and ethical basis of the geological disposal of radioactive waste. This Collective Opinion will be published shortly by OECD/NEA.
- 14 Unavoidably there is some interaction between safety provisions and the liability regime. For instance if a considerable extension of the institutional control system and "reversible" solutions were decided upon thus permitting recovery of the waste disposed of if necessary this would favour extending the liability regime in time.

## ***Portugal - European Commission***

### ***Oral Proceedings in the ENU v the Commission cases (5 April 1995)\****

The parties were heard on 5 April 1995 by the Court of First Instance of the European Communities (CFI), in both the cases brought by the Portuguese natural uranium-producing company, the *Empresa Nacional de Uranio* (ENU), against the European Commission. The first of these, dated 20 October 1992, was an action for compensation against the European Atomic Energy Community, based on Article 188, paragraph 2 of the EAEC Treaty (Case T-458/93)<sup>1</sup>. The second, dated 27 September 1993, was to annul the decision of the Commission of 19 July 1993<sup>2</sup> (Case T-523/93)<sup>3</sup>.

#### ***The facts***

A brief reminder of the facts is necessary before the arguments put forward by the parties can be summarised.

ENU, a Portuguese company mining natural uranium, has for some years had difficulty selling its production. Since there are no reactors in Portugal using uranium, it is obliged, in order to survive, to sell all its production elsewhere. Until the end of the 1980s, ENU was able to sell most of its production, under a multi-year contract, to a Community user. After the fall of prices on the natural uranium market, ENU was unable to renew or replace this contract, and turned to the Euratom Supply Agency (the Agency), in order to sell its production.

On several occasions, ENU offered all its stocks and its future production to the Agency, considering that the Agency was obliged to exercise the right of option provided for under Article 57 of the EAEC Treaty, and then to ensure the sale of these materials to Community users. Following discussions between ENU, the Agency and the Commissioner responsible for the Agency, the Commissioner wrote to ENU on 25 October 1989 saying that he shared the view that supply policy should include a "special course of action" designed to resolve such cases. The Agency tried to convince users and intermediaries to purchase the Portuguese production, but without immediate success.

On 21 December 1990, ENU made a referral to the Commission under Article 53, paragraph 2 of the EAEC Treaty, essentially asking for the Chapter VI mechanisms of the EAEC Treaty to be re-established, and an immediate solution applied to the problem of the sale of its production. ENU based these requests on the argument that the EAEC Treaty provides for a system of Community preference, prohibiting all imports for as long as Community production is available at fair prices. In implementation of a judgment<sup>4</sup> of the Court of Justice, following initial proceedings (for failure to act) brought by ENU, the Commission, on 19 July 1993, took a formal decision<sup>5</sup> on the ENU requests, rejecting them, inter alia, on the grounds that the Treaty did not provide for any Community preference. In its decision, the Commission asked the Agency to continue to try to sell the ENU production, but without making this mandatory for Community users. This is the decision against which the proceedings for annulment were brought on 27 September 1993.

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\* This note was kindly prepared by Mr A. Bouquet, Euratom Supply Agency.

Meanwhile without waiting for the formal decision of the Commission ENU had already on 20 October 1992, brought an action for compensation against the Commission.

### *Historical and legal background*

Section II of Chapter VI of the EAEC Treaty deals with Community supplies in nuclear fuels (ores source materials and special fissile materials) A Supply Agency is set up under this Chapter, which carries out its duties within the context of a "common supply policy", and has two fundamental rights a right of option and an exclusive right to conclude contracts (Article 52 of the EAEC Treaty) This supply system may be considered as a monopoly, with a central body ensuring all Community supplies Thus, Article 60 of the Treaty provides that users should make their needs known to the Agency, while producers inform it of their tenders and production forecasts, following which the Agency informs those concerned of the way in which needs can be met The last paragraph of Article 60 empowers the Agency to determine, with the approval of the Commission, the manner in which demand is to be balanced against supply In view of the political and economic situation which was no longer the same as that when the Treaty entered into force a simplified procedure was introduced by the Agency Regulation of 5 May 1960<sup>6</sup> As things stand at present,<sup>7</sup> users are able under a co-signature procedure (Article 5bis of the Regulation), to negotiate freely with the supplier of their choice after which contracts are concluded by the co-signature of the Agency

Article 66 provides for an exception to the exclusive right of the Agency Should the Commission find that the Agency is not in a position to deliver within a reasonable period of time or that it can only do so at excessively high prices users are authorised to conclude contracts directly The Commission may however object to the conclusion of such contracts "if they are contrary to the objectives of this Treaty"

Twice now the Court of Justice has had occasion to express an opinion directly or indirectly on Chapter VI firstly in 1971 in case 7/71, in which it rejected France's argument that Chapter VI was no longer valid and secondly in 1978 in an opinion (1/78) in which it emphasized the exclusive jurisdiction of the Community as regards nuclear supplies, and the consequences for conclusion of the IAEA Convention on Physical Protection

### *The main arguments of the parties*

Apart from the question of the admissibility of the action for compensation, the arguments of the parties are practically identical in both cases

The Commission contests the admissibility of the proceedings for compensation since they were brought in the absence of any act and against the Commission alone, and therefore constitute a misuse of procedure whereas for its part, ENU argues that a formal act is not a pre-condition for a request for compensation for breaches of the Treaty, and that a case against the Community can be brought against the Commission alone

As to substance, ENU argues that the simplified co-signature procedure is contrary to the Treaty, claiming that it interferes with the exercise by the Agency of its right of option and its exclusive right to conclude contracts that it therefore does away with the system of balancing supply and demand and deprives of any useful effect the provision under which prices are determined as a result of balancing supply against demand (Article 67 of the EAEC Treaty) ENU argues that a Community preference does exist and that by virtue of this principle producers can export their production only when Community users do not require it (Article 59 of the EAEC Treaty), in return, however users cannot buy supplies on outside markets unless the Commission establishes that Community production is insufficient or excessively expensive (Article 66 of the EAEC Treaty) ENU alleges that due to its lack of dynamism, the Agency is not fulfilling its role and that the conditions for a decision by the Commission to allow free supply from outside sources were not met since the ENU offer at fair prices still existed Lastly, ENU is of the opinion that the "special provision" should consist of a mechanism making it possible to oblige Community users to buy the Portuguese production



The Commission rejects these arguments, pointing out in the first place that the Agency is not obliged to exercise its right of option, as can be seen from Article 59, paragraph 1, of the EAEC Treaty. The Commission argues that the simplified co-signature procedure (Article 5bis of the Agency Regulation) is valid, representing merely a merger of the contracts between the Agency and the producer and between the Agency and the user into a single contract between producer and user, co-signed by the Agency. In support of this, the Commission invokes the rejection by the Court of Justice in its judgment of 14 December 1971, of the French argument<sup>8</sup> that the simplified procedure<sup>9</sup> would lead to the abandonment of balancing supply and demand<sup>10</sup>, and the opinion of Mr Advocate-General Römer in this case<sup>11</sup> that the simplified procedure corresponded to the spirit and to the objective of Article 60 of the Treaty. As for Article 66 of the EAEC Treaty, the Commission considers that this procedure would apply only in situations of crisis, when the Agency would not be in a position to supply users within a reasonable period or could do so only at excessively high prices. Moreover, unlike the simplified procedure, this provision does not provide for any intervention by the Agency. As for the so-called "Community preference", the Commission points out that the duty of the Community is essentially to supply users and not to sell production. The Commission also claims that the "special course of action" can only be a series of weighty and continual endeavours by the Agency to encourage Community users to buy from ENU without any obligation to do so.

In its oral arguments, ENU reproached Member States for not having respected their commitments under the EAEC Treaty, and the Agency and the Commission for not having done anything to ensure compliance with the Treaty, despite the confirmation by the Court in 1971 of its applicability.

For its part, the Commission, in its oral arguments, placed the provisions regarding supply in a wider political, economic and legal context, contrasting the ENU cases, in which it is said to have done too little, with the Kernkraftwerke Lippe Erms (KLE) cases, in which it is said to have done too much.

#### *A comparison with the KLE/Commission cases*

It is interesting to note that the actions of the Agency, based on the simplified co-signature procedure but including the possibility of imposing certain restrictions on the acquisition of materials from the CIS, are being called into question in the present ENU cases and in the KLE cases, and that from diametrically-opposed viewpoints. In the KLE cases, appeals (T-149/94 and T-181/94) were lodged by the German user Kernkraftwerke Lippe Erms (KLE) against the decisions of the Commission of 4 and 21 February 1994<sup>12</sup>. KLE criticised<sup>13</sup> the Agency and the Commission for imposing a reasonable limit on acquisitions of nuclear materials from the Commonwealth of Independent States (CIS), arguing that the Agency is not entitled to refuse contracts but must act as a sort of "notary" limiting itself to recording contracts.

#### *Conclusion*

The Court is deliberating these cases and will hand down its decision at a later date. It will be interesting not only to know the Court's position in the ENU case itself, but also to see whether this position gives any indication as to possible solutions in the KLE case.

## *Notes and References*

- 1 This case was initially brought before the Court of Justice of the European Communities as C-380/92 (OJ No C 316 of 3 12 1992, p 14) and then sent back to the Court of First Instance under Articles 1 and 4 of the Council Decision of 8 June 1993 (OJ, No L 144, of 16 6 1993, p 21) amending Decision 88/591/ECSC, EEC, Euratom establishing the Court of First Instance of the European Communities (OJ, No 319 of 25 11 1988, Euratom establishing the Court of First Instance of the European Communities (OJ, No L 319, of 25 11 1988, p 1)
- 2 OJ, No L 197 of 6 8 1993 p 54
- 3 OJ, No C 306, of 12 11 1993, p 7
- 4 C.J.E.C 16 February 1993 ENU/Commission, Case C-107/91, ECR 1993 I 599 and contrary opinion of Mr C GULMAN
- 5 OJ, No L 197 of 6 8 1993 p 54
- 6 Regulation of the Agency of 5 May 1960 OJ, No 60 of 11 5 1960, as amended by Regulation of the Agency of 15 July 1975, OJ, No L 193 of 25 7 1975
- 7 Article 5 of the Regulation allows in theory, that should supply manifestly exceed demand the Commission may always introduce a simplified non-opposition procedure specifying that contracts shall be deemed to have been concluded if they are communicated to the Agency and the Agency raises no objection within eight days
- 8 ECR 1971, p 1014
- 9 At the time in question, this was still the non-opposition procedure in Article 5 of the Agency Regulation mentioned above
- 10 C.J.E.C 14 December 1971, Case 7/71, Commission/France ECR 1971 p 1003 in particular item 43 of the Judgment.
- 11 Rec 1971, p 1023, in particular p 1032
- 12 OJ, No L 48, of 19.2 1994, p 45 and No L 122 of 17 5 1994, p 30; for a summary of the decisions see Nuclear Law Bulletin No 54, December 1994, p 38
- 13 For a summary of these cases, see OJ, No C 146 of 28 5 1994, p 13 and No C 174 of 25 6 1994

# NATIONAL LEGISLATIVE AND REGULATORY ACTIVITIES

## ***BULGARIA***

### **ORGANISATION AND STRUCTURE**

#### ***Regulation on the National Centre of Biology and Radiation Protection (1993)***

The above Regulation determines the structure and activities of the National Centre of Biology and Radiation Protection. It was published in the State Gazette No 52 of 18 June 1993 and entered into force on 21 June 1993.

The Centre is a specialised agency under the Ministry of Health, responsible for questions related to radiobiology and radiation protection as well as emergency medicine. It carries out preventive, diagnostic, scientific and technical work in those areas.

The Centre also advises the Health and Epidemiological Inspectorate on matters involving pre-employment and periodical medical examinations and medical supervision of radiation workers.

The Regulation specifies the National Centre's main activities and tasks, its general structure and management as well as its financing.

## ***DENMARK***

### **ORGANISATION AND STRUCTURE**

#### ***Danish Preparedness Act (1992)***

The Danish Preparedness Act of 23 December 1992 provided for the merger of the Civil Defence and the Emergency Planning Agency into the Emergency Management Agency. The Act has also established a new organisation, the National Rescue Preparedness, which has taken over the functions of the Former National Fire Service and the Civil Defence.

The Emergency Management Agency, within the Ministry of the Interior, is responsible for deciding on taking emergency safety measures when the population has been exposed to radiation as a result of a nuclear incident. The Agency is also in charge of studying all questions relating to nuclear safety and is competent for collaborating with other national and international authorities in this field.

# ***ETHIOPIA***

## **ORGANISATION AND STRUCTURE**

### ***Radiation Protection Proclamation (1993)\****

The Radiation Protection Proclamation (No 79/1993) was published in the Official Gazette of 22 December 1993 (*Negaru Gazta*). It has established an authority for the control and supervision of activities involving all radiation sources and lays down provisions regulating such activities for purposes of protection against radiation hazards.

# ***FINLAND***

## **GENERAL LEGISLATION**

### ***1994 Act to amend the 1987 Nuclear Energy Act (European Union and nuclear waste)***

Act No 1420/94 to amend the Nuclear Energy Act of 11 December 1987 was enacted by the President of the Republic on 29 December 1994, who issued Decree No 1589/94 providing that the Act (with some exceptions) would enter into force on 1 January 1995. The following is a brief description of the purpose and contents of the Act.

The Act has two purposes: in view of Finland's adherence to the European Union to adjust national legislation accordingly more specifically to the Euratom Treaty, and to settle the question of the transfer of domestic nuclear waste to Russia.

As regards the European Union, minor amendments have been made to the Nuclear Energy Act which concern licensees (delivery of a licence for other uses of nuclear energy) and provision of information in accordance with the Euratom Treaty.

As regards nuclear waste, it was decided that the spent fuel from the Lovisa nuclear power plant which under contractual arrangements was sent back to Russia should no longer be sent there - in fact, no Finnish waste should be transferred to Russia, but should be dealt with in Finland. Furthermore no foreign nuclear waste should be accepted in Finland. The Act was amended to reflect these decisions. Due to the above-mentioned current contracts the Sections dealing with transfer of spent fuel to Russia will enter into force in 1996.

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\* This information has been taken from the WHO Digest of Health Legislation Volume 45(4) 1994

## **THIRD PARTY LIABILITY**

### ***Act to amend the 1972 Nuclear Liability Act (1994)***

On 18 February 1994, the Council of State submitted to Parliament a Bill to amend the Nuclear Liability Act of 8 June 1972 (the text of the Act is reproduced in the Supplement to Nuclear Law Bulletin No 44) The main purposes of the amendments were to

- raise the nuclear operator's maximum amount of liability to 150 million SDRs
- enable Finland to ratify the Joint Protocol linking the Vienna and Paris Conventions,
- empower the Council of State to raise by Decree the maximum amount of liability, and
- concentrate all claims to one single court, the Helsinki District Court.

The Act (No 588/94) to amend the Nuclear Liability Act was enacted on 28 June 1994 the President of the Republic issued Decree No 1040/94 on 28 November 1994 providing that the amendments would enter into force on 3 January 1995

(A detailed account of these amendments is set out in Nuclear Law Bulletin No 53)

Furthermore, Finland ratified the Joint Protocol on 3 October 1994

### ***Council of State Decision on liability amounts (1994)***

On 5 May 1994, the Council of State (the Cabinet) issued Decision No 333/94 setting at 13 million Special Drawing Rights (SDR) the maximum amount of liability for nuclear damage due to a nuclear incident occurring during the transport of non-irradiated uranium enriched to 20 per cent in the isotope U-235

The purpose of the Decision is to lower the premium of nuclear liability insurance so as to facilitate trade in uranium in particular, in cases where uranium is transferred from military programmes to programmes for peaceful uses

The Decision entered into force on 11 May 1994

## **FRANCE**

### **RADIOACTIVE WASTE MANAGEMENT**

#### ***Decree on the import, export, transit of radioactive waste between Community Member States (1994)***

Decree No 94-853 of 22 September 1994 (published in the Journal Officiel de la République Française of 2 October 1994) transposes into domestic law Council Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Communities (European Union) (the text of the Directive has been published in Nuclear Law Bulletin No 49)

The Decree generally reproduces the provisions in the Community Directive. The first sections deal with definitions, after which the Decree specifies the cases which require to be licensed.

The Decree defines radioactive waste as any material for which no use is foreseen by its consignor or consignee, which contains radioactive substances whose total activity and weight does not exceed the values given in Section 3 and Annex II of Decree No. 66-450 of 20 June 1966.

The Ministry of Industry, Telecommunications and Foreign Trade (General Directorate for Energy and Raw Materials - Nuclear Matters) is the competent authority for implementing the system for supervision and control defined by the Directive.

Any operations involving the import, export or transit of radioactive waste must be accompanied by a standard document and the authorisation or a certified copy of the latter.

It should be noted that the automatic approval procedure referred to in Article 6(4) of the Directive has not been accepted by France. The procedure is the following: in cases of transfer of radioactive waste between Member States, if the authorities of the country of destination and/or countries of transit have not sent their reply within a period of two months, it shall be deemed that these countries have approved the requested transfer.

## **GERMANY**

### **GENERAL LEGISLATION**

#### ***Amendment of the Constitution (1994)***

By Act of 27 October 1994, which entered into force on 15 November 1994, a new Article 20 was inserted into the Basic Law ("Grundgesetz" = Constitution) [Bundesgesetzblatt 1994 I p. 3146]. Article 20 provides for the obligation of the State to protect the natural bases of life ("natürlichen Lebensgrundlagen"), within the framework of the constitutional order, by legislation, administration and jurisdiction. The new provision makes protection of the environment a constitutional task of the State.

### **REGIME OF NUCLEAR INSTALLATIONS**

#### ***Authorities competent in the field of nuclear licensing and nuclear surveillance (1994)***

The Federal Minister for the Environment, Nature Conservation and Reactor Safety published a comprehensive list of the authorities which are competent in the field of nuclear licensing and nuclear surveillance in Germany, covering both federal authorities and authorities of the Länder (Gemeinsame Ministerialblatt 1994 No. 28 p. 838). The list provides precise information about the competence of each authority and indicates the respective legal bases of that competence.

#### ***Amendment of the Nuclear Installations Ordinance (1994)***

The Ordinance concerning the Procedure for Licensing Nuclear Installations pursuant to Section 7 of the Atomic Energy Act (Nuclear Installations Ordinance) of 18 February 1977 as amended by Ordinance of 31 March 1982 (the text of this Ordinance as amended is reproduced in the Supplement to Nuclear Law Bulletin No. 30).

has again been amended by the Second Ordinance to amend the Nuclear Installations Ordinance of 11 November 1994 [Bundesgesetzblatt 1994 I p 3455, 3992 (corr )]

The amendment mainly aims at further implementing the European Commission Directive on the Environmental Impact Assessments of 27 July 1985 (see Nuclear Law Bulletin No 45 regarding the 1990 Act implementing the Directive) This implementation implies the insertion of several new sections (1a, 1b, 7a, 14a, 19a) and changes to others, section 21 of the previous version of the Ordinance was deleted

The new provisions also apply to licensing procedures which were initiated before the entry into force of the amendments

A consolidated version of the Nuclear Installations Ordinance was published in Bundesgesetzblatt 1995 I p 1080 The revised Ordinance entered into force on 25 November 1994

## **TRANSPORT OF RADIOACTIVE MATERIAL**

### ***Ordinance on the transport of dangerous goods by inland waterways (1994)***

The Ordinance on transportation of dangerous goods on the Rhine (ADNR) of 15 February 1994 as last amended on 24 November 1994, (Annex 1 to the Ordinance of 21 December 1994, Bundesgesetzblatt 1994 II p 3830) was amended once again by an Ordinance of 21 December 1994 [Bundesgesetzblatt 1994 I p 3971]

This Ordinance extends the scope of application of the ADNR to other navigable internal waters The ADNR, however does not apply to seagoing ships navigating on internal waters Furthermore, the Ordinance designates the competent national authorities under the ADNR

## ***IRELAND***

### **REGIME OF RADIOACTIVE MATERIALS**

#### ***The Radiological Protection Act 1991 (General Control of Radioactive Substances, Nuclear Devices and Irradiating Apparatus) Order 1993***

The above Order (S I No 51 of 9 June 1993) revokes and replaces the Nuclear Energy (General Control of Fissile Fuels, Radioactive Substances and Irradiating Apparatus) Order 1977 (see Nuclear Law Bulletin No 20)

The Order provides that a licence from the Radiological Protection Institute must be obtained for the custody, transport, storage, handling, possession, use, production, processing, import, export or marketing, etc of radioactive substances, nuclear devices or irradiating apparatus as defined by the Order

The Order furthermore fully implements at domestic level Council Directives 80/836/Euratom and 84/467/Euratom laying down basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation (see Nuclear Law Bulletin Nos 25 and 34)

## ***ITALY***

### **RADIOACTIVE WASTE MANAGEMENT**

#### ***Circular on shipments of radioactive waste (1994)***

Circular No 236/F of 28 October 1994 of the Ministry of Industry, Commerce and Crafts specifies the conditions of application of Euratom Directive No 92/3 of 3 February 1992 on supervision and control of shipments of radioactive waste between Member States and into and out of the Community (the European Union) (the text of the Directive has been published in Nuclear Law Bulletin No 49)

Article 21 of the Directive set at 1 January 1994 the deadline for transposing its provisions into the national laws of Member States. Pending the adoption of the Decree transposing those provisions into Italian law this Circular provides information for persons intending to ship radioactive waste. More specifically it provides the names of the national authorities responsible for implementation of the Community Directive. They are the following:

- the Minister of Industry, Commerce and Crafts,
- the mayor or other competent authority
- the National Environmental Protection Agency (ANPA)

The Circular also describes the administrative procedure for shipping radioactive waste between Member States (dispatch, reception and transit) as well as the procedure for imports into and exports out of the European Union. The Circular furthermore contains information on the transit of this type of waste from a non member State to another non-member State. The procedure thus described is widely based on that set down in Directive No 92/3/Euratom.

## ***KAZAKHSTAN***

### **GENERAL LEGISLATION**

#### ***Temporary Regulations on the Use of Atomic Energy (1994)***

Temporary Regulations on the use of atomic energy, nuclear activities, radioactive waste management spent nuclear fuel were made to ensure the radiation protection of the population. They were enacted by Government (the Cabinet of Ministers) Resolution No 364 of 11 April 1994.

The Regulations define their scope of application, the functions of the Government bodies competent in the nuclear field and also lay down requirements on licensing, on radiation safety and on accounting and control of nuclear materials.



## **ORGANISATION AND STRUCTURE**

### ***Resolution setting up the Atomic Energy Agency (1993)***

Resolution No 125 of 18 February 1993 by the Cabinet of Ministers set up the Atomic Energy Agency which is responsible for the national policy in the nuclear field

The Agency is generally competent for regulating activities in the nuclear field and is also responsible for issuing licences for the operation of nuclear installations. The Agency is empowered to take decisions, within its area of competence, which are mandatory for authorities and undertakings involved in the nuclear field

The Agency's main objectives are the following

- inspect nuclear facilities and lay down penalties when the conditions of the operating licence are violated,
- undertake nuclear safety controls in facilities and supervise the safe management of nuclear materials and radioactive waste (including their collection, reprocessing transport and storage),
- determine the requirements for establishing quality control programmes and ensuring that they are properly carried out during construction and operation of the facilities
- supervise the adoption of measures for accident prevention in nuclear facilities,
- carry out the accounting of nuclear materials and control their storage, transport and use,
- represent Kazakhstan within the International Atomic Energy Agency and conduct activities related to the international regime for the safe use of nuclear energy

In accordance with these objectives, the Atomic Energy Agency carries out a series of tasks in the framework of nuclear legislation. In particular, it establishes criteria and standards related to nuclear safety, in addition to drafting regulations on nuclear safety and radiation protection. The Agency is also responsible for the early notification of nuclear accidents, in particular to the competent international organisations and to the countries likely to be affected by such an accident.

## **REGIME OF RADIOACTIVE MATERIALS**

### ***Regulations and Guidelines on the Physical Protection of Nuclear Materials (1994)***

The above Regulations were enacted in 1994 by Decision of the Director General of the Kazakhstan Atomic Energy Agency (KAEA). They lay down the requirements for physical protection of nuclear materials in nuclear installations, on site and during transport and transit. In particular they specify the organisation of the physical protection system, the responsibilities of the different bodies within the state structure, as well as those of the operators

The Regulations provide that all Government bodies which have responsibilities concerning nuclear installations must submit plans for implementing physical protection measures in accordance with the requirements laid down in the Regulations. Also, operators must submit their internal physical protection rules for approval by the Kazakhstan Atomic Energy Agency

The Guidelines, also issued in 1994 by Decision of the Director General of the KAEA are intended for operators of nuclear installations to assist them in the drafting of their own internal physical protection rules. They provide explanations on the content, structure and requirements of the Regulations.

A detailed description of the Regulations will appear in a forthcoming issue of the Nuclear Law Bulletin.

## **REPUBLIC OF KOREA**

### **GENERAL LEGISLATION**

#### ***Revision of Atomic Energy Act (1994)***

In Korea, Act No. 483 of 11 March 1958 is the fundamental text for the regulation of nuclear energy (see Nuclear Law Bulletin Nos. 6 and 7). The Act has been amended several times since then. In 1982, Act No. 3549 of 1 April 1982 substantially amended the 1958 Act to bring together the existing national nuclear legislation. The Act was also amended in 1986 for the main purpose of setting up a radioactive waste management fund.

More recently, in 1994, the Act was again amended (Official Gazette of 5 January 1995). The most important changes are described below.

Two new chapters have been added. The first (Chapter 3) creates an "Integrated Nuclear Promotion Plan". The Plan is established for periods of five years and its purpose is to determine the future orientations of the uses of nuclear energy, including nuclear safety measures. The other chapter (Chapter 9) sets up a radiation dose monitoring system to improve the protection of workers exposed to radiation.

The 1994 revision further strengthens the safety rules for decommissioning nuclear reactors and nuclear fuel cycle facilities. Accordingly, Section 76 specifies that owners should submit a decommissioning plan to the authorities for approval before commencing decommissioning operations.

As regards penalties, the 1994 revision introduces fines in case of suspension or revocation of a licence for activities entailing a great hazard for the public. This provision applies to the construction (Section 17) and operating stages (Section 24) for nuclear reactors and nuclear fuel cycle facilities (Section 47). Radioisotope users are also concerned (Section 68).

Two amendments should be pointed out dealing with institutional aspects. The first concerns the number of members of the Atomic Energy Commission, previously five to seven, which have now been raised to seven to nine members. They are selected from industrial and academic circles and research institutes. The Commission is chaired by the Deputy Prime Minister for Finance and Economic Planning (Section 5). The second institutional amendment foresees the establishment of a nuclear research and development organisation and its financing.

# **LATVIA**

## **GENERAL LEGISLATION**

### ***Act on Radiation and Nuclear Safety (1994)***

The above Act was adopted by the Latvian Parliament on 1 December 1994. It governs all activities involving radioactive or nuclear materials and other sources of ionizing radiation. The Act establishes the basic principles of radiation and nuclear safety (justification, optimization and limitation) and also lays down requirements in the field of civil liability in the nuclear field.

Responsibilities for nuclear activities are divided between two regulatory bodies: the Ministry of Environmental Protection and Regional Development and the Ministry of Welfare. The basic legal framework is provided by the Ministry of Environmental Protection and Regional Development.

The Act establishes a licensing system, divided into two parts:

- licences for all commercial operations,
- permits for all non-commercial operations

Control over safety matters is exercised by the Radiation and Nuclear Safety Inspectorate or the relevant state institution from the Ministry of Welfare if this concerns a medical facility.

Operators (the managers of radiation works) must inform the Inspectorate that all the basic safety principles will be met, following which, inspectors can deliver licences or permits, as the case may be. The Inspectorate may withdraw or amend licences or permits at any time if radiation or nuclear safety requirements are not met.

The Act also deals with civil liability for nuclear damage. In 1995, Latvia became a Party to the 1963 Vienna Convention on Civil Liability for Nuclear Damage and the 1988 Joint Protocol on the application of the Vienna Convention and the Paris Convention. Accordingly, the liability provisions of the Act conform to the Vienna Convention regime. The limitation of liability for nuclear damage is laid down as the minimum amount of liability provided by the Vienna Convention. According to the Act, only an operator is liable for nuclear damage originating in his facility. Latvia is the operator of a research reactor as the reactor is the property of the State and is financed from the State budget. The major portion of liability will be covered by the State, while the Nuclear Research Centre will jointly cover the remainder through an insurance mechanism.

The text of the Act is reproduced in the Supplement to this issue of the Nuclear Law Bulletin.

It should be noted that there are no nuclear power plants in operation or under construction in the Republic of Latvia. The country has no plants for processing, manufacturing or reprocessing fuel and does not plan to build any new nuclear facility in the near future.

Several regulations on radiation and nuclear safety exist dating back to the time of the ex-USSR, these have been strengthened by the Cabinet of Ministers pending the adoption of new regulations.

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### ***Draft regulations***

Draft regulations have been elaborated on the basis of the safety standards of the International Atomic Energy Agency (IAEA) and the European Union (EU), as well as on other international recommendations

The first set of new regulations concern the granting of licences and permits. These regulations will include chapters on requirements for applicants, limitations on civil liability for different types of facilities such as X ray apparatus, research laboratories etc.

Radiation safety will be governed by basic regulations on protection against ionizing radiation. They will also include chapters on early warning, requirements for food and feed, etc.

Furthermore, draft regulations to be completed in 1995 relate to radioactive waste management.

## **ORGANISATION AND STRUCTURE**

### ***Competent bodies***

There are two regulatory bodies in the nuclear field, the Ministry of Environmental Protection and Regional Development and the Ministry of Welfare, together with their subordinate organisations. The main executive bodies are:

- the Radiation and Nuclear Safety Inspectorate under the Ministry of Environmental Protection and
- the Public Health Centre and the Radiological Centre under the Ministry of Welfare.

The above bodies are responsible for:

- supervising the manufacture, import, export, transport, sale, transfer, lease, possession or use of radioactive substances, the use or maintenance of technical devices capable of emitting radiation
- registration of radioactive materials and ionizing radiation sources
- registration, control and physical protection of nuclear materials
- information of the public on nuclear activities, and
- early warning in the case of a nuclear or radiological incident.

# **LUXEMBOURG**

## **RADIATION PROTECTION**

### ***Regulations on protection of the population against radiation (1994)***

The Grand-Ducal Regulations of 17 August 1994 amend and supplement the Regulations of 29 October 1990 on protection of the population against the hazards of ionizing radiation (see Nuclear Law Bulletin No 48). The revision takes into account the principles set down in Euratom Directive 90/641 of 4 December 1990 on the operational protection of outside workers exposed to the risk of ionizing radiation during their activities in controlled areas (see Nuclear Law Bulletin No 47). This revision affects Chapters 6 and 12 of the 1990 Regulations.

As regards Chapter 6, stricter measures are laid down in work areas where radiation doses are likely to exceed one tenth of the annual dose limits set for exposed workers. Thus, in such areas, the methods for prevention and monitoring must be defined according to exposure risks, workers must wear personal dosimeters which are monitored by the Radiation Protection Division of the Health Directorate, they must undergo specific training and medical examinations prior to their recruitment and annually thereafter. Two new definitions are included: "controlled area" and "monitored area". A controlled area is any area where three-tenths of the annual dose limits are likely to be exceeded and monitored areas are those in which one-tenth of the dose limits is likely to be exceeded.

A new Chapter 12 is included (the old chapter 12 becomes 13) in the 1990 Regulations. This new Chapter concerns the operational protection of outside workers. Henceforth their protection is at the same level as that of workers employed on a permanent basis. Also the heads of outside undertakings must have a prior licence and are responsible for the operational aspects of the protection of outside workers. Finally, a series of important definitions, including that of "outside undertaking" and "outside worker" have been added to the original text.

## **REGULATIONS ON NUCLEAR TRADE**

### ***Regulations prohibiting fire or smoke detectors containing radioelements (1994)***

These Grand-Ducal Regulations of 17 August 1994 forbid the use of radioelements in the manufacture of fire or smoke detectors. The import, possession with a view to selling, sale and setting up of fire and smoke detectors containing radioelements is also prohibited.

The Regulations were made in furtherance of the Act of 25 March 1963 on protection of the population against the hazards of ionizing radiation. Accordingly, violation of the provisions of the Regulations is punishable by the penalties laid down by that Act.

# **MADAGASCAR**

## **TRANSPORT OF RADIOACTIVE MATERIALS**

### ***Interministerial Order on the transport of radioactive materials (1994)***

Interministerial Order No 2735/94 of 4 June 1994 on the transport of radioactive materials defines the conditions for bringing to an acceptable level the radiological risks to which persons, property and the environment are exposed due to the transport of such materials

The Order applies to all modes of transport of radioactive materials (by land sea or air) except when such materials are part of the means of transport.

After laying down general radiation protection principles, the Order describes the technical criteria for the safe transport of radioactive materials (Chapter III), the duties of the consignor and the carrier (Chapter IV) and finally, the administrative procedure (Chapter V)

As regards the transport safety rules, the Order conforms to the provisions of the International Atomic Energy Agency's (IAEA) Regulations for the Safe Transport of Radioactive Materials Accordingly, the dispatch and storage in transit of radioactive packages are subject to the provisions defined by the IAEA Regulations and the quantity of radioactive materials in one package must not exceed the limits specified by the Regulations The Order provides that a consignment which does not observe all the conditions laid down by the Order can only be sent by special arrangement, with the authorisation of the National Nuclear Science and Technology Institute The special arrangement must include provisions guaranteeing that the general safety level during, transport and storage in transit is at least equivalent to that prescribed by the Order

With respect to his duties, the consignor must include in the transport documents all the technical information concerning the consignment, as listed in the IAEA Regulations He must also add to the transport documents a statement concerning the measures to be taken by the carrier if necessary, also as specified in the IAEA Regulations

The administrative provisions provide that any transport of radioactive materials is subject to a prior licence from the Minister responsible for nuclear questions, following the opinion of the Transport Ministry and the National Nuclear Science and Technology Institute In the event of an accident during transport, the carrier consignor or any other person or authority having knowledge of the occurrence must immediately inform the Institute accordingly so that radiological emergency plans may be implemented

# **PHILIPPINES**

## **ORGANISATION AND STRUCTURE**

### ***Radiological Technology Act of 1992***

Act No 7431 regulating the practice of radiological technology and setting up a Radiological Technology Board to this effect was approved on 22 April 1992 (Official Gazette No 88 of 16 June 1992)

The Act contains a national statement of policy specifying that "It is the policy of the State to upgrade the practice of radiological technology in the Philippines for the purpose of protecting the public from the hazards posed by radiation as well as to ensure proper diagnosis, treatment and research through the application of equipment using radiation"

Accordingly the Act sets up a Radiological Technology Board to regulate the practice of X-ray and radiological technology as laid down in the Act. The Board is made up of a Chairman and four other members appointed by the President of the Philippines on the recommendation of the Professional Regulation Commission. The members must include three radiological technologists, one radiologist and one medical expert. The Act lays down the conditions for qualification and remuneration of the members

The Board, appointed for a three-year term, is in particular responsible for

- enforcing the provisions of the Act,
- issuing, suspending and revoking certificates of registration for the practice of radiological and X-ray technology;
- conducting yearly examinations for radiological and X-ray technologists in accordance with the provisions of the Act,
- keeping under review the status of such technology, and
- making such rules and regulations as are necessary in implementation of the Act.

The Board is placed under the general supervision of the Professional Regulation Commission

## ***PORTUGAL***

### **ORGANISATION AND STRUCTURE**

#### ***Decree-Law setting up the Technological and Nuclear Institute (1994)***

Decree-Law No 324-A/94 of 30 December 1994 sets up the Technological and Nuclear Institute (ITN) to replace the Nuclear Science and Engineering Institute (ICEN). The new Institute has legal personality and has been given scientific, technical, administrative and financial autonomy under the supervising authority of the Ministry for Planning and Land Administration (*Ministério do Planeamento e da Administração do Território*)

The ITN is, in particular, responsible for

- promoting and undertaking scientific research and technical development in the field of the peaceful applications of nuclear energy
- providing scientific and technical assistance to the Government when implementing its policies in the fields of nuclear safety, pharmaceutical and metrological control as well as in radiation and radioisotopic applications,
- organising and undertaking training activities in the above fields,

- technology transfers to public and private agencies
- establishing exchange relations with national, international and foreign institutes pursuing the same objectives, and
- studying and implementing bilateral and multilateral co-operation programmes in its field of competence

The structure and internal organisation of the Institute will be established by Decree

## **RADIATION PROTECTION**

### ***Decree-Law implementing Euratom health protection measures in the event of a radiological emergency (1995)***

Decree-Law No 36/95 of 14 February 1995 transposes into national law the Council of the European Communities Directive No 89/618/Euratom of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency (the text of the Directive is reproduced in Nuclear Law Bulletin No 45)

The Directive defines a "radiological emergency" and lays down the procedures to be implemented by Member States in that situation. The population likely to be affected by such an occurrence must be provided with prior information on the health protection measures applicable and the action to be taken, as defined in the Directive. When such an emergency does occur, the population actually affected must be informed without delay about the facts and the steps to be taken, as also defined in the Directive. This information must include the names of the authorities responsible for implementing such measures.

## **SLOVAK REPUBLIC**

### **ORGANISATION AND STRUCTURE**

#### ***Act and Decree setting up a State Fund for Decommissioning (1994-95)***

Act No. 254/1994 on the State Fund for Decommissioning Nuclear Power Plants and Handling Spent Nuclear Fuel and Radioactive Wastes was adopted by the National Council of the Slovak Republic on 25 August 1994 and entered into force on 1 January 1995.

The Fund has legal personality and will be administered by the Ministry of Economy. It will be headed by a Director appointed by the Minister of Economy who will also set up a Fund Board made up of seven members competent in the fields of nuclear power, health environmental protection, economy and public administration to advise him on the allocation of funds.

The Fund will be financed from the following resources:

- contributions from nuclear power plant owners (each owner must pay into the Fund 10 per cent of the sale price of the electricity produced by his plant),



- bank credits,
- appropriations from the State budget,
- any other resources as provided by regulation

The Fund finances may be used to decommission nuclear power plants transport, store, process and dispose of spent nuclear fuel and radioactive wastes ("handle") in accordance with the provisions of this Act and the Decree below

The Act contains penal provisions concerning the misuse of Fund finances The Ministry of Finance is responsible for management of the Fund

**Decree No 14/1995** was issued by the Ministry of Economy on 3 January 1995 in pursuance of the Act on the State Fund for Decommissioning and entered into force on the same date

The Decree specifies the conditions for collecting funds, applications for funding and use of the Fund

Owners of nuclear power plants, spent nuclear fuel or radioactive waste repositories may apply in writing for funding of their decommissioning or handling operations The application must give the name and headquarters of the applicant, the amount of funding required, its purpose, etc The application will be submitted to the Fund Board for review, and on the basis of its conclusions, the Minister of Economy will decide on whether or not to approve the application

If the decision is favourable the funding is to be provided to the applicant within 30 days of the decision

## ***SPAIN***

### **REGIME OF RADIOACTIVE MATERIALS**

#### ***Royal Decree on the physical protection of nuclear material (1995)***

The purpose of Royal Decree No 158/1995 of 3 February 1995 (published in the Official Gazette of 4 March 1995) is to set up a national system for the control and physical protection of nuclear installations and material The Decree implements at domestic level the Convention on the Physical Protection of Nuclear Material of 3 March 1980 ratified by Spain on 6 September 1991 (the text of the Convention is reproduced in Nuclear Law Bulletin No 24, Nuclear Law Bulletin No 53 gives the status of its ratifications as at December 1993)

The Decree covers the handling, use and transport of nuclear material and lays down a series of requirements for licensees These activities are subject to a prior licence issued by the General Directorate for Energy in the Ministry of Industry and Energy, after having informed the Nuclear Safety Council and the Ministry of Justice and the Interior The General Directorate for Energy decides on whether or not to grant a licence within six months of the date of filing of the application

Where operations subject to a licence take place in several installations, a separate licence is required for each of the installations involved A licence is valid for two years and may be renewed. It may be suspended or revoked in case of transgression In that event the decision must give specific information on the destination of the nuclear material involved

## **RADIOACTIVE WASTE MANAGEMENT**

### ***Royal Decree on shipments of radioactive waste (1994)***

Royal Decree No 2088/1994 of 20 October 1994 specifies the conditions of application at domestic level of Euratom Directive No 92/3 of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Communities (European Union) (the text of the Directive is reproduced in Nuclear Law Bulletin No 49) The Decree, which was published in the Official Gazette of 26 November 1994, therefore applies to shipments of radioactive waste between Spain and the other Community States, as well as to imports and exports when the quantities of waste exceed certain basic values

The procedure to be followed is that laid down by the above-mentioned Directive Accordingly, any person intending to ship radioactive waste must apply to the General Directorate for Energy for a licence The Directorate then forwards this application to the authorities of the country of destination for approval, and when necessary to the country/ies of transit.

## **THIRD PARTY LIABILITY**

### ***Increase of the nuclear operator's amount of liability (1994)***

Act No 40/1994 of 30 December 1994, published in the Official Gazette of 31 December 1993 reorganises the national electricity system and Section 66 thereof amends Section 57(1) of Act No 25/1964 on Nuclear Energy (see Nuclear Law Bulletin No 2) That Section deals with the nuclear operator's amount of liability, originally set in 1964 at 300 million pesetas. That amount was raised to 850 million pesetas in 1987 and has now been raised to 25 billion pesetas by Act No 40/1994

In case of transport of nuclear substances or any other activity which, according to the Nuclear Safety Council does not involve a major risk the Ministry of Industry and Energy may set another limit. The latter may not, however, be lower than one billion pesetas.

The Act also provides that these amounts may be modified by the Government, on proposal by the Ministry of Industry and Energy, to comply with the obligations of international conventions to which Spain is a Party

## **SWITZERLAND\***

### **GENERAL LEGISLATION**

#### ***Amendment of the 1959 Act on Atomic Energy (1995)***

The Federal Act of 23 December 1959 on the Peaceful Uses of Atomic Energy was amended on 5 February 1995 The purpose of the amendment is to strengthen the provisions on non-proliferation The gaps noted in this respect these past years, particularly in the context of the rearmament of certain countries in the

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\* This Note was kindly prepared by the Swiss Authorities

Near and the Middle East had to be filled and Switzerland had to establish a strict legal basis, especially in view of the ominous evolution observed in several countries. Switzerland's security is endangered, given the risk, at international level, of illegal commercial operations involving materials which could be used to manufacture nuclear weapons, with the recruitment of specialists by countries wishing to accede to nuclear technology.

The amendments of Sections 1 and 4 provide for the introduction of a licensing system for brokerage activities. Before amendment of the Act, commercial activities involving the delivery of nuclear materials from country A to country B were not subject to licensing if the materials did not cross the Swiss border. This was also true even when operations linked to such activities took place in Switzerland. Some companies or natural persons have indeed established themselves in Switzerland to carry out activities forbidden in their own countries. Switzerland should set up its own legal bases to enable it to penalise not only fraudulent exports but also illegal brokerage operations in sensitive nuclear materials and technology. Henceforth, this activity will therefore be governed by the Act, irrespective of the location of the object of the main transaction.

The other amendments concern penalties for breach of the obligation to take out a licence. These provisions are now stricter. The judge may henceforth deliver a sentence of 10 years imprisonment at most and inflict fines amounting to 5 million Swiss francs in the more serious cases.

The time limit for holding a referendum is 15 May 1995. If there is no request for a referendum, the Federal Council intends to bring this amendment into force during the summer of 1995.

On 3 February 1995, the Federal Assembly (Parliament) amended the Federal Act of 23 December 1959 on Atomic Energy [RS 732.0] as follows:

"Section 1, para. 2bis

2bis Brokerage activity, irrespective of the location of the nuclear articles or technology, means

- a) the creation of conditions which are essential with a view to concluding contracts the purpose of which is the manufacture, tender, acquisition or transmission of nuclear articles or technology,
- b) the conclusion of contracts within the meaning of (a) when the services are rendered by third parties.

Section 4 para. 1(c) and para. 2(d)

1 A licence from the Confederation is required

- c) for a brokerage activity on Swiss territory, as well as for the import, transit and export of nuclear fuels and residues

2 The Federal Council may subject to the licensing system

- d) a brokerage activity, on Swiss territory, involving nuclear articles and technology within the meaning of this paragraph "

#### ***Draft partial revision of the 1978 Federal Order concerning the Atomic Energy Act***

A note on this subject was published in Nuclear Law Bulletin No. 54

Despite the constitutional moratorium voted by the Swiss people and the cantons on 23 September 1990 which stops the construction of any new nuclear power plant until the year 2000, the problem of eliminating radioactive waste must be solved. The search for a site for the final storage of such waste in Switzerland has suffered from the lengthy delays imposed on the boring operations. Now several amendments to cantonal laws

may stop this work from being continued. The same problem exists with the other boring sites where the use of every possibility for objections and complaints has resulted in important delays.

At present, the Federal Council is empowered to grant the licences required by nuclear legislation for nuclear installations and preparatory measures (with the exception of the general licence) there is no possible appeal. Simplification of the objection procedure should therefore affect that part of the procedure which is not specific to nuclear activities (land planning, environment) and this may somewhat restrict cantonal powers.

According to the draft amendment, construction of a repository will always require a general licence which involves approval by Parliament. The other licences and grants will be included in a federal licence. In addition the holder of such a licence will be given expropriation rights. If he makes use of them only one procedure is necessary to conform to the requirements of both nuclear and expropriation laws. This is why the licence must be issued by the Federal Department of Transport, Communications and Energy and not by the Federal Council. The position of the persons involved will be much improved as regards the nuclear part of the procedure because henceforth, they will be able to lodge an appeal against this decision before the Federal Court.

Therefore, certain questions which, until now, had been left to the Cantons have been transferred to the Confederation. These mainly concern land planning and sovereign rights regarding the subsoil (mining rights). The Cantons may, however, intervene. Their views will in so far as possible be taken into account. Furthermore, the approval of the authorities competent at present will be required in several important fields such as the clearing of forests.

## **RADIATION PROTECTION**

### ***1991 Act and 1994 Ordinance on Radiation Protection***

The Federal Act of 22 March 1991 on Radiation Protection applies to all fields of protection against ionizing radiation, in particular in the use of nuclear energy. The only exception concerns the granting of licences and supervision. The provisions of the Act in this connection do not cover activities for which a licence is required by virtue of the Atomic Energy Act of 23 December 1959.

The purpose of the Radiation Protection Act is the protection of man and his environment against the hazards of ionizing radiation. It is based on the principles according to which exposure to radiation must be justified, such exposures must be as low as reasonably achievable and exposure limits must be fixed for certain persons (dose limit values).

The Act is divided into three main parts:

- provisions on actual radiation protection which regulate the protection of persons exposed to radiation, protection of the population in case of increased radioactivity as well as radioactive waste,
- provisions on licensing and supervision, specifying the activities which require a licence and generally describing the duties of the supervisory authorities
- provisions governing third party liability and insurance, legal protection, emoluments and penalties.

The Act regulates all aspects of radiation protection. The Ordinance of 22 June 1994 supplements the Act and specifies the technical provisions for all aspects of such protection as well as the procedures required in this field.

The new legislation (Act and Ordinance) entered into force on 1 October 1994. It has repealed, inter alia, the Ordinance of 30 June 1976 on Radiation Protection (see Nuclear Law Bulletin No. 18).

# **UKRAINE**

## **ORGANISATION AND STRUCTURE**

### ***Order establishing the Ministry for Protection of the Natural Environment and Nuclear Safety (1994)***

Decree No 768/94 of 15 December 1994 sets up the above Ministry and suppresses the previous Ministry of the Environment and the State Committee on Nuclear and Radiation Safety (GAN) Accordingly, the duties discharged until now by both these bodies have been taken over by the new Ministry

The main tasks of the Ministry are to improve the protection of the natural environment and further enhance the safe use of nuclear energy, radiation technology and radioactive substances

## **RADIOACTIVE WASTE MANAGEMENT**

### ***Bill on Radioactive Waste Management (1995)***

The Parliament of Ukraine accepted the first reading of the above Bill on 10 February 1995 While Parliament is to decide on the sites for storage of radioactive waste, the Government's approval is required for such storage The following paragraph briefly summarizes the Bill's provisions

Waste storage operations are subject to a licence and will be financed by a special Government Fund from outside the State budget. The Fund will be set up according to a procedure to be established by the Government. In case of an accident caused by radioactive waste, the owner of such waste will be responsible for eliminating the source or consequences of the damage Furthermore persons living in the neighbourhood of a radioactive waste repository will be entitled to compensation

# **URUGUAY**

## **ENVIRONMENTAL PROTECTION**

### ***Regulation on environmental impact assessments (1994)***

The above Regulation was adopted on 21 September 1994 in implementation of Act No 16 466 of 19 January 1994 on the same subject (see Nuclear Law Bulletin No 54)

The Regulation specifies that most public and private works which might generate a negative environmental impact require a prior environmental licence These activities include construction of plants for the treatment and final disposal of toxic and hazardous wastes and plants for nuclear power generation and conversion

The Ministry for Housing Land Planning and the Environment is the competent licensing authority. The licensing procedure involves the following steps.

- submission of the project, including all relevant particulars, its description, siting, ownership, proposed environmental protection measures, etc ,
- classification of the project into categories A (minimal or no negative environmental impact), B (moderate negative impact which may be countered by easily applicable measures) and C (significant negative impact requiring preventive/mitigating measures),
- application for a prior environmental licence which includes the classification certificate and the environmental impact study ,
- posting of project,
- public hearing and
- decision on the application

The Regulation specifies all the steps in the above procedure. When rendering its decision, the Ministry must assess whether the project's environmental impact is acceptable, taking into account the environmental impact study and all other information submitted in the application. The licence is granted only when the environmental impact of the project is acceptable or when any negative impact may be eliminated or reduced to a permissible level by the introduction of further preventive or mitigating measures.

The Ministry must communicate its decision within 150 days of submission of the application for a licence.

# INTERNATIONAL REGULATORY ACTIVITIES

## ***OECD NUCLEAR ENERGY AGENCY***

### **COLLECTIVE EXPERT OPINION ON THE ENVIRONMENTAL AND ETHICAL BASIS OF GEOLOGICAL DISPOSAL OF RADIOACTIVE WASTE (1995)**

At its meeting on 2 May 1995, the OECD Steering Committee for Nuclear Energy considered a report containing the Collective Opinion of the NEA Radioactive Waste Management Committee on the environmental and ethical basis of geological disposal. The Steering Committee had already on two previous occasions, in 1985 and 1990, approved the Radioactive Waste Management's Collective Opinions presenting a technical appraisal in the field of radioactive waste management and on the long-term safety of such management respectively (see Nuclear Law Bulletin Nos 35 and 47)

The objective of this new Collective Opinion is to put the disposal of radioactive waste in perspective with existing principles and policies regarding environmental protection, with emphasis on the ethical aspects of long-lived radioactive waste disposal, including considerations of equity and fairness within and between generations

This Collective Opinion by professionals having a responsibility at a national level in the field of radioactive waste management, is intended to contribute to an informed and constructive debate on the subject. It is based on recent work reported from NEA countries and on extensive discussions held at an NEA workshop organised in Paris in September 1994 on the Environmental and Ethical Aspects of Long-lived Radioactive Waste Disposal. Of particular importance in these discussions was the participation of the OECD Environment Directorate and of independent experts from academic and environmental policy circles

The report concluded that

- the geological disposal strategy can be designed and implemented in a manner that is sensitive and responsive to fundamental ethical and environmental considerations
- it is justified, both environmentally and ethically, to continue development of geological repositories for those long-lived radioactive wastes which should be isolated from the biosphere for more than a few hundred years, and
- stepwise implementation of plans for geological disposal leaves open the possibility of adaptation, in the light of scientific progress and social acceptability, over several decades, and does not exclude the possibility that other options could be developed at a later stage

This Collective Opinion received the support of the Steering Committee for Nuclear Energy and will be published shortly by the OECD/NEA

# **INTERNATIONAL ATOMIC ENERGY AGENCY**

## **MEASURES AGAINST ILLICIT TRAFFICKING IN NUCLEAR MATERIALS AND OTHER RADIOACTIVE SOURCES**

At its thirty-eighth regular session (19-23 September 1994), the IAEA General Conference adopted Resolution GC(XXXVIII)RES/15 on illicit trafficking in nuclear materials (see Nuclear Law Bulletin No 54). The Resolution was adopted in view of the concern expressed by the representatives of IAEA Member States about recent cases of illicit trafficking involving in particular, materials presumed to be coming from ex-USSR countries.

It was also agreed to set up a group of experts to examine in detail the actions to be taken at international level regarding illicit trafficking in nuclear materials. The first meeting was held on 2-3 November 1994 with participants from 46 countries and three international organisations. While confirming that the primary responsibility for preventing and responding to such events rested with governments and national authorities, the experts stressed the importance of encouraging bilateral and multilateral co-operation and intensifying the Agency's support activities to Member States in that field.

The experts' proposals were submitted to the IAEA Board of Governors at its meetings in December 1994 and March 1995.

The experts considered, in particular, that the IAEA should play a key role in the following matters:

- providing information on illicit trafficking
- promoting training activities for authorities and the public,
- assisting States in intensifying their physical protection measures for nuclear materials
- developing State systems of accounting and control of nuclear materials
- developing radiation safety infrastructures related to control and security of radioactive sources

A short-term programme of work (1995-1996) was established according to this list of activities. The programme includes two main aspects: illicit trafficking in nuclear materials and illicit trafficking in radioactive sources.

The question of illicit trafficking in nuclear materials is dealt with from the viewpoint of both prevention and response. Particular attention is paid to physical protection of nuclear materials and State accounting systems. The objective of co-operation in physical protection is to provide additional support to States and to propose training programmes and technical guidance adapted to the needs of States in that area. As regards State systems of accounting and control, these activities should include assistance in both planning and improving their technical features. Setting aside the more industrialised countries which already operate such systems, this action should concern mainly the Newly Independent States - NIS (of the ex-USSR) which need further assistance in that area.

As regards illicit trafficking in radioactive sources, action is focused on the relevant legal instruments, in particular on the International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources approved by the IAEA Board of Governors in 1994 (see under IAEA/NEA/ILO/FAO/WHO/PAHO below). The importance of these Standards, which have the status of legal recommendations, is explained by the fact that there are no legally binding international instruments according to which the parties are obliged to ensure the control and security of such sources and, in particular, to notify an international organisation of their theft or loss.



The Board of Governors is to soon decide on the proposals submitted by the group of experts on illicit trafficking of nuclear materials and other radioactive sources

## ***EUROPEAN UNION***

### **REORGANISATION OF THE JOINT RESEARCH CENTRE (1994)**

By Decision No 94/809/Euratom of 16 November 1994 of the European Communities the Commission amended Decision No 85/593/Euratom on the reorganisation of the Joint Research Centre (JRC) (see Nuclear Law Bulletin No 37)

The amendments provide for the reorganisation of the Board of Governors and the setting up of a Scientific and Industrial Advisory Group

The Board of Governors consists of the following members

- a high-level representative from each Member State, to be appointed by the Commission on the basis of nominations by the authorities of each State,
- a Chairman elected by the appointed representatives

All members of the Board are appointed for a three-year term which is renewable. The Board meets at least four times a year

The Board assists the Director General and gives its opinion for submission to the Commission on the role of the JRC within the Community and its scientific and financial management. The Commission takes full account of the opinions of the Board.

The Board deals in particular with proposals for specific programmes for the JRC and the preparation of multiannual strategic planning covering all JRC activities. It also deals with staff policy

The Scientific and Industrial Advisory Group set up by this Decision is made up of ten high-level representatives of the scientific and industrial community who are appointed by the Commission on a personal basis

The Advisory Group gives the Board of Governors its opinion on the annual work programmes and is also consulted on all questions relevant to the JRC concerning the scientific and technological connected with the development of Community policies

### **COMMISSION REGULATION ESTABLISHING A LIST OF PRODUCTS EXCLUDED FROM THE APPLICATION OF COUNCIL REGULATION (EEC) No 737/90 (1994)**

Commission Regulation (EC) No 3034/94 of 13 December 1994 establishes a list of products excluded from the application of Council Regulation (EEC) No 737/90 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power station (see Nuclear Law Bulletin No 49)

The Regulation specifies that most agricultural products currently imported from third countries are free of radioactive contamination from the Chernobyl accident or so slightly contaminated that they present a negligible health risk. Therefore it provides that all products save those listed in the Annex are excluded from the scope of Regulation (EEC) No 737/90

Regulation (EEC) No 1518/93 which had previously established a list of products excluded from the application of Regulation (EEC) No 737/90 is repealed.

#### **COUNCIL RESOLUTION ON RADIOACTIVE WASTE MANAGEMENT (1994)**

On 19 December 1994 the Council of the European Union adopted Resolution No 94/C 379/01 on radioactive waste management confirming the interest of pursuing a Community plan of action in that field

The Resolution reaffirms the importance of continuing the efforts to reduce the volume and toxicity of radioactive waste, emphasises that the establishment of suitable facilities for treatment, conditioning and final disposal of radioactive waste would greatly contribute to the creation of a safe waste management structure and encourages continuous co-operation with the IAEA and the OECD/NEA to provide international guidance and standards for such safe management.

### ***IAEA/NEA/ILO/FAO/WHO/PAHO\****

#### **INTERNATIONAL STANDARDS FOR RADIATION PROTECTION (1994 - 1995)**

At its meeting on 2 May 1995 the OECD Steering Committee for Nuclear Energy approved the new International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources (BSS) and recommended that Member Countries apply them at domestic level. It also agreed to their publication jointly with the IAEA, the ILO, the FAO, the PAHO\* and the WHO. The Steering Committee also agreed to co-sponsor publication of the Radiation Safety Fundamentals (which provide a description of the general objectives and basic principles for the requirements in the BSS) jointly with these Organisations.

A note on the new Basic Safety Standards was published in Nuclear Law Bulletin No 53. They supersede the previous standards issued in 1982 (see Nuclear Law Bulletin No 28).

The new BSS are based primarily on the new recommendations of the International Commission on Radiological Protection (ICRP) and were prepared by a Joint Secretariat made up of representatives of the sponsoring Organisations. They reflect recent developments in radiation protection and nuclear safety and intend to ensure safety with respect to all types of radiation sources. The BSS are limited to specifying basic requirements of radiation protection and nuclear safety, with some guidance on how to apply them. They are expected to be followed by more specific applicative guides which will be issued by the sponsoring organisations in their respective fields of competence.

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\* PAHO- Pan American Health Organisation.

# AGREEMENTS

## *BILATERAL AGREEMENTS*

### *Australia-Euratom*

#### **IMPLEMENTING ARRANGEMENT CONCERNING THE AGREEMENT ON NUCLEAR TRANSFERS (1993)**

Australia and the European Atomic Energy Community (Euratom) concluded an Agreement on 21 September 1981 concerning the transfer of nuclear materials from Australia to Euratom (see Nuclear Law Bulletin No 30) The Agreement, valid for a period of thirty years, fixes inter alia, the conditions to be met for such transfers, namely prohibition to use these materials for explosive or military purposes, implementation of safeguards, retransfers to third parties, etc

An Implementing Arrangement, concerning international obligation exchanges, to the above Agreement was concluded by an exchange of notes between Australia and the European Commission on 8 September 1993

The Arrangement provides that.

- the safeguards obligations of the 1981 Agreement will apply to transfers of quantities of materials to which, either Party, at the request of the other Party, has consented it should apply,
- the 1981 Agreement will cease to apply to quantities of material to which, either Party, at the request of the other Party, has consented it should no longer apply

The Implementing Arrangement entered into force on 8 September 1993 and remains in force for as long as the 1981 Agreement unless otherwise agreed by the Parties

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A further exchange of notes on another Implementing Arrangement took place between both Parties, also on 8 September 1993, where the European Commission requested the advance consent of Australia to the retransfer from Euratom to Japan of plutonium This plutonium is subject to the above 1981 Agreement on Nuclear Transfers, and to the United States/Euratom Agreement and has been recovered from spent fuel subject to the Japan/United States Agreement and the Japan/Australia Agreement.

Australia consented to the Commission's proposal and conditions of transfer on the same date This Implementing Arrangement entered into force on 8 September 1993 on the same conditions as the one described above

## ***Canada–People’s Republic of China***

### **AGREEMENT ON CO-OPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY (1994)**

Canada and the People’s Republic of China concluded the above Agreement on 7 November 1994. Under the Agreement, co-operation in the peaceful uses of nuclear energy may include supply of scientific and technical information, technical assistance and exchange of experts, studies of nuclear safety and regulations, exploration for and development of uranium resources.

The Agreement provides for the transfer of nuclear material, equipment and technology in accordance with conditions agreed by the Parties. Any transfer from the territory of either Party to a third party may take place only when agreed in writing prior to the transfer.

The Parties furthermore undertake not to enrich to twenty per cent or more in the isotope-235 or to reprocess the nuclear material subject to the Agreement. In such event, an arrangement must be concluded beforehand. The Agreement specifies that such material cannot be used to manufacture or develop any nuclear explosive device or for any military purpose.

The International Atomic Energy Agency is the competent authority for verifying compliance with the obligations laid down by the Agreement. In Canada, pursuant to its Safeguards Agreement concluded with the Agency on 21 February 1972 and in China, in accordance with that country’s voluntary offer Agreement with the Agency concluded on 20 September 1988.

The Agreement will remain in force for thirty years and may be renewed for additional periods of ten years unless either Party, at least six months before expiry of the Agreement, notifies the other Party of its intention to terminate it.

## ***Canada–Czech Republic***

### **AGREEMENT FOR CO-OPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY (1995)**

The above Agreement between Canada and the Czech Republic was signed on 22 February 1995. It entered into force on the date of its signature for an initial period of ten years and may be extended for additional periods of five years unless otherwise decided by either Party.

The Agreement provides for co-operation related to the use, development and application of nuclear energy for peaceful purposes. Such co-operation may include, inter alia,

- the supply of information which includes technology related to research and development, health, nuclear safety, emergency planning and environmental protection, equipment, uses of nuclear material
- supply of nuclear material and equipment;
- industrial co-operation,
- implementation of R and D projects for nuclear energy applications in agriculture, medicine, electricity.

- training, technical assistance and exchanges of experts, and
- exploration for and development of uranium resources

It is provided that nuclear material, equipment and technology subject to the Agreement may not be used to manufacture or otherwise acquire nuclear weapons or other explosive devices. This commitment will be verified in accordance with the safeguards agreements concluded by both Parties with the IAEA under the Non-Proliferation Treaty.

The Agreement further provides that the Parties will take all the necessary measures to ensure the physical protection of the nuclear material covered by the Agreement.

The Agreement is supplemented by several Annexes which form part of the Agreement. They concern the nuclear material, material, equipment and technology subject to the Agreement (Annexes A, B, C), definitions reproduced from Article XX of the Statute of the IAEA (Annex D), and agreed levels of physical protection (Annex E).

## ***Czech Republic–Republic of Korea***

### **STATEMENT OF INTENT ON CO-OPERATION IN THE NUCLEAR FIELD (1995)**

On 5 March 1995, the Czech Republic and the Republic of Korea concluded the above Statement of Intent.

In that Statement the Parties recognize that close co-operation in the field of nuclear energy between the two countries would play a vital role and share the view that both countries would make efforts to initiate and strengthen their co-operation in the peaceful uses of nuclear energy and nuclear safety. They also recognize that it is necessary for them to conclude a nuclear co-operation agreement at governmental level and make arrangements to promote their co-operation as soon as possible. Both countries would expand and strengthen their co-operation in nuclear field by an exchange of scientists and engineers, joint research, information exchange and other co-operative activities.

## ***Denmark–Lithuania***

### **AGREEMENT ON INFORMATION EXCHANGE AND CO-OPERATION IN NUCLEAR SAFETY AND RADIATION PROTECTION (1993)**

Denmark and Lithuania concluded the above Agreement on 16 March 1993. It entered into force on the date of its signature for an unlimited period and may be terminated in writing by either Party six months after receipt of such notification by the other Party.

The Agreement was concluded in furtherance of the 1986 IAEA Convention on Early Notification of a Nuclear Accident (the text of the Convention is reproduced in the Supplement to Nuclear Law Bulletin No. 38). The Agreement provides that the Parties will notify each other immediately of any accident in connection with

a nuclear facility or activities in cases where the radioactivity released may affect the territory of the other Party. They will also notify each other of unusual increases of radioactivity on their own territories even when unconnected with an accident in a nuclear facility or activities on the territory concerned.

The Parties may arrange consultations and exchange information on the protection of persons and the environment against radiation and on the layout of the respective countries' nuclear facilities for safety purposes.

Furthermore, the Parties undertake to encourage the development of co-operation between the institutions of both countries working in the fields of nuclear safety and radiation protection.

## ***Greece–Romania***

### **AGREEMENT ON EARLY NOTIFICATION OF A NUCLEAR INCIDENT AND EXCHANGE OF INFORMATION ON NUCLEAR INSTALLATIONS (1995)**

On 10 March 1995, Greece and Romania concluded an Agreement on Early Notification of a Nuclear Incident and on Exchange of Information on Nuclear Installations.

The Agreement aims to implement the 1986 IAEA Convention on Early Notification (the text of the Convention is reproduced in the Supplement to Nuclear Law Bulletin No. 38). The Agreement also provides for exchange of information on the development of the peaceful uses of nuclear energy.

## ***Russia–European Commission***

### **MEMORANDUM OF UNDERSTANDING ON TECHNICAL ASSISTANCE IN NUCLEAR SAFETY (1995)**

The above Memorandum of Understanding between the European Commission and the Russian Federation on the implementation of technical assistance programmes in the field of nuclear safety was concluded on 27 February 1995.

This text further specifies the technical, legal and administrative conditions under which the programmes financed by the European Union in the Russian Federation under the Tacis programmes of nuclear safety should be carried out.

The main objective of the programmes is the improvement of the safety of nuclear power plants and of other civil nuclear installations in the Russian Federation, including fuel cycle and radioactive waste management facilities.

A provision in the Memorandum exonerating the Community from liability paves the way for Western companies participating in Tacis programmes to provide their technical assistance to Russian nuclear installations.

since it absolves them from liability for any accident occurring in such installations. The Russian Federation furthermore accepts the Commission's request for an indemnity statement on nuclear liability from the beneficiaries of such assistance, which specifies in particular that:

- the Community (European Union) will not be held liable for any injury, loss or damage caused to the beneficiary or the Russian Federation or to its citizens or to third parties as a result of any act or omission related to execution of the Tacis programmes,
- the beneficiary will bring no claims arising from activities related to execution of the programmes against the Community (European Union), its institutions and Member States and their personnel and their contractors, suppliers of services, etc. for indirect, direct or consequential damage to property owned by the Russian Federation.

The competent authority in the Russian Federation for implementation of the Memorandum is the Ministry for Atomic Energy (Minatom). The programmes and projects will be monitored by a Joint Management Unit.

## ***MULTILATERAL AGREEMENTS***

### ***NUCLEAR THIRD PARTY LIABILITY CONVENTIONS (1995)***

#### **1963 VIENNA CONVENTION ON CIVIL LIABILITY FOR NUCLEAR DAMAGE**

The Slovak Republic acceded to the above Convention on 7 March 1995.

#### **1988 JOINT PROTOCOL ON THE APPLICATION OF THE VIENNA CONVENTION AND THE PARIS CONVENTION**

Finland ratified the above Protocol on 3 October 1995, Slovenia and the Slovak Republic acceded to the Joint Protocol on 27 January 1995 and 7 March 1995 respectively.

See Nuclear Law Bulletin No. 54 for the status of the Nuclear Liability Conventions.

### **TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS**

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was adopted on 1 July 1968 and entered into force on 5 March 1970 in accordance with Article IX thereof which provides that it shall enter into force following its ratification by forty Signatory States and the designated Depositary States [the United Kingdom, the United States and Russia (ex -USSR)]. The text of the Treaty is reproduced as an Appendix to a commentary on the 1990 NPT Review Conference published in Nuclear Law Bulletin No. 46. The 1995 NPT Review Conference began on 17 April 1995 at the Headquarters of the United Nations in New York. The Parties to the Treaty must decide on whether to extend it for a set period or indefinitely. It should be noted that

any extension of the Treaty requires a favourable vote from an absolute majority of the Parties At the close of the meeting, the Parties agreed to extend the Treaty for an indefinite period

The following table gives the status of ratifications and accessions to the Treaty on the eve of the Conference

The following table gives the status of the NPT as of April 1995

### *TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS*

<b>Contracting Parties</b>	<b>Date of Ratification/ Accession/Succession</b>
Albania** (acc )	12 Sept 1990
Afghanistan*	4 Feb 1970
Algeria (acc )	12 Jan 1995
Antigua and Barbuda (succ )	17 June 1985
Argentina (acc )	10 Feb 1995
Armenia (acc )	15 July 1993
Australia*	23 Jan 1973
Austria*	27 June 1969
Azerbaijan (acc )	22 Sept 1992
Bahamas (succ )	11 Aug 1976
Bahrain (acc )	3 Nov 1988
Bangladesh *(acc )	31 Aug 1979
Barbados	21 Feb 1980
Belarus (acc )	22 July 1993
Belgium*	2 May 1975
Belize (succ )	9 Aug 1985
Benin	31 Oct 1972
Bhutan*	23 May 1985
Bolivia	26 May 1970
Bosnia and Herzegovina (succ )	15 Aug 1994
Botswana	28 April 1969
Brunei* (acc )	26 March 1985
Bulgaria*	5 Sept. 1969
Burkina Faso	3 March 1970
Burundi (acc )	19 March 1971
Cambodia (acc )	2 June 1972
Cameroon, United Republic of	8 Jan 1969
Canada*	8 Jan 1969
Cape Verde (acc )	24 Oct 1979
Central African Republic (acc )	25 Oct 1970
Chad	10 March 1971
China, People's Republic of (acc )	9 March 1992
Colombia**	8 April 1986
Congo (acc )	23 Oct 1978



<b>Contracting Parties</b>	<b>Date of Ratification/ Accession/Succession</b>
Costa Rica*	3 March 1970
Cote d'Ivoire	6 March 1973
Croatia (succ )	29 June 1992
Cyprus*	10 Feb 1970
Czech Republic* (succ )	1 Jan 1993
Denmark*	3 Jan 1969
Dominica (succ )	10 Aug 1984
Dominican Republic*	24 July 1971
Ecuador*	7 March 1969
Egypt*	26 Feb 1981
El Salvador*	11 July 1972
Equatorial Guinea (acc )	1 Nov 1984
Eritrea (acc )	3 March 1995
Estonia (acc )	7 Jan 1992
Ethiopia*	5 Feb 1970
Fiji* (succ )	14 July 1972
Finland*	5 Feb 1969
France (acc )	3 Aug 1992
Gabon (acc )	19 Feb 1974
Gambia*	12 May 1975
Georgia (acc )	7 March 1994
Germany, Federal Republic of*	2 May 1975
Ghana*	4 May 1970
Greece*	11 March 1970
Grenada (succ )	2 Sep 1975
Guatemala*	22 Sept. 1970
Guinea (acc )	29 April 1985
Guinea Bissau (succ )	20 Aug 1976
Guyana (acc )	19 Oct. 1993
Haiti	2 June 1970
Holy See (acc )	25 Feb 1971
Honduras*	16 May 1973
Hungary*	27 May 1969
Iceland*	18 July 1969
Indonesia*	12 July 1979
Iran*	2 Feb 1970
Iraq*	29 Oct. 1969
Ireland*	1 July 1968
Italy*	2 May 1975
Jamaica*	5 March 1970
Japan*	8 June 1976
Jordan*	11 Feb 1970
Kazakhstan (acc )	14 Feb 1994
Kenya	11 June 1970
Kiribati* (succ )	18 April 1985
Korea, Democratic People's Republic of (acc )	12 Dec 1985
Korea*, Republic of	23 April 1975
Kuwait	17 Nov 1989

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**Contracting Parties****Date of Ratification/  
Accession/Succession**

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Kyrgyzstan (acc )	5 July 1994
Laos	20 Feb 1970
Latvia (acc )	31 Jan 1992
Lebanon*	15 July 1970
Lesotho*	20 May 1970
Liberia	5 March 1970
Libyan Arab Jamahiriya*	26 May 1975
Liechtenstein* (acc )	20 April 1978
Lithuania (acc )	23 Sept. 1991
Luxembourg*	2 May 1975
Macedonia, former Yugoslav Republic of (succ )	30 March 1995
Madagascar*	8 Oct. 1970
Malawi (succ )	18 Feb 1986
Malaysia*	5 March 1970
Maldives*	7 April 1970
Mali Republic of	10 Feb 1970
Malta*	6 Feb 1970
Marshall Islands (acc )	31 Jan. 1995
Mauritania (acc )	23 Oct. 1993
Mauritius*	8 April 1969
Mexico*	21 Jan. 1969
Micronesia (acc )	14 April 1995
Moldova (acc )	11 Oct. 1994
Monaco (acc )	13 March 1995
Mongolia*	14 May 1969
Morocco*	27 Nov 1970
Mozambique (acc )	4 Sept. 1990
Myanmar (Burma) (acc )	2 Dec 1992
Namibia (acc )	2 Oct. 1992
Nauru* (acc )	7 June 1982
Nepal*	5 Jan 1970
Netherlands*	2 May 1975
New Zealand*	10 Sept. 1969
Nicaragua*	6 March 1973
Niger (acc )	9 Oct. 1992
Nigeria*	27 Sept. 1968
Norway	5 Feb 1969
Palau (acc ) 14 April 1995	
Panama	13 Jan. 1977
Papua New Guinea* (acc )	13 Jan 1982
Paraguay*	4 Feb 1970
Peru*	3 March 1970
Philippines*	5 Oct. 1972
Poland*	12 June 1969
Portugal* (acc )	15 Dec 1977
Qatar (acc ) 3 April 1989	
Romania*	4 Feb 1970
Russian Federation	5 March 1970

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**Contracting Parties****Date of Ratification/  
Accession/Succession**

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Rwanda (acc )	20 May 1975
St. Kitts and Nevis (acc )	22 March 1993
St. Lucia* (acc )	28 Dec 1979
St. Vincent and the Grenadines (succ )	6 Nov 1984
San Marino	10 Aug 1970
Sao Tome and Principe (acc )	20 July 1983
Saudi Arabia (acc )	3 Oct. 1988
Senegal*	17 Dec 1970
Seychelles (acc )	12 March 1985
Sierra Leone (acc )	26 Feb 1975
Singapore*	10 March 1976
Slovak Republic (succ )	1 Jan 1993
Slovenia (acc )	7 April 1992
Solomon Islands (succ )	17 June 1981
Somalia	5 March 1970
South Africa *(acc )	10 July 1991
Spain *(acc )	5 Nov 1987
Sri Lanka*	5 March 1979
Sudan*	31 Oct. 1973
Suriname* (succ )	30 June 1976
Swaziland	11 Dec 1969
Sweden* 9 Jan 1970	
Switzerland*	9 March 1977
Syrian Arab Republic	24 Sept. 1969
Tajikistan (acc )	17 Jan 1995
Tanzania (acc )	31 May 1991
Thailand *(acc )	2 Dec 1972
Togo	26 Feb 1970
Tonga (succ )	7 July 1971
Trinidad & Tobago	30 Oct. 1986
Tunisia*	26 Feb 1970
Turkey*	17 April 1980
Turkmenistan (acc )	29 Sept. 1994
Tuvalu *(succ )	19 Jan. 1979
Uganda(acc )	20 Oct. 1982
Ukraine (acc )	5 Dec 1994
United Kingdom	27 Nov 1968
United States	5 March 1970
Uruguay*	31 Aug 1970
Uzbekistan (acc )	2 May 1992
Venezuela*	25 Sept. 1975
Viet Nam, *Socialist Republic of (acc )	14 June 1982
Western Samoa *(acc )	17 March 1975
Yemen, Arab Republic of	1 June 1979

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**Contracting Parties****Date of Ratification/  
Accession/Succession**

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Yugoslavia	4 March 1970
Zaire*	4 Aug 1970
Zambia (acc )	15 May 1991
Zimbabwe(acc	26 Sept. 1991

(Chinese Taipei 27 Jan 1970)

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acc = accession succ = succession

\* These countries have NPT safeguards agreements in force

\*\* These countries have non-NPT full-scope safeguards agreements in force

## ***Germany/Netherlands/United Kingdom/United States of America***

### **AGREEMENT ON AN URANIUM ENRICHMENT INSTALLATION (1992)**

The Agreement of 24 July 1992 between the Governments of the Federal Republic of Germany the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland ("the Three Governments") and the Government of the United States of America regarding the establishment, construction and operation of an uranium enrichment installation in the United States has been accepted by German Parliament and was published in Bundesgesetzblatt 1994, II, p 3576

In its Article II, the Agreement specifies that

- the Three Governments will authorise the transfer to the United States of centrifuge technology to establish, construct and operate the installation,
- the United States will provide for the transfer to and the use in the United States by the joint venture of such centrifuge technology to establish, construct and operate the installation
- the Three Governments and the Urenco Company\* will have access to data generated at the installation which is designated restricted data,
- the Three Governments and the Urenco Company will have access to United States national security information to apply safeguards and security systems to the installation

The Agreement provides for the necessary legal framework to implement these conditions The Agreement also contains, inter alia, provisions on international safeguards and physical protection

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\* The "Three Governments" concluded an Agreement in 1970 for the development and exploitation of a gas centrifuge process for producing enriched uranium, forming the Urenco Company The text of the Agreement is reproduced in Nuclear Law Bulletin No 6

Any centrifuge technology transferred to the United States, subject to this Agreement, the installation, any nuclear material in the installation any special nuclear material produced through the use of such special nuclear material and any data generated at the installation which is designated restricted data will only be used for peaceful, non-explosive purposes (Article III) The nuclear material to which this latter condition applies and which is within the territory of the United States will be subject to the application of international safeguards The same holds true for physical protection measures which will at least provide the level of protection recommended in IAEA document INFCIRC/225 Rev 2 or subsequent revisions thereto (Articles IV and V)

Articles VI et seq contain provisions on transfers of nuclear material, competent agencies, security classifications, classified information, the protection of proprietary information and the relationship with the European Atomic Energy Community (Euratom)

The Annex to the Agreement deals with the procedure for the monitoring and review of data generated at the installation which is designated restricted data

The Agreement will remain in force for a period of 30 years It may be extended automatically for an additional period of fifteen years unless the Three Governments or the United States notify the other Party of their desire to cease the Agreement (Article XIV)

## *FRANCE*

**Que sais-je ? Le droit nucléaire, by J-M Ramaud, published by Presses Universitaires de France, Paris, 1994, 126 pages**

The purpose of the "Que sais-je" series is to familiarize its readers with economic historical or legal topics by using a concise approach to the subject concerned. Que sais-je? Le droit nucléaire therefore follows that pattern.

After a general introduction focusing on the development of nuclear law alongside the expansion and decline of that source of energy during the twentieth century, this book analyses the particularities of that law. The author defines it as composite law (Chapter I), contested law (Chapter II), model law (Chapter III). Each connotation refers to a specific activity in the field of the peaceful uses of nuclear energy. The term "model law" for example, refers to the efforts of the international community to set up a strong and efficient legal system to ensure appropriate compensation of victims in case of a nuclear accident.

The approach chosen is based on the historical context of what has been called the nuclear era, with particular attention being paid first to the cold war and then to international co-operation. The author, therefore, preferred to highlight history and hence development of that law rather than proceed with a strict analysis of the relevant texts.

## *UNITED NATIONS*

**The United Nations and Non-Proliferation, United Nations Blue Book Series, Volume III, Department of Public Information, United Nations, New York, 1995, 189 pages**

This book was published on the eve of the Review Conference of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Section One comprises an Introduction by the Secretary-General of the United Nations Boutros-Boutros Ghali and provides an overview of the present nuclear non-proliferation regime, supplemented by a collection of relevant legal texts issued by the International Atomic Energy Agency (IAEA) and the United Nations (UN) (Section Two).

Section One highlights the NPT as the cornerstone of the international community's efforts to prevent the proliferation of nuclear weapons while promoting in parallel the development of nuclear technology for peaceful purposes. This analysis is supplemented by a description of other instruments in that field: the IAEA Safeguards System, the Convention on Nuclear Safety, the Convention on the Physical Protection of Nuclear Material, the international instruments prohibiting nuclear weapons in certain parts of the world and beyond it. The Section is concluded by a brief review of the Treaties on nuclear disarmament between the ex-USSR and the United States.

Section Two of the book is mainly made up of a series of texts which are of great relevance to nuclear non-proliferation. They include not only the texts of international Treaties and Conventions but also reports, resolutions and statements by the IAEA and the UN.

This publication forms part of the United Nations Blue Book Series whose purpose is to provide tools for research and reflection on selected topics within the competence of the United Nations for academics, lawyers, journalists.

# LIST OF CORRESPONDENTS TO THE NUCLEAR LAW BULLETIN

- ALGERIA** - Mr A CHERF, Radiation Protection and Safety Centre
- ARGENTINA** - Mr J MARTINEZ FAVINI Legal Advisor National Atomic Energy Commission
- AUSTRALIA** - Ms M E HUXLIN INIS Information Officer Australian Nuclear Science and Technology Organisation (ANSTO)
- AUSTRIA** - Dr J KRENN Deputy Director Division of Nuclear Co-ordination and Non-Proliferation Federal Chancellery
- BELGIUM** - Mr P STALLAERT Director General Technical Safety of Nuclear Installations Ministry of Employment and Labour  
Mr F RIVALET, Legal Services Ministry of Economic Affairs
- BRAZIL** - Mrs D FISCHER Legal Affairs Comissao Nacional de Energia Nuclear
- BULGARIA** - Mr A PETROV Senior Expert, Committee on the Use of Atomic Energy for Peaceful Purposes
- CANADA** - Ms L S HOLLAND General Counsel Atomic Energy Control Board
- CHINA** - Ms LIU XUEHONG Deputy Director General Bureau of Foreign Affairs, Ministry of Nuclear Industry
- CZECH REPUBLIC** - Mr R BEZDEK, Professor at the Institute of Law Czechoslovak Academy of Science  
- Mr F SURANSKY, Section for Nuclear Area Administration Ministry of Industry and Trade
- DENMARK** - Ms C ALSING YUUL Legal Department, Ministry of Justice
- FINLAND** - Mr Y SAHRAKORPI, Ministerial Counsellor Ministry of Trade and Industry
- FRANCE** - Mrs D DEGUEUSE Legal Department Atomic Energy Commission
- GERMANY** - Dr N PELZER Institute of Public International Law of Gottingen University Division of Nuclear Law



- GHANA** - Mrs OFORI-BOATENG Acting Director for Legislative Drafting Attorney General's Dept
- GREECE** - Prof A A KATSANOS, President Greek Atomic Energy Commission
- HUNGARY** - Ms V LAMM Professor at the Institute for Legal and Administrative Studies, Academy of Sciences Budapest
- INDONESIA** - Mr SULCHAN, Head, Bureau for Public Acceptance and Co-operation on Science and Technology National Atomic Energy Commission
- IRELAND** - Mr K DOYLE Higher Executive Officer, Nuclear Section, Department of Industry and Energy
- ITALY** - Dr F NOCERA International Relations National Agency for New Technologies, Energy and the Environment
- Mr G GENTILE Legal Office, National Electricity Board
- JAPAN** - THE DIRECTOR, Research and International Affairs Division, Atomic Energy Bureau, STA
- JORDAN** - Mr A M A HABJOUQA, Ministry of Energy and Resources
- KAZAKHSTAN** - Mr S VATAEV, Consultant to the Director General, Atomic Energy Agency
- KOREA  
REPUBLIC OF** - Mr K-Gab PARK Assistant Professor Dept of Law, Hallym University
- LATVIA** - Mr A SALMINS Head Specialist Environmental Protection Department
- LITHUANIA** - Mr G RUSECKAS, Head, Legal Division, Energy Agency
- MEXICO** - Mrs Ma DE LOURDES VEZ CARMONA Legal Adviser, Instituto Nacional de Investigaciones Nucleares
- NETHERLANDS** Mr R VAN EMDEN, Counsellor, Insurance Department, Ministry of Finance
- NORWAY** - Ms A BERGE HELLESYLT, Ms A B ANDERSEN Health Dept., Ministry of Health and Social Affairs
- POLAND** - Ms M LICHONIEWICZ, Legal and Treaty Department Ministry of Foreign Affairs
- PORTUGAL** - Mr H VIEIRA Head, Nuclear Energy Division, General Directorate for Energy
- RUSSIAN  
FEDERATION** - Prof A JOYRISCH, Dr O SUPATAEVA Institute of State and Law Russian Academy of Sciences
- SLOVAK  
REPUBLIC** - Mr J ZLATNANSKY Vice-Chairman, Nuclear Regulatory Authority
- SLOVENIA** - Prof M JUHART Pravna Fakulteta, Ljubljana University
- SPAIN** - Mr A ARIAS, Secretary General, Consejo de Seguridad Nuclear

- Ms L CORRETJER Ministry of Industry and Energy
- SWEDEN**
  - Mr Tomas NORSTRÖM Senior Legal Adviser Ministry of Justice
  - Mr G HEDELIUS Senior Legal Adviser, Nuclear Power Inspectorate
- SWITZERLAND** - Mr W A. BUHLMANN, Head Legal Services Federal Office of Energy
- TUNISIA** - Mr M CHALBI, Ministry of Education and Science National School of Engineering Monastir
- TURKEY** - Dr Dogan BOR Head of the Research, Development and Co-ordination Department, Turkish Atomic Energy Authority
- UNITED KINGDOM**
  - Mr M W TURNER Legal Advisor UK Atomic Energy Authority
  - Mr S MILLIGAN Assistant Treasury Solicitor Department of Energy
- UNITED STATES**
  - Mrs M NORDLINGER Office of the General Counsel U S Nuclear Regulatory Commission
  - Ms S KLEIN Acting Assistant General Counsel for Civilian Nuclear Affairs U S Department of Energy
- UKRAINE**
  - Mr Y KARPICH Head Legal Division State Committee on Nuclear and Radiation Safety
  - Mr Y KRUPA Head Institute of State and Law National Academy of Sciences
- URUGUAY** - Dr D PEREZ PINEYRUA Deputy Director, National Atomic Energy Commission
- IAEA** - Mr V BOULANENKOV Senior Legal Officer, International Atomic Energy Agency
- EC**
  - Mr R LENNARTZ Directorate General for Energy, European commission
  - Mr G VALERIO JORDANA Directorate General for the Environment Nuclear Safety and Civil Protection, Radiation Protection Division
- WHO** - Mr S FLUSS Councillor on Health Legislation World Health Organization
- IIEL** - Dr P CAMERON Director, International Institute of Energy Law Leiden University