Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation establishing an Instrument for Nuclear Safety Cooperation'

COM(2011) 841 final

(2012/C 229/19)

Rapporteur: **Richard ADAMS**

On 7 December 2011 the European Commission decided to consult the European Economic and Social Committee, under Article 203 of the Treaty on the European Atomic Energy Community, on the

Proposal for a Council Regulation establishing an Instrument for Nuclear Safety Cooperation

COM(2011) 841 final.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 10 May 2012.

At its 481st plenary session, held on 23 and 24 May 2012 (meeting of 23 May), the European Economic and Social Committee adopted the following opinion by 146 votes to 5 with 6 abstentions.

1. **Conclusions and recommendations**

1.1 The Committee welcomes the proposed regulation and conditionally supports the wider application of the EU's expertise in nuclear safety to third countries.

1.2 The Committee notes that oversight of the substantial financial reference amount of EUR 631 million over the period 2014-2020 rest with EuropeAid – Development and Cooperation DG and will be governed by rules and procedures common to all aid and development policies. The Committee expects this to enhance accountability, transparency and consistency with other aid programmes.

1.3 The Committee notes that it will be receiving a report from the Commission on the implementation, results, main outcomes and impacts of this programme in the Union's external financial assistance every two years, commencing in 2016, and looks forward to full engagement with this process of scrutiny and review. Timely planning of the mid-term reviews of the programmes should maximise capacity to show results and no doubt will take place in collaboration with the geographical programmes/EU Delegations in partner countries.

1.4 It is noted that the views of European civil society about the development of nuclear energy in general vary considerably across the Member States and recognition of this should be more evident in certain aspects of the regulation.

1.5 In particular it should be clarified for the European citizen as tax payers, that the majority of programme expenditure will be directed towards remediation with only a small minority of expenditure applied to safety advisory programmes in emerging economies where political and civil stability can be assured.

1.6 For giving assistance to emerging countries the Commission should propose an international convention on criteria and conditionality relating to nuclear safety advisory work to be developed between the small number of states capable of delivering such advice. Irrespective of such a convention, clear criteria should be implemented in the INSC to enable a decision on whether an emerging country:

— meets minimum criteria of national and international stability

— is capable and prepared to guarantee the installation of the administrative, scientific and technical structure that is needed to realise the nuclear option

— can sustainably make available the financial, technical and industrial resources needed to ensure a high level of regulatory competence, to ensure all means for safe operations and provide for a long term safe waste management programme.

1.7 These criteria should not be part of the annex of the regulation but included in the main text because they comprise general principles related to international nuclear safety, the safety of international relations and international security of high significance.

1.8 Assistance projects should only be implemented in an emerging country if it is a party to the Non-Proliferation Treaty and its Protocols, the Convention on Nuclear Safety and the Joint Convention on the Safe Management of Radioactive Waste.

1.9 Only under exceptional circumstances relating to safety assurance should resources be supplied for the acquisition of technical equipment. Criteria should be developed by the Commission and be reported. Assistance should not be given to operators.

1.10 As an aid to transparency it is recommended that case studies from the current programme are made available as well as improving presentation and inter-referencing on the EuropeAid website.

1.11 The Instrument for Nuclear Safety Cooperation (INSC) programme should encourage and evaluate the capacity for mandatory instruments to be placed into law in each country of activity in circumstances where they would implement or enhance International Atomic Energy Agency (IAEA) treaties, conventions and agreements.

1.12 We particularly recommend the inclusion of support for independent civil society organisations within or adjacent to beneficiary states who wish to improve accountability and transparency of the nuclear safety culture through specific actions.

2. **Introduction**

2.1 From time to time issues of nuclear safety and security beyond Europe are brought into very sharp focus, most notably through Three Mile Island in 1979, Chernobyl in 1986 and Fukushima in 2011. Such accidents have global impact and highlight the catastrophic consequences arising from deficient design, poor safety culture and an inadequate operational safety and regulatory framework.

2.2 441 commercial nuclear reactors were operating in 30 countries around the world in 2010, many were built in the 1970s and 1980s, with an average lifespan of around 35 years. 56 countries also operate some 250 civil research reactors. Over 60 further nuclear power reactors are under construction, while over 150 are planned. New reactors will be built principally in China, India and Russia, but possibly also in South-east Asia, South America and the Middle East. The demand for electricity is inexorably rising and states may also seek to expand their exports of nuclear generated power.

2.3 Irrespective of whether a nuclear 'renaissance' develops, significant nuclear safety issues, potentially with global impact, will always be present as long as nuclear power plants are operating. The EU therefore determines that aspects of international nuclear safety are a legitimate area of its concern and involvement, particularly as, from the 1957 Euratom Treaty onwards, the Union has developed research, technical, operational and regulatory expertise in this area. With about a third of the world's installed nuclear capacity and the widest experience in diverse and dynamic regulatory and safety regimes, Europe contains a significant knowledge pool in this area. The Chernobyl disaster then stimulated a dynamic and proactive approach on nuclear safety cooperation and dissemination as the potential weaknesses in third country safety regimes were tragically illustrated.

2.4 From 1991 onwards, as part of the EU's TACIS programme (Technical Assistance to the Commonwealth Independent States) significant support has been provided in the area of nuclear safety to non-member states. Support was directed to safety analysis; on-site assistance to nuclear power plants (NPPs) and in some cases supply of equipment to improve the control of the plants operation; regulatory and licensing activities; and waste management. Contributions were also made to wider international initiatives, particularly action at Chernobyl. Some EUR 1.3 billion was allocated for nuclear safety assistance particularly in Russia and Ukraine and, to a much lesser extent, in Armenia and Kazakhstan.

2.5 From 2007 the INSC ([1]), being specifically dedicated to the promotion and development of nuclear safety, succeeded TACIS and was no longer limited to states created as a result of the break-up of the Soviet Union. INSC has a budget of EUR 524 million for the period 2007-2013 and finances actions on improving nuclear safety, the safe transport, treatment and disposal of radioactive waste, the remediation of former nuclear sites and the protection against ionising radiation given off by radioactive materials, emergency preparedness and the promotion of international cooperation in the field of nuclear safety.

2.6 The EU works closely with the IAEA, often providing implementation finance for recommended programmes which would otherwise be unfunded.

2.7 A new challenge arises from the intention of third countries to build up a nuclear power capacity. Some of those emerging countries may not always have stable political structures and may lack separation of powers, democratic control, experienced administrative structures and expertise in managing high risk technologies. Indirectly encouraging such countries to develop nuclear technology by giving their nuclear programme a veneer of credibility from EU assistance could create new risks for nuclear safety.

2.8 Apart from that and irrespective of any intentions of third countries to build up nuclear power capacity the EESC is conscious of the fact that the civil use of nuclear power is linked with the production of plutonium, or other radioactive materials and with the development of technical knowhow that could produce international nuclear threats and increase international tensions. Those risks could be increased in unstable third countries.

([1]) OJ L 81, 22.3.2007, p. 1.

3. **Summary of the proposed regulation**

3.1 The current proposed regulation, a recasting of the 2007 INSC Regulation, provides, inter alia, for a revision of the geographical scope to include all third countries worldwide and specifies the priorities and criteria for cooperation. Responsibility for implementation of the actions rests with EuropeAid - Development and Cooperation DG (DEVCO), with the collaboration of External Action DG, the Energy DG and the Joint Research Centre. In particular the regulation will be subject to the *Common rules and procedures for the implementation of the Union's instruments for external action* (COM(2011) 842 final) This also provides for a simplified implementing approach to the Development Cooperation Instrument ('DCI'), the European Instrument for Democracy and Human Rights (EIDHR), the European Neighbourhood Instrument (ENI), the Instrument for Stability (IfS), the Instrument for Pre-accession Assistance (IPA) and the Partnership Instrument (PI).

3.2 The regulation supports the promotion of a high level of nuclear safety, radiation protection and the application of efficient and effective safeguards of nuclear material in third countries. This covers mining for fuel, new build, operating, decommissioning and waste disposal issues – a comprehensive approach. In the view of the Commission, progress will be assessed through IAEA peer review, the status of development of the spent fuel, nuclear waste and decommissioning strategies, the respective legislative and regulatory framework and the implementation of projects and the number and importance of issues identified in relevant IAEA nuclear safeguards reports.

3.3 The regulation seeks to ensure consistency towards EU policy objectives and other third country development measures through the formulation of strategy papers followed by multi-annual indicative programmes covering an initial period of four years, followed by a subsequent three years.

3.4 An annex defines the specific supported measures and the criteria for cooperation, including the priorities, under which the budget of 631 million Euros will be spent over seven years.

4. **General comments**

4.1 The Committee notes the process by which the nuclear safety assistance and cooperation programmes have developed over the last 20 years. The present proposed regulation continues that trend and tries to make it clear that safety and not the promotion of nuclear energy is the overriding aim (COM(2011) 841 final; Annex – Criteria – final point). The Committee understands that the aim of the programme is not to encourage emerging countries to implement nuclear technology. To this end a more detailed elaboration of the balance of expenditure under previous and proposed INSC programmes should be more prominent. In particular it would help alleviate some concerns if it could be clarified that the majority of programme expenditure will be directed towards remediation and a small minority of expenditure applied to safety advisory programmes in merging economies.

4.2 This would also recognise the possibility that in previous phases of the programme the dominant safety rationale for supporting certain operational measures, which also necessarily contribute to the extended as well as the safe running of NPPs, has not been fully apparent or explained. The exploitation of nuclear energy remains an issue on which European public opinion is divided whereas encouraging the highest safety standards is universally supported.

4.3 The Committee believes that the question of whether the engagement of the EU through INSC offers tacit support and encouragement for a nascent nuclear programme, particularly in an unstable emerging economy, has not been fully addressed. The Committee understands that specific project funding under INSC will only occur under rigorous conditions however it would support initial dialogue and debate on nuclear energy issues with any third country, free from all conditionality.

4.4 It must be an objective of the EU not to contribute to the development of a nuclear capacity in a third country that could create new risks for nuclear safety or nuclear threats that could affect international security. Qualifying criteria are suggested in paragraph 1.6. By the application of the highest nuclear safety standards within the Union the EU could claim leadership for the most safe and the most secure civil use of nuclear energy worldwide.

4.5 The contribution of the INSC programme to countries with a more limited industrial, scientific and research base and which either have or are intending to undertake commercial nuclear generation programmes and fulfil the minimum stability criteria is also considered of value and in the EU's public interest. In association with the IAEA it is quite possible that best practice support has strengthened technical and regulatory regimes in third countries with more limited resources. However, obtaining a clear view of how the current and future INSC programmes achieve these benefits can be difficult.

4.6 Therefore it is suggested that the Commission take further steps to clarify the paramount role of safety in the forthcoming INSC programme. This could involve publishing accessible case studies from the current programme, improving presentation and inter-referencing on the EuropeAid website and generally seeking a higher profile for what is a substantial programme. Such an approach would

also aid transparency and encourage accountability. As the regulation supports the promotion of a high level of nuclear safety it is suggested that exemplary references to such high standards are made, for example the WENRA Statement on Safety Objectives for New Nuclear Plants.

5. **Specific comments**

5.1 It should be noted that European directives on nuclear safety, contrary to the impression that might be given in the proposed regulation, do not contain technical safety standards and similarly the regulatory framework obligations only comprise some general requirements in line with the Convention on Nuclear Safety.

5.2 The proposal also states that there is a comprehensive safety assessment within the EU. However, the ongoing 'stress tests' are only a complementary safety assessment without underlying safety criteria that try to answer the question 'what happens when the safety systems fail'. It is also recognised that the process is limited because of the extremely short time scale imposed. Despite those limitations, the strengths of the EU approach to nuclear safety is based on the intention to take the 'stress tests' as the first step to further evolve and improve safety culture and to realise highest standards of nuclear safety. Interim conclusions from the current 'stress tests' of European NPPs reveal that further changes, improvements and statutory action will need to be undertaken. These should be reflected into the implementation and advisory work of the INSC programme with maximum speed.

5.3 It should be considered that the EU, institutionally, has very limited expertise in nuclear matters and the projects of the INSC are mostly performed by organisations of the member states. The Commission may be well placed to offer valuable critical analysis and reflection on the diversity of European standards and practices but should also seek to build up its own internal capacity and independent expertise.

5.4 The INSC proposal states that the goal of INSC is to eliminate nuclear risk but it should be noted that, technically, as with the elimination of risk in any complex industrial process, achieving this goal cannot be guaranteed, especially not the prevention of catastrophic nuclear accident. It should be clarified that the goal is the prevention of incidents and accidents according to the best known standards. It should also be noted that a belief that risk has been eliminated in any process does not encourage a high-level safety culture.

5.5 The Commission proposes Integrated Regulatory Review Service (IRRS) and Operational Safety Team (OSART) missions as indicators but both provide only limited value as they are not meant for supervisory purposes. E.g., they gave no protection against the Fukushima accident. Additionally both types of missions do not aim at the nuclear safety status of Nuclear Power Plants (NPPs). The international supervision of NPPs remains a complex and contentious issue.

5.6 INSC programmes should also consider, where appropriate, the encouragement of mandatory instruments to be placed into law in each country of activity in circumstances where they would enhance IAEA treaties, conventions and agreements.

5.7 The explanatory memorandum to the regulation notes that in the public consultation on external action the overwhelming majority of respondents supported a stronger focus on monitoring and evaluations systems in the future instruments and in the implementation of projects/programmes. The Committee recognises that, though newly established, EuropeAid - Development and Cooperation DG draws on extensive experience and expertise in this area which, no doubt, will be fully applied.

5.8 However, we note that the list of specific supported measures does not include support for independent civil society organisations within or external to beneficiary states who wish to improve accountability and transparency of the nuclear safety culture through specific actions. This is allowable under the Instrument for Stability and also the European Instrument for Democracy and Human Rights and the Committee very strongly recommends that the INSC programme includes such support in its allowable measures.

5.9 The Committee notes the flexibility which is created by grouping the supported measures and cooperation criteria in the Annex, which itself may be modified in accordance with the examination procedure provided for the Common Implementing Regulation. However, consideration should be given as to whether key issues of principle relating to international nuclear safety and security should be included in the main body of the regulation.

5.10 Cooperation criteria are drawn with some latitude. This is welcomed by the Committee for all countries having operating nuclear power plants. It may also be appropriate to engage at an exploratory and preliminary stage with a very wide range of third countries. Placing further restrictive criteria on which states may be INSC beneficiaries is not in the best interests of the safety of the European public. In respect of countries which are determined to take the first steps into nuclear electricity production we believe that EU access, expertise, analysis and advice can and should be applied where strengths are to be found in an active, independent and organised civil society. However, the most careful attention should be paid to the question of long-term political stability and the capacity to ensure civil security in partner countries.

5.11 The Committee therefore suggests defining minimum conditions for assistance in the frame of the INSC and that an international convention on conditionality relating to nuclear safety advisory work be developed between the EU and the small number of states in a position to provide such advice (the discussions of the Nuclear Safety Working Group of the G8 and similar discussions within the IAEA and also the EU would form a starting point).

Brussels, 23 May 2012.

The President
of the European Economic and Social Committee
Staffan NILSSON