

**Opinion of the European Economic and Social Committee on the 'Draft proposal for a Council Directive amending Directive 2009/71/Euratom establishing a Community Framework for the nuclear safety of nuclear installations'**

COM(2013) 343 final

(2013/C 341/21)

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On 13 June 2013 the European Commission decided to consult the European Economic and Social Committee, under Articles 31 and 32 of the Euratom Treaty, on the

*Draft proposal for a Council Directive amending Directive 2009/71/EURATOM establishing a Community Framework for the nuclear safety of nuclear installations*

COM(2013) 343 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 2 September 2013.

At its 492nd plenary session, held on 18 and 19 September 2013 (meeting of 18 September), the European Economic and Social Committee adopted the following opinion by 160 votes to 9, with 15 abstentions.

## 1. Conclusions and Recommendations

1.1 The EESC positively welcomes the timely amendments to the Nuclear Safety Directive, the outcome of the European Council's mandate to the Commission to consider and propose necessary legislative changes following the Fukushima disaster. Subsequently, stress tests of European nuclear power plants identified areas needing attention. Nuclear safety is a major cross-border issue for the EU. How this issue is perceived by the public has a significant impact on national policy. Citizens rightly expect verifiable high standards and consistency.

1.2 The Committee is encouraged to see that several issues highlighted in our previous Opinions<sup>(1)</sup> on nuclear safety have been addressed in this proposal. These include a stronger approach to harmonisation amongst Member States, clarification of regulatory responsibilities, competence and capacity, the independence of national regulators, and action on on-site emergency preparedness and response. In particular we commend the strengthened approach to overall transparency and the drive to include specific obligations as a necessary and potentially effective contribution to dealing with public concerns.

1.3 The Committee particularly welcomes the greatly enhanced approach to national regulatory responsibility, competence, application and independence which strengthens each of these areas and also provides support and verification mechanisms.

1.4 The enlarged "definitions" Article will aid clarity of interpretation and help with greater legal enforceability although it should be ensured that the text is compatible where equivalent definitions are provided by WENRA (Western European Nuclear Regulators Association) and the IAEA (International Atomic Energy Authority) and updated as necessary to remain consistent with internationally agreed terminology.

1.5 The strengthening of provisions for on-site emergency preparedness and response arrangements is noted. Prompt action will be needed in response to recommendations from the in-progress report on off-site emergency preparedness, when available. This is an area of particular concern to the European citizen and requires urgent and effective additional measures to be put in place.

1.6 Provisions for public information and transparency are enhanced but Member States should be required to ensure that the public and civil society organisations are practically and actively supported in developing, with the regulatory authority, participative processes for strengthening public involvement in planning, review and decision-making.

1.7 The Committee appreciates the prompt action taken by the Commission in bringing forward this amending directive. We also note that international analysis of the lessons to be learned from Fukushima continues and that a review of the implementation of the current Nuclear Safety Directive may suggest further safety insights in due course. All parties are committed to continuous improvement and experience indicates that further enhancements of nuclear safety will remain a work in progress.

<sup>(1)</sup> OJ C 306, 16.12.2009, p. 56-63.

OJ C 218, 23.7.2011, p. 135-139.

OJ C 44, 15.2.2013, p. 140-146.

## 2. Introduction

2.1 In 2009, in its Opinion on the proposed *Community framework for nuclear safety* <sup>(2)</sup>, the EESC indicated its concern at the length of time it had taken to develop and win sufficient consensus to bring forward the first nuclear safety directive (2009/71/ Euratom); a Council Resolution of 22 July 1975 on the technological problems of nuclear safety had called for appropriate action and a harmonised approach at Community level. By contrast it has taken just four, rather than 34 years, for the present amendments to be proposed to the 2009 Directive.

2.2 There are a number of reasons for this change of pace. Primarily the proposed amendments are a response to the report on the extensive 'stress test' programme carried out in Europe subsequent to the impact of the tsunami on the Fukushima Daiichi nuclear power complex in March 2011. In Japan this had exposed a range of technical, operational and regulatory weaknesses and failures. However, the amendments also reflect concerns expressed prior to 2009 which, due to views expressed by regulators, Member States and the nuclear industry, it had not been possible to include in the original Directive. Fukushima not only made it possible to reconsider these concerns but also had a major and direct impact on nuclear policy in several Member States.

2.3 This Opinion expresses the responsibility of the European Economic and Social Committee to reflect the views and concerns of civil society in general, a responsibility enhanced in this case by the procedure under Art. 31 of the Euratom treaty (on health and safety matters) where the Committee's Opinion is a priority requirement. The Committee has previously commented that because nuclear safety directives contain fundamental issues of workers health, environment and public safety (emergency response), which the EU deals with under the TEU and TFEU there is a case for dealing with it under these treaties rather than Euratom. This would furthermore increase democratic credibility, because it would have to be co-decided with the European Parliament.

2.4 Some of the public is still concerned about the 132 nuclear reactors operating in Europe. Although attitudes vary by Member State, nuclear power plants can remain a source of underlying anxiety, a feeling which can be greatly stimulated by external events. Many citizens are looking for assurance in a form they can understand and trust and turn to the EU which has extensive experience and a largely good reputation in enhancing and consolidating public safety issues. In an important sense Fukushima signalled that any promotion of the concept of *absolute* safety, a tendency in Japan in technological and institutional terms, could not be maintained. The challenge facing any legislative approach is whether it can underpin a *relative* approach to safety which can sustain public confidence. Such confidence will be based on a combination of how the risk is perceived and the strength of the protective or mitigating measures. Fully harmonised safety standards for Europe do not yet exist and public concern is present where

they believe safety standards, or their enforcement, in an adjacent country are lower than in their own. It is understandable that one solution to any such variability could be an EU-level competent authority.

2.5 In all Member States nuclear safety is the responsibility of the plant operator acting within a framework overseen by the national regulatory body. Fukushima raised questions about a series of issues including plant design and defensive actions, mitigation efforts, emergency response, information communication, human error, governance, transparency and regulatory oversight. The implications of a limited number of these issues as they might be applicable to European nuclear power plants and safety were addressed in the stress test process, and subsequent reports.

2.6 Nuclear safety is a cross-border issue and the EU has taken action because international safety standards and conventions governing nuclear safety are either legally non-binding or directly legally non-enforceable. The present amendment proposals are the outcome of the mandate given to the Commission by the European Council to review the existing legal and regulatory framework and propose any necessary improvements.

## 3. Summary of the Commission's proposal

3.1 The proposal is a review of the existing legal and regulatory framework for nuclear safety which seeks to guarantee consistent and high standards of nuclear safety and oversight. In the light of the stress tests and lessons learned from the Fukushima enquiries it proposes adjusting, in some respects and where possible, the EU's nuclear safety framework to the latest technical standards and requires greater transparency.

3.2 The powers and independence of national regulatory authorities would be strengthened and they would be given a greater role, supported with expert staff and resources. Together with plant operators they would be required to develop and publish a strategy to provide information to the public, especially in case of accidents but also for normal operation. Citizens would be able to participate to a greater extent in the licensing of nuclear plants.

3.3 The siting, design, construction, commissioning, operation, and decommissioning of nuclear plants will be subject to new safety objectives and an EU-wide system of peer reviews of nuclear installations every six years would be introduced, resulting in the development of technical guidelines for the improvement of nuclear safety.

3.4 New nuclear power plants should be designed so damage to a reactor core cannot have consequences outside the plant and each plant must have a well-protected emergency response centre and strict accident management guidelines.

<sup>(2)</sup> OJ C 306, 16.12.2009, p. 56-63.

#### 4. General Comments

4.1 The EESC has closely followed the debate about nuclear safety, the stress test process and subsequent developments. In its Opinion *Final report on the nuclear stress tests* <sup>(3)</sup> the EESC urged an ambitious revision of the 2009 directive. The European Commission also clearly stated its own ambitions for the directive in its report on the stress tests <sup>(4)</sup>. It identified four main areas where the Nuclear Safety Directive required revision, these being:

- safety procedures and frameworks;
- role and means of nuclear regulatory authorities;
- openness and transparency;
- monitoring and verification.

A short review of whether the objectives identified under these four headings are achieved is set out in section six.

4.2 The current proposal details over 90 amendments to the existing directive, some of them of considerable length and substance. The extensive recitals to the directive offer interpretive guidance on rationale and practical implementation though it should be noted that the Articles of the Directive constitute the substantive text, with which this Opinion deals.

4.3 The EESC notes that the term "reasonably achievable", as used in the text, though provided with an expanded definition, could lead to giving undue weight to economic or political considerations. An alternative would be the use of "Best Available Technologies (BAT)" and "Best Regulatory Practice (BRP)", as applicable, but this would have significant cost implications.

4.4 The EESC notes that although the Commission states that the Directives should ensure that new nuclear power plants are designed so damage to a reactor core cannot have consequences outside the plant, current technical and scientific opinion suggests that such a far-reaching claim cannot be made and it is a practical impossibility to eliminate fully all off-site consequences.

#### 5. Specific Comments

5.1 The original directive will be strengthened, extended and clarified by this amending directive and a number of specific concerns relevant to public assurance on safety matters will be addressed. In particular the Committee welcomes:

- The extension and clarification in Article 3 of the definitions of terms, particularly where uncertainty could be present. For example the clearer definition of terms like "practically eliminating" removes a lot of potential ambiguity and will increase public confidence in a consistent approach. However, it should be ensured that where equivalent definitions are provided by the IAEA and WENRA the terminology is consistent and updated as necessary.
- The specific requirement that safety arrangements cover all stages of the lifecycle of nuclear installations. (Art. 4.1.a).
- The maintenance of the principle of the legal independence of national regulatory authorities and their considerable strengthening by including specific reference to independence from political interest, the provision of an appropriate, autonomously managed budget and adequate expert staffing resources (Art. 5.2), and a clearer definition of legal powers. (Art. 5.3).
- The specific inclusion of verification of "defence in depth" requirements supported by a clear definition. (Art. 6.3).
- The requirement that licence applicants must submit a detailed demonstration of safety commensurate with the scale of the hazard. (Art. 6.4.a).
- The extension to sub-contractors of the requirement to maintain extensive competencies in relation to safety. (Art. 6.5).
- The inclusion of on-site emergency preparedness and response supporting arrangements. (Art. 7).

5.2 The EESC commends the renaming and expansion of Article 8, now dealing with Transparency and the new Section 2, which defines extensive Specific Obligations. Previously Article 8, entitled "Information to the public", was of very limited scope. Taken together with Articles 8.a-f, and the expanded "definitions" in Article 3, they now comprise nearly 50 % of the text of the amended Directive. Legal enforcement should be enhanced by these provisions though some areas remain open to divergent interpretation. It is particularly encouraging to see the extensive new provisions which are proposed and which could go a considerable way towards addressing citizens' understandable concerns. Amongst these can be highlighted:

- An obligation to produce and apply a transparency strategy covering all eventualities. (Art. 8.1).

<sup>(3)</sup> OJ C 44, 15.2.2013, p. 140-146.

<sup>(4)</sup> COM(2012) 571 final.

— An emphasis on information provision with reference to international obligations. (Art. 8.3) Though not mentioned in directive's text the preamble states that exchanges with experts, in which the EESC participated, confirmed the very important role of the public in decision-making procedures and the applicability of the provisions of the Aarhus Convention.

— Strong support for more rigorous safety objectives and methodology. (Art. 8a-8c).

— The development of requirements (in conjunction with Art. 7) for on-site emergency preparedness and response. (Art. 8d).

— The expansion and extension of the requirement for international peer review. (Art. 8e).

5.3 The EESC notes that the important topic of off-site emergency preparedness and crisis communication is not dealt with in this directive but is the subject of a current review and report with recommendations to be brought forward by the end of 2013. Any necessary action should be taken on these recommendations as a matter of urgency.

5.4 The question of protection of nuclear facilities against terrorist attack was dealt with as a separate track alongside the stress test programme and was reported on to the European Council in 2012. Member States regard security measures as a matter of sovereign competency which lies outside the provisions of the Nuclear Safety Directive. It can be noted that the Nuclear Regulation Authority in Japan in the post-Fukushima analysis, has decided to ask all nuclear power plants to take appropriate measures to ensure that power plants are buffered against the possibility of terrorist attacks.

5.5 To some degree the Directive expands legislative requirements. It is important that new demands are necessary, proportional and serve the purpose of assuring public safety. The EESC is of the opinion that an appropriate balance has been achieved in the amending directive.

## 6. Will the proposal eliminate the weaknesses identified in the present directive?

6.1 Continuing differences between Member States result in the absence of a consistent approach to nuclear safety. This is identified (by the Commission) as the key finding capable of being remedied through a legislative framework. The absence of codified EU mechanisms to agree on technical standards and ways to conduct safety reviews are highlighted. Amending

Art. 8f establishes such a mechanism though the EESC believes that the phrase "*Member States shall, with the support of the competent regulatory authorities, jointly develop and establish guidelines*" lacks precision and indicates insufficient resolution on this issue. The effectiveness of this approach should therefore be kept under review and in the event that serious doubts arise the establishment of an EU Nuclear Safety Regulatory Agency ought to be considered. Such an approach could offer significant advantages in terms of access to skills and resources for smaller Member States.

6.2 Questions about national regulators' independence, split responsibilities, lack of coordination, adequate resourcing and defined competences are all areas which need addressing. Amending Art. 5 provides much more specific legislative requirements of Member States. These should go a considerable way in dealing with these issues. However, there is a need to urgently verify the independence and competence of national regulators – one of the areas specifically raised in the Commission report. Such verification should be seen as enhancing rather than infringing on the independence of national regulators and it should not be left to a ten-year self-assessment with supplementary international peer review. The EESC proposes that assessment and peer review should take place in all Member States no later than the end of 2018, and six-yearly thereafter.

6.3 At present the monitoring and verification mechanisms at EU level are limited to the peer review of the national nuclear safety framework and competent regulatory authorities. Chapter 2a of the amending directive considerably expands the scope of international peer reviews – a welcome development. However, the schedule of a six-yearly review "on one or more specific topics" would seem to leave scope for some areas to remain unexamined in depth for decades. The Committee therefore proposes that the topical reviews be conducted in parallel with the review process of the Convention on Nuclear Safety which takes place every three years. The discussion of which specific topics are the subject of review should also be an area in which the public are involved as part of the commitment to transparency.

6.4 Public information and transparency have been given considerably greater emphasis in the amending directive, with specific requirements, in several cases, replacing those which are currently generic. However, in practice it is often difficult for individuals or civil society organisation to engage with public consultation and information mechanisms. The effectiveness of public participation was seen in the two meetings organised by ENSREG in relation to the stress tests. The EESC proposes that Member States are required to ensure that public and civil society organisations are actively supported in developing, with the regulatory authority, participative processes for establishing public engagement and consultation for planning, review and decision-making. This should also apply to formal or de facto plant lifetime extensions. Established processes, such as the RISCOM model for transparency ([http://www.karita.se/our\\_approach/riscom\\_model.php](http://www.karita.se/our_approach/riscom_model.php)) could, when independently conducted, offer effective routes.

6.5 The understanding of what constitutes a comprehensive approach to nuclear safety is continually advancing. Ethical, socio-economic and psychological factors have all won greater acceptance in the period of intense debate since the Fukushima disaster. The Committee believes that other areas of energy generation and use, particularly in a period of transition and global pressure, can also benefit from such analysis.

Brussels, 18 September 2013.

*The President*  
*of the European Economic and Social Committee*  
Henri MALOSSE

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