



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.5.2005
COM(2005) 199 final

Proposal for a

COUNCIL DECISION

**issuing directives to the Commission for the negotiation of the amendments to the
Convention on the Physical Protection of Nuclear Material**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The Convention on the Physical Protection of Nuclear Material (“the CPPNM” thereafter) was signed in 1980 and entered into force in 1987. 106 states and the European Atomic Energy Community (“Euratom” thereafter) are parties to the CPPNM¹. All the Member States of the European Union are parties of the CPPNM.

In accordance with Article 18.4a) of the CPPNM, Euratom signed the CPPNM on 13. 6. 1980 and acceded to it on 6.10 1991².

The objective of the CPPNM is, in particular, to apply the measures of physical protection during the international transport of nuclear materials.

In 1999 a number of countries indicated that the CPPNM was not comprehensive and in need of a revision, mainly because it did not cover certain major aspects of physical protection. Shortcomings were identified in the protection of material in domestic use, storage, and transport. Moreover the convention does not deal adequately with the protection of nuclear facilities against malicious acts. In order to answer these concerns the Director General of the International Atomic Energy Agency (IAEA) set up in June 2001 an “Open-Ended Group of Legal and Technical Experts to Prepare a draft Amendment of the CPPNM” to discuss, whether there is a need to revise the CPPNM”.

The group met six times in Vienna (the first meeting took place on 3rd December 2001). The European Commission (“the Commission” thereafter) participated in all the meetings of the group. The group concluded its work in March 2003 establishing a final report to which the draft amendment was enclosed. It was circulated to all Parties to the CPPNM, including also the Commission on behalf of Euratom. However, as this first proposal for the amendment contained a number of bracketed clauses on which no common agreement was achieved during the discussions, no majority of Parties was found to convene the Amendment Conference.

Therefore, in the meantime, a group of 25 parties to the CPPNM under the lead of Austria, established in June 2004 a new proposal to amend the CPPNM. This revised proposal could be described as a “consensual” text.

The main revision is that in this new proposal a list of fundamental principles of physical protection of nuclear material and nuclear facilities, which was previously attached in an annex, was inserted verbatim to the text.

This revised proposal was also circulated to all the Parties of the CPPNM by the IAEA secretariat, in order to initiate the procedure for the convening of the Amendment Conference in accordance with the Article 20 of the CPPNM.

¹ Latest status 08.11.2004

² Council Decision of 9 June 1980 approving the conclusion by the Commission of the International Convention on the physical protection of nuclear material, Official Journal L 149, 17.06.1980 p. 0041

The Commission received this revised proposal in September 2004. In order to convene an Amendment Conference the IAEA has to receive a request from the majority of States Parties to the CPPNM. The needed majority will probably be reached in the first semester of 2005.

2. THE PROPOSED AMENDMENTS TO THE CPPNM

The aim for amending the CPPNM is mainly to extend its scope, which is now focussing mainly on international transport of nuclear material, to cover more extensively domestic use of nuclear material, storage and transport, as well as protection of nuclear material and facilities from sabotage. Furthermore the proposed amendment stresses the importance of national responsibility for physical protection and of protection of confidential information. Finally in order to strengthen the physical protection regime a list of fundamental principles of physical protection of nuclear materials and nuclear facilities were inserted.

The main points of the envisaged amendment of the CPPNM are the following:

In particular a new *Article 1A* is included identifying the objectives of the CPPNM. Reflecting the extension of the scope of the CPPNM, *Article 2* is updated and two new definitions of “sabotage” and “nuclear facility” are inserted in *Article 1*.

Furthermore the importance of national responsibility for the physical protection is set out in an amended *Article 2 Para 2* of the Convention.

Article 6 of the Convention concerning the protection of confidential information is complemented accordingly and updated considering the extension of the scope of the CPPNM.

A new *Article 2A* is added setting up legal commitments including the establishment, implementation and maintenance of the appropriate physical protection regime to answer the physical protection objectives, the establishment and maintenance of the legislative and regulatory framework, and the establishment and designation of the competent authority or authorities.

In the same article a legal commitment is introduced to apply insofar as is reasonable and practicable the inserted fundamental principles of physical protection of nuclear materials and nuclear facilities.

Furthermore, the CPPNM is strengthened through the introduction of new measures of co-operation addressing the case of credible threat of sabotage of nuclear material or nuclear facility, or of sabotage thereof (*Article 5*) and through the introduction of new offences relating to sabotage, contributing to and organising or directing the commission of an offence and smuggling (*Article 7*).

3. THE ROLE OF THE COMMUNITY ALONGSIDE WITH THE MEMBER STATES IN THE INTERNATIONAL NEGOTIATION PROCESS TO AMEND THE CPPNM

Article 101 paragraph 1 Euratom Treaty foresees that “the Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements with a third state, ...”.

The role and competences of the Community within the framework of the CPPNM have been clearly defined in 1978 by the Court of Justice³:

Para 21: “...Article 2(e) (of the Euratom Treaty) gives the Community the task of making certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended, without making any distinction with regard to the nature of such diversions and the circumstances in which they might take place and finally that the very expression “safeguards” which the Treaty uses to characterize the provisions of chapter VII has a wider scope than the mere substitution of a different destination for the one declared by a user of nuclear materials. The Treaty here envisages all diversions of nuclear materials entailing a security risk that is to say the danger of interference with the vital interests of the public and the states. Consequently there can be no doubt that the concept of “safeguards” within the meaning of the Treaty is sufficiently comprehensive to include also measures of physical protection.”

Para 27: “...Therefore, it is the Community, and the Community alone, which is in a position to ensure that in the management of nuclear materials the general needs of the public are safeguarded in its own field.”

Para 28: “...Therefore it is the Community which, by virtue of its right of ownership, holds the power to deal with unforeseen situations in a coherent manner. Consequently in so far the draft convention is intended to meet new risks, the Community is concerned as the owner of the materials which are to be protected.”

Finally the Court concluded that “the participation of the Member States in the CPPNM ... is compatible with the provisions of the Euratom Treaty only subject to the conditions that, in so far as its own powers and jurisdiction are concerned, the Community as such is a party to the CPPNM on the same lines as the Member States”.

When acceding to the CPPNM the Commission declared to the depository, as Article 18.4.c) requires from an international organisation which accedes to the CPPNM, which articles do not apply to it. The Declaration states that Articles 7-13⁴ are not applicable to the Community as opposed to individual Member States.”

³ Court Ruling 1/78 of 14 November 1978, ECR 1978, p. 02151

⁴ Articles 7-13 of the CPPNM deal with the definition of criminal offences, pursuit and extradition of offenders and related matters

4. CONCLUSIONS

In view of the above described proposed amendments to the CPPNM and the cited ruling of the Court of Justice, it is necessary that the Community continues to fully participate in the international negotiating process to amend this Convention, particularly with the view to ensuring compatibility between the provisions of the CPPNM and of the Euratom Treaty and its secondary legislation.

Therefore the Commission proposes to the Council to adopt, in accordance with Article 101 paragraph 2 of the Euratom Treaty the enclosed Decision authorising the Commission to negotiate, with regard to matters covered by the Community competence, in the framework of the up-coming Amendment Conference of the CPPNM, the amendments to the CPPNM in conformity with the directives attached.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community (“Euratom” thereafter) , and in particular Article 101, paragraph 2 thereof,

Having regard to the proposal from the Commission⁵,

Whereas:

- (1) Article 2 e) of the Euratom Treaty requests from the Community that it shall “make certain, by appropriate supervision, that nuclear materials are not diverted to purpose other than those for which they are intended”.
- (2) The Convention on the Physical Protection of Nuclear Material (“the CPPNM” in the following) was signed in 1980 and entered into force in 1987. 106 states and Euratom are parties to the CPPNM. All the Member States of the European Union are the Parties to the CPPNM.
- (3) An Amendment Conference in accordance with Article 20 of the CPPNM will be convened soon.
- (4) The Court of Justice⁶ decided that “the participation of the Member States in the CPPNM is compatible with the provisions of the Euratom Treaty only subject to the conditions that, in so far as its own powers and jurisdiction are concerned, the Community as such is a party to the CPPNM on the same lines as the Member States” and that “certain commitments of the CPPNM can only be implemented, where the Community is concerned, by means of close association between the Community and the Member States, both in negotiation and conclusion process and in fulfilment of the commitments assumed.”
- (5) The Community shall therefore fully participate in the negotiating process to amend the CPPNM, particularly with the view to ensuring compatibility between the provisions of the Convention and of the Euratom Treaty and its secondary legislation.

⁵ OJ C , , p. .

⁶ Court Ruling 1/78 of 14 November 1978, ECR 1978, p. 02151

HAS DECIDED AS FOLLOWS:

Sole Article

The Commission shall negotiate, with regard to matters covered by the Community competence, in the framework of the up-coming Amendment Conference of the CPPNM, the amendments to the CPPNM in conformity with the directives attached hereto.

Done at Brussels,

*For the Council
The President*

ANNEX

Negotiation Directives

During the negotiations the Commission takes care to ensure the compatibility of amendments made to the CPPNM with the policies and provisions of the Euratom Treaty and its secondary legislation.