

# Nuclear Free Local Authorities Secretariat

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European Commission  
DG ENER/Unit Nuclear energy, transport, decommissioning & waste management (DDG2.D2)  
Euroforum building  
L - 2920 Luxembourg

24<sup>th</sup> May 2010

Dear European Commission,

## **EUROPEAN UNION CONSULTATION ON PROPOSALS FOR LEGISLATION ON THE MANAGEMENT OF SPENT FUEL AND RADIOACTIVE WASTE**

On behalf of the UK and Ireland Nuclear Free Local Authorities (NFLA), an organisation of Councils concerned with developments in nuclear energy, radioactive waste management and nuclear weapons proliferation, I attach its comments to the European Union's consultation on proposals for legislation on the management of spent fuel and radioactive waste.

For further information on the UK and Ireland Nuclear Free Local Authorities please consult its website – <http://www.nuclearpolicy.info> – or contact the NFLA Secretariat using the details above. Our contact email address is through the NFLA Secretary, Sean Morris – [s.morris4@manchester.gov.uk](mailto:s.morris4@manchester.gov.uk).

**I have responded to the questionnaire as per the questions on the Commission's website.**

### **Q1. About You**

Are you an Individual; Organisation/Company or Public Authority?

Public Authority – UK and Ireland Nuclear Free Local Authorities

Region of Residence: European Union (we have local authority members in the UK and the Republic of Ireland though in reference to these questions radioactive waste is stored in much greater quantities in the UK)

### **Q2 Your perception of the situation in your country of residence.**

Q2.1. Do you consider that the measures taken in your country of residence for ensuring the safe management of spent fuel and radioactive waste are sufficient?

A2.1. No

Q2.2. What are the main challenges related to the spent fuel and radioactive waste management with which your country of residence is still confronted?

A2.2 This is a question where the NFLA believe none of the options offered quite allow us what is necessary. Clearly it is wrong for the UK Government to propose allowing utilities to produce yet more waste by building new reactors when there is no solution to the problem of what to do with it. NFLA therefore would like to endorse the following options:

- Lack of independence of the regulatory authority - ***the UK Nuclear Decommissioning Authority is responsible for planning and delivering the geological disposal facility, and yet it also continues to produce nuclear waste.***
- Lack of a permanent and safe solution for the disposal of low and intermediate level waste.
- Lack of a permanent and safe solution for the disposal of high level waste and spent fuel.
- Lack of adequate financial resources for implementing disposal solutions.
- Insufficient involvement of the public in the decision-making process.
- Lack of transparency.

***NB. The idea that radioactive waste can be "disposed" is rejected by NFLA - it must be managed. To dispose means "to get rid of", yet a "disposal" safety case relies on computer models to show radionuclides leak at a sufficiently slow rate to limit the doses to members of the public living nearby to an acceptably low level. NFLA believes such models are too uncertain and would have concerns about using current dose limits to represent a definition of 'safe'.***

**Q3. General questions on the preferred approach for EU legislation governing the management of spent fuel and radioactive waste.**

Q3.1. Do you consider that a common approach of all the 27 Member States at EU level is needed for tackling the challenges related to the spent fuel and radioactive waste management with which your country of residence might still be confronted?

A3.1 No opinion. However please note the following -

Whilst it might be a good idea to require some member states to behave more responsibly with regard to nuclear waste management the NFLA cannot answer yes to this question as it would imply support for a European Union Directive which is too prescriptive, for example, making deep disposal a legal requirement.

Q3.2. What would be your preferred instrument of Community intervention?

A3.2 Binding legislation (e.g. Directive)

Binding legislation would help to force countries which currently have an inadequate waste policy, such as Bulgaria, Slovakia, Lithuania, to sort out their mess, but **as mentioned above a Directive which is too prescriptive would be counterproductive.**

Q3.3. Do you consider that legal certainty would be enhanced if the principles of the IAEA Safety Fundamentals and the Joint Convention would become part of Community legislation?

A3.3 Yes

The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management is an international convention which aims to ensure that during all stages of spent fuel and radioactive waste management there are effective defences against potential hazards in such a way that the needs and aspirations of the present generation are met without compromising the ability of future generations to meet their needs and aspiration.

Together these principles represent the lowest common denominator. It would be better to use the clear set of environmental principles agreed at the Nuclear Free Local Authorities October 2004. (See box)

**At its Annual General Meeting in Hull in October 2004, the Nuclear Free Local Authorities Steering Committee agreed a set of clear environmental principles which should be used for the management of nuclear waste. These are:**

- \* the idea that radioactive waste can be "disposed" of be rejected in favour of radioactive waste management
- \* any process or activity that involves new or additional radioactive discharges into the environment be opposed, as this is potentially harmful to the human and natural environment
- \* the policy of 'dilute and disperse' as a form of radioactive waste management (i.e. discharges into the sea or atmosphere) be rejected in favour of a policy of 'concentrate and contain' (i.e. store safely on-site)
- \* the principle of waste minimisation be supported
- \* the unnecessary transport of radioactive and other hazardous wastes be opposed
- \* wastes should ideally be managed on-site where produced (or as near as possible to the site) in a facility that allows monitoring and retrieval of the wastes

**Q4. Possible approaches for binding EU legislation governing the management of spent fuel and radioactive waste.**

The Commission has identified two possible options for binding legislation governing the management of spent fuel and radioactive waste.

Q4.1. Option 1 consists of strengthening the internationally accepted principles and requirements laid down in the IAEA Safety Standards and the Joint Convention on the management of radioactive waste and spent fuel throughout the Community. It would include important requirements as to the national legislative and regulatory system and would require Member States to adopt national programmes for the management of spent fuel and radioactive waste. Which are the fundamental principles and requirements that Member States should comply with under this policy option?

**A4.1** The NFLA endorses all the policy options *apart from the two which deal with deep disposal* as follows:

- To effectively protect future generations from the dangers of ionising radiation (*as well as present generations*)
- To establish and maintain a national legislative, regulatory and organisational framework for spent fuel and radioactive waste ('national framework')
- To establish and maintain a competent regulatory authority in the area of spent fuel and radioactive waste management
- To ensure the effective independence of the regulatory authority

- To provide to the regulatory authority the necessary legal, human and financial resources in order to fulfil its functions
- To ensure verifications of compliance with legal obligations
- To ensure enforcement of legal requirements
- To ensure that the licence holder has the prime responsibility for the safety of radioactive waste and spent fuel management (**Assuming the licence holder is the producer of the waste**)

***Whilst spent fuel should be declared waste i.e. not reprocessed, it should not be disposed of.***

- To ensure appropriate expertise and training to all the parties concerned
- To apply the "polluters pay" principle
- To ensure adequate financial resources for the safe management of spent fuel and radioactive waste
- To ensure the establishment and implementation of quality assurance programmes
- To implement transparency arrangements
- To actively involve the public in the decision-making process

***The NFLA believes that geological disposal should not be foreseen as the end point for High Level Waste and Spent Fuel. It has not been proven to be the best available technology for radioactive waste. There are still too many uncertainties. Once the waste is buried in a Geological Disposal Facility, if it does not behave in the way predicted, radionuclides could return to the biosphere much more quickly than expected, breaching risk limits. Better to leave future generations with a monitorable, retrievable store, and a choice about how to manage the waste than a leaking nuclear waste dump. Research needs to continue into a wider spectrum of options including robust, terrorist resistant stores, in order to have a real choice about which is the best available technology.***

- To ensure adequate financial resources for the safe management of spent fuel and radioactive waste
- To ensure the establishment and implementation of quality assurance programmes
- To implement transparency arrangements
- To actively involve the public in the decision-making process

***Other - Clearly minimising the amount of future radioactive waste produced by phasing out nuclear power and not building new reactors is an important way to help protect present and future generations.***

Q4.2. Option 2 would contain, in addition to option 1, specific requirements for the scope, contents and review of national programmes for radioactive waste and spent fuel management throughout the Community. This question asks which elements should be included in national programmes for spent fuel and radioactive waste management?

A4.2 The proposed directive could include:

- Roles and Responsibilities - ***keeping waste producers separate from the organisation which regulates and controls waste management***
- Decision-making process - ***requiring an open and transparent consultative process***
- Inventories of radioactive waste and spent fuel

**And set out requirements for a:**

- Cost assessment

- Financing system

**and require:**

- Remedial actions for legacy waste

**Q5. Means to validate the implementation of binding legislation**

Q5.1. Which of the following requirements would you consider as valuable options for ensuring the implementation of binding EU legislation at the level of your country?

- To organise periodic international peer-reviews of the regulatory system (e.g. regulatory body, licensing system, enforcement)
- To organise periodic international peer-reviews of the national programme
- To report to the Commission and to the other Member States on the results of the international peer-reviews, when these are available
- To report separately to the Commission on the implementation of the legislative instrument, in addition to the national reporting under the Joint Convention to the IAEA

**A5.1** The NFLA believe these points would enable citizens to file complaints when their Member State fails to implement the requirements of the Directive. It is better for Member States to report on implementation to the Commission as well as the Joint Convention, rather than just reporting to IAEA, because that would give fake-legitimacy, whereas reports to the Commission should require full transparency and allow citizens to complain.

**Q6. Possible impacts of binding legislation**

Q6.1. As to potential impacts, which of the following would you expect?

**A6.1** The Binding Legislation should mainly aim to enhance public involvement in the decision-making. There should certainly be no question of requiring 'avoidance of unjustified delays of disposal solutions' because disposal has not been shown to be the best environmental option.

**Q7. Additional suggestions and thoughts?**

Q7.1. Do you have additional suggestions or more specific thoughts on a potential legal EU instrument for spent fuel and radioactive waste management?

**A7.1** The Directive should aim to increase awareness among decision makers, operators and the general public that there is still a huge amount of uncertainty surrounding the idea of deep geological disposal, therefore there is no final solution to the problem of how to manage radioactive waste.

Technical problems and uncertainties described by the Environment Agency (EA)<sup>1</sup>, and the European Union Joint Research Centre (EU JRC)<sup>2</sup>, in particular uncertainties

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<sup>1</sup> (1) Review of Nirex Report: 'The Viability of a Phased Geological Repository Concept for the Long term Management of the UK's Radioactive Waste' Version 3.1 NWAT/Nirex/05/003, Environment Agency, November 2005.

(2) Technical Issues Associated with Deep Repositories for Radioactive Waste in different geological environments. EA August 2009

<http://publications.environment-agency.gov.uk/pdf/SCHO0809BQVU-e-e.pdf> See especially table 6.5 ( pp 141 - 143 ) "Summary of Major Knowledge Limitations on the Technical Issues"

Summary document: <http://publications.environment-agency.gov.uk/pdf/SCHO0809BQVV-e-e.pdf>

regarding solubility and sorption of radionuclides and the presence as a gas, could mean estimated contamination levels calculated for a deep geological disposal facility are in error by a factor of 10,000 to 1,000,000 which clearly has implications for the risk estimates.<sup>3</sup>

The Directive should encourage Member States to reduce the production of nuclear waste to the bare minimum (i.e. only essential medical uses) as there is currently no acceptable solution for its management. This means ending plans for new reactors and phasing out existing stations.

Management of existing waste (including spent nuclear fuel) should be based on a clear set of environmental principles (see above), including the polluter pays principle.

The Directive should prescribe the highest level of security for waste stores.

The Directive should prescribe the highest level of transparency and ensure that the public has full access to information, and that there is full public participation in all steps of planning for management of radioactive wastes. The Directive should prescribe in the preamble that guidance should be taken from the EU Directive on access to information (2001/1049/EC), the EU Directive on public access to environmental information (2003/4/EC), the EU Directive on the assessment of the effects of certain plans and programmes on the environment (2001/42/EC), the EU Directive on the application of the provisions of the Aarhus Convention to Community institutions and bodies (1367/2006/EC) and the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

This letter has been sent to all our member authorities and a prior background briefing has been provided to them. The NFLA is keen to be kept informed of progress with development of the Commissions policy in this area.

Yours sincerely,



Bailie\* George Regan  
Chair of UK and Ireland Nuclear Free Local Authorities

\* Bailie is a Scottish word for a senior councillor, such as an Alderman.

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<sup>2</sup> Chapter Two of the Report (pp 10 – 21) entitled “*The Technical Concept of Geological Disposal*” shows that in fact there are a very large number of conceptual and research gaps associated with deep geological disposal. See W.E. Falck and K.-F. Nilsson “*Geological Disposal of Radioactive Waste: Moving Towards Implementation*”, European Union – Joint Research Centre – Reference Report

[http://ec.europa.eu/dgs/jrc/downloads/jrc\\_reference\\_report\\_2009\\_10\\_geol\\_disposal.pdf](http://ec.europa.eu/dgs/jrc/downloads/jrc_reference_report_2009_10_geol_disposal.pdf)

<sup>3</sup> See evidence by Nuclear Waste Advisory Associates submitted to House of Commons Energy and Climate Change Committee “The proposals for national policy statements on Energy”, Volume II, Ev 428.

<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmenergy/231/231ii.pdf>