

# Nuclear Free Local Authorities briefing



Date: 7 April 2003

No. 32

**Subject: DTI/DEFRA consultation on Euratom 'Nuclear Package' Directives**

## Background

At the joint Irish and UK Local Authorities Conference on Nuclear Hazards, Cork 20 – 21 March 2003, the Head of the EURATOM Co-ordination and Nuclear Safety Unit, Mrs Nina Commeau, summarised the 'nuclear package' (proposed EURATOM Directives and other measures) referring to the Directives on nuclear safety and radioactive waste management as follows:

*A Directive on the safety of nuclear installations in operation and being dismantled (meaning...) fixing the basic obligations and the general principles guaranteeing a high safety level of nuclear facilities on the basis of which common safety standards will be determined, established by Directives...and*

*A Directive on spent nuclear fuel and radioactive waste to bring about progress towards safe long-term management of spent fuel and radioactive waste. The draft Directive includes a range of "basic requirements" for safe management and will require:*

- *each Member State to establish a clearly defined programme for waste management, including disposal*
- *a report will be made on each programme to the Commission at regular intervals*

*This proposed Directive also sets the following timetable:*

- *authorisation for development of appropriate disposal site(s) to be granted no later than 2008. In the case of geological disposal of high-level and long-lived waste, this authorisation could be conditional upon a further period of detailed underground study;*
- *in the case of short-lived low and intermediate-level waste, if this is to be disposed of separately from high-level and long-lived waste, authorisation for operation of the disposal facility to be granted no later than 2013;*
- *in the case of high-level and long-lived waste, to be disposed of in a geological repository, authorisation for operation of the disposal facility to be granted no later than 2018...*

DTI/DEFRA recently consulted informally on these matters and the NFLA secretariat responded in the terms below. A formal DTI/DEFRA public consultation is expected to follow in due course and the NFLA Secretariat will provide a further briefing subject to consultation paper content.



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Submission by the Nuclear Free Local Authorities Secretariat in response to the  
**Informal DTI/DEFRA consultation on Euratom 'Nuclear Package' Directives**

17 March 2003

1. We welcome the decision of the DTI to undertake this informal consultation with a wide range of stakeholders. This compares favourably with the Commission's provision last July of a draft safety directive to a very limited circle of industry and regulators.

### **Decommissioning**

We agree with the principle that decommissioning funds should be strictly protected from access by operators to ensure future generations have sufficient funds to deal with waste. We therefore support the creation of separate legal personality for the funds. For this reason we oppose the major loophole in the draft directive which says 'If exceptional and duly justified reasons make such legal separation impossible, the fund could continue to be managed by the operator...'

### **Article 31 Group**

3. Article 31 of the Treaty is to be relied on for the proposed directives. This requires, prior to adoption by the Commission of an initial text, the opinion of the article 31 expert group. This group is made up of independent representatives of Member States who are experts in radiation and health. The group is now being asked to assess issues on nuclear safety, financing of decommissioning and disposal strategies for nuclear waste. The Group is secretive, unaccountable and does not conduct its affairs transparently. It is not at all clear how experts in radiation and health are equipped to pronounce on the many other areas of concern raised by the Directives.

### **Inappropriate timing**

4. The Commission urge that the legal regime will need to be operational by 1st January 2004 to ensure no hiatus between the accession of new members and the impact upon them of the new legislation. However insofar as the package seeks to apply the Safety Convention to new members, this is already the case so this bull-dosing is not necessary and should be resisted.

We certainly agree with others that the package should not be used to breathe new life into the Euratom Treaty but should at a minimum await the outcome of the inter-governmental conference (IGC) in 2004 for two reasons:

(i) The Nice Declaration on the future of the Union mentioned the simplification of the Treaties as one of the issues for discussion contributing to "the need to improve and to monitor the democratic legitimacy and transparency of the Union and its institutions, in order to bring them closer to the citizens of the Member States". The Laeken Declaration that has triggered the Convention-process leading up to the IGC places this exercise in a wider context, that of "Towards a Constitution for European citizens" The Euratom Treaty par excellence distances citizens from its provisions and lacks democratic legitimacy or transparency.

(ii) the package seeks to alter the distribution of powers between the EU and member states in the area of nuclear safety at a time when the Convention process and the IGC will be wrestling with a clearer definition of the line to be drawn for establishing subsidiarity.

### **Article 8 of the Safety Convention and Euratom's ambiguous role**

5. The Council and the Commission deny that the EU has legal competence to accede to Article 8 of the Nuclear Safety Convention\*. Article 8.2 provides that "Each Contracting Party shall take the appropriate steps to ensure an effective separation between the functions of the

regulatory body and those of any other body or organisation concerned with the promotion or utilisation of nuclear energy." Yet the Commission itself seeks to require precisely this of member states through the mechanism of the directive:

"Article 4 Independence of the safety authority":

"Each Member State shall establish a safety authority. The safety authority shall be independent in its organisation, legal structure and decision-making from any other body or organisation, whether private or public, concerned with the promotion or utilisation of nuclear energy."

Either this IS a matter which DOES fall within EU competence or it does not. The fact that Euratom does promote nuclear energy (Article 1 states: "It shall be the task of the Community to .. creat(e)(...) the conditions necessary for the speedy establishment and growth of nuclear industries.") sits uneasily with its search for a new safety regulation role in the light of Article 8 and may explain why it has avoided committing the EU to comply with Article 8. However if its view on this is correct, it is hard to see how it can then claim legal competence to promote draft Article 4.

[\* This provision is not amongst those provisions to which the EU has by Article 30.4(ii) of the Convention claimed competence. (Comission Decision of 16 November 1999 concerning the accession to the 1994 Convention on Nuclear Safety by the European Atomic Energy Community (Euratom) Official Journal L 318 , 11/12/1999 p. 0021 - 0030). The position is not affected by the Judgement of the European Court on 10 December 2002 in Case C-29/99 which found that the commission decision was too narrow in its view of the relevant competencies when it found that Articles 7, 14, 16(1) and (3) and 17 to 19 of that convention should have been included.]

### **Duplication and weakness of proposed safety standards**

6. The Nuclear Safety Convention proved to be an emasculated response to the original post-Chernobyl demand for a Convention with detailed standards and teeth. As it turned out it was "a rather cursory text limited to only the most innocuous general principles hedged with multiple qualifications.." per Louise de la La Fayette, formerly responsible for international nuclear law at the Canadian Department of External Affairs and International Trade.

As it is the case that (a) the modest requirements of the Convention already apply to all EU member states and entrant states with facilities; and (b) the draft Directive for the most part simply replicates these, it is difficult to see what would be achieved in terms of increasing safety.

### **Radwaste Directive impact on UK policy development process**

7. We would agree with the comments below that you have already had from UK Nirex Ltd, namely:

"...We want to make it clear that we think that what is proposed (in the Radwaste Directive) will not be helpful in the UK context for 2 main reasons:

- the statement that deep disposal is the option to be pursued totally undermines due process. A key lesson learned in the UK is that legitimacy of the process is key to an acceptable way forward. Any implication (and the proposed EC directive is more than just an implication) that an option has already been set subverts any process that is in place.

\* The dates are also an issue, although we understand that there may be a bit more leeway in this area. Again the main problem is subverting the process..."

Our concerns were also better captured in earlier draft text that you were offered for circulation, namely:

"...This proposal raises a number of issues. It undermines some Member States' own plans for developing and implementing safe and consensus-based radioactive waste management solutions and it does not reflect the movement of the international consensus towards monitoring and retrievability of waste in the event of significant new information. For the UK, the proposals cut right across our on-going public consultation on waste management policy and DEFRA's consultation

document "Managing Radioactive Waste Safely" made it clear that all options would be considered with no presumption in favour of deep disposal."

## **Openness and Transparency**

8. Regarding openness and transparency, Article 1, Objectives, states:

"By establishing requirements for the safe management of spent nuclear fuel and radioactive waste, this Directive is aimed at:

1. ...
2. ...
3. enhancing effective public information and, WHERE NECESSARY, participation in order to ensure the required transparency in the relevant decision-making processes.

Article 4, General requirements for the management of spent nuclear fuel and radioactive waste, also says:

- "1. ...
2. ...
3. ...
4. Member States shall ensure that adequate financial resources are available to support the safe management of spent nuclear fuel and radioactive waste, including that from decommissioning activities, and that financing schemes respect the "polluter pays" principle.
5. Member States shall ensure that there will be effective public information and, WHERE NECESSARY, participation in order to achieve a high level of transparency on issues related to the management of spent nuclear fuel and radioactive waste under their jurisdiction.
6. ..."

"Where necessary" is not an acceptable standard and falls well short of the openness and transparency in decision making that most parties to future policy development, including DEFRA and UK Nirex Ltd are committed.

## **Concluding remarks**

9. In our view the very ambitious and prescriptive timetable for radwaste disposal is a naive attempt to 'solve' the radwaste problem and we understand why others are concerned that the real 'agenda' is to lay the ground for new nuclear build particularly in new EU member states, aided by an extension of Euratom loans that will principally benefit the nuclear construction industries in existing member states.

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