

ENSREG EXPLANATORY NOTE ON DRAFT EURATOM NUCLEAR SAFETY DIRECTIVE

This paper contains the position of ENSREG¹ regarding the DG Energy proposal for a new Nuclear Safety Directive (NSD) and the rationale behind the ENSREG proposals. The DG Energy proposal for a NSD and the information supplied by the Commission during the meetings of an ENSREG Ad-hoc group, set up to review the proposed NSD, formed the basis and starting point of the work.

It is important to underline that some members of ENSREG believe that there is not enough justification to actually revise the current directive from a technical point of view. Concerns exist also regarding the time table for the process and priority would be given to first evaluate the current directive, to be done next year, before to decide start the revision of the directive as proposed by the Commission.

There are also concerns among the members of ENSREG that the suggested changes of the directive will shift resources within the competent regulatory bodies from supervision of the nuclear installations to negotiations within EU and peer reviews. Such important aspect must be considered by the member states in the process that follows.

ENSREG is of the opinion that the proposed text of the DG Energy NSD has within it a great detail of prescription and guidance which could reduce the flexibility and dynamics of the European nuclear safety framework. In addition, some areas of the text could reduce the striving for continuous improvement.

The rationale behind the ENSREG's proposal is based on the following four cornerstones:

Ambitious safety objectives as the specific European added value

In line with the principle of continuously improving nuclear safety, ENSREG proposes that the NSD sets ambitious safety objectives instead of detailed and fixed safety criteria as proposed in the DG Energy draft NSD. This would primarily complement the work of the IAEA and, on the other hand, the work of the national regulators of the Member States.

The EU Member States, within the IAEA framework, are committed to develop and constantly revise standards and guides in the area of nuclear safety. Fixed safety criteria, by their very nature, should not replace this well established and dynamic process. Neither should such criteria replace the specific and very detailed rules for nuclear installations developed in each Member State.

Therefore, in the view of ENSREG, setting ambitious safety objectives can provide added value to the system of nuclear safety regulation in Europe. The major advantage of ambitious safety objectives is, while harmonizing goal setting, fostering high-level and dynamic standards of nuclear safety. This approach avoids the necessity of establishing fixed technical criteria and allows to follow state of the art progress in nuclear safety.

¹ This ENSREG explanatory note on a draft text to amend Council Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations contains the position of the national regulators in the European Nuclear Safety Regulators Group (thereafter ENSREG). This paper is the result of the work of the national regulators meeting in ENSREG and does not prejudice the final form of any decision to be taken by the European Commission.

European Reviews as a mechanism to ensure high-quality nuclear safety regulation

ENSREG is strongly committed to develop a mechanism to translate the ambitious safety objectives into concrete recommendations including a follow-up of actions (a closed loop). To this end ENSREG proposes topical reviews as an inter-regulatory instrument to ensure high quality nuclear safety regulation across Europe. This process is additional to the already existing instruments such as periodic safety reviews (PSR) and builds upon the valuable experience that was gained from the European Stress Test exercise.

ENSREG notes that various international peer-review mechanisms are in place and are widely used by the EU Member States. ENSREG recognizes that peer reviews are demanding both in terms of time and resources, so that their feasibility depends on sufficient allocation of additional resources. However, dedicated European topical peer reviews will, in the view of ENSREG, be an effective way to ensure the transposition of the safety objectives. This could, within the EU, ensure consistency, promote sharing of good practices, and help to identify important safety issues which would require special attendance.

The European review process, as proposed by ENSREG, would take the ambitious safety objectives as well as the agreed WENRA nuclear safety “acquis” as a basis. It would involve – after the selection of one or more topics – in a first step a national assessment and in a second step a peer review of the outcomes.

The ENSREG proposal assigns the task of the European reviews to the Member States, with support of ENSREG.

Transparency as a tool to improve nuclear safety

ENSREG recognizes that transparency is wider than communication and information sharing. Transparency with regard to nuclear safety regulation enhances public confidence in the national regulatory system. Furthermore, it assists in improving nuclear safety as the public is put in a better position to develop founded opinions on nuclear safety issues. To this end, ENSREG proposes that the regulator and the operator develop, publish and implement a transparency strategy. The strategy should cover, inter alia, normal operating conditions of nuclear installations, non-mandatory consultation activities with the workers and the general public and communication in case of incidents and accidents.

Independent regulatory decision making

A strong competent regulatory authority is a fundamental condition of the European nuclear safety regulatory framework. ENSREG recognizes the DG Energy’s intent to strengthen the competent regulatory authority. However, ENSREG emphasizes that, in order to avoid any conflict of interest, the key criteria is the effective independence from undue influence in the decision making.

In support of the above further is presented rationale related to ENSREG proposals to the articles of the DG Energy draft NSD as presented in Appendix.

CHAPTER I
OBJECTIVES, SCOPE OF APPLICATION AND DEFINITIONS

Article 3
Definitions

ENSREG recognises the value of clear and unambiguous definition of the occurring terms in the directive. This does not mean that all the occurring terms has to be defined, in many cases the common vocabulary English meaning will suffice. The following issues should however be checked:

- a) the necessity of the definition
- b) the internal consistency of the definitions
- c) the consistency with definitions in other EU-directives, inter alia the waste directive and the EU BSS
- d) the consistency with IAEA definitions

CHAPTER II
OBLIGATIONS
Section 1
General Obligations

Article 5
Competent Regulatory Authority

In addition to what is stated above (see “Independent regulatory decision making”) ENSREG emphasizes the following which is reflected in the ENSREG proposal on Article 5:

ENSREG considers the DG Energy proposal on Article 5 as too detailed for a framework directive. In contrast, the ENSREG proposal on Article 5 focuses on main tasks and responsibilities of the competent regulatory authority. In particular, it requires the independence of the competent regulatory authority from undue influence in its decision making. Moreover, ENSREG emphasizes that the competent regulatory authority must have the power to suspend the operation of a nuclear installation on safety grounds, irrespective of the licensing process. Finally, ENSREG recognizes the importance of cooperation between competent regulatory authorities of neighboring countries as a good practice. Reference to this practice should be made in the recitals.

Article 8
Transparency

ENSREG recognises that existing European law contains obligations regarding, inter alia, access to information and public participation in environmentally relevant decision making. Consequently, specific obligations with regard to nuclear safety need to be compatible with already existing obligations.

Art. 8 should be implemented and applied without discrimination to the population of other Member States and neighbouring countries, which can be affected by cross-border impacts. This concept should be adequately reflected in the recitals.

There should also be a clear reference in the recitals to existing work published by ENSREG on transparency.

Further supporting transparency Member States shall ensure proper cooperation between the competent regulatory authority and counterpart authorities from other Member States or neighbouring countries, on nuclear safety matters with cross-border impacts. This concept should be adequately reflected in the recitals.

Section 2 Specific Obligations

Art. 9

Safety Objectives for Nuclear Power Plants

In line with the principle of continuously improving nuclear safety, ENSREG proposes safety objectives rather than detailed and fixed safety criteria.

ENSREG proposes ambitious high-level safety objectives based on recent WENRA work (Art.9). Safety objectives are proposed for nuclear power plants and, if applicable, research reactor facilities.

Other nuclear installations are covered by the generic safety objective of Art.1c).

The scope includes decommissioning and dismantling to encompass the whole nuclear power plant life-cycle.

In addition to high level safety objectives, more detailed objectives are presented for different life-cycle phases of nuclear power plants (Art. 10) and for on-site emergency preparedness and response (Art. 11).

It should be noted that WENRA works continuously on establishing and implementing safety criteria. Establishing detailed technical safety criteria in Europe should be left to European national nuclear safety authorities.

The ENSREG proposal focuses on on-site Emergency Preparedness activities and off-site EPR activities are only included as far as the co-operation with off-site bodies is concerned.

ENSREG recognises that other EU Directives, existing and under revision, address Emergency Preparedness and Response (EPR) and the possible overlap and consistency with these have to be taken into account.

CHAPTER III PEER-REVIEWS AND REPORTING

Art. 12

Peer Reviews

The article proposed by ENSREG should replace articles 14 and 16 of the draft DG Energy NSD. It ensures that responsibilities with regard to nuclear safety remain with the Member States.

Article 14

Transposition

ENSREG recognises that a graded approach must be applied when implementing the new safety directive.

In line with this approach par. 2 states that some Articles shall not apply to Cyprus, Ireland, Luxembourg and Malta, for as long as they do not decide to develop any activity related to nuclear installations under their jurisdiction.

ENSREG is of the view that recitals of the new NSD should contain further explanations or guidance on the meaning of a graded approach to the application of the directive.

In particular, Member States only having a research reactor under their jurisdiction should not have to fully implement the provisions for a regulatory authority and the topical peer-review; the latter should however not hinder their voluntary participation.

CHAPTER IV

Final provisions

Deletion of Article Penalties

The system of enforcement (including administrative penalties) in the nuclear area is regulated under the respective national framework in each MS. Consequently, the Article has been deleted.

Appendix: Technical input to a revised Nuclear Safety Directive