

INTERNATIONAL REGULATORY ACTIVITIES

European Union*

Since 1 May 2004, there are ten new Member States in the European Union: upon that date the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia became Members of the Union and Parties to the treaties upon which it is based, as amended and completed.

The criteria governing this enlargement, the largest to date within the European Union, were established by an act annexed to the Accession Treaty of each of the ten new Member States signed in Athens on 16 April 2003.

General legislation

Nuclear Safety Convention – Euratom Declaration

The European Atomic Energy Community acceded to the Nuclear Safety Convention in 2000. As required by this Convention, a Declaration of competences was then deposited with the Director General of the International Atomic Energy Agency, which was limited to radiation protection issues and, partially, to aspects of radiological emergency preparedness.

The Commission was not satisfied with this Declaration and therefore seized the European Court of Justice of the matter. In its judgement of 10 December 2002, the Court of Justice declared that the Euratom Declaration of competences should have also referred to Articles 7, 14, 16(1) and (3) and Articles 17 to 19 of the Nuclear Safety Convention.

In execution of this ruling, a Council Decision was adopted on 15 December 2003 (not published) which modifies the wording of the Declaration to be made by Euratom pursuant to Article 30(4)(iii) of the Nuclear Safety Convention. According to Commission Decision 2004/491/Euratom, of 29 April 2004, amending Commission Decision 1999/819/Euratom of 16 November 1999 concerning the accession to the 1994 Convention on Nuclear Safety by the European Atomic Energy Community (Euratom) with regard to the Declaration attached thereto (OJEU L 172, p. 7), a new Euratom Declaration was transmitted on 12 May 2004 to the IAEA.

The new Declaration was also modified to include the ten new Member States that joined the European Union as from 1 May 2004.

* This update on legislative and regulatory activities of the European Union was kindly provided by Blanca Andres-Ordax and Nathalie Cornuel of the Directorate-General for Transport and Energy in the European Commission.

Radiation protection (including emergency planning)

Council Directive 2003/122/Euratom on the Control of High Activity Sealed Sources and Orphan Sources (2003)

This Directive was formally adopted by the Council on 22 December 2003 (OJEU L 346, p. 57). The so-called “HASS Directive” supplements Directive 96/29/Euratom laying down basic safety standards for the health protection of the general public and workers against the dangers of ionising radiation (see *Nuclear Law Bulletin* Nos. 52, 58 and 61), and sets up a control system allowing for source traceability within the EU. This control system provides that:

- prior authorisation is required for any practice involving a high activity sealed source, including taking possession of a source; it thus enlarges the authorisation obligation under Directive 96/29 to all sources considered as being of concern;
- each holder shall keep records of all sources under his responsibility, their location and their transfer to another holder. Records shall be transmitted to the authorities at precise moments and be available for inspection;
- national authorities must keep up-to-date records of authorised holders and of the sources they hold, and of transfers of sources;
- obligations on holders include the requirement to verify the location of the source and to promptly notify of any loss or theft, and to ascertain that, before a transfer is made, the recipient holds the appropriate authorisation;
- sources have to be identified by a unique number and be accompanied by relevant written information.

The Directive contains two provisions on financial requirements. The first of these provides that, before issuing authorisation, Member States shall ensure that adequate provision (by way of financial security or any other equivalent means) has been made to guarantee the safe management of the source when it becomes a disused source, including the case where the holder becomes insolvent or goes out of business. The second mechanism deals with intervention costs relating to the recovery of orphan sources. Member States are required to set up a system of financial security (or any equivalent means) on the basis of arrangements to be decided at national level.

Member States are required to completely adapt their national provisions to the requirements of this Directive by 31 December 2005.

Decisions in relation to civil protection (2003)

On 29 December 2003, the Commission adopted a Decision laying down rules for the implementation of Decision 2001/792/EC, Euratom, establishing a Community mechanism to facilitate reinforced co-operation in civil protection assistance interventions (Decision 2004/277/EC, Euratom, OJEU L 87, p. 20). The Community civil protection mechanism was established in 2001 in order to improve the manner in which the European Union reacts to major natural, technological, radiological or environmental disasters. It aims to provide support, upon request, in the event of a major emergency and to improve the co-ordination of emergency interventions carried out by Member States and by the Community within or outside the European Union.

The Decision of 29 December 2003 establishes a procedure for the communication of information on available resources for civil protection assistance interventions in the countries which participate in this system. It sets up a Monitoring and Information Centre which is accessible and able to react immediately 24 hours a day and it establishes a common emergency communication and information system (CECIS). It describes the tasks of experts and rules for interventions within and outside the Community.

Participation in this mechanism is open to Member States, candidate countries having signed a memorandum of understanding with the Commission, and to Norway, Iceland and Liechtenstein.

Environmental protection

Directive 2004/35/EC on Environmental Liability with regard to the Prevention and Remedying of Environmental Damage (2004)

On 21 April 2004, the European Parliament and the Council jointly adopted the Directive on environmental liability with regard to the prevention and remedying of environmental damage (Directive 2004/35/EC, OJEU L 143, p. 56). The Directive entered into force on 30 April 2004. Member States have a period of three years to implement the directive in their national law. This text was in discussion since January 2002 (see *Nuclear Law Bulletin* No. 72)

The Directive establishes a framework based on the polluter-pays principle to ensure the prevention and remedying of environmental damage. It establishes the requirement for operators to take the necessary measures to prevent situations where there is an imminent threat of damage to the environment and to remedy such damage when it occurs.

The scope of application of the Directive extends to damage to species and habitats protected at European Union level, damage to water resources covered by Directive 2000/60/EC establishing a framework for Community action in the field of water policy, as well as land contamination which creates a significant risk to human health. The Directive distinguishes between high-risk professional activities, listed in an exhaustive fashion, which are subject to a strict liability regime for all environmental damage which they may cause, and other professional activities for which only damage caused to protected species and natural habitats are covered in the event of fault or negligence on the part of the operator.

The Directive does not apply to nuclear environmental damage or risks, nor does it apply to an imminent threat of such damage arising from Euratom Treaty-related activities or from an incident or activity in respect of which liability or compensation falls within the scope of any of the following international instruments, listed at Annex V, including any future amendment to those instruments:

- the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy and the Brussels Supplementary Convention of 31 January 1963;
- the Vienna Convention of 21 May 1963 on Civil Liability for Nuclear Damage;
- the Convention of 12 September 1997 on Supplementary Compensation for Nuclear Damage;
- the Joint Protocol of 21 September 1988 relating to the Application of the Vienna Convention and the Paris Convention;

- the Brussels Convention of 17 December 1971 relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material.

The Commission shall present a report on the implementation of the Directive including any appropriate proposals for amendment within ten years of the entry into force of the directive. This report should address, *inter alia*, the regime excluding activities covered by the international liability regimes, including the nuclear third party liability regime, taking into account in particular experience gained in relation to these international agreements, their implementation in Member States and differences between liability levels in Member States.

Commission Recommendation 2004/2/Euratom on standardised information on radioactive airborne and liquid discharges into the environment from nuclear power reactors and reprocessing plants in normal operation (2003)

This Recommendation, adopted on 18 December 2003 (OJEU L 2, p.36) is addressed to Member States and defines the format and content of information to be reported to the Commission on radioactive discharges into the environment from nuclear power stations and spent fuel reprocessing plants in the European Union. It provides clear guidance to Member States on the assessment and reporting of data relating to radioactive discharges. In this way, the Commission aims to achieve a higher degree of consistency and utility with respect to the information it receives from across the Union.

The implementation of the Recommendation will allow the Commission to boost the quality of the reports it publishes on radioactive discharges and on their impact on the population of the European Union.

Third party liability

Council Decisions authorising the Member States to sign and ratify the Protocol to Amend the Paris Convention, or to accede to it (2003 and 2004)

On 27 November 2003, the Council adopted a Decision authorising the Member States which are Contracting Parties to the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy to sign, in the interest of the European Community, the Protocol amending that Convention (Decision 2003/882/EC, OJEU L 338, p.30) (see *Nuclear Law Bulletin* No. 72). A second decision authorising these same Member States to ratify the amending protocol, or to accede to it, was adopted by the Council on 8 March 2004 (Decision 2004/294/EC, OJEU L 97, p. 53) following the Parliament's assent to this proposal on 26 February 2004.

The signature and ratification of the protocol, or accession to it, are within the jurisdiction of the Community and the Member States. The Community has exclusive jurisdiction with regard to the amendment of Article 13 of the Paris Convention in that this amendment affects the Community rules established in Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. The Member States retain their jurisdiction over matters covered by the Protocol which do not affect Community law.

The Member States were exceptionally authorised to sign and ratify the Protocol in the interest of the Community and the Member States, because the Paris Convention and its amending protocol are not open to the participation of regional organisations. Austria, Ireland and Luxembourg, which are

not Party to the Paris Convention, are not required to give effect to these decisions. These three States will continue to apply the Community rules as established in Regulation (EC) No. 44/2001 in the field covered by the Paris Convention and its amending protocol. Furthermore, Denmark, which is not bound by the Regulation of 22 December 2000, did not participate in the adoption of these decisions.

The Member States which are Party to the Paris Convention signed the Protocol in the interest of the Community on 12 February 2004 in accordance with the Council decision of 27 November 2003. They shall endeavour to ratify the Protocol before 31 December 2006.

Regulations on nuclear trade (including non-proliferation)

Council Decision approving a Commission Regulation on the Application of Euratom Safeguards (2004)

On 29 April 2004, the Council adopted a decision approving a Commission Regulation on the application of Euratom Safeguards.

The Regulation, which still has to be adopted by the Commission, is designed to replace Commission Regulation No. 3227/76/Euratom of 19 October 1976 which is currently in force. Adopted in implementation of Article 79 of the Treaty establishing the European Atomic Energy Community, the new Regulation reviews the obligations of operators in relation to safeguards in order to take account developments to the legal framework and technological advancements.

The new Regulation will allow the Commission to fulfil its obligations under the Additional Protocols to the Safeguards Agreements concluded between the Community, the Member States and the International Atomic Energy Agency (IAEA). Signed on 22 September 1998, the Additional Protocols entered into force on 30 April 2004. In this regard, the Regulation sets out new provisions concerning declarations on sites and on waste with a view to fulfilling requirements arising from the additional protocols. It also provides a new format for declarations.