

International Regulatory Activities

European Union

Council Decision Authorising the Republic of Slovenia to Ratify the 2004 Protocol Amending the Paris Convention (2007)

Council Decision [2007/727/EC] of 8 November 2007 authorises the Republic of Slovenia to ratify, in the interest of the European Community, the Protocol of 12 February 2004 Amending the Paris Convention of 29 July 1960 on Third Party Liability in the Field of Nuclear Energy.¹

In 2003² and in 2004,³ the Council had authorised the Member States which are Contracting Parties to the Paris Convention to sign and ratify, in the interest of the Community, the Protocol amending the Paris Convention, or to accede to it (see *Nuclear Law Bulletin* Nos. 72 and 73; unofficial consolidated text of the Paris Convention reproduced in Supplement to *Nuclear Law Bulletin* No. 75). An authorisation by the Council was necessary because the 2004 Protocol to amend the Paris Convention contains provisions which affect the rules laid down in the Council Regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, a field in which the Community has exclusive competence.⁴

The two decisions were addressed to Member States which are Contracting Parties to the Paris Convention, to the express exclusion of Austria, Denmark, Ireland and Luxembourg. Denmark is neither bound by Regulation (EC) No. 44/2001 (see *Nuclear Law Bulletin* Nos. 72 and 73) nor subject to its application, in accordance with Articles 1 and 2 of the Protocol on the Position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community. In addition, Austria, Ireland and Luxembourg, which are not parties to the Paris Convention, have been expressly exempted from applying the decisions. They will continue to be governed by the rules in Regulation (EC) No. 44/2001 and apply them in the field covered by the Paris Convention and the 2004 Protocol.

The Member States addressed by the above decisions signed the Protocol to that Convention in the interest of the European Community on 12 February 2004. Under Article 2(1) of the Decision 2004/294/EC they “shall take the necessary steps to deposit simultaneously their instruments of ratification of the Protocol, or accession to it, with the Secretary-General of the Organisation for Economic Co-operation and Development within a reasonable time and, if possible before 31 December 2006”.

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1. Official Journal of the European Union L 294 of 13 November 2007.
 2. Council Decision 2003/882/EC of 27 November 2003.
 3. Council Decision 2004/294/EC of 8 March 2004.
 4. Council Regulation (EC) No. 44/2001 of 22 December 2000.

Since the Republic of Slovenia was not a Member State at the time of the 2003 and 2004 decisions, the Council decision authorises the Republic of Slovenia to ratify, in the interest of the Community, the 2004 Protocol amending the Paris Convention and to take the necessary steps to deposit its instrument of ratification, if possible simultaneously with the Member States addressed by the 2004/294/EC.

Council Decision Approving the Accession of the European Atomic Energy Community to the Amended Convention on the Physical Protection of Nuclear Material (2007)

Council Decision 2007/513/Euratom of 10 July 2007⁵ is a declaration by the European Atomic Energy Community (“Community”) under Articles 18(4) and 17(3) of the Convention on the Physical Protection of Nuclear Material (CPPNM).

The CPPNM was adopted on 26 October 1979 (see *Nuclear Law Bulletin* No. 23) and entered into force in 1987. As of 17 September 2007, 130 states, including all Member States of the Community, are parties to the CPPNM. An Amendment to the CPPNM, which has not yet entered into force, was adopted on 8 July 2005. The final act regarding the Amendment to the CPPNM (see *Nuclear Law Bulletin* Nos. 71, 75 and 76) was signed by the European Commission on behalf of the Community on 8 July 2005.

International and regional organisations, when becoming a party to the Convention, must communicate to the depositary a declaration indicating which articles of the CPPNM do not apply to them [Article 18(4) of the CPPNM]. Pursuant to this provision, the Community declares that Articles 8 to 13 of the CPPNM do not apply to it. These provisions relate to prosecution and extradition of alleged offenders. The Community also declares that Article 14 paragraphs (2) and (3) of the CPPNM, relating to the communication between states prosecuting an alleged offender, states directly concerned and all other states, do not apply to the Community.

The Community furthermore specifies, pursuant to Article 17(3) of the CPPNM, that since only states may be parties in cases before the International Court of Justice, the Community is bound only by the arbitration procedure referred to in Article 17(2) of the CPPNM.

Council Decision Establishing the European Joint Undertaking for ITER and the Development of Fusion Energy and Conferring Advantages upon it (2007)

Council Decision 2007/198/Euratom of 27 March 2007 establishes a European Joint Undertaking for the International Thermonuclear Experimental Reactor (ITER) and the Development of Fusion Energy for a period of 35 years, starting on 19 April 2007. The Joint Undertaking will be based in Barcelona.

On 24 May 2006, Euratom, the People’s Republic of China, India, Japan, the Republic of Korea, Russia and the United States concluded an Agreement on the Establishment of the ITER International Fusion Energy Organisation for the Joint Implementation of the ITER Project (ITER Organisation) with its headquarters in France (see *Nuclear Law Bulletin* No. 77). The ITER Agreement requires all parties to provide contributions to the ITER Organisation through appropriate legal entities referred to as “domestic agencies”.

5. Official Journal of the European Union L 190 of 21 July 2007.

In addition, on 5 February 2007, Euratom and Japan concluded a bilateral agreement for the joint implementation of the “broader approach” fusion research activities, geared towards the rapid realisation of fusion energy. The Broader Approach Agreement envisages that such activities should be carried out by Euratom through its “domestic agency”.

According to Article 1(2) (a) to (c) of the decision, the tasks of the Joint Undertaking shall be:

- to provide the contribution of Euratom to the ITER International Fusion Energy Organisation;
- to provide Euratom’s contribution to broader approach activities with Japan for the rapid realisation of fusion energy;
- to prepare and co-ordinate a programme of activities in preparation for the construction of a demonstration fusion reactor and related facilities including the international fusion materials irradiation facility.

The Joint Undertaking shall have the following members: Euratom (represented by the Commission), the Member States of Euratom and third countries which have concluded co-operation agreements with Euratom in the field of controlled nuclear fusion, which associate their respective research programmes with Euratom programmes and which have expressed their wish to become members of the Joint Undertaking.

The Joint Undertaking shall have legal personality. It may, in particular, conclude contracts, obtain licences, acquire or dispose of movable and immovable property, take out loans and be a party to legal proceedings. The indicative total resources deemed necessary for the Joint Undertaking amount to 9 653 million euros (EUR), pursuant to Article 4(3) of the decision.

International Atomic Energy Agency

Convention for the Suppression of Acts of Nuclear Terrorism (2007)

In its Resolution A/RES/59/290 of 13 April 2005, the General Assembly of the United Nations adopted the International Convention for the Suppression of Acts of Nuclear Terrorism (the Convention). The Convention was opened for signature by all states from 14 September 2005 until 31 December 2006 at United Nations headquarters in New York. It entered into force on 7 July 2007, the 30th day following the date of the deposit of the 22nd instrument of ratification, acceptance, approval or accession.

The preamble to the Convention explicitly refers to the Convention on the Physical Protection of Nuclear Material (CPPNM), which was adopted under the auspices of the IAEA and entered into force on 8 February 1987. An amendment to the CPPNM, which has not yet entered into force, was adopted on 8 July 2005. As of 1 October 2007, 12 out of 130 States Parties have accepted the amendment.

On 11 September 2007, the IAEA’s Board of Governors approved the functions specifically assigned to the IAEA under the Convention and authorised the Director General to implement them, subject to the availability of resources.

Resolution on the Exclusion of Small Quantities of Nuclear Material from the Application of the Vienna Convention (2007)

On 11 September 2007, the Board of Governors adopted the Resolution on the Establishment of Maximum Limits for the Exclusion of Small Quantities of Nuclear Material from the Application of the Vienna Conventions on Nuclear Liability. In operative paragraph 12 of its Resolution GC(51)/Res/11, the General Conference welcomed the Board's aforementioned resolution.

Three legal instruments on civil liability for nuclear damage, adopted under the auspices of the IAEA, namely, the Vienna Convention on Civil Liability for Nuclear Damage (the 1963 Vienna Convention), the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage (the 1997 Vienna Convention) and the Convention on Supplementary Compensation for Nuclear Damage (the 1997 CSC), provide for the Board of Governors to establish maximum limits for the exclusion of small quantities of nuclear material from their respective scope of application. With respect to the 1963 Vienna Convention, the IAEA Board of Governors established maximum limits in September 1964 and again in September 1978 in line with the then current Edition of the IAEA's Regulations for the Safe Transport of Radioactive Material (the IAEA's Transport Regulations). No maximum limits have been established so far for the 1997 Vienna Convention or the 1997 CSC.

During the course of its meetings in 2006 and 2007, INLEX considered the possible need for the Board to establish new maximum limits in line with the current edition of the IAEA's Transport Regulations and to establish limits with respect to the 1997 Vienna Convention and the 1997 CSC. INLEX recommended that the proposed limits should be examined by the IAEA's Transport Safety Standards Committee (TRANSSC) and the Radiation Safety Standards Committee (RASSC) to ensure their technical adequacy prior to their submission to the Board. On 14 March 2007 and 11 April 2007, TRANSSC and RASSC, endorsed the proposed maximum limits and accordingly a new draft resolution was submitted to the Board for its consideration and adoption [GOV/2007/39 (Corrected)].

International Expert Group on Nuclear Liability (2007)

The International Expert Group on Nuclear Liability (INLEX) established by the Director General in 2003, held its seventh meeting in June 2007. During the course of its meeting the Group, *inter alia*, continued its work on addressing possible gaps and ambiguities in the existing nuclear liability regime, in particular, by identifying further steps to address them. The Group also considered gaps in insurance coverage and considered the possible ways of increasing the amounts of nuclear liability coverage through voluntary international pooling of operators' funds. In discussing the issue of the amount of liability limit in the 1963 Vienna Convention on Civil Liability for Nuclear Damage Vienna Convention (the 1963 Vienna Convention), the Group concluded that the unit of account was "35 US Dollars (USD) per one troy ounce of fine gold" as provided in Article V(3). Accordingly, the Group concluded that the correct minimum amount of liability under the 1963 Vienna Convention was dependent on the day-to-day price of gold, and that it was currently equivalent to approximately USD 93 million. INLEX's work is still ongoing and the third Regional Workshop on Liability for Nuclear Damage, is scheduled to be held in South Africa, in February 2008 and the eighth meeting of the Group is scheduled to be held in May 2008.

Code of Conduct on the Safety and Security of Radioactive Sources and its Supplementary Guidance (2007)

An open-ended meeting of technical and legal experts for sharing of information as to states' implementation of the Code of Conduct on the Safety and Security of Radioactive Sources (the Code) and its supplementary Guidance on the Import and Export of Radioactive Sources (the Guidance), was held from 25 to 29 June 2007 at the IAEA Headquarters in Vienna under the chairmanship of Mr. S. McIntosh of Australia. The objective of the meeting was to promote a wide exchange of information on national implementation of the Code and Guidance. The meeting was open to all Member and non-Member States of the IAEA, whether or not they had made a political commitment to the Code and/or to the Guidance.

The key issues discussed at the meeting include: infrastructure for regulatory control, facilities and services available to the persons authorised to manage radioactive sources, training of staff in the regulatory body, law enforcement agencies and emergence service organisations, experience in establishing a national register of radioactive sources, national strategies for gaining or regaining control over orphan sources including arrangements for reporting loss of control and encouraging awareness of, and monitoring to detect orphan sources, approaches to managing sources at the end of their life cycles and experience with implementation of the import and export provisions of the Code and the Guidance on the Import and Export of Radioactive Sources.

There is widespread international support for the Code and the import/export Guidance. States that have not yet made a political commitment to the Code or the Guidance were encouraged to consider doing so. The adoption and implementation of the Code by states and the IAEA's technical co-operation programme have produced significant improvements in regulatory infrastructure and capability in many states. In relation to the import and export of category 1 and 2 sources, many states have already provided national points of contact (POC) to the Secretariat, and this information is available on the IAEA webpage dedicated to the Code. This information is of mutual benefit to both importing states and exporting states, and all states are encouraged to provide their POC's to the Secretariat. The establishment of a national registry of sources is an essential element of the regulatory control process and it should be given high priority. Orphan sources detected at national borders need to be managed in a safe and secure manner. This area of concern would benefit from further multilateral discussions.

51st IAEA General Conference

The 51st regular session of the IAEA General Conference was held in Vienna, from 17 to 21 September 2007 with the participation of delegates from Members States and representatives of various international organisations. In addition to its regular work, the 51st anniversary session involved a special event:

Special event – 10th Scientific Forum

The 10th Scientific Forum took place from 18 to 19 September 2007 focusing on the theme *Global Challenges and the Development of Atomic Energy: The Next 25 Years*. The objective of the discussion was to envisage how the world's nuclear energy future might unfold over the next 25 years, and how in this context the IAEA might best advance in its mission of ensuring the peaceful, safe and secure use of that energy source. The presentations consisted of four major sessions on the future of nuclear power in meeting the world's energy needs; new roles for nuclear technology in food,

agriculture and health; meeting the challenge of safety and security in nuclear infrastructure; and most challengingly, holding the line against weapons breakout through effective safeguards and verification.

The Forum found that since public confidence in effective nuclear verification was likely to be a precondition for the significantly expanded use of nuclear energy, it was important that the IAEA continue to fulfil its verification responsibilities credibly by perfecting its safeguards system and applying it in an impartial and objective manner. States with relevant non-proliferation undertakings were encouraged to support the IAEA's work by bringing into force safeguards agreements to which they had committed and by concluding Additional Protocols in order to provide the IAEA with the required legal authority for its verification work. The Forum concluded that the expansion of the use of nuclear energy will only be possible if the proliferation risk created by the further spread of sensitive nuclear technology, such as enrichment and reprocessing, is minimised. The Forum discussed the need for the IAEA to continue its work in building consensus on the establishment of an international fuel bank or the development of other acceptable international arrangements aimed at guaranteeing nuclear fuel supply and avoiding the need for the development at the national level of a full fuel cycle capability with the inherent proliferation risks that poses.

Resolutions of the Conference

A number of resolutions were adopted by the General Conference. The following takes note of two Resolutions: GC(51)/RES/11 Relating to Nuclear, Radiation and Transport Safety and Waste Management and GC(51)/RES/12 Relating to Nuclear Security. The relevant sections of Resolution 11 and Resolution 12 can be summarised as follows:

Measures to strengthen international cooperation in nuclear, radiation and transport safety and waste management [GC (51)/RES/11]

In Part A.1 of the Resolution, the Conference requested the Director General to continue the current programme to assist Member states in improving their national infrastructures for nuclear installation, radiological, transport and waste safety, including their legislative and regulatory frameworks.

Nuclear installation safety

In Part A.3 of the Resolution, the General Conference noted with satisfaction that all states currently operating nuclear power plants are now Contracting Parties to the Convention on Nuclear Safety (CNS), and urged all Member States constructing or planning nuclear power plants, or considering a nuclear power programme, to become parties to the Convention as part of the establishment and maintenance of the requisite nuclear power infrastructure. The Fourth Review Meeting under the CNS will take place in April 2008.

The Conference also continued to endorse the principles and objectives of the non-legally binding Code of Conduct on the Safety of Research Reactors and encouraged Member States constructing, operating or decommissioning research reactors or with research reactors in extended shutdown to apply the guidance in the Code. The Conference also acknowledged the efforts of the Secretariat in organising three regional meetings on the application of the Code, and looks forward to the outcome of the International Meeting on the Application of the Code to be held in Vienna in 2008.

The safety of radioactive waste management

In Part A.5 of the Resolution, the General Conference welcomed the increase in the number of contracting parties to the Joint Convention from 32 at the first review meeting in 2003, to 45 in 2007, and appealed to all Member States which have not yet become party to the Joint Convention to do so. The Conference also welcomed the continuing efforts of the Contracting Parties to the Joint Convention to enhance the transparency, efficiency and effectiveness of the review process, including the creation of a website to facilitate the sharing of information between review meetings. The review meeting will be held in 2009.

Nuclear and radiological incident and emergency preparedness and response

In Part A.8 of the Resolution, the General Conference again urged all Member States to become parties to the Convention on Early Notification of a Nuclear Accident (the Early Notification Convention) and the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency (the Assistance Convention), thereby contributing to a broader and improved basis for international emergency response, to the benefit of all Member States.

The Conference also continued to encourage all Member States to enhance, where necessary, their own preparedness and response capabilities for nuclear and radiological incidents and emergencies, by improving capabilities to prevent accidents, to respond to emergencies and to mitigate any harmful consequences. It encouraged the Secretariat to assist Member States in developing national capabilities consistent with international standards.

Safety and security of radioactive sources

In Part A.9 of the Resolution, the General Conference continued to endorse the principles and objectives of the non-legally-binding Code of Conduct on the Safety and Security of Radioactive Sources (the Code) and welcomed the high level of global support for the Code. The Conference noted that, as at 12 July 2007, 89 states had made a political commitment to it in line with Resolutions GC(47)/RES/7.B and GC(48)/RES/10.D and it urged other states to do so as well.

The Conference underlined the important role of the Guidance on the Import and Export of Radioactive Sources for the establishment of continuous, global control of radioactive sources and noted that, as at 12 July 2007, 43 states had notified the Director General, pursuant to Resolution GC(48)/RES/10.D, of their intention to act in accordance with the Guidance. The Conference reiterated the need for states to implement the Guidance in a cooperative, harmonised and consistent fashion, noted that the Guidance is supplementary to the Code, encouraged those states which have not already notified the Director General to do so and encouraged the Secretariat to make available information to facilitate states' implementation of the Guidance, subject to the consent of the states concerned.

In addition, the Conference welcomed the progress made by many Member States in working towards implementing the Code and the Guidance, and encouraged other states to do the same. The Conference noted the report of the Chairman of the open-ended meeting of technical and legal experts for sharing of information as to states' implementation of the Code and Guidance held in Vienna in June 2007. The Conference noted the conclusions of the meeting, particularly those relating to sustainability of implementation of the Code and the value of regional meetings and regional

partnerships and requested the Secretariat to take these conclusions into account in developing its future programmes in this area.

Transport safety

In Part B of the Resolution, the General Conference stressed the importance of having effective liability mechanisms in place to insure against harm to human health and the environment as well as actual economic loss due to an accident or incident during the maritime transport of radioactive materials. It noted the establishment by the Board of Governors of new maximum limits for the exclusion of small quantities of nuclear material from the scope of the relevant conventions on nuclear liability. The Conference again welcomed the continuing valuable work of the INLEX (see also operative paragraph 11 of the Resolution), including the examination of the application and scope of the IAEA's nuclear liability regime and the consideration and identification of further specific actions to address any gaps in scope and coverage of the regime. Additionally, the Conference reiterated that it looked forward to the continuation of INLEX's work, and requested the Secretariat to report on INLEX work at appropriate times.

Nuclear security – Measures to protect against nuclear terrorism [GC (51)RES/12]

The General Conference again reaffirmed the importance of the Convention on the Physical Protection of Nuclear Material (CPPNM), as the only multilateral legally binding instrument dealing with the physical protection of nuclear material.

The Conference recalled that other international agreements negotiated under the auspices of the IAEA are relevant to nuclear security and the physical protection of nuclear and other radioactive materials, including the Early Notification and Assistance Conventions, the Convention on Nuclear Safety and the Joint Convention.

The Conference reaffirmed the importance of the Code of Conduct on the Safety and Security of Radioactive Sources for enhancement of safety and security of radioactive sources while recognising that the Code is not a legally binding instrument. The Conference also noted the central contribution of IAEA safeguards systems, and of states' systems of accounting for and control of nuclear materials, to preventing illicit trafficking and to deterring and detecting diversion of nuclear materials.

The Conference welcomed the adoption of an important Amendment to the CPPNM which substantially strengthens the Convention, extending its scope to cover the physical protection of nuclear facilities and the domestic transport, storage and use of nuclear material. The Conference called on States Parties to the Convention to accelerate the ratification of the Amendment and to act in accordance with the object and purpose of the Amendment until such time as it enters into force. It called on all states that have not done so to adhere to the CPPNM and adopt the Amendment as soon as possible.

The General Conference expressed its deep satisfaction at the entry into force on 7 July 2007 of the International Convention for the Suppression of Acts of Nuclear Terrorism, recalled the functions assigned to the IAEA by the Convention, and called upon all states that have not yet done so to ratify the Convention as soon as possible. It welcomed the unanimous adoption in September 2006 of the General Assembly Resolution on the United Nations Global Counter-Terrorism Strategy encouraging the IAEA to help states to build capacity to prevent terrorists from accessing nuclear materials, ensure security at related facilities and respond effectively in the event of an attack using such materials.

OECD Nuclear Energy Agency

Decision on the Exclusion of Small Quantities of Nuclear Substances from the Application of the Paris Convention (2007)

At its 115th meeting on 18 October 2007, the OECD Steering Committee for Nuclear Energy adopted the Decision on the Exclusion of Small Quantities of Nuclear Substances outside a Nuclear Installation from the Application of the Convention on Third Party Liability in the Field of Nuclear Energy (Paris Convention). The decision ensures continued harmonisation between the Paris Convention and the conventions adopted under the auspices of the IAEA⁶ with respect to the exclusion of small quantities of such substances from the application of those conventions.

Under the terms of Article 1 (b) of the Paris Convention, the Steering Committee may, if in its view the small extent of the risks involved so warrants, exclude any nuclear installation, nuclear fuel, or nuclear substances from the application of the convention.

Soon after the adoption of the Paris Convention in 1960, it was recognised that within certain defined limits, nuclear substances which are in transport or are in use outside a nuclear installation should be excluded from the application of that convention, given the small extent of risks involved. Accordingly, on 26 November 1964, the Steering Committee adopted a Decision on the Exclusion of Small Quantities of Nuclear Substances from the Application of the Paris Convention. It subsequently revised that decision on 27 October 1977. The revised decision established the activity levels below which nuclear substances being transported or used outside a nuclear installation are excluded from the Paris Convention by referring, in the decision's Annex, to the 1973 Revised Edition of the IAEA Regulations for the Safe Transport of Radioactive Material (IAEA Transport Regulations). In the latest edition of the IAEA Transport Regulations (2005), the *formula* for calculating "A₂" (the value of activity of radioactive material) is different from that used in the 1973 edition. As a result, depending on which edition is used, the "A₂" calculation for the same radioactive material might differ, meaning that the same radioactive material might qualify for exclusion under one edition of the IAEA Transport Regulations, but not under the other.

To avoid any such confusion, the revised decision of the Steering Committee for Nuclear Energy now incorporates the relevant provisions of the most recent version of the IAEA Transport Regulations (2005).

6. Vienna Convention on Civil Liability for Nuclear Damage; Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage; Convention on Supplementary Compensation for Nuclear Damage.