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Organisation de Coopération et de Développement Economiques  
Organisation for Economic Co-operation and Development

**05-Apr-2005**

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**NUCLEAR ENERGY AGENCY  
COMMITTEE ON NUCLEAR REGULATORY ACTIVITIES**

**CNRA WORKING GROUP ON INSPECTION PRACTICES (WGIP)**

**REGULATORY INSPECTION PRACTICES TO BRING ABOUT COMPLIANCE**

**April 2005**

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## ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Pursuant to Article 1 of the Convention signed in Paris on 14th December 1960, and which came into force on 30<sup>th</sup> September 1961, the Organisation for Economic Co-operation and Development (OECD) shall promote policies designed:

- to achieve the highest sustainable economic growth and employment and a rising standard of living in Member countries, while maintaining financial stability, and thus to contribute to the development of the world economy;
- to contribute to sound economic expansion in Member as well as non-member countries in the process of economic development; and
- to contribute to the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.

The original Member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The following countries became Members subsequently through accession at the dates indicated hereafter: Japan (28th April 1964), Finland (28th January 1969), Australia (7th June 1971), New Zealand (29th May 1973), Mexico (18th May 1994), the Czech Republic (21st December 1995), Hungary (7th May 1996), Poland (22nd November 1996), Korea (12th December 1996) and the Slovak Republic (14 December 2000). The Commission of the European Communities takes part in the work of the OECD (Article 13 of the OECD Convention).

## NUCLEAR ENERGY AGENCY

The OECD Nuclear Energy Agency (NEA) was established on 1st February 1958 under the name of the OEEC European Nuclear Energy Agency. It received its present designation on 20th April 1972, when Japan became its first non-European full Member. NEA membership today consists of 28 OECD Member countries: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, Norway, Portugal, Republic of Korea, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The Commission of the European Communities also takes part in the work of the Agency.

The mission of the NEA is:

- to assist its Member countries in maintaining and further developing, through international co-operation, the scientific, technological and legal bases required for a safe, environmentally friendly and economical use of nuclear energy for peaceful purposes, as well as
- to provide authoritative assessments and to forge common understandings on key issues, as input to government decisions on nuclear energy policy and to broader OECD policy analyses in areas such as energy and sustainable development.

Specific areas of competence of the NEA include safety and regulation of nuclear activities, radioactive waste management, radiological protection, nuclear science, economic and technical analyses of the nuclear fuel cycle, nuclear law and liability, and public information. The NEA Data Bank provides nuclear data and computer program services for participating countries.

In these and related tasks, the NEA works in close collaboration with the International Atomic Energy Agency in Vienna, with which it has a Co-operation Agreement, as well as with other international organisations in the nuclear field.

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## **COMMITTEE ON NUCLEAR REGULATORY ACTIVITIES**

The Committee on Nuclear Regulatory Activities (CNRA) of the OECD Nuclear Energy Agency (NEA) is an international committee made up primarily of senior nuclear regulators. It was set up in 1989 as a forum for the exchange of information and experience among regulatory organisations.

The committee is responsible for the programme of the NEA, concerning the regulation, licensing and inspection of nuclear installations with regard to safety. The committee's purpose is to promote cooperation among member countries to feedback the experience to safety improving measures, enhance efficiency and effectiveness in the regulatory process and to maintain adequate infrastructure and competence in the nuclear safety field. The CNRA's main tasks are to review developments which could affect regulatory requirements with the objective of providing members with an understanding of the motivation for new regulatory requirements under consideration and an opportunity to offer suggestions that might improve them or avoid disparities among member countries. In particular, the committee reviews current management strategies and safety management practices and operating experiences at nuclear facilities with a view to disseminating lessons learned.

The committee focuses primarily on existing power reactors and other nuclear installations; it may also consider the regulatory implications of new designs of power reactors and other types of nuclear installations.

In implementing its programme, the CNRA establishes cooperative mechanisms with the Committee on the Safety of Nuclear Installations (CSNI) responsible for the programme of the Agency concerning the technical aspects of the design, construction and operation of nuclear installations. The committee also co-operates with NEA's Committee on Radiation Protection and Public Health (CRPPH) and NEA's Radioactive Waste Management Committee (RWMC) on matters of common interest.

## FOREWORD

This report completes a study that was endorsed by CNRA following discussion on the issue. It is intended to be a basis for a new section in the next revision of the “Status Report on Regulatory Inspection Philosophy, Inspection Organisation and Inspection Practices”. The original proposal from CNRA was to consider and compare the *enforcement* practices in participating countries. In discussions in WGIP it was agreed that the intention had been to investigate all practices that bring about compliance, not only formally penalising non-compliance. The revised title of the study reflects this. Therefore, to aid discussion and ensure that the study remains broadly based, the questionnaire dealt with *all practices bringing about compliance with legal provisions by giving advice or applying such penalties, consent, compulsion or prohibition as are established by law*.

It was also anticipated that the study should enable WGIP to identify possible themes for further discussion within WGIP in order to identify commendable inspection practices used to bring about compliance.

Readers are cautioned that different interpretations can be made of the questions and responses and that they may also derive different understandings of the English terms for some legal provisions referred to in the report. For clarification in these cases, it would be best for the reader to contact a member of the specific countries regulatory organisation to obtain the correct meaning.

## TABLE OF CONTENTS

FOREWORD .....	4
1. EXECUTIVE SUMMARY .....	6
1.1 Main Findings.....	6
1.2 Conclusions .....	6
1.3 Structure of Report .....	6
2. METHODOLOGY .....	7
3. FINDINGS .....	8
3.1 Breaches of regulatory provisions - non-compliance .....	8
3.2 Progressive nature of practices leading to enforcement .....	8
3.3 Roles of Inspectors .....	9
3.4 Powers of Inspectors .....	10
3.5 Criteria for enforcement .....	12
3.6 Gathering evidence for formal penalising of non-conformance.....	13
3.7 General .....	13
APPENDIX 1 .....	15
Question 1 Progressive practices leading to compliance (Please indicate which of the following practices are available in your country). .....	16
Question 2 Powers of Inspectors to carry out Inspection or Investigation.....	17
Question 3 Criteria for enforcement.....	21
Question 4 Gathering evidence for enforcement.....	22
Question 5 General.....	23
APPENDIX 2.....	24
Summary of findings.....	24

## **1. EXECUTIVE SUMMARY**

### **1.1 Main Findings**

A finding of the questionnaire and the subsequent discussions in Working Group on Inspection Practices (WGIP) is that there is a range of practices for bringing about compliance. At one end of the spectrum, this includes the exchange of information, verbal and written, and at the other end includes enforcement actions penalising non-compliance, such as prohibitions, directions and prosecution.

We find, from the questionnaire and subsequent discussion in WGIP, that individual Inspectors, even if they have the legal powers, operate for the majority of their time without invoking these powers. It is by this that they seek to encourage discussion and promote an improvement in safety culture, thus enhancing nuclear safety. Because of this potential for individual Inspectors to influence safety improvement, there are very fruitful areas for further work by WGIP. This work can address inspection practices to:

- advise licensees on staying within the limits of compliance;
- avoid penalising non-compliance by supporting the achievement of compliance;
- enhance safety culture by advice and guidance; etc.

### **1.2 Conclusions**

The main conclusion of this report is a recommendation to the Committee on Nuclear Regulatory Activities (CNRA) that further work on this topic is likely to be most beneficial as there are clearly issues that warrant further exploration. The WGIP suggests to the CNRA that they give careful consideration in tasking these further investigations so as to ensure that each task is designated to its rightful level of expertise and seniority. The analysis of the questionnaire also suggests that there are a number of issues the CNRA might wish to take note of that are not for within the scope of the WGIP. They are principally the concern of senior members of Regulatory Bodies and as such should be addressed to the CNRA itself, or one of its task Groups.

A separate theme has also emerged from the responses to the questionnaire; this is the role of Inspectors in carrying out investigations and the collection of evidence, which may lead to formal penalties for non-compliance such as prosecution. Responses on aspects of this issue were split, and there may be scope for further discussion in the WGIP on this matter.

### **1.3 Structure of Report**

The main body of this report identifies general trends gathered from the responses and general observations.

The questionnaire and final answers are compiled in Appendix 1. This appendix stands alone for possible inclusion in the next issue of the “Status report on Regulatory Inspection Philosophy, Inspection Organisation and Inspection Practices”.

Appendix 2 is a table which summarises the findings. Comments contained in the main body of the report (denoted by superscript numbers) are indexed and printed in italics and are repeated in Appendix 2. They represent possible areas for future work and an indication is given in the table on whether WGIP’s opinion is that any further work should be done by it or by others.

## 2. METHODOLOGY

The questionnaire was drafted through discussions in a small sub-group of WGIP prior to the WGIP meeting in October 2002. Care was taken to ensure that the questionnaire was as open and broadly based as possible and the title of the study was changed to ensure that the scope was not limited only to the formal penalisation of non-compliance. The revised questionnaire was agreed in the Berlin meeting of the full WGIP.

Replies to the questionnaire were received and reviewed prior to the next WGIP meeting in May 2003. This review made particular note of points of interest in the replies which might indicate misunderstanding or inconsistencies and these were listed for discussion in the May meeting. Some participants revised and resubmitted their replies in the light of this discussion. Other points discussed in the May meeting, were on those issues which are interesting and capable of further expansion and discussion in future WGIP meetings or workshops. There was a discussion of a final draft report in the October 2003 WGIP meeting. This report is based on the draft report presented to that meeting.

Readers are cautioned that different interpretations can be made of the questions and responses and that they may also derive different understandings of the English terms for some legal provisions referred to in the report. For clarification in these cases, it would be best for the reader to contact a member of the specific countries regulatory organisation to obtain the correct meaning.

### 3. FINDINGS

#### 3.1 Breaches of regulatory provisions - non-compliance

A fundamental purpose of inspection is to establish whether licensees are in breach of regulatory requirements.

Breaches of regulatory provisions can be:

- breaches of legal provisions;
- breaches of conditions of an authorisation or licence;
- breaches of other regulatory requirements.

Breaches can:

- vary in severity;
- be actions or inaction resulting in unacceptable increase in risk or hazard (such as failure to maintain plant in a proper fashion resulting in the degradation of a safety function);
- be actions or inactions not resulting in increases in risk/hazard, but which contravene administrative requirements in regulations (such as operating a nuclear plant without a licence or obstructing an inspector);
- be discovered as a result of proactive inspection or as a result of the investigation or reactive inspection arising from an event.

#### 3.2 Progressive nature of practices leading to enforcement

A series of steps, from advice, through light enforcement actions to heavy penalties (e.g.; through prosecution in courts), are used in different countries so that practices can be progressive and proportionate to the need for advice or the severity of a breach and can ascend (subject to the Regulatory Bodies discretion) step-by-step if licensees are not responding.

Taking enforcement action is a judgemental activity and Inspectors can have different enforcement options available dependent on laws, regulations, and national culture.

The first question dealt with this issue. By looking at the various options available to Regulatory Bodies, which may include:

- prosecution in Courts;
- licence withdrawal;
- refusal to approve or permission an activity;
- direction to shut down;
- directly imposed fines;
- prohibition on activities;
- requirement to make improvement;
- letters;
- oral and written cautions;
- giving advice.

### ***Discussion***

The majority of these options are available to nearly all Regulatory Bodies. There are three options where a sizeable minority of Regulatory Bodies responded they do not have powers and these relate to directly imposed fines and prosecutions. These replies probably relate to differing legal practices in the countries concerned. A smaller group indicated “no” to the question on oral caution and Czech Republic made a comment that oral cautions have no legal basis – *this could open a useful discussion to widen understanding about inspection and enforcement practices which are used by Regulatory Bodies but which are not backed by legal powers. For example, is it an objective of inspection to promote safety consciousness through licensee self improvement.*<sup>1</sup>

The United States indicated that members of the public can ask for enforcement to be initiated.

Hungary made a comment that the Regulatory Body can prescribe new licence conditions or other supplementary regulatory requirements.

### **3.3 Roles of Inspectors**

In carrying out their duties Inspectors may:

- verify compliance;
- issue permissioning or prohibition;
- advise;
- collect evidence;
- investigate events;
- etc.

*Question 2.1.1 dealt with the roles Inspectors have*

### ***Discussion***

Almost all the responding Regulatory Bodies confirmed the inspector's role in verifying compliance, collecting evidence and investigating events. About half the Regulatory Bodies have no role for inspectors in issuing permissioning. *It may be that permissioning activities are performed by a separate body or by the Regulatory Body at management or corporate level. Further discussion on this is thought to be beyond the scope of the present study.*<sup>2</sup>

About half the Regulatory Bodies have no role for inspectors in issuing prohibition – this finding conflicts with later answers in the questionnaire on enforcement actions taken in the event of imminent danger and could be clarified. *Further work is proposed on actions that may be taken in these circumstances other than outright prohibition.*<sup>3</sup>

A small minority of Regulatory Bodies have no (or limited) role in giving advice.

### **3.4 Powers of Inspectors**

To enable Inspectors to carry out their duties they may be granted certain powers. Powers may be granted to them by statute, by administrative means (such as by a Minister's decree), or by some other means. In doing so Inspectors in Regulatory Bodies may be appointed to exercise, in certain circumstances and with restrictions or controls, powers of inspection and investigation such as:

- right of entry (at all times, restricted times, with, without notice);
- examine and investigate;
- seize evidence (or prevent tampering with evidence);
- take samples;
- take photos;
- examine and copy documents and records;
- require the co-operation of others;
- question persons and require them to sign a declaration of truth;
- etc.

Inspectors may also be invested with powers of discretion, for example, with respect to decisions on enforcement actions.

*Questions 2.2.1 and 2.2.2 dealt with the appointment of inspectors (2.2.1) and the source of their powers (2.2.2).*

**Discussion**

A small group of Regulatory Bodies indicated that Inspectors are not formally appointed in their countries. There was a minor anomaly in the answers to 2.2.1 and 2.2.2 as some Regulatory Bodies reported “No” to 2.2.1 and then Yes to 2.2.2.

*Question 2.2.3 dealt with the powers Inspectors have in order to carry out their duties.*

**Discussion**

In these part, the question on restricted right of entry was included to allow Regulatory Bodies who had no unrestricted right of entry to indicate whether they had a limited right of entry. All the responding Regulatory Bodies indicated a full and unrestricted right of entry.

A minority of Regulatory Bodies indicated that their Inspectors had no rights to seize or prevent interference with evidence. A minority also indicated that their Inspectors had no rights to initiate legal proceedings. These Regulatory Bodies hand over legal proceedings to another group, such as a public prosecutor. This question was covered in more detail in question 4.1 and could be the subject of further discussion. *A proposal for further work arises from this and other observations and this is dealt with below.*

In the question on the right to issue fines a majority of Regulatory Bodies indicated that their Inspectors had no right to issue fines (although in some cases the Regulatory Body does have this right).

Only a few Regulatory Bodies reported that their Inspectors can question persons under oath or caution.

Finland reported that its Inspectors have rights to carry out measurements and install control devices.

Germany reported that its expert support organisations have the same powers as inspectors as far as their technical duties are concerned (e.g. rights of entry, requests for documents, examine equipment etc.). This suggests a discussion topic - *and this, again is dealt with below.*

Belgium reported a similar relationship - between AVN and FANC.

**Question 2.2.4** *asked specific questions about some of Inspectors’ powers: whether they can initiate enforcement actions without referring back to the Regulatory Body, whether they can do this up to a certain level, whether they can do it in certain limited circumstances such as imminent danger and whether they can exercise discretion.*

**Comment:** This question elicited the most “write-in” answers, which are summarised in appendix 1.

Five Regulatory Bodies reported that their Inspectors can initiate formal enforcement (penalties for non-compliance are referred to as “formal enforcement” throughout this report). Most of the Regulatory Bodies that reported that their Inspectors cannot initiate formal enforcement reported that Inspectors can initiate certain types or levels of enforcement, but had to refer higher levels of formal enforcement up the command chain. Most Regulatory Bodies’ Inspectors can initiate enforcement actions if there is “imminent danger” without reference back to management. There were some write in comments on these questions that suggests that some respondents interpreted the question “Initiate enforcement actions in

certain circumstances e.g. when there is imminent danger” as meaning a shutdown of activities. Some actions, short of shutdown, may be available.

Only three Regulatory Bodies replied that their Inspectors could not exercise discretion in enforcement (Czech Republic, USA and Mexico). The USA’s write-in answer indicates that Inspectors have discretion, but licensees have a duty to rectify all identified violations, *this topic may merit expanded discussion with emphasis on the process for determining the significance of findings.*<sup>4</sup>

*From this section of the questionnaire, two topics are proposed for further WGIP discussion:*

- A. what constitutes discretion and how is it used.<sup>5</sup> This topic could be developed into a topic for a workshop, after a preliminary discussion in WGIP.*
- B. when the higher levels of formal enforcement are proposed (e.g. prosecution), in some Regulatory Bodies the enforcement action is passed to another agency (e.g. the public prosecutor or the police): in these cases what role does the Regulatory Bodies inspectors retain in supporting the enforcement action for example by collecting evidence and giving technical advice.<sup>6</sup>*

### **3.5 Criteria for enforcement**

Depending on the circumstances and the severity of a breach, one or more of the various levels of formal enforcement actions noted above may be appropriate. Regulators may have criteria and guidance to trigger what level of enforcement to use.

Possible factors upon which criteria can be based include:

- risk/hazard;
- multiple breaches - history of non-compliance;
- failure to comply with administrative requirements in regulations;
- failure to comply with prohibition;
- incidents;
- reckless disregard for safety;
- seeking economic advantage by non-compliance;
- public concern/public interest;
- protecting vulnerable groups (e.g. children);
- impact on licensees’ employees (e.g. to benefit them if compliance is secured);
- example to others.

*Questions 3.1 and 3.2 examined the criteria for enforcement and corresponding guidance for inspectors.*

*Comment:* All the respondents said that enforcement was influenced by: Risk/hazard, multiple breaches, history of non-compliance, incidents, failure to comply with administrative requirements in regulations, failure to comply with prohibition and incidents.

Three Regulatory Bodies stated that seeking economic advantage by non-compliance would not be regarded as an influencing factor. Seven stated that protecting vulnerable groups would not be a consideration, presumably as the health or life of all persons should be treated equally before the law. Three stated that protecting licensees' employees would not be a consideration. This result is surprising: even if the Regulatory Body thinks that the licensee was motivated not to comply with the law in order to make financial gain. Most Regulatory Bodies would wish to treat licensees more harshly in these circumstances. *These aspects could benefit from a discussion on the way in which enforcement actions are decided upon in various countries.*<sup>7</sup>

Four Regulatory Bodies replied that enforcement may be initiated if it was felt that it might result in an example to others.

In write-in answers, Regulatory Bodies also mentioned environmental damage, licensee's attempts to hide the breach and negligence.

*The majority of Regulatory Bodies have guidance for their inspectors on enforcement issues, but a large minority do not - this suggests that there would be a good input to a future task in WGIP, or a workshop on decisions on enforcement actions.*<sup>8</sup>

### **3.6 Gathering evidence for formal penalising of non-conformance**

In different countries, evidence for prosecutions and other formal enforcement actions may be gathered in various ways. In some countries Inspectors gather evidence and take prosecutions into court. In others Regulatory Bodies may hand over enforcement actions and the gathering of evidence to other agencies. For example, an Regulatory Body may have responsibility for permissioning and prohibitions and use their normal inspection and assessment processes to carry them out, but for a prosecution the enforcement may be turned over to the police and public prosecuting agency (with or without the continuing support of Inspectors).

*Questions 4.1 and 4.2 asked about the practices Regulatory Bodies use in their enforcement activities. The questions asked whether Regulatory Bodies have special processes for investigations, gathering evidence or prosecutions. It also asked whether the practices used were the same as the police use.*

*Comment:* The answers to these questions were split. A half of the respondents replied "yes" to these questions and a half replied "no". A number of commonalities appear in the write-in answers with regard to investigations being taken over by the police, if a prosecution is being considered. *A possible discussion topic arises, which is related to an earlier question: to what extent inspectors see themselves as law enforcement officers?*<sup>9</sup>

### **3.7 General**

*Question 5.1 asked if individuals could be jailed for safety offences in nuclear installations.*

*Comment:* Only one country, Slovakia, answered "no" to this question.

NEA/CNRA/R(2005)1

*Question 5.2 asked about Human Rights legislation.*

*Comment:* Most countries responded that they have Human Rights legislation that could influence enforcement. In several of the write-in replies respondents mentioned the rights of prior hearings or appeals.

*Question 5.3 was a write-in question asking for any further observations.*

*Comment:* Again, appeals were mentioned by a responder (Spain). *Thus, further discussion might be useful on rights of appeal and the scope for appeals.*<sup>10</sup>

**APPENDIX 1*****Survey questionnaire on Regulatory Enforcement Practices used to bring about Compliance***

The following countries responded:

Country	Shortened name in the tables - EN ISO 3166-1(1997)
Belgium *	<b>Be</b>
Canada	<b>Ca</b>
Czech Republic	<b>Cz</b>
Finland	<b>Fi</b>
Germany	<b>De</b>
Hungary	<b>Hu</b>
Italy	<b>It</b>
Japan	<b>Jp</b>
Korea	<b>Kr</b>
Mexico	<b>Mx</b>
Slovakia	<b>Sk</b>
Spain	<b>Es</b>
Sweden	<b>Se</b>
Switzerland	<b>Ch</b>
United States	<b>Us</b>
United Kingdom	<b>Uk</b>

\* Belgium has two organisations, FANC and AVN. AVN is the inspection organisation which working together with the Safety organisation, FANC, comprises the Regulatory Body. Thus interpretation has been applied to Belgian answers to the questionnaire to ensure that if either AVN or FANC carry out an activity it is interpreted that the Regulatory Body carries out the activity.

**Question 1 Progressive practices leading to compliance (Please indicate which of the following practices are available in your country).**

<b><i>Giving Advice:</i></b>	
<i>Yes:</i> Be, Ca, Cz, Fn, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Uk	<i>No:</i> Us
<b><i>Oral Caution:</i></b>	
<i>Yes:</i> Be, Ca, Fi, De, Hu, Jp, Mx, Sk, <b>Es*</b> , Se, Ch, Uk	<i>No:</i> <b>Cz*</b> , It, Kr, Us
<b><i>Written Caution:</i></b>	
<i>Yes:</i> Be, Ca, Cz, Fi, De, Hu, Jp, Mx, Sk, Es, Se, Ch, Uk	<i>No:</i> It, Us, Kr
<b><i>Letter</i></b>	
<i>Yes:</i> Be, Ca, Cz, Fi, De, Hu, Jp, Mx, Sk, Es, Se, Ch, Us, Uk	<i>No:</i> It, Kr
<b><i>Prohibition on activities:</i></b>	
<i>Yes:</i> Be, Ca, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, <b>Ch*</b> , Us, Uk	<i>No:</i>
<b><i>Directly imposed fines</i></b>	
<i>Yes:</i> Be, Cz, <b>De*</b> , Es, Hu, It, Kr, Sk, Ch, Us	<i>No:</i> Ca, Fi, Jp, Mx, Se, Uk
<b><i>Direction to cease operation:</i></b>	
<i>Yes:</i> Be, Ca, Cz, Fi, De, Hu, Jp, Kr, Mx, Sk, Es, Se, <b>Ch*</b> , Us, Uk	<i>No:</i> It
<b><i>Refusal to approve or permission an activity:</i></b>	
<i>Yes:</i> Be, Ca, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	<i>No:</i>
<b><i>Licence withdrawal</i></b>	
<i>Yes:</i> Be, Ca, Cz, Fi, De, Hu, Jp, Kr, Mx, Sk, Es, Se, <b>Ch*</b> , Us, Uk	<i>No:</i> It
<b><i>Prosecution in Courts leading to fines</i></b>	
<i>Yes:</i> Be, Ca, Cz, Es, Fi, <b>De*</b> , It, Jp, Kr, Se, Ch, Us, Uk	<i>No:</i> Hu, Mx, Sk
<b><i>Prosecution in Courts leading to imprisonment</i></b>	
<i>Yes:</i> Be, Ca, Fi, De, It, Jp, Kr, Se, <b>Ch*</b> , Us, Uk	<i>No:</i> Cz, Hu, Mx, Sk, Es
<p><b>Cz *</b> and <b>Es *</b> – Oral caution has no legal basis</p> <p><b>De *</b> – Fines are directly imposed as for all industrial premises, not only nuclear, by the competent authority specified in law – offences that may result in fines are specified in law.</p> <p><b>Ch *</b> – Practices marked * are available but have not been used.</p>	

***Additional Responses: Are there any other practices used in your Country?***

Fi – Can request a third party to meet an obligation of a licensee at the licensee's expense; also can impose a fine conditionally.

De – Most performed by Inspection authority some by Licensing authority – the public prosecutor performs prosecutions.

Hu – Can prescribe new licence conditions or supplementary regulatory requirements.

Jp – Can issue a direction for improvement.  
 Kr – The Ministry of Science and Technology can directly impose a fine to utility for the violation of the rule.  
 Ch – Have some powers that they have not used to date.  
 Us – Members of the public can request enforcement actions.  
 Uk – Licence withdrawal leaves the site without a licensee and the previous licensee out with legal control, so it has never been used.

## Question 2 Powers of Inspectors to carry out Inspection or Investigation

### 2.1 - Role of Inspectors

2.1.1 Please indicate what roles in bringing about compliance, Inspectors have in your country.

<b>Verify compliance</b>	
Yes: Be, Ca, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	No:
<b>Issue permissioning</b>	
Yes : Be, Ca, Fi, De, De, Sk, Ch, Uk	No: Cz, Hu, It, Jp, Kr, Mx, Es, Se, Us
<b>Issue prohibition</b>	
Yes: Be, Ca, Fi, De, Sk, Es, Ch, Us, Uk	No: Cz, Hu, It, Jp, Kr, Mx, Se, Us
<b>Collect evidence</b>	
Yes: Be, Ca, Cz, Fi, De, Hu, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	No: It
<b>Investigate events</b>	
Yes: Be, Ca, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	No:
<b>Give advice</b>	
Yes: Be, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Se, Ch, Uk	No: Ca*, Es, Us
Ca * - advice is only given to help interpret regulatory requirements.	

### Additional Responses - Do Inspectors have any other roles in your country?

Ca – Issue orders to licensees regarding actions on contamination to non-licence holders.  
 Fi – Scope of the roles is limited.  
 De – Contributing to safety consciousness by giving advice on technical and other best practice or urging licensees to continually improve on a plant's safety status.  
 Hu – Inspectors empowered but Chief takes final decision.  
 Jp – Direction for compliance.  
 Mx – Findings assessment to initiate enforcement.  
 Es – Demand immediate cessation of work, operation, activities in the event of imminent danger.  
 Se – DG delegates prohibition to Inspectors in cases of imminent danger.  
 Ch – Inspectors can advise, if advice not taken HSK issues a letter.

**2.2 Powers of Inspectors:**

2.2.1 Please indicate whether inspectors are formally appointed with legal powers, in your country.

Yes: Be, Ca, Cz, Fi, De, It, Jp, Kr, Mx, Sk, Es, Ch, Uk	No: Hu, Se, Us
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2.2.2 Please indicate what the source of the powers is.

<b>Statute</b>	
Yes: Be, Ca, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Uk	No:
<i>Administrative means:</i> Be - FANC have the status of the police Fi – Administrative rules De – Licence notification Hu – Regulatory procedures Se – DG can delegate	
<i>Other means:</i> Fi – STUK Quality system Jp, Mx – Licence conditions Us - Inspectors. have no specific authority in any legal matter but are given the authority to inspect by law	

2.2.3 Please indicate what powers appointed inspectors have in your country.

<i>Statute</i>	<i>Administrative</i>	<i>None</i>
<b>Right of entry - unrestricted</b>		
Be, Ca, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk		
<b>Right of entry - restricted in time; with or without notice, with controls etc</b>		
Be, Ca, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	Cz	
<b>Right to examine and investigate equipment</b>		
Ca, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk		Be, Cz
<b>Right to seize evidence, or prevent interference with evidence</b>		
Be, Ca, De, It, Jp, Kr, Sk, Es, Se, Uk	Ch	Cz, Fi *, Hu, Mx, Us*
<b>Right to take samples</b>		
Ca, Cz, Fi, De, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Uk		Be*, Hu, Us*
<b>Right to take photographs</b>		
Ca, Cz, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Uk	Ch	Be*, Fi *, Us*
<b>Right to examine and take copies of records</b>		
Be, Ca, Cz, De, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	Hu	Fi *

<b><i>Right to question persons</i></b>		
Be, Ca, Cz, De, It, Jp, Kr, Mx, Sk, Es, Se, Us, Uk	Hu, Ch	<b>Fi *</b>
<b><i>Right to question persons under oath or caution</i></b>		
Be, Ca, Sk, Us, Uk		Be, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Es, Se, Ch
<b><i>Right to issue fines</i></b>		
Be, <b>De*</b> , It, Sk		Ca, Cz, Fi, Hu, Jp, Kr, Mx, Es, Se, Ch, Us, Uk
<b><i>Right to initiate legal proceedings</i></b>		
Be, <b>De*</b> , It, Jp, Sk, Es, Se, Uk	Hu	Ca, Cz, Fi, Kr, Mx, Ch, Us
<p><b>De *</b> – Fines are directly imposed as for all industrial premises, not only nuclear, by the competent authority specified in law – offences that may result in fines are specified in law – legal proceedings are initiated by reporting to the public prosecutor.</p> <p><b>Be *</b> - samples and photographs are taken but are not explicitly mentioned in law.</p> <p><b>Fi *</b> - in practice but not in law; also rights to carry out measurements and install control devices.</p>		

***Additional Responses - Do Inspectors have any other powers in your country?***

<p>Ca – powers to issue orders.</p> <p>De – Expert support organisations exercise the same powers as Inspectors.</p> <p>Us - inspectors can ask for photo/samples/record/questioning - licensees are usually responsive - but if not satisfied Regulatory Body can subpoena if refused.</p>
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***2.2.4 Please indicate whether, in your country, inspectors can:***

<b><i>Initiate enforcement actions, without prior agreement from the Regulatory Body</i></b>	
<i>Yes:</i> Be*, Ca, Cz, Fi, It, Mx, Sk, Es	<i>No:</i> Hu, Jp, Kr, Se, Ch, Us, Uk
<b><i>Initiate enforcement actions up to a certain level</i></b>	
<i>Yes:</i> Cz, Fi, De, Mx, Sk, Es, Ch, Us, Uk	<i>No:</i> Hu, It, Jp, Kr, Se
<p><b>Please specify:</b></p> <p>Be - AVN cannot initiate enforcement but recommend it to FANC</p> <p>Cz – Inspectors can ask to perform or repeat a surveillance test or analysis to prove operability of systems, and require remedy of a situation, within a set time.</p> <p>Es - Yes, but only in case of event of imminent danger.</p> <p>Fi – Oral and written cautions.</p> <p>De – Inspectors can ask the Licensing Authority to evoked the licence in the event of danger or multiple breaches.</p> <p>Hu – Inspectors may initiate enforcement without prior agreement but Regulatory Body decides on taking it forward.</p> <p>Mx - oral and written cautions and prohibitions</p>	

<p>Sk – confiscate certification of a professional person if flagrant or repeated violation makes unsuitable.                  Us – Inspectors confer with management and use a collegiate process to decide on enforcement – for low-level violations corrective action can be agreed with licensees and inspectors.                  Uk – activities that require formal enforcement with significant impact on operation require administrative approval from management (except for imminent danger –see below).</p>	
<p><b><i>Initiate enforcement actions in certain circumstances e.g. when there is imminent danger</i></b></p>	
<p>Yes: Ca, Fi, De, Hu, It, Jp, Sk, Es, Se, Ch, Uk</p>	
<p><b>Please specify:</b>                  Cz – Regulatory Body has power to order shutdown, but not Inspector.                  Fi – Written caution and immediate information to Regulatory Body.                  De – Orders may be issued by the Regulatory Body in the event of imminent danger stating the protective measures that must be applied.                  Hu – If imminent danger, Inspector can issue even without an official form and handwritten.                  Mx – Inspectors can advise operators to follow regulatory requirements.                  Sk – Regulatory Body authorised to order licensee to take necessary steps including cease operations.                  Us – no legally binding authority, but licensees are aware that enforcement action could follow if they fail to rectify a dangerous activity after an inspector’s request to desist activities.                  Uk – Inspectors can prohibit activities without prior approval when there is significant and imminent danger to workers or public.                  Kr – Regulatory Body can order the utility to shutdown the reactor, but not inspector.</p>	
<p><b><i>Exercise discretion over enforcement actions</i></b></p>	
<p>Yes: Ca, Cz, Fi, Hu, Jp, Kr, Mx, Sk</p>	<p>No: Be, Es, Se, Ch, Us</p>
<p><b>Please specify:</b>                  Cz – Enforcement actions are the last resort, other actions should result in improvements or prevent repetition.                  Fi – STUK Quality system guides give examples.                  De – No discretion if dangerous situation exists, in other cases discretion is exercised.                  Hu – Inspector may dismiss low importance violations.                  Sk – discussion with licensee before enforcement.                  Us – Inspectors are not required to document in inspection reports certain non-compliances (violations) determined to be of minor significance, however licensees always have a duty to take corrective action on all violations.                  Uk – Regulatory Body has discretion over enforcement actions and has a process to guide inspectors on making such decisions.                  Kr – Inspectors can give an oral advice rather than issue an official recommendation depending on the importance of the issue.</p>	

**Question 3 Criteria for enforcement****3.1 What factors influence enforcement actions in your country?**

<b>Risk/hazard</b>	
Yes: Be, Ca, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	No:
<b>Multiple breaches</b>	
Yes: Be, Ca, Cz, Fi, De*, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	No:
<b>History of non-compliance</b>	
Yes: Be, Ca, Cz, Fi, De*, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	No:
<b>Failure to comply with administrative requirements in regulations</b>	
Yes: Be*, Ca, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	No:
<b>Failure to comply with prohibition</b>	
Yes: Be*, Ca, Cz, Fi, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	No: De**
<b>Incidents</b>	
Yes: Be, Ca, Cz, Fi, Hu, It, Jp, Kr, Mx, Sk, Es, Se, Ch, Us, Uk	No: De*, Hu, Sk,
<b>Seeking economic advantage by non-compliance</b>	
Yes: Be, Ca, Cz, Fi, It, Jp, Kr, Mx, Es, Se, Ch, Us, Uk	No:
<b>Likelihood of public concern</b>	
Yes: Be, Ca, Cz, Es, Hu, It, Jp, Kr	No: Fi, De, Mx, Sk, Se, Ch, Us
<b>Protecting vulnerable groups (e.g. children)</b>	
Yes: Be, Ca, De***, It, Es, Se, Ch, Uk	No: Cz, Fi, Hu, Jp, Kr, Mx, Sk, Us
<b>Impact on licensees employees (e.g. to benefit them if compliance is secured)</b>	
Yes: Be, Ca, Cz, De***, Hu, It, Mx, Sk, Es, Se, Ch, Uk	No: Fi, Jp, Us, Kr
<b>To make an example to others</b>	
Yes: Ca, Sk, Ch, Uk	No: Cz, Fi, De, Hu, It, Jp, Kr, Mx, Es, Se, Us
<p>*De - multiple breaches and continued non-compliance do not normally arise.</p> <p>**De - Incidents should be reported and licensees take corrective actions, but this would not necessarily influence enforcement. But a reportable event may result from non-compliance.</p> <p>***De - defence of danger is normally considered as a whole; not in terms of a single group.</p> <p>*Be - only failure to comply with administrative requirements and prohibition are legally prescribed, but other factors will actually influence enforcement actions.</p>	

Others? - Please specify:

Fi – Licensees attempt to hide breach or complicate Regulatory Bodies work, negligence or lack of care.

De – two criteria are important – defence of danger and compliance with legal and licensing requirements.

Kr – Public Acceptance is an influence factor in the regulatory decisions.

Es – Environmental impact – negligence or wilfulness, diligence in identifying and communicating an infringement.  
 Ch – complexity of corrective actions, negligence or intent, transparency and comparison with other operators, whether discovered by inspection or reported by operator.  
 Us – Violations are allocated a severity level according to guidance on the level of actual and potential safety significance, any potential to impact NRC’s function and evidence of wilfulness. The severity level contributes to decisions on the level of enforcement.

**3.2 Does your country have guidance?**

<b><i>To help the Regulatory Body or its Inspectors decide on the kind of enforcement action which is appropriate</i></b>	
<i>Yes:</i> Ca, Fi, De*, Hu, Sk, Us, Uk, Kr	<i>No:</i> Be, Cz, Es, It, Jp, Mx, Se,
<b><i>Laid down in regulations or law</i></b>	
<i>Yes:</i> Fi, De**, Kr, Mx, Sk, Es, Se, Us	<i>No:</i> Be, Ca, Cz, Hu, It, Jp, Uk
*De – Some Lander have written guidance. **De – laws specify non-compliance that can result in fines.	

**Question 4 Gathering evidence for enforcement**

Some Regulatory Bodies may have special processes for investigations that may lead to court proceedings. For example, they may have to preserve evidence to police evidential standards, or investigations may be taken away from them by another agency.

**4.1 - Please indicate whether Regulatory Bodies in your country**

<b><i>Have special processes for investigations</i></b>	
<i>Yes:</i> Ca, Fi, De, Hu, Mx, Sk, Ch, Us	<i>No:</i> Be, Cz, It, Jp, Kr, Es, Se, Uk
<b><i>Have special processes for gathering evidence</i></b>	
<i>Yes:</i> Ca, Fi, De, Hu, Sk, Ch, Us	<i>No:</i> Be, Cz, It, Jp, Kr, Mx, Es, Se, Uk
<b><i>Have special processes for prosecutions</i></b>	
<i>Yes:</i> Ca, De, Ch, Us, Uk	<i>No:</i> Be, Cz, Fi, Hu, It, Jp, Kr, Mx, Sk, Es, Se
<b><i>Use the same processes as the police</i></b>	
<i>Yes:</i> Be, Ca*, De, It, Ch, Us, Uk	<i>No:</i> Cz, Fi, Hu, Jp, Kr, Mx, Sk, Es, Se
*Ca – only for investigations. *Be - FANC have same status as police, but refer prosecutions to public prosecutor	

**4.2 Briefly specify any special processes for investigations:**

Fi – If criminal prosecution is considered investigation is taken over by the police – then Regulatory Body advises on safety aspects.

De – Regulatory Body has same rights as police, the public prosecutor does prosecution with appropriate assistance from Regulatory Body.

Mx – the main objective of investigations is to find root cause of failure or weakness.

Se – legal procedures are carried out by the police.

Us – NRC have an investigations branch with legal training, use the same techniques as other law enforcement agencies – Suspected criminal violations are handed to the Department of Justice for action.

Uk – NII is developing its existing guidance on investigation and evidence gathering to comply with the requirements of the Crown Prosecutor

**Question 5 General****5.1 Please indicate whether in your country*****Individuals can be jailed for safety offences in nuclear installations***

*Yes:* Be, Ca, Cz, Fi, De, Hu, It, Jp, Kr, Mx, Es, Se, Ch, Us, Uk

*No:* Sk

**5.2 Human rights legislation, such as the European Human Rights Convention (EHRC), or the US Bill of Rights may confer rights on licensees. What Human Rights legislation influence enforcement?**

Be - For formal enforcement an appeals procedure is enshrined in law, but does not suspend the enforcement action.

Ca – Canadian charter of rights and freedoms.

Cz, Hu, Mx, Ch – None.

Fi – Finnish Constitution – enforcement directed at licensees not individuals.

De – Under the constitution appeals can be made against any decision of the Licensing Authority.

Kr – Korean Constitution – Court decision is necessary for the criminal punishment

Sk – EHRC enacted in law – no conflict seen.

Se – EHRC enacted in law.

Us – Penalties provide the operator with an opportunity for prior hearing, unless immediate action is required, in which case a hearing can still be requested.

Uk – EHRC recently enacted in law – NII is modifying its processes to take account of this..

**5.3 Any further observations or comments:**

De – Enforcement is seldom done, due to high levels of compliance.

Es – Database of enforcement actions – time of expiration – appeals process.

## APPENDIX 2

### Summary of findings

A. Question 1, reference point **1** in the report. Possible topic for WGIP discussion: **Yes**

A small group indicated “no” to the question on oral caution and Czech Republic made a comment that oral cautions have no legal basis – *this could open a useful discussion to widen understanding about inspection and enforcement practices which are used by Regulatory Bodies but which are not backed by legal powers. For example, is it an objective of inspection to promote safety consciousness through licensee self improvement.*

B. Question 2.1.1, reference point **2** in the report. Possible topic for WGIP discussion: **No**

About half the Regulatory Bodies have no role for inspectors in issuing permissioning. It may be that permissioning activities are performed by a separate body or by the Regulatory Body at management or corporate level. Further discussion on this is thought to be beyond the scope of the present study.

C. Question 2.1.1, reference point **3** in the report. Possible topic for WGIP discussion: **Yes**

About half the Regulatory Bodies have no role for inspectors in issuing prohibition – this finding conflicts with later answers in the questionnaire on enforcement actions taken in the event of imminent danger and could be clarified. *Further work is proposed on actions that may be taken in these circumstances other than outright prohibition.*

D. Question 2.1.4, reference point **4** in the report. Possible topic for WGIP discussion: **No**

Only three Regulatory Bodies replied that their Inspectors could not exercise discretion in enforcement, this topic may merit expanded discussion with emphasis on the process for determining the significance of findings.

E. Question 2.1.2 – 2.2.4, reference point **5** in the report. Possible topic for WGIP discussion: **Yes**

*What constitutes discretion and how is it used?*. This topic could be developed into a topic for a *workshop*, after a preliminary discussion in WGIP.

F. Question 2.1.2 – 2.2.4, reference point **6** in the report. Possible topic for WGIP discussion: **No**

When the higher levels of formal enforcement are proposed (e.g. prosecution), in some Regulatory Bodies the enforcement action is passed to another agency (e.g. the public prosecutor or the police): *in these cases what role does the Regulatory Bodies inspectors retain in supporting the enforcement action for example by collecting evidence and giving technical advice?*

G. Question 3.1, reference point **7** in the report. Possible topic for WGIP discussion: **No**

Three Regulatory Bodies stated that seeking economic advantage by non-compliance would not be regarded as an influencing factor. Seven stated that protecting vulnerable groups would not be a consideration. Three stated that protecting licensees' employees would not be a consideration. This result is surprising, for example, the first of these is suggesting that a prosecution is more likely if a REGULATORY BODY thinks that the licensee was motivated not to comply with the law in order to make financial gain. It is suggested that: *These aspects could benefit from a discussion on the way in which enforcement actions are decided upon in various countries.*

H. Question 3.2, reference point **8** in the report. Possible topic for WGIP discussion: **Yes**

The majority of Regulatory Bodies have guidance for their inspectors on enforcement issues, but a large minority do not - this suggests that there would be a good input to a future task in WGIP, or a workshop on decisions on enforcement actions.

I. Question 4.1 and 4.2, reference point **9** in the report. Possible topic for WGIP discussion: **Yes**

The answers to questions on evidence gathering processes and whether these were the same as those of the police, were split. A half of the respondents replied "yes" to these questions and a half replied "no". A number of commonalities appear in the write-in answers with regard to investigations being taken over by the police, if a prosecution is being considered. *A possible discussion topic arises, which is related to an earlier question: to what extent inspectors see themselves as law enforcement officers?*

J. Question 5.2 and 5.3, reference point **10** in the report. Possible topic for WGIP discussion: **No**

Most countries responded that they have Human Rights legislation that could influence enforcement. In several of the write-in replies respondents mentioned the rights of prior hearings or appeal. *Thus, further discussion might be useful on rights of appeal and the scope for appeals.*