

National legislative and regulatory activities

Algeria

Nuclear security

Presidential Decree No. 14-195 of 6 July 2014 setting out the nuclear security provisions applying to the physical protection of nuclear facilities, nuclear materials and the security of radioactive sources¹

This new regulation forms a part of Algeria's framework of international commitments working towards the implementation and strengthening of the nuclear security regime.

On this subject, Algeria has ratified, with reservations, the Convention on the Physical Protection of Nuclear Material together with its amendment, and the Convention on the Suppression of Acts of Nuclear Terrorism.

The nuclear security provisions aim in particular to prevent the sabotage of nuclear facilities, the unauthorised removal of nuclear and radioactive materials, acts of malice and aggression towards nuclear facilities or involving nuclear materials or other radioactive materials.

A nuclear security committee, charged with creating and updating the intersectoral nuclear security programme, was created within the Ministry of Energy. The committee is charged with defining and evaluating the design basis threat and the risk with regard to nuclear security and with keeping them up to date.

The decree also contains provisions relating to the training, qualification and reallocation of human resources responsible for nuclear security.²

This regulation will enable the strengthening of the legal framework relating to the security of nuclear facilities, radioactive sources and other radioactive materials.

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1. Décret présidentiel n° 14-195 du 8 Ramadhan 1435 (correspondant au 6 juillet 2014) fixant les dispositions de sécurité nucléaire applicables à la protection physique des installations nucléaires, des matières nucléaires et de la sécurité des sources radioactives, *Journal Officiel de la République Algérienne* (Official Journal of the Republic of Algeria), No. 42, p. 3.
 2. On the subject of training, see also Presidential Decree No. 12-87 of 2012 on the creation of the Centre de Formation et d'Appui à la Sécurité Nucléaire (Nuclear Security Training and Support Centre). NEA (2013), *Nuclear Law Bulletin*, No.92, NEA, Paris, p. 97.

France

Radioactive waste management

Decision of the board of directors of the National Radioactive Waste Management Agency of 5 May 2014 on the follow-up to be given to the public debate on the Cigéo project³

Following the public debate organised on the subject of the deep geological repository (Cigéo) project, which is intended to take in long-lived high and intermediate level radioactive waste, as well as the various opinions and recommendations given to the Agence nationale pour la gestion des déchets radioactifs (ANDRA) (National Radioactive Waste Management Agency) on this subject during 2013, the board of directors of ANDRA made a decision to continue with the Cigéo project.

Nevertheless, ANDRA made a certain number of decisions to take into consideration the comments contained in the minutes of the public debate and in the aforementioned recommendations and opinions. These decisions have led to the following main developments:

- the inclusion of a pilot industrial phase upon activation of the facility to test all aspects of disposal under real conditions;
- the implementation of a regularly revised master plan for disposal operations;
- the adjustment of the project schedule to include preparations for the building authorisation application (submission: end of 2017); and
- the submission of a file to the *Autorité de sûreté nucléaire* (ASN) (French Nuclear Safety Authority) presenting the main technical options ensuring the recovery of the waste packages deposited and thus meeting reversibility requirements.

Nuclear safety and radiological protection

Order of 11 April 2014 on the ratification of Nuclear Safety Authority decision No. 2014-DC-0420 of 13 February 2014 on material modifications to basic nuclear installations⁴

Order of 11 April 2014 on the ratification of Nuclear Safety Authority decision No. 2014-DC-0420 of 13 February 2014 on (correctional) material modifications to basic nuclear installations⁵

Nuclear Safety Authority decision No. 2014-DC-0420 of 15 May 2014 on material modifications to basic nuclear installations

The ASN's decision, ratified by the order of 11 April 2014, sets out the provisions that must be implemented by the operator of a basic nuclear installation (INB or

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3. *Délibération du conseil d'administration de l'Agence nationale pour la gestion des déchets radioactifs du 5 mai 2014 relative aux suites à donner au débat public sur le projet Cigéo, Journal Officiel de la République Française (Official Journal of the French Republic) (JORF) No. 0108 (10 May 2014), Text No. 8, p. 7851.*
 4. *Arrêté du 11 avril 2014 portant homologation de la décision n° 2014-DC-0420 de l'Autorité de sûreté nucléaire du 13 février 2014 relative aux modifications matérielles des installations nucléaires de base, JORF No. 0111 (14 May 2014), p. 7971, Text No. 5.*
 5. *Arrêté du 11 avril 2014 portant homologation de la décision n° 2014-DC-0420 de l'Autorité de sûreté nucléaire du 13 février 2014 relative aux modifications matérielles des installations nucléaires de base (rectificatif), JORF No. 0142 (21 June 2014), p. 10243, Text No. 14.*

installation nucléaire de base in French) in order to:

- Assess and reduce as far as possible any consequences of equipment modifications to the installation that might affect the interests mentioned in Article L. 593-1 of the *code de l'environnement* (French Environmental Code) – security, public health and hygiene, the protection of nature and the environment – and to justify their acceptability.
- Prepare and carry out these modifications.

In particular, this decision sets out the provisions for the management of simultaneous material modifications to a single INB and the methods for carrying out these modifications.

In addition, it defines a material modification as any addition, modification or removal of at least one important element for the protection (*élément important pour la protection* or EIP) of the aforementioned interests or of an element of which the presence, operation or failure may affect the operation or integrity of an EIP.

This decision will become effective on 1 January 2015 and will not apply to modification files submitted to the competent authorities before this date, even if they are still under investigation on that date.

*Order of 20 March 2014 on the ratification of Nuclear Safety Authority decision No. 2014-DC-0417 of 28 January 2014 on the regulations applicable to basic nuclear installations (INBs) for the control of risks associated with fire*⁶

Nuclear Safety Authority decision No. 2014-DC-0417 of 28 January 2014 on the regulations applicable to basic nuclear installations (INBs) for the control of risks associated with fire

The ASN's decision, ratified by the order of 20 March 2014, marks the completion, on the subject of control of risks associated with fire, of the terms of application of Chapter III, on the demonstration of nuclear safety, of the order of 7 February 2012 setting the general rules for basic nuclear installations.⁷

Its appendix sets out the rules applicable to INBs for the control of risks associated with fire.

In addition to the general provisions (definitions, objectives, identification of important protective parts and devices, periodic controls and tests), it contains provisions on:

- the prevention of outbreaks of fire (construction and furnishing materials, management of flammable materials, fire prevention plan and licence, prevention of electrical and electrostatic risks);
- the detection of and intervention in the event of a fire (fire detection and associated safety devices, means of intervention and firefighting, access and circulation routes); and

6. *Arrêté du 20 mars 2014 portant homologation de la décision n° 2014-DC-0417 de l'Autorité de sûreté nucléaire du 28 janvier 2014 relative aux règles applicables aux installations nucléaires de base (INB) pour la maîtrise des risques liés à l'incendie*, JORF No. 0078 (2 April 2014), Text No. 35, p. 6303.

7. *Arrêté du 7 février 2012 fixant les règles générales relatives aux installations nucléaires de base*, JORF No. 0033 (8 February 2012), Text No. 12, p. 2231. More information on this order may be found in NEA (2012), *Nuclear Law Bulletin*, No. 89, NEA, Paris, p. 119.

- measures to avoid the spread of fire and to limit its consequences (zoning, fire resistant structures, ventilation, smoke extraction, equipment).

This decision also provides an option for the operator to obtain an exemption from ASN accompanied by compensatory instructions in the event of difficulties in its application.

This decision is applicable:

- from delivery of the building authorisation for INBs not possessing a building authorisation and not operating under the rights acquired on 3 April 2014; and
- from 1 June 2014 for other INBs, except for certain articles, which are applicable from 1 January 2017.

General legislation

Update to report by the Court of Auditors (Cour des Comptes) on the cost of nuclear energy production, 2014 update (May 2014)

This report updates the statements made by the French Court of Auditors in its report of January 2012 on the cost of nuclear energy production in France.⁸ In addition, it answers the questions posed by the National Assembly's committee of inquiry on the following two subjects:

- the evolution of investments linked to the maintenance and renewal of the existing fleet; and
- the evaluation of the costs associated with the risk of a major nuclear accident and the consideration of the same by the various agents.

The Court observed firstly:

- an increase of 21% in the cost of nuclear energy production since 2010; and
- an increase of 14% since 2010 in funding linked to future costs for decommissioning, spent fuel management and long-term waste management, the emphasis being placed on the uncertainty existing with regard to future costs.

Secondly, the Court studied the evolution of the costs borne by the state between 2010 and 2013 and confirmed:

- an increase of 10% in public and private spending dedicated to research;
- a decrease of 6% in spending financed by public credit and associated with safety and security. However, these costs are expected to increase after 2014 due to the expertise required in future cases (implementation of probabilistic risk assessment, decommissioning of Fessenheim); and
- a widening of the gap between the amount collected in tax on basic nuclear installations and the total amount of spending financed by public credit, meaning that this tax will no longer be able to cover the entirety of this spending.

8. For more information on the January 2012 report, see NEA (2012), *Nuclear Law Bulletin*, No. 89, NEA, Paris, pp. 119-120.

International co-operation

Law No. 2014-308 of 7 March 2014 authorising the approval of the Joint Protocol on the application of the Vienna and Paris Conventions⁹

Official Journal of Laws and Decrees, 9 March 2014, p. 5024, text no. 4

Decree No. 2014-975 of 22 August 2014, publishing the Joint Protocol on the application of the Vienna and Paris Conventions, drawn up in Vienna on 21 September 1988, signed by France on 21 June 1989¹⁰

The principles of the international nuclear civil liability system were set down under the authority of:

- the Organisation for Economic Co-operation and Development (OECD) in the Paris Convention on Third Party Liability in the Field of Nuclear Energy adopted on 29 July 1960; and
- the International Atomic Energy Agency (IAEA) in the Vienna Convention on Civil Liability for Nuclear Accidents adopted on 21 May 1963;

In this context, the Joint Protocol on the application of the Vienna and Paris Conventions aims to create a “bridge” between the aforementioned two conventions, enabling the nuclear civil liability system to be extended to all countries having signed one of these conventions and the Joint Protocol. It also ensures that only one of the two conventions applies to a single nuclear account.

Law No. 2014-308 of 7 March 2014 authorised France’s approval of the Joint Protocol. On 30 April 2014, France then filed its instrument of ratification with the IAEA. Thus, since 30 July 2014, the date on which the Joint Protocol came into effect in France, France has had treaty relations with 31 states.

By means of Decree No. 2014-975 of 22 August 2014, the Joint Protocol was published in the *Journal officiel de la République française* (Official Journal of the French Republic) and may therefore be challenged by third parties.

Decree No. 2014-835 of 23 July 2014 publishing the agreement between the Government of the French Republic and the Government of the Kingdom of Belgium on the processing of Belgian spent fuel in La Hague, signed in Paris on 25 April 2013¹¹

This decree publishes the agreement signed in Paris on 25 April 2013 between the French and Belgian governments on the processing of Belgian spent fuel at the AREVA La Hague site.

The published agreement refers to operations to take place within the framework of the contract for the processing of spent fuel from the BR2 research reactor located on the Mol site in Belgium, concluded on 10 July 1997 between the *Compagnie Général des Matières Nucléaires* (COGEMA), now AREVA NC and *StudieCentrum voor Kernenergie/Centre d’Études de l’Énergie Nucléaire* (SCK-CEN).

9. LOI n° 2014-308 du 7 mars 2014 autorisant l'approbation du protocole commun relatif à l'application de la convention de Vienne et de la convention de Paris, JORF No. 0058 (9 March 2014), Text No. 4, p. 5024.

10. Décret n° 2014-975 du 22 août 2014 portant publication du protocole commun relatif à l'application de la convention de Vienne et de la convention de Paris, fait à Vienne le 21 septembre 1988, signé par la France le 21 juin 1989, JORF No. 0198 (28 August 2014), Text No. 1, p. 14441.

11. Décret n° 2014-835 du 23 juillet 2014 portant publication de l'accord entre le Gouvernement de la République française et le Gouvernement du Royaume de Belgique relatif au traitement de combustibles usés belges à La Hague, signé à Paris le 25 avril 2013, JORF No. 0170 (25 July 2014), Text No. 4, p. 12274.

It states in particular that:

- spent fuel from the BR2 research reactor at the French reprocessing plant in La Hague will be accepted from the entry into force of the agreement until 31 December 2025;
- the processing of this fuel is planned for a period of six years following each delivery;
- radioactive waste from the processing of this fuel will be returned to Belgium which will accept this in the form of conditioned waste packages;
- the return of this waste will be optimised to use a minimal number of transports and will take place no later than 31 December 2030;
- the uranium and plutonium from the processing of spent fuel will be recycled as new nuclear fuel for a reactor for civil use.

Germany

International trade

New versions of the Foreign Trade Act and of the Foreign Trade Ordinance (2013/2014)

The 1961 Foreign Trade Act and its implementing 1961 Foreign Trade Ordinance have very often been amended and revised. This applies particularly since the European Union (EU) used its competence to establish an export control regime of its own.¹² As a consequence, the German foreign trade law, including nuclear trade, was confusingly complex and of a patchwork character.

With a view to improving this legal situation, the Act of 6 June 2013 on Modernising the Foreign Trade Law¹³ provides in its Article 1 a new version of the Foreign Trade Act (*Außenwirtschaftsgesetz*) and lists in its Article 2 consequential amendments to other laws. The Act is implemented by the Foreign Trade Ordinance of 2 August 2013.¹⁴ The Act and the Ordinance entered into force on 1 September 2013. At the same time, the 1961 Foreign Trade Act as amended, including the 1961 Foreign Trade Ordinance, ceased to be in force.¹⁵

The new Act contributed to downsizing and simplifying the regime of foreign trade. While the old Act contained 50 sections, the number of sections of the new Act was reduced to 28. The language was adapted to a more modern terminology; in particular a harmonisation with the EU terminology was aimed at. A new structure shall help provide better clarity of the foreign trade law: in the old version, provisions on import procedures were part of both the Act and the Ordinance, now they are exclusively covered by the Ordinance and thus regulated in the same way as the export procedures. Moreover, due to a lack of practical relevance, an Import

12. See e.g., National legislative and regulatory activities: Germany (2012), “International trade”, *Nuclear Law Bulletin*, No. 89, NEA, Paris, p. 122.

13. *Gesetz zur Modernisierung des Außenwirtschaftsrechts* of 6 June 2013 (*Bundesgesetzblatt* 2013 part I, p. 1482). An unofficial, English working translation is available at: www.bmwi.de/BMWi/Redaktion/PDF/A/awg-englisch,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf.

14. *Außenwirtschaftsverordnung* of 2 August 2013, as last amended by Ordinance of 25 March 2014 (*Bundesgesetzblatt* 2013 part I, p. 2865; *Bundesanzeiger* 2014 AT 31.03.2014 V1). An unofficial, English working translation is available at: www.bmwi.de/BMWi/Redaktion/PDF/A/awv-englisch,property=pdf,bereich=bmwi2012,sprache=de,rwb=true.pdf (accessed 23 October 2014).

15. Article 4 Act on Modernising the Foreign Trade Law; Section 83 Foreign Trade Ordinance.

List is no longer required, while the Export Control List continues to be published as Annex 1 “AL” to the Ordinance.¹⁶ The provisions on criminal and administrative offences take into account the criticism expressed by courts regarding the old provisions. Since the export of dual-use goods are comprehensively covered by legal acts of the EU, there is no longer a necessity for a special national legal framework.

Irrespective of those changes, the approved principal structures of the German foreign trade law remain untouched. This applies in particular to the general freedom of foreign trade, which only in defined cases may be limited by a permission requirement.

A more detailed commentary on the new Foreign Trade Act can be found in the official *Exposé des Motifs* to the Act,¹⁷ and, on the Foreign Trade Ordinance, from the Circular Decree on the Explanation of the Foreign Trade Ordinance.¹⁸

Indonesia

Nuclear security

Early in 2014, Indonesia ratified the Convention for the Suppression of Acts of Nuclear Terrorism by issuing Act No.10 of 2014. The ratification is considered to be part of Indonesia’s commitment to support efforts to handle terrorism, especially nuclear terrorism.

General legislation

Other regulatory decisions have been made in 2014, including the issuance of Government Regulation No. 2 of 2014 on Licensing of Nuclear Installations and Nuclear Material Uses. Regulation No. 2 gives a more comprehensive treatment than before on the licensing of nuclear installations and nuclear material uses. This Regulation replaced Government Regulation No. 43 of 2006 and revoked the Government Regulation No. 29 of 2008.

Toward the end of 2013, Government Regulation No. 61 of 2013 on The Management of Radioactive Wastes was issued, replacing Government Regulation No. 27 of 2002. The new Regulation appoints the National Nuclear Energy Agency (BATAN) as the main implementer of the management of radioactive wastes in Indonesia. As such, sealed sources waste would be submitted to BATAN or be returned to the country of origin.

Ireland

Nuclear safety and radiological protection

The recently enacted Radiological Protection (Miscellaneous Provisions) Act 2014 (No. 20 of 2014) provides for the dissolution of the Radiological Protection Institute of Ireland (RPII) and the transfer of all its functions, assets, liabilities and staff to the Environmental Protection Agency (EPA).

The Act gives effect to the Amendment to the Convention on the Physical Protection of Nuclear Material done at Vienna on 8 July 2005. The Act also amends

16. *Bundesgesetzblatt* 2013 part I, p. 2898.

17. *Begründung zum Entwurf eines Gesetzes zur Modernisierung des Außenwirtschaftsrechts*, Bundestags-Drucksache 17/11127, 22 October 2012.

18. Federal Ministry for Economy and Energy, Circular Decree: *Runderlaß Außenwirtschaft Nr. 5/2013 Verordnung zur Neufassung der Außenwirtschaftsverordnung* of 2 August 2013 (*Bundesanzeiger* AT 05.08.2013 B1).

the Radiological Protection Act 1991, the Environmental Protection Agency Act 1992 and certain other enactments and provides for matters connected therewith.

General legislation

European Union (Waste Electrical and Electronic Equipment) Regulations 2014

In July 2014, the Minister for Environment made the European Union (Waste Electrical and Electronic Equipment) Regulations 2014, thus providing the regulatory basis to enable Ireland to implement the European Union (EU) Directive on the same.¹⁹

The European Union's directive on waste electrical and electronic equipment (WEEE) was adopted as *Statutory Instrument No. 149 of 2014*, replacing Ireland's European Communities (Waste Electrical and Electronic Equipment) Regulations 2011 (SI No. 355 of 2011).

The purpose of Regulations 2014 is to contribute to sustainable production and consumption by the prevention of WEEE and, in addition, by the re-use, recycling and other forms of recovery of such wastes, so as to reduce the disposal of waste.

Regulations 2014 also seeks to improve the environmental performance of all operators involved in the life cycle of electrical and electronic equipment. It will facilitate, in particular, the achievement of the targets for the collection, treatment, recovery and disposal of WEEE in an environmentally sound manner established by the EU Directive.

As a minimum, a number of substances have to be removed from any separately collected WEEE. This list includes components containing radioactive substances, with the exception of components that are below the exemption thresholds set in Council Directive 96/29/Euratom.²⁰

Lithuania

Nuclear security

Rules of procedure for nuclear material accounting and control

New nuclear safety requirements were approved by the Head of the State Nuclear Power Safety Inspectorate in Order No. 22.3-85 on 30 May 2014,²¹ establishing requirements for nuclear material accounting and control and also rules of procedure for the provision of information on nuclear fuel cycle related research and development activities to the European Commission and State Nuclear Power Safety Inspectorate. This document replaces two previous regulations,²² and compared to these, the new rules of procedure provide for more detailed and mandatory rules

19. Council Directive 2012/19/EU of 4 July 2012 on waste electrical and electronic equipment (WEEE), *Official Journal of the European Union (OJ)* L 197/38 (24 July 2012).

20. Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation, *OJ* L 159/1 (29 June 1996).

21. BSR-1.2.1-2014 (2014), "Rules of Procedure of Nuclear Material Accounting and Control and Provision of Information about Research and Development Activities", available at: www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=473783&p_tr2=2.

22. General Requirements of Nuclear Material Accounting and Control and Provision of Information about Activities in the Field of Nuclear Energy or Another Fields Related to the Use of Nuclear Energy (approved by the Head of the State Nuclear Power Safety Inspectorate, Order No. 22.3-11, 28 January 2008) and Recommendations for Implementation of the General Requirements (approved by the Head of the State Nuclear Power Safety Inspectorate, Order No. 22.3-12, 28 January 2008).

and as well as the introduction of a possibility of accounting for nuclear material in a nuclear material balance zone established by State Nuclear Power Safety Inspectorate for natural persons using nuclear material for purposes other than commercial activities and legal persons handling nuclear material for short periods or those not required to obtain a licence.

The new regulations will come into force on 1 November 2014.

Nuclear safety and radiological protection

Revised requirements for fire safety

New requirements for fire safety were approved by the Head of State Nuclear Power Safety Inspectorate in Order No. 22.3-57 on 10 April 2014,²³ establishing requirements for fire safety of structures, systems and components important to the safety of nuclear facilities. The new requirements replace a previous version from 2002²⁴ that had a similar scope. The main goals of the revised requirements are to:

- adjust it to the recent general changes in legal acts related to nuclear energy safety;
- establish the applicable criteria and requirements for the protection against fires of safety related structures, systems and components important to safety of nuclear facilities, including the commissioning and decommissioning stages, and aims to prevent or to limit the consequences of such fires;
- establish the requirements to apply the defence in depth principle for the design of fire safety assurance measures of safety related structures, systems and components important to safety of nuclear facilities; and
- establish the requirements for the subdivision of the nuclear facility buildings into fire compartments and fire cells.

The new requirements came into force on 1 November 2014.

Slovak Republic

International co-operation

Details about international agreements concluded by the Slovak Republic

Since the last edition of the *Nuclear Law Bulletin* No. 93, the Slovak Republic has not acceded, signed, ratified or terminated any treaty in the field of nuclear energy.

Liability and compensation

Government Resolution No. 152

Concerning the international liability regime under the 1963 Vienna Convention²⁵ and the EU Council Decision 2013/434/EU,²⁶ the Slovak Republic was considering the

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23. BSR-1.7.1-2014 (2014), "Fire Safety of Safety related Structures, Systems and Components important to Safety of Nuclear Facility", available at: www3.lrs.lt/pls/inter3/dokpaieska.show_doc_l?p_id=468916&p_tr2=2.
 24. Requirements on Fire Safety of Systems, Important to Safety, of Nuclear Facilities (approved by the Head of the State Nuclear Power Safety Inspectorate, Order No. 42, 11 October 2002).
 25. Vienna Convention on Civil Liability for Nuclear Damage (1963) ("Vienna Convention"), IAEA Doc. INFCIRC/500, 1063 UNTS 266.

pros and cons of its ratification. The Nuclear Regulatory Authority (NRA) had initiated and co-ordinated the cooperation of the relevant ministries in the Interdepartmental Working Group for the Civil Liability for Nuclear Damages that provided the NRA with support when elaborating the non-legislative material “Analysis of the advisability of accession of the Slovak Republic to the Protocol amending the 1963 Vienna Convention on the Civil Liability for Nuclear Damages caused by the Nuclear Incidents as fulfilment of the Council Decision 2013/434/EU” (“Analysis”). That Analysis was submitted to the government on March 2014 to provide the government with the wide-range information and expected influences of such ratification.

The government took the Analysis into their consideration and adopted Resolution No. 152 as of the 2 April 2014 based on which NRA is supposed to:

- submit to the government the separate draft law on civil liability for nuclear damage and its financial coverage based on the 1963 Vienna Convention for now (until the end of December 2014);
- report to the government on the status and developments of the European legislation as regards civil liability for nuclear damage (until the end of March 2017); and
- postpone the intended legislative works considering the accession to the 1997 Protocol amending the 1963 Vienna Convention until the submission of the abovementioned report in 2017.

Thus, the Slovak government postponed making a decision about the accession of the Slovak Republic to the 1997 Protocol. Based on government resolution No. 152, the NRA elaborated a draft law on civil liability for nuclear damage that was already sent for the interdepartmental notification procedure at the end of August 2014 and the clarifications and objections received were negotiated by NRA with the interested parties in October 2014. The NRA is within its time schedule to submit a separate draft law to the government by the end of December 2014.

Environmental protection

The Aarhus Convention Compliance Committee (ACCC)

To draw attention to another important forum, where the national legislation and implementation might be challenged, it is necessary to mention the 46th meeting, on 24 September 2014 in Geneva, of the Aarhus Convention Compliance Committee. The Slovak Republic, as a Party concerned, had to communicate its position concerning case ACCC/C/2013/89/Slovakia.²⁷

Prior to that case, the Slovak Republic already had to deal with the case 2009/41/Slovakia,²⁸ concerning the licensing for the construction of two new reactors in Mochovce and the possibility for proper public participation in the environmental impact assessment (EIA) procedure and the decision-making process as a whole. In the 2009 case, the ACCC report stated that the Slovak Republic, by adoption of the

26. Council Decision 2013/434/EU of 15 July 2013 authorising certain member states to ratify, or to accede to, the Protocol amending the Vienna Convention on Civil Liability for Nuclear Damage of 21 May 1963, in the interest of the European Union, and to make a declaration on the application of the relevant internal rules of Union law, *Official Journal of the European Union (OJ) L 220/1* (17 August 2013).

27. Docket is available at: www.unece.org/env/pp/compliance/compliancecommittee/89tableSlovakia.html (accessed 24 October 2014).

28. Docket is available at: www.unece.org/env/pp/compliance/Compliancecommittee/41TabSlovakia.html (accessed 24 October 2014).

legislative changes concerning the public participation, fully complied with the Aarhus Convention requirements.

Nevertheless, in the current case, there are objections posed concerning the improper implementation of the right of access to the court concerning the public participation in the decision-making process. This communication was initiated by the non-governmental organisations Greenpeace Slovakia, Via Iuris and GLOBAL 2000/Friends of the Earth Austria from 10 June 2013 (reporting on the Slovak legislation).

The various legislative amendments made by the Slovak Republic since the 2008 decisions convinced the Compliance Committee that the Slovak Republic was actively engaged in efforts to review its legal framework so as to ensure that early and effective public participation is provided for in the decision-making for the reconsideration or updating of old permits, or the activities were changed or extended compared with previous conditions. The Slovak Republic considered that the new case is related to the previous case. Therefore, based on the facts and information stated by the Slovak Republic in its written standpoint from 23 December 2013, the Slovak Republic proposed to the ACCC to consider termination of the current case as unjustified and conclude that the Slovak Republic is no longer in non-compliance with the Aarhus Convention.

Switzerland

Radioactive waste management

Revision of Decommissioning and Waste Disposal Funds Ordinance

The financing of the decommissioning of nuclear facilities and the disposal of nuclear waste is regulated in the Swiss Federal Nuclear Energy Act²⁹ as well as the Ordinance on the Decommissioning Fund and the Waste Disposal Fund for Nuclear Installations,³⁰ which regulates the specific details.

There are two independent funds: the Decommissioning Fund,³¹ which aims to secure the costs for the decommissioning and subsequent dismantling of nuclear installations as well as for the disposal of the resulting waste (established in 1984) and the Waste Disposal Fund³² with the purpose to secure the costs for the disposal of nuclear waste resulting from the operation of nuclear power plants as well as for spent fuel elements following the decommissioning of a nuclear power plant (established in 2000). The operators of nuclear facilities pay annual contributions into these funds. The contributions are calculated using a mathematical model on the basis of cost estimates, which take place every five years.

In June 2014, the Federal Council revised the Ordinance on the Decommissioning and Waste Disposal Funds for Nuclear Installations, and in doing so, has adapted the parameters for the calculation of contributions into the two funds. Upon coming into

29. Kernenergiegesetz vom 21 März 2003, SR 732.1; Loi du 21 mars 2003 sur l'énergie nucléaire, RS 732.1.

30. Verordnung vom 7 Dezember 2007 über den Stilllegungsfonds und den Entsorgungsfonds für Kernanlagen, SR 732.17; Ordonnance du 7 décembre 2007 sur le fonds de désaffectation et sur le fonds de gestion des déchets radioactifs pour les installations nucléaires, RS 732.17.

31. For more information on the Decommissioning Fund, see Swiss Federal Office of Energy SFOE, Decommissioning Fund (2013), www.bfe.admin.ch/entsorgungsfonds/01474/index.html?lang=en (accessed 27 October 2014).

32. For more information on the Waste Disposal Fund, see Swiss Federal Office of Energy SFOE, Disposal Fund (2013), www.bfe.admin.ch/entsorgungsfonds/01476/index.html?lang=en (accessed 27 October 2014).

effect in January 2015, a general inflation rate of 1.5% (previously 3.0%) and a return on investment of 3.5% (previously 5.0%) will apply. In order to take the uncertainties of cost estimates into account, a new safety margin of 30% will be added to the cost estimates.

United Arab Emirates

Liability and compensation

Convention on Supplementary Compensation for Nuclear Damage (CSC)

In July 2014, the United Arab Emirates (UAE) ratified the CSC.³³ The UAE's ratification instrument is the Federal Decree No (51) of 2014 Ratifying the Convention on Supplementary Compensation for Nuclear Damage,³⁴ which stipulates that the operator(s) of the nuclear installation(s) located in the UAE shall meet the UAE's obligation as a contracting party under the convention to make available public funds for compensation in respect of nuclear damage per nuclear incident in accordance with Article III.1 (b) of the CSC and such operator(s) shall submit and maintain the required insurances or other financial guarantees to meet this obligation. In accordance with Article XVI.3 of the CSC, the UAE has invoked its right to not be bound by either or both of the dispute settlement procedures as stipulated in Article XVI.2 the CSC.

United States

Radioactive waste management

Commission Approves Continued Storage of Spent Fuel Final Rule and Generic Environmental Impact Statement; Lifts Suspension on Final Licensing Decisions

On 26 August 2014, the Commission approved a final rule and associated generic environmental impact statement (GEIS), amending 10 CFR 51.23 to revise the generic determination on the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor. Historically, 10 CFR 51.23 contained the "Waste Confidence" rule, which denoted the NRC's generic determination that spent nuclear fuel can be stored safely and without significant impacts for a period of time past a reactor's licensed life, but before permanent disposal. This generic determination previously satisfied the NRC's obligations under the National Environmental Policy Act (NEPA), which requires that federal agencies assess the environmental impacts of major federal actions, consider these impacts in making decisions and disclose them to the public. On 8 June 2012, the US Court of Appeals for the District of Columbia Circuit found that some aspects of the NRC's 2010 rulemaking to update the Waste Confidence rule did not satisfy NEPA and, therefore, vacated the rulemaking.³⁵ The court identified deficiencies related to the NRC's environmental analysis of spent fuel pool fires and leaks, and the environmental impacts concerning the impacts of indefinite storage of spent fuel should a permanent repository not become available in the future.

In response to the court's decision, the Commission directed the NRC staff to develop a generic environmental impact statement to analyse the environmental impacts of continued storage, address the issues raised in the court's decision and

33. Convention on Supplementary Compensation for Nuclear Damage (1997), IAEA Doc. INFCIRC/567, 36 ILM 1473.

34. An unofficial English translation of the ratification instrument can be found in the section "Documents and Legal Texts" of this edition of the *Nuclear Law Bulletin*.

35. *New York v. NRC*, 681 F.3d 471 (DC Cir. 2012).

support an updated waste confidence rule. The NRC issued a proposed rule and draft generic environmental impact statement for public comment in September 2013.³⁶ The NRC held 13 public meetings throughout the United States, and over 33 000 comments were received during the public comment period, including comments from Tribal and state governments, industry groups, advocacy groups, NRC licensees, individuals and the US Environmental Protection Agency.

The final rule, titled “Continued Storage of Spent Nuclear Fuel”, represents a change from the Commission’s previous approach to Waste Confidence. Under the previous rule, the Commission had generically determined that spent fuel could be stored safely and without significant environmental impacts for a period of time past the licensed life for a reactor, and would thus make a “finding of no significant impact” (FONSI) to satisfy NEPA. Under the new rule, 10 CFR 51.23(a) is amended to state that the Commission has generically determined that the environmental impacts of continued storage of spent nuclear fuel beyond the licensed life for operation of a reactor are those impacts identified within the GEIS. Thus, future licensing decisions that require an analysis of the environmental impacts of continued storage of spent fuel beyond the facility’s licensed life for operation will no longer rely on a FONSI but will instead rely on the generic determinations reached within the GEIS to satisfy compliance with NEPA.³⁷ Additionally, the final rule clarifies that the generic determination applies to licence renewals for independent spent fuel storage installations, reactor construction permits and early site permits.

The GEIS generically determines the environmental impacts of continued storage and provides a regulatory basis for the revision to 10 CFR 51.23. The GEIS analyses potential environmental impacts of such storage over three possible timeframes: a short-term timeframe, which includes 60 years of continued storage beyond the licensed life of a reactor; a long-term timeframe, which includes an additional 100-year timeframe (60 years plus 100 years) beyond the licensed life of a reactor to address the potential for delay in the availability of a geologic repository; and a third, indefinite timeframe to address the possibility that a repository for spent fuel never becomes available. The GEIS considers the environmental impacts of continued storage under each of these timeframes for a number of identified environmental resource areas (e.g. air quality, surface and groundwater resources, soil and geology, historic and cultural resources, etc.) and generally evaluates these impacts as Small, Moderate, or Large. The GEIS also addresses two technical issues specifically referenced in the 2012 court decision remanding the waste confidence rule: spent fuel pool leaks and spent fuel pool fires. Additionally, the GEIS addresses the technical feasibility of repository availability, and also contains hundreds of pages of NRC responses to public comments.

The final rule was published in the *Federal Register* on 19 September 2014 and will become effective on 20 October 2014.³⁸ On the same day the Commission approved the final Continued Storage Rule and associated GEIS, the Commission also lifted its previous suspension on all final licensing decisions as of the effective date of the final rule.³⁹ The Commission had previously suspended all reactor and ISFSI

36. 78 Federal Register 56,776 (13 September 2013).

37. The safety and environmental impacts of storage of spent fuel during the licensed life of the facility, as opposed to continued storage, are not covered by the final rule and associated GEIS and are still subject to review as part of the NRC’s current licensing process.

38. 79 Federal Register 56,238 (19 September 2014).

39. Calvert Cliffs 3 Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-14-08, 80 NRC _ (26 August 2014).

licensing activities that relied on the waste confidence rule until the 2012 DC Circuit's remand was appropriately addressed.⁴⁰

Licensing and regulatory infrastructure

Commission Approves Direct Final Rule Amending Definition of "Utilization Facility" Within 10 CFR 50.2

On 26 August 2014, the Commission approved a direct final rule amending the definition of a "utilization facility" within 10 CFR 50.2 to specifically add SHINE Medical Technologies, Inc.'s (SHINE) proposed accelerator-driven subcritical operating assemblies. In 2013, SHINE submitted a two-part construction permit application for a medical radioisotope production facility that SHINE proposes to build in Janesville, Wisconsin. The proposed accelerator-driven subcritical operating assemblies would irradiate special nuclear material (SNM) that would be used to produce molybdenum-99 (Mo-99) and other fission products.

The Direct Final Rule resolves any licensing uncertainty concerning the applicable regulations for licensing the construction and potential operation of the SHINE irradiation units. The Atomic Energy Act (AEA) provides authority for the NRC to license "production" facilities or "utilization" facilities for industrial or commercial purposes.⁴¹ The NRC staff had previously determined that SHINE's proposed irradiation units do not meet any of the existing definitions of a "production facility" in the AEA or NRC regulations,⁴² nor are the irradiation units integral to the operation of the radioisotope production facility that later extracts the radioisotopes from the irradiated SNM. Furthermore, the NRC staff determined SHINE's proposed irradiation units do not meet the current definition of a "utilization facility" because the units do not, singly or collectively, sustain nuclear fission in a self-supporting chain reaction. However, Section 11cc. of the AEA authorises the Commission to determine what constitutes a "utilization facility" by rule.⁴³ SHINE's proposed irradiation units closely resemble non-power reactors, which are licensed as utilization facilities under 10 CFR Part 50. Therefore, amending 10 CFR 50.2 to specifically include SHINE's irradiation units within the definition of a "utilization facility" allows the NRC staff to review and potentially license SHINE's irradiation units under the same standards as other technologies with similar radiological, health, and safety considerations.

The amendment to 10 CFR 50.2 applies only to the irradiation units proposed by SHINE in its docketed licence application. As standard procedure for direct final rule packages, a direct final rule and a companion proposed rule would be published in the Federal Register. The direct final rule would become effective 75 days after publication unless significant adverse comments are received within 30 days after publication. Should any significant adverse comments be received, the direct final rule would be withdrawn, and the comments would be addressed during preparation of a traditional final rule package. As part of this process, the NRC would not initiate a separate comment period for the proposed rule.

40. Calvert Cliffs 3 Nuclear Project, LLC (Calvert Cliffs Nuclear Power Plant, Unit 3), CLI-12-16, 76 NRC 63 (7 August 2012).

41. 42 USC 2132.

42. 42 USC 2014(v); 10 CFR 50.2.

43. 42 USC 2014(cc) states, in relevant part, that a "utilization facility" is "any equipment or device...determined by rule of the Commission to be capable of making use of special nuclear material in such a quantity as to be of significance to the common defense and security, or in a manner that affects the health and safety of the public".