REPORT


Committee on Industry, Research and Energy

Rapporteur: Romana Jordan
Symbols for procedures

* Consultation procedure
*** Consent procedure
***I Ordinary legislative procedure (first reading)
***II Ordinary legislative procedure (second reading)
***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in bold italics in the left-hand column. Replacements are indicated in bold italics in both columns. New text is indicated in bold italics in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in bold italics. Deletions are indicated using either the symbol or strikeout. Replacements are indicated by highlighting the new text in bold italics and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Consultation)

The European Parliament,

– having regard to the Commission proposal to the Council (COM(2013)0715),
– having regard to Articles 31 and 32 of the Euratom Treaty, pursuant to which the Council consulted Parliament (C7-0385/2013),
– having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
– having regard to Rule 55 of its Rules of Procedure,
– having regard to the report of the Committee on Industry, Research and Energy (A7-0252/2014),

1. Approves the Commission proposal as amended;
2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union and Article 106a of the Euratom Treaty;
3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
5. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive
Citation 4 a (new)

Text proposed by the Commission

Amendment

Having regard to the Aarhus Convention
on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, which was signed by the European Community and all the EU Member States in 1998,

Amendment 2

Proposal for a directive
Citation 4 b (new)

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>Having regard to the implementation of the Aarhus Convention in the context of nuclear safety, as brought about by the ‘Aarhus Convention and Nuclear’ initiative, which requires Member States to publish key information concerning nuclear safety and to involve the public in the decision-making process,</td>
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Amendment 3

Proposal for a directive
Recital 6

<table>
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<tr>
<th>Text proposed by the Commission</th>
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<tr>
<td>(6) Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste\textsuperscript{33} imposes obligations on the Member States to establish and maintain a national framework for spent fuel and radioactive waste management. The European Parliament resolution of 14 March 2013 on risk and safety assessments (‘stress tests’) of nuclear power plants in the European Union and related activities\textsuperscript{33a} recalled that the hazards of nuclear waste were once again</td>
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Amendment 4

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) Council Conclusions of 8 May 2007 on nuclear safety and safe management of spent nuclear fuel and radioactive waste highlighted that ‘nuclear safety is a national responsibility exercised where appropriate in an EU-framework. Decisions concerning safety actions and the supervision of nuclear installations remain solely with the operators and national authorities’.

Amendment

(7) Council Conclusions of 8 May 2007 on nuclear safety and safe management of spent nuclear fuel and radioactive waste highlighted that ‘nuclear safety is a national responsibility exercised where appropriate in an EU-framework. Decisions concerning safety actions and the supervision of nuclear installations remain solely with the operators and national authorities’. However, in its resolution of 14 March 2013 on risk and safety assessments ('stress tests') of nuclear power plants in the European Union and related activities, the European Parliament took note of the cross-border relevance of nuclear safety, for example by recommending that periodic safety reviews should be based on common safety standards or that cross-border safety and supervision should be ensured. That resolution called for the definition and implementation of binding nuclear safety standards.


33a P7_TA(2013)0089.

Amendment 5
Proposal for a directive
Recital 15

Text proposed by the Commission

(15) A strong and independent competent regulatory authority is a fundamental condition of the European nuclear safety regulatory framework. Its independence and the exercise of its powers impartially and transparently are crucial factors to ensure a high level of nuclear safety. Objective regulatory decisions and enforcement actions should be established without any undue external influence that might compromise safety, such as pressures associated with changing political, economic or societal conditions, or pressures from government departments or any other public or private entities. The negative consequences of the lack of independence were evident in the Fukushima accident. The provisions of Directive 2009/71/Euratom on functional separation of competent regulatory authorities should be strengthened to ensure the regulatory authorities' effective independence and to guarantee that they are provided with the appropriate means and competencies to properly carry out the responsibilities assigned to them. In particular, the regulatory authority should have sufficient legal powers, sufficient staffing and sufficient financial resources for the proper discharge of its assigned responsibilities. The strengthened requirements aiming at ensuring independence in carrying out the regulatory tasks should be however without prejudice to close cooperation, as appropriate, with other relevant national authorities or to general policy guidelines issued by the government not related to the regulatory powers and duties.

Amendment

(15) A strong and independent competent regulatory authority is a fundamental condition of the European nuclear safety regulatory framework. Its legal independence and the exercise of its powers impartially and transparently are crucial factors to ensure a high level of nuclear safety. Objective regulatory decisions and enforcement actions should be established without any undue external influence that might compromise safety, such as pressures associated with changing political, economic or societal conditions, or pressures from government departments or any other public or private entities. The negative consequences of the lack of independence were evident in the Fukushima accident. The provisions of Directive 2009/71/Euratom on functional separation of competent regulatory authorities should be strengthened to ensure the regulatory authorities' effective independence and to guarantee that they are provided with the appropriate means and competencies to properly carry out the responsibilities assigned to them. In particular, the regulatory authority should have sufficient legal powers, sufficient staffing and sufficient financial resources for the proper discharge of its assigned responsibilities. The strengthened requirements aiming at ensuring independence in carrying out the regulatory tasks should be however without prejudice to close cooperation, as appropriate, with other relevant national authorities and the Commission or to general policy guidelines issued by the government that do not undermine the national authority's regulatory powers and duties.
Amendment 6

Proposal for a directive
Recital 22

Text proposed by the Commission

(22) In order to ensure that the proper skills are acquired and that adequate levels of competence are achieved and maintained, all parties should ensure that all staff (including sub-contractors), having responsibilities relating to the nuclear safety of nuclear installations and to the on-site emergency preparedness and response arrangements, undergo a continuous learning process. This can be achieved through the establishment of training programmes and training plans, procedures for periodic review and updating of the training programmes as well as appropriate budgetary provisions for training.

Amendment

(22) In order to ensure that the proper skills are acquired and that adequate levels of competence are achieved and maintained, all parties should ensure that all staff (including sub-contractors), having responsibilities relating to the nuclear safety of nuclear installations and to the on-site emergency preparedness and response arrangements, undergo a continuous learning process. This can be achieved through the establishment of training programmes and training plans, procedures for periodic review and updating of the training programmes and by exchanges of knowhow between countries within and outside the Union as well as appropriate budgetary provisions for training.

Amendment 7

Proposal for a directive
Recital 23

Text proposed by the Commission

(23) Another key lesson learned from the Fukushima nuclear accident is the importance of enhancing transparency on nuclear safety matters. Transparency is also an important means to promote independence in regulatory decision making. Therefore, the current provisions of Directive 2009/71/Euratom on the information to be provided to the public should be more specific as to which type of information should be provided, as a

Amendment

(23) Another key lesson learned from the Fukushima nuclear accident is the importance of enhancing transparency on nuclear safety matters. Transparency is also an important means to promote independence in regulatory decision making. Therefore, the current provisions of Directive 2009/71/Euratom on the information to be provided to the public should be more specific as to which type of information should be provided, as a
minimum by the competent regulatory authority and by the licence holder, and within which time frames. To this purpose, for example, the type of information that should be provided, as a minimum by the competent regulatory authority and by the licence holder as part of their wider transparency strategies, should be identified. Information should be released in a timely manner, particularly in case of abnormal events and accidents. Results of periodic safety reviews and international peer reviews should also be made public.

resolution of 14 March 2013 on risk and safety assessments (‘stress tests’) of nuclear power plants in the European Union and related activities the European Parliament called for the Union’s citizens to be fully informed and consulted on nuclear safety in the Union.

Amendment 8
Proposal for a directive
Recital 24

Text proposed by the Commission

(24) The requirements of this Directive on transparency are complementary to those of the existing Euratom legislation. Council Decision 87/600/Euratom of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency imposes obligations on Member States to notify and provide information to the Commission and to other Member States in case of a radiological emergency on its territory, whilst Council Directive 89/618 Euratom of 27 November 1989 includes requirements on Member States to inform the public about health protection measures to be applied and steps to be taken in the event of a radiological emergency, and to provide advance and continuing

Amendment

(24) The requirements of this Directive on transparency are complementary to those of the existing Euratom legislation. Council Decision 87/600/Euratom of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency imposes obligations on Member States to notify and provide information to the Commission and to other Member States in case of a radiological emergency on its territory, whilst Council Directive 89/618 Euratom of 27 November 1989 includes requirements on Member States to inform the public about health protection measures to be applied and steps to be taken in the event of a radiological emergency, and to provide advance and continuing
information to the population likely to be affected in the event of a such an emergency. However, in addition to the information to be provided in such an event, Member States should under this Directive arrange for appropriate transparency provisions, with prompt and regularly updated release of information to ensure that workers and the general public are kept informed about all nuclear safety related events, including abnormal events or accident conditions. Moreover, the public should be given opportunities to participate effectively in the licencing process of nuclear installations and the competent regulatory authority should provide any safety-related information independently, without need for prior consent from any other public or private entity.

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Amendment 9
Proposal for a directive
Recital 25

Text proposed by the Commission

(25) The Directive 2009/71/Euratom sets up a legally binding Community framework underlying a nuclear safety legislative, administrative and organisational system. It does not include specific requirements for nuclear installations. In view of the technical progress achieved by the IAEA, and the Western European Nuclear Regulators Association ('WENRA') and other sources of expertise, including the lessons learned from the stress tests and the Fukushima nuclear accident investigations, Directive

Amendment

(25) The Directive 2009/71/Euratom sets up a legally binding Community framework underlying a nuclear safety legislative, administrative and organisational system. It does not include specific requirements for nuclear installations. In view of the technical progress achieved by the IAEA, and the Western European Nuclear Regulators Association ('WENRA') and other sources of expertise, including the lessons learned from the stress tests and the Fukushima nuclear accident investigations, Directive
2009/71/Euratom should be amended to include Community nuclear safety objectives covering all stages of the lifecycle of nuclear installations (siting, design, construction, commissioning, operation, decommissioning).

2009/71/Euratom should be amended to include legally binding Community nuclear safety objectives covering all stages of the lifecycle of nuclear installations (siting, design, construction, commissioning, operation, decommissioning).

Amendment 10

Proposal for a directive
Recital 28

Text proposed by the Commission

(28) For new reactor design, there is a clear expectation to address in the original design what was beyond design for previous generations of reactors. Design extension conditions are accident conditions that are not considered for design basis accidents, but are considered in the design process of the installation in accordance with best estimate methodology, and for which releases of radioactive material are kept within acceptable limits. Design extension conditions could include severe accident conditions.

Amendment

(28) For new reactor design, there is a clear expectation to address in the original design what was beyond design for previous generations of reactors. Design extension conditions are accident conditions that are not considered for design basis accidents, but are considered in the design process of the installation in accordance with best estimate methodology, and for which releases of radioactive material are kept within acceptable limits. Design extension conditions should include severe accident conditions.

Amendment 11

Proposal for a directive
Recital 29

Text proposed by the Commission

(29) Application of the concept of defence-in-depth in organisational, behavioural, or design activities related to a nuclear installation, ensures that safety related activities are subject to independent layers of provisions, such that if a failure were to occur, it would be detected and

Amendment

(29) Application of the concept of defence-in-depth in organisational, behavioural, or design activities related to a nuclear installation, ensures that safety related activities are subject to independent layers of provisions, such that if a failure were to occur, it would be detected and
compensated by appropriate measures. The independent effectiveness of each of the different layers is an essential element of defence in depth to prevent accidents and mitigate the consequences if they do occur.

compensated or corrected by appropriate measures. The independent effectiveness of each of the different layers is an essential element of defence in depth to prevent accidents, detect and control deviations and mitigate the consequences if they do occur.

Amendment 12
Proposal for a directive
Recital 33

Text proposed by the Commission

(33) This Directive introduces new provisions on self-assessments and peer-reviews of nuclear installations based on selected nuclear safety topics covering their entire lifecycle. At an international level, there is already confirmed experience with conducting such peer-reviews on nuclear power plants. At the EU level, the experience from the stress tests process shows the value of a coordinated exercise to assess and review the safety of EU nuclear power plants. A similar mechanism, based on cooperation between the Member States' regulatory authorities and the Commission, should be applied here. Therefore, competent regulatory authorities coordinating in the context of expert groups such as ENSREG, could contribute with their expertise to identifying the relevant safety topics and in carrying out these peer reviews. If Member States fail to jointly select at least one topic the Commission should select one or more topics to be subject to the peer reviews. Participation of other stakeholders, such as Technical Support Organisations, international observers or non-governmental Organisations could bring added value to the peer reviews.

Amendment

(33) This Directive introduces new provisions on self-assessments and peer-reviews of nuclear installations based on selected nuclear safety topics covering their entire lifecycle. At an international level, there is already confirmed experience with conducting such peer-reviews on nuclear power plants. At the EU level, the experience from the stress tests process shows the value of a coordinated exercise to assess and review the safety of EU nuclear power plants. A similar mechanism, based on cooperation between the Member States' regulatory authorities and the Commission within the framework of ENSREG, should be applied here. Therefore, Competent regulatory authorities coordinating in the context of expert groups such as ENSREG, could contribute with their expertise to identifying the relevant safety topics and in carrying out these peer reviews. If Member States fail to jointly select at least one topic the Commission should select one or more topics to be subject to the peer reviews. Participation of other stakeholders, such as Technical Support Organisations, international observers or non-governmental Organisations could bring added value to the peer reviews.
Amendment 13
Proposal for a directive
Recital 33 a (new)

Text proposed by the Commission

(33a) Considering the risks of duplication with existing international peer review processes and the risk of interference in the work of independent national regulatory authorities, topical peer reviews should build on the experience gained by ENSREG and WENRA during the European safety reassessments after Fukushima. ENSREG should be entrusted by Member States with the choice of topics, the organisation of the topical peer review, its implementation, and follow-up actions.

Amendment 14
Proposal for a directive
Recital 35

Text proposed by the Commission

(35) An appropriate follow-up mechanism should be established to ensure that the outcome of these peer-reviews is properly implemented. Peer reviews should help improve the safety of individual nuclear installations as well as help formulate generic technical safety recommendations and guidelines valid across the Union.

Amendment

(35) An appropriate follow-up mechanism should be established to ensure that the outcome of these peer-reviews is properly implemented. Peer reviews should help improve the safety of individual nuclear installations in the context of different applications as well as help formulate generic technical safety recommendations and guidelines valid across the Union.

Amendment 15
Proposal for a directive
Recital 36

Text proposed by the Commission

(36) In case the Commission identifies substantial deviations or delays in the

Amendment

(36) In case the Commission, in close coordination with ENSREG, identifies
implementation of the technical recommendations from the peer review process, the Commission should invite the competent regulatory authorities of Member States not concerned to organise and carry out a verification mission with the aim of getting a full picture of the situation and informing the Member State concerned about possible measures to remedy any identified shortcomings.

Amendment 16
Proposal for a directive
Recital 42 a (new)

Text proposed by the Commission

(42a) ENSREG, which has the experience of the European stress tests exercise and is composed of all Union nuclear safety regulators and the Commission, should be closely involved in the selection of the topics subject to regular peer reviews, in the organisation of those topical peer reviews and in ensuring their follow-up, in particular regarding implementation of the recommendations.

Amendment 17
Proposal for a directive
Article 1 – point 2
Directive 2009/71/Euratom
Article 1 – point c

Text proposed by the Commission

(c) to ensure that Member States shall provide for appropriate national arrangements so that nuclear installations are designed, sited, constructed, commissioned, operated or decommissioned so as to avoid unauthorised radioactive releases.

Amendment

(c) to ensure that Member States shall provide for appropriate national arrangements so that nuclear installations are designed, sited, constructed, commissioned, operated or decommissioned so as to limit unauthorised radioactive releases to a
Amendment 18

Proposal for a directive
Article 1 – paragraph 1 – point 2 a (new)
Directive 2009/71/EURATOM
Article 1 – point d

_text proposed by the Commission

Amendment

(2a) In Article 1, the following point is added:
"(d) to promote and enhance nuclear safety culture.";

Amendment 19

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 7

_text proposed by the Commission

Amendment

7. "abnormal event' means any unintended occurrence the consequences, or potential consequences of which are not negligible from the point of view of protection or nuclear safety;

Justification

To allow for consistency with IAEA definitions, this definition is deleted and replaced with the definition of "incident"

Amendment 20

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 7 a (new)
7a. 'incident' means any unintended event, including operating errors, equipment failures, initiating events, accident precursors, near misses or other mishaps, or unauthorised act, malicious or non-malicious, the consequences or potential consequences of which are not negligible from the point of view of protection or safety;

Justification

To allow for consistency with IAEA definition.

Amendment 21

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 8

8. 'accident' means any unplanned event, including operating errors, equipment failures and other mishaps, the consequences or potential consequences of which are not negligible from the point of view of protection or nuclear safety;

8. 'accident' means any unintended event, including operating errors, equipment failures and other mishaps, the consequences or potential consequences of which are not negligible from the point of view of protection or nuclear safety;

Justification

To allow for consistency with IAEA definition.

Amendment 22

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 8 a (new)
Text proposed by the Commission

8a. 'accident conditions' are deviations from normal operation that are less frequent and more severe than anticipated operational occurrences, and which include design basis accidents and design extension conditions;

Amendment 23

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 12

Text proposed by the Commission

'reasonably achievable' means that, in addition to meeting the requirements of good practice in engineering, further safety or risk reduction measures for the design, commissioning, operation or decommissioning of a nuclear installation should be sought and that these measures should be implemented unless it can be demonstrated that they are grossly disproportionate with regard to the safety benefit they would confer;

Amendment

'reasonably practicable' means that, in addition to meeting the requirements of good practice in engineering, further safety or risk reduction measures for the design, commissioning, operation or decommissioning of a nuclear installation should be sought and that these measures should be implemented unless the national regulatory authority accepts that they are demonstrated to be grossly disproportionate with regard to the safety benefit they would confer;

(The amendment from “reasonably achievable” to “reasonably practicable” applies throughout the text. Adopting it will necessitate corresponding changes throughout.)

Amendment 24

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 13
13. 'design basis' means the range of conditions and events taken explicitly into account in the design of an installation, according to established criteria, so that the installation can withstand them without exceeding authorised limits by the planned operation of safety systems;

13. 'design basis' means the range and cumulative effect of conditions and events taken explicitly into account in the design of an installation, according to established criteria, so that the installation can withstand them without exceeding authorised limits by the planned operation of safety systems;

Amendment 25

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 14

14. 'design basis accident' means accident conditions against which an installation is designed according to established criteria, and for which the damage to the fuel and the release of radioactive material are kept within authorised limits;

14. 'design basis accident' means an accident causing accident conditions for which a facility is designed in accordance with established design criteria and conservative methodology, and for which releases of radioactive material are kept within acceptable limits;

Amendment 26

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 15

15. 'beyond design basis accident' means an accident which is possible, but was not fully considered in the design because it was judged to be too unlikely;

deleted
Amendment 27

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 16 a (new)

Text proposed by the Commission

16a. 'design extension conditions' are accident conditions that are not considered for design basis accidents, but that are considered in the design process of the facility in accordance with best estimate methodology, and for which releases of radioactive material are kept within acceptable limits. Design extension conditions could include severe accident conditions.

Amendment

Amendment 28

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 17 a (new)

Text proposed by the Commission

17a. 'verification' means an investigation process while it is ensured that products of the phase of system, system component, method, calculation tool, computer program, development and production meet all requirements of the previous phase.

Amendment

Amendment 29

Proposal for a directive
Article 1 – point 4
Directive 2009/71/Euratom
Article 3 – point 17 b (new)
Text proposed by the Commission

17b. 'severe accident' means accident conditions more severe than a design basis accident and involving significant core degradation.

Amendment

Justification

Consistent with IAEA definitions.

Amendment 30

Proposal for a directive
Article 1 – point 6 – point a
Directive 2009/71/Euratom
Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall establish and maintain a national legislative, regulatory and organisational framework (hereinafter referred to as the ‘national framework’) for nuclear safety of nuclear installations that allocates responsibilities and provides for coordination between relevant state bodies. The national framework shall provide in particular for:

Amendment

1. Member States shall establish and maintain a national legislative, regulatory, administrative and organisational framework (hereinafter referred to as the ‘national framework’) for nuclear safety of nuclear installations that allocates responsibilities and provides for coordination between relevant state bodies. The national framework shall provide in particular for:

Amendment 31

Proposal for a directive
Article 1 – point 7
Directive 2009/71/Euratom
Article 5 – paragraph 2 – point a

Text proposed by the Commission

(a) is functionally separate from any other public or private entity concerned with the promotion or utilisation of nuclear energy or electricity production;

Amendment

(a) is legally separate from any other public or private entity concerned with the promotion or utilisation of nuclear energy or electricity production;
Amendment 32

Proposal for a directive
Article 1 – point 7
Directive 2009/71/Euratom
Article 5 – paragraph 2 – point c

Text proposed by the Commission

(c) takes regulatory decisions, founded on objective and verifiable safety-related criteria;

Amendment

(c) establishes a transparent regulatory decision-making process, founded on objective and verifiable safety-related criteria;

Amendment 33

Proposal for a directive
Article 1 – point 7
Directive 2009/71/Euratom
Article 5 – paragraph 2 – point d

Text proposed by the Commission

(d) has its own appropriate budget allocations, with autonomy in the implementation of the allocated budget. The financing mechanism and the budget allocation process shall be clearly defined in the national framework;

Amendment

(d) has its own appropriate budget allocations, with autonomy in the implementation of the allocated budget. The financing mechanism and the budget allocation process shall be clearly defined in the national framework and should include provisions for the adequate generation of new and management of existing knowledge, expertise and skills;

Amendment 34

Proposal for a directive
Article 1 – point 7
Directive 2009/71/Euratom
Article 5 – paragraph 2 – point e
(e) employs an appropriate number of staff with the necessary qualifications, experience and expertise;

(e) employs an appropriate number of staff, all of whom, in particular politically appointed board members, possess the necessary qualifications, experience and expertise to fulfil its obligations and that have access to external scientific and technical resources and supporting expertise as far as considered necessary in support of its regulatory functions and in accordance with the principles of transparency, independence and integrity of regulatory processes;

Amendment 35

Proposal for a directive
Article 1 – point 7
Directive 2009/71/Euratom,
Article 5 – paragraph 3 a (new)

Text proposed by the Commission

3a. Persons with executive responsibility within the competent regulatory authority shall be appointed according to clearly defined procedures and requirements for appointment. They may be relieved from office during their term especially if they do not comply with the requirements of independence set out in this Article or have been guilty of misconduct under national law. An appropriate cooling-off period for posts with a potential conflict of interest shall be defined.

Amendment 36

Proposal for a directive
Article 1 – point 7
Directive 2009/71/Euratom
Article 5 – paragraph 3 – point e
Text proposed by the Commission

(e) to carry out enforcement actions, including suspending the operation of a nuclear installation in accordance with the conditions defined by the national framework referred to in Article 4(1).

Amendment

Text proposed by the Commission

(e) to carry out enforcement actions, including penalties in accordance with Article 9a and suspending the operation of a nuclear installation in accordance with the conditions defined by the national framework referred to in Article 4(1).

Amendment 37

Proposal for a directive
Article 1 – point 7
Directive 2009/71/Euratom
Article 5 – paragraph 3 – point f (new)

(f) to provide appropriate conditions for the research and development activities needed to develop the necessary knowledge base and to support the management of expertise for the regulatory process.

Amendment

Text proposed by the Commission

(f) to provide appropriate conditions for the research and development activities needed to develop the necessary knowledge base and to support the management of expertise for the regulatory process.

Amendment 38

Proposal for a directive
Article 1 – point 8 – point d
Directive 2009/71/Euratom
Article 6 – paragraph 4

4. Member States shall ensure that the national framework requires licence holders to establish and implement management systems which give due priority to nuclear safety and are regularly verified by the competent regulatory authority.

Amendment

4. Member States shall ensure that the national framework requires licence holders to establish and implement management systems which give due priority to nuclear safety, including promotion and enhancement of a nuclear safety culture, and are regularly verified by the competent regulatory authority.
Amendment 39
Proposal for a directive
Article 1 – point 8 – point f
Directive 2009/71/Euratom
Article 6 – paragraph 5

Text proposed by the Commission
5. Member States shall ensure that the national framework requires licence holders to provide for and maintain adequate financial and human resources, with appropriate qualifications, expertise and skills, to fulfil their obligations with respect to nuclear safety of a nuclear installation, laid down in paragraphs 1 to 4a of this Article and Articles 8a to 8d of this Directive. These obligations also extend to subcontracted workers.

Amendment
5. Member States shall ensure that the national framework requires licence holders to provide for and maintain adequate financial and human resources, with appropriate qualifications, expertise and skills, to fulfil their obligations with respect to nuclear safety of a nuclear installation, laid down in paragraphs 1 to 4a of this Article and Articles 8a to 8d of this Directive, including during and after its decommissioning. These obligations also extend to subcontracted workers.

Amendment 40
Proposal for a directive
Article 1 – point 9
Directive 2009/71/Euratom
Article 7

Text proposed by the Commission
Member States shall ensure that the national framework requires all parties to make arrangements for education, training and exercise for their staff having responsibilities relating to the nuclear safety of nuclear installations and to on-site emergency preparedness and response arrangements, in order to build up, maintain and to further develop up-to-date and mutually recognised expertise and skills in nuclear safety.

Amendment
Member States shall ensure that the national framework requires all parties to make arrangements for education, continuous training and exercise for their staff having responsibilities relating to the nuclear safety of nuclear installations and to on-site emergency preparedness and response arrangements, in order to build up, maintain and to further develop up-to-date and mutually recognised expertise and skills in nuclear safety.
Amendment 41

Proposal for a directive
Article 1 – point 9
Directive 2009/71/Euratom
Article 8

Text proposed by the Commission

Transparency

1. Member States shall ensure that up to date and timely information in relation to nuclear safety of nuclear installations and related risks is made available to workers and the general public, with specific consideration to those living in the vicinity of a nuclear installation.

The obligation established in the first subparagraph includes ensuring that the competent regulatory authority and the licence holders, within their fields of responsibility, develop, publish and implement a transparency strategy covering, inter alia, information on normal operating conditions of nuclear installations, non-mandatory consultation activities with the workers and the general public and communication in case of abnormal events and accidents.

2. Information shall be made available to the public in accordance with applicable Union and national legislation and international obligations, provided that this does not jeopardise other overriding interests, such as security, recognised in national legislation or international

Amendment

Transparency

1. Member States shall ensure that up to date information in relation to nuclear safety of nuclear installations and related risks is made available to workers and the general public without undue delay, with specific consideration to those living in the vicinity of a nuclear installation. A widespread and transparent communication process shall be ensured including, where appropriate, by regular information and consultation of citizens.

The obligation established in the first subparagraph includes ensuring that the competent regulatory authority and the licence holders, within their fields of responsibility, develop, publish and implement a transparency strategy covering, inter alia, information on normal operating conditions of nuclear installations, consultation activities with the workers, where appropriate, and the general public, and immediate communication in case of incidents and accidents. It shall also cover significant information such as siting, construction, extension, commissioning, operation, operation beyond design service life, final shutdown and decommissioning.

2. Information shall be made available to the public in accordance with applicable Union and national legislation and international obligations, provided that this does not jeopardise other overriding interests, such as security, recognised in national legislation or international
obligations.

3. Member States shall ensure that the public shall be given early and effective opportunities to participate in the licensing process of nuclear installations, in accordance with relevant Union and national legislation and international obligations.

Amendment 42
Proposal for a directive
Article 1 – point 10
Directive 2009/71/Euratom
Article 8a

Text proposed by the Commission

Safety objective for nuclear installations
1. Member States shall ensure that the national framework requires that nuclear installations are designed, sited, constructed, commissioned, operated and decommissioned with the objective of avoiding potential radioactive releases by:

(a) practically eliminating the occurrence of all accident sequences which would lead to early or large releases;

(b) for accidents that have not been practically eliminated, implementing design measures so that only limited protective measures in area and time are needed for the public and that sufficient time is available to implement these measures, and that the frequency of such accidents is minimised.

2. Member States shall ensure that the national framework requires that the

Amendment

Safety objective for nuclear installations
1. Member States shall ensure that the national framework requires that nuclear installations are designed, sited, constructed, commissioned, operated and decommissioned with the objective of preventing accidents and radioactive releases and, should an accident occur, mitigating its effects and preventing radioactive releases and large, long-term, off-site contamination by:

(a) practically eliminating the occurrence of all accident sequences which would lead to early or large releases to a level as low as reasonably practicable;

(b) in the event of an accident, implementing design measures so that only limited protective measures in area and time are needed for the public and that sufficient protective measures in area and time are needed for the public and that sufficient time is available to implement these measures, and that the frequency of such accidents is minimised.

2. Member States shall ensure that the national framework requires that the
objective set out in paragraph 1 applies to existing nuclear installations to the extent reasonably achievable.

Amendment 43
Proposal for a directive
Article 1 – point 10
Directive 2009/71/Euratom
Article 8b

Text proposed by the Commission
Implementation of the safety objective for nuclear installations
In order to achieve the safety objective set out in Article 8a, Member States shall ensure that the national framework requires that nuclear installations are:
(a) sited so that due consideration is provided to avoid, where possible, external natural and man-made hazards and minimise their impact;
(b) designed, constructed, commissioned, operated and decommissioned based on the defence-in-depth concept so that:
(i) radiation doses to workers and the general public do not exceed prescribed limits and are kept as low as reasonably achievable;
(ii) the occurrence of abnormal events is minimised;
(iii) the potential for escalation to accident situations is reduced by enhancing the nuclear installations’ capability to effectively manage and control abnormal

Amendment
Implementation of the safety objective for nuclear installations
In order to achieve the safety objective set out in Article 8a, Member States shall ensure that the national framework requires that nuclear installations are:
(a) sited so that due consideration is provided to prevent external natural and man-made hazards and minimise their impact;
(b) designed, constructed, commissioned, operated and decommissioned based on the defence-in-depth concept so that:
(i) radiation doses to workers and the general public do not exceed authorised limits and are kept as low as reasonably practicable;
(ii) the occurrence of incidents is minimised;
(iii) the potential for escalation to accident situations is reduced by enhancing the nuclear installations’ capability to effectively manage and control incidents

'**OJ: please insert the date of entry into force of this Directive.'
events;

(iv) harmful consequences of abnormal events and design basis accidents, should they occur, are mitigated to ensure that they induce no off-site radiological impact, or only minor radiological impact;

(v) external natural and man-made hazards are avoided, where possible, and their impact is minimised.

should they nevertheless occur;

(iv) harmful consequences of incidents and design basis accidents, should they nevertheless occur, are mitigated to ensure that they induce no off-site radiological impact, or only minor radiological impact;

(v) the frequency of external natural and man-made hazards is minimised, and their impact is as low as reasonably practicable.

Amendment 44

Proposal for a directive
Article 1 – point 10
Directive 2009/71/Euratom
Article 8c

Text proposed by the Commission

Methodology for siting, design, construction, commissioning, operation and decommissioning of nuclear installations

1. Member States shall ensure that the national framework requires that the licence holder, under the supervision of the competent regulatory authority:

(a) regularly evaluates the radiological impact of a nuclear installation on workers, the general public and air, water and soil, in both normal operating and in both operating and accident conditions;

(b) defines, documents and re-assesses regularly and at least every ten years, the design basis of nuclear installations through a periodic safety review, and supplements it by a design extension analysis, to ensure that all reasonably practicable improvement measures are implemented;

(c) ensures that the design extension analysis covers all accidents, events and combination of events, including internal

Amendment

Methodology for siting, design, construction, commissioning, operation and decommissioning of nuclear installations

1. Member States shall ensure that the national framework requires that the licence holder, under the supervision of the competent regulatory authority:

(a) regularly evaluates the radiological impact of a nuclear installation on workers, the general public and air, water and soil, in both normal operating and in both operating and accident conditions;

(b) defines, documents and re-assesses regularly and at least every eight years, the design basis of nuclear installations through a periodic safety review, and supplements it by a design extension analysis, to ensure that all reasonably practicable improvement measures are implemented;

(c) ensures that the design extension analysis covers all accidents, events and combination of events, including internal
and external natural or man-made hazards and severe accidents, leading to conditions not included in the design basis accidents;

(d) establishes and implements strategies to mitigate both design basis and beyond-design basis accidents;

(e) implements Severe Accident Management Guidelines for all nuclear power plants and, if appropriate, other nuclear installations, covering all operational conditions, accidents in the spent fuel pools and long-duration events;

(f) carries out a specific safety review for nuclear installations which the competent regulatory authority considers to be close to the limit of their operating lifetime as originally foreseen, and for which an extension of the lifetime is requested.

Any measures mandated by the regulatory authority to prevent beyond-design basis accidents shall be implemented before an extension of lifetime is authorised.

2. Member States shall ensure that the national framework requires that the granting or the review of a licence to construct and/or operate a nuclear installation should be based upon an appropriate site- and installation-specific safety assessment.

3. Member States shall ensure that the national framework requires, for nuclear power plants and, if applicable, for research reactor facilities, for which a construction licence is sought for the first time, that the competent regulatory authority obliges the applicant to demonstrate that the design practically limits the effects of a reactor core damage to within the containment.

3. Member States shall ensure that the national framework requires, for nuclear power plants and, if applicable, for research reactor facilities, for which a construction licence is sought for the first time, that the competent regulatory authority obliges the applicant to demonstrate that the design practically limits the effects of a reactor core damage to within the containment.
**Amendment 45**

**Proposal for a directive**  
**Article 1 – point 10**  
Directive 2009/71/Euratom  
Article 8d

**Text proposed by the Commission**

On-site emergency preparedness and response

Member States shall ensure that the national framework requires that the licence holder, under the supervision of the competent regulatory authority:

(a) prepares and regularly updates an on-site emergency plan which shall:

(i) be based on an assessment of events and situations that may require protective measures on-site or off-site;

(ii) be co-ordinated with all other bodies involved and shall draw on lessons learned from the feedback of experience from severe events, should they occur;

(iii) address in particular events that could impact multiple units of a nuclear installation;

(b) establishes the necessary organisational structure for clear allocation of responsibilities and ensures the availability of necessary resources and assets;

(c) puts in place arrangements for co-ordinating on-site activities and co-operating with authorities and agencies responsible for emergency response throughout all phases of an emergency, that should be regularly exercised;

(d) provides for preparedness measures for the workers on-site with regard to potential

**Amendment**

On-site emergency preparedness and response

Member States shall ensure that the national framework requires that the licence holder, under the supervision of the competent regulatory authority:

(a) prepares and regularly updates, **at least every eight years**, an on-site emergency plan which shall:

(i) be based on an assessment of events and situations that may require protective measures on-site or off-site;

(ii) be co-ordinated with all other bodies involved and shall draw on lessons learned from the feedback of experience from severe events, should they occur;

(iii) address in particular events that could impact multiple units of a nuclear installation;

**(iiiia) takes into consideration cumulative risks associated with the presence nearby of other hazardous (Seveso III-type) industrial installations;**

(b) establishes the necessary organisational structure for clear allocation of responsibilities and ensures the availability of necessary resources and assets;

(c) puts in place arrangements for co-ordinating on-site activities and co-operating with authorities and agencies responsible for emergency response throughout all phases of an emergency, that should be regularly exercised;

(d) provides for preparedness measures for the workers on-site with regard to potential
**abnormal events** and accidents;

(e) provides arrangements for cross-border and international cooperation, including pre-defined arrangements for receiving on-site external assistance, if needed;

(f) arranges for an on-site emergency response centre, sufficiently protected against natural hazards and radioactivity to ensure its habitability;

(g) takes protective measures in case of an emergency in order to mitigate any consequences for human health and for air, water and soil.

**incidents** and accidents;

(e) provides arrangements for cross-border and international cooperation, including pre-defined arrangements for receiving on-site external assistance, if needed;

(f) arranges for an on-site emergency response centre, sufficiently protected against natural hazards and radioactivity to ensure its habitability in the event of and throughout potential crisis management situations;

(g) takes protective measures in case of an emergency in order to mitigate any consequences for human health and for air, water and soil.

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**Amendment 46**

**Proposal for a directive**

**Article 1 – point 11**

Directive 2009/71/Euratom Article 8e

![Text proposed by the Commission](https://example.com)

Peer Reviews

1. Member States shall at least every **ten** years arrange for periodic self-assessments of their national framework and competent regulatory authorities and invite an international peer review of relevant segments of their national framework and competent regulatory authorities with the aim of continuously improving nuclear safety. Outcomes of any peer review shall be reported to the Member States and the Commission, when available.

2. Member States, with the support of the competent regulatory authorities, shall periodically arrange, and at least every six years, an international peer review of relevant segments of their national framework and competent regulatory authorities with the aim of continuously improving nuclear safety. Outcomes of any peer review shall be reported to the Member States and the Commission, when available. **The European Parliament shall be regularly informed about the results of the peer reviews as well as about related measures and plans.**

![Amendment](https://example.com)

Peer Reviews

1. Member States shall at least every **eight** years arrange for periodic self-assessments of their national framework and competent regulatory authorities and invite an international peer review of relevant segments of their national framework and competent regulatory authorities with the aim of continuously improving nuclear safety. Outcomes of any peer review shall be reported to the Member States and the Commission, when available.
years, a system of topical peer reviews and agree on a time-frame and the modalities for implementation. For this purpose Member States shall:

(a) jointly and in close coordination with the Commission select one or more specific topics related to the nuclear safety of nuclear installations. Should Member States fail to jointly select at least a topic within the time frame specified in this paragraph, the Commission shall select the topics to be the subject of the peer reviews;

(b) based on these topics, perform in close collaboration with licence holders, national assessments and publish the results;

(c) jointly define a methodology, arrange and carry out a peer review of the results of the national assessments referred to in point (b), to which the Commission is invited to participate;

(d) publish the results of the peer reviews referred to in point (c).

3. Each Member State subject to the peer review referred to in paragraph 2 shall arrange for the planning and mode of implementation on its territory of relevant technical recommendations resulting from the peer-review process and shall inform the Commission thereof.

4. Should the Commission identify substantial deviations or delays in the implementation of the technical recommendations resulting from the peer review process, the Commission shall

years, a system of topical peer reviews, and agree on a time-frame and the modalities for implementation. For this purpose Member States, in the framework of the Nuclear Safety Regulator Group (ENSREG) as established by Decision 2007/530/Euratom, shall:

(a) jointly select one or more specific topics related to the nuclear safety of nuclear installations. Should Member States fail to jointly select at least a topic within the time frame specified in this paragraph, the Commission shall select the topics to be the subject of the peer reviews;

(b) assess to what extent these topics have been addressed and, where needed, perform in close collaboration with licence holders, national assessments of the installations, to be evaluated by the competent regulatory authority and publish the results;

(c) jointly define a methodology, arrange and carry out a peer review of the results of the national assessments referred to in point (b),

(d) publish the results of the peer reviews referred to in point (c).

2a. The topic of the first topical peer review shall be decided not later than ... +.

3. Each Member State subject to peer reviews referred to in paragraph 2 shall report the outcomes to all Member States and the Commission and arrange for the planning and mode of implementation on its territory of relevant technical recommendations resulting from the peer-review process and publish an action plan reflecting the steps taken.

4. Should the Commission in close coordination with ENSREG identify substantial deviations or delays in the implementation of the technical recommendations resulting from the peer...
invite the competent regulatory authorities of Member States not concerned to organise and carry out a verification mission to get a full picture of the situation and inform the Member State concerned about possible measures to remedy any identified shortcomings.

5. In case of an accident which leads to an early or large release or an abnormal event leading to situations that would require off-site emergency measures or protecting measures for the public, the Member State concerned shall invite within six months a peer review of the installation concerned in accordance with paragraph 2, and to which the Commission shall be invited to participate.

Amendment 47

Proposal for a directive
Article 1 – point 11
Directive 2009/71/Euratom
Article 8f

Text proposed by the Commission

Based on the results of the peer reviews performed in accordance with Article 8e(2) and the resulting technical recommendations, in line with the principles of transparency and continuous improvement of nuclear safety, Member States shall, with the support of the competent regulatory authorities, jointly develop and establish guidelines on the specific topics referred to in Article 8e(2)(a).

Amendment

Based on the results of the peer reviews performed in accordance with Article 8e(2) and the resulting technical recommendations, in line with the principles of transparency and continuous improvement of nuclear safety, Member States shall, with the support of the competent regulatory authorities, jointly develop and establish guidelines on the specific topics referred to in Article 8e(2)(a).

The results of the topical peer reviews shall be used to foster discussions in the nuclear community which potentially
could lead to the development of a set of harmonised Community nuclear safety criteria in the future.
EXPLANATORY STATEMENT

On 22 July 2009 the Directive establishing a Community framework for the nuclear safety of nuclear installations\(^1\) entered into force with the aim to start the process of creating a common EU framework on nuclear safety. The objective of this Directive is to maintain and promote continuous improvement of nuclear safety, whereas the Member States shall provide for appropriate national arrangements in this respect. It covers issues ranging from provisions on the establishment of national legislative and regulatory framework for nuclear safety of nuclear installations to organisation, duties and responsibilities of competent regulatory authorities, licence holders, education and training of staff, information to the public as well as the requirement for functional separation of competent regulatory authority from any other body or organisation concerned with promotion or utilisation of nuclear energy. In addition it establishes ten-year periodic self-assessments with international peer-review of their relevant segments that the Member States shall arrange to be carried out, of which the outcomes shall be reported to the Member States as well as the European Commission.

In the aftermath of the Fukushima accident, however, the EU heads of state and government asked the Commission, together with the European Nuclear Safety Regulators' Group (ENSREG), to carry out stress tests. This exercise was based on a common methodology and demonstrated that all nuclear installations in the Union attain appropriate levels of nuclear safety for them to remain in operation. However, due to a high level of safety culture in the EU, the stress tests resulted also in a number of recommendations, namely specific recommendations on external hazards, on loss of safety functions, severe accidents and aircraft. In addition, in its Communication\(^2\) the Commission suggested that the Nuclear Safety Directive requires revision in the following areas: safety procedures and frameworks, role and means of nuclear regulatory authorities, openness and transparency, monitoring and verification.

The Commission presented in June 2013 a proposal to amend, strengthen and supplement the Nuclear Safety Directive, by combining technical improvements with wider safety issues such as governance, transparency and on-site preparedness and response. For this purpose the proposal introduces a requirement for the effective independence of competent regulatory authorities and established criteria in terms of institutional organisation of the regulatory authorities (NRA), budgetary requirements, human resources as well as regulatory tasks. The proposal also includes the prime responsibility of the licence holders and underlines the need for a comprehensive safety assessment and sufficient defence-in-depth provisions. A requirement for human resources with appropriate qualifications, expertise and skills is extended to subcontracted workers. Finally, the concept of a transparency strategy, which is to be developed, published and implemented by the NRA and licence holders, is introduced and a provision on penalties is included.


The Commission's proposal also introduces provisions on safety objectives for nuclear installation throughout their whole life-cycle as well as requirements for the nuclear installations, underlining the importance of external natural and man-made hazards as well as the defence-in-depth. It furthermore establishes methodology for the whole lifecycle of a nuclear power plant, from sitting, design, construction, commissioning, and operation to decommissioning. In particular, the importance of strategies for accident preparedness is underlined and rules for on-site emergency preparedness are established, including a requirement for an on-site emergency response centre.

Finally, the Commission's proposal establishes procedures for periodic safety-assessments, peer reviews and guidelines. According to the proposal the Member States shall at least every ten years undertake periodic self-assessments of their national framework and competent regulatory authorities. They shall then invite an international peer review of relevant segments, and the outcomes shall be reported to the Member States and the European Commission. In addition, the Commission also proposes that six-year topical peer reviews are established, where the Member States together select one or more specific topics related to nuclear safety and jointly carry out the peer reviews. In case the Member States cannot agree on a topic, the Commissions would select the area to be reviewed.

RECOMMENDATIONS OF THE RAPPORTEUR

The Rapporteur welcomes the proposal of the Commission to strengthen the current regulatory framework for nuclear safety in the Community. She stresses in particular the importance of prevention of incidents and accidents as well as an efficient response in case that an incident or accident do occur. Accident preparedness and coordination in case of an accident should be at the very core of nuclear safety.

In relation to definitions, the Rapporteur suggests that they are aligned as much as possible with the terminology used by the International Atomic Energy Agency (IAEA) in order to allow for a consistency with globally defined standards and procedures.

The Rapporteur supports the clear criteria for the independence of the competent regulatory authorities in the Member States, in particular related to appropriate levels of human and financial resources and their transparency. Furthermore, the Rapporteur believes that the European Commission should play an important role in building trust in nuclear energy.

Furthermore, the Rapporteur supports the provisions on periodic self-assessments with peer reviews as well as six-year topical peer reviews. She suggests, in addition, that the topic of the first topical peer review is decided upon no later than three years after the entry into force of the Directive. Also, the Rapporteur proposes that the results of the topical peer reviews are used to foster discussions in the nuclear community which could lead to a potential development of a set of harmonised Community nuclear safety criteria in the future.

Finally, the rapporteur calls for a prompt revision of the current Euratom Treaty with the view of allowing for a more transparent and democratic decision-making process in the field of nuclear safety, which would be comparable to that related to other energy sources, for which the provisions are governed by the Treaty on the Functioning of the European Union.
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Ms Amalia Sartori
Chair
Committee on Industry, Research and Energy
BRUSSELS


Dear Madam Chair,


I. Background


The draft report of the Committee on Industry, Research and Energy (rapporteur, Romana Jordan) is scheduled for adoption in the ITRE Committee on 18 March with a view to enabling Parliament to adopt its position in the April plenary session. A number of amendments have been tabled to the draft report which seek to modify the legal basis of the proposal by replacing the reference to Articles 31 and 32 of the Euratom Treaty by a reference to the Treaty on the Functioning of the European Union (TFUE) and in particular Articles 153,191 and 192 thereof as legal bases for the Directive.

By letter of 21 February 2014 the Chair of the Committee on Industry, Research and Energy has requested the opinion of the Committee on Legal Affairs pursuant to Rule 37 of the Rules of Procedure on the correct legal basis for the proposed directive.

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II. The proposal

The proposal refers to the Fukushima nuclear accident in Japan in 2011 and the renewed attention paid worldwide to measures needed to minimise the risk of nuclear accidents and improve nuclear safety, as well as to the 'stress tests' carried out in order to have comprehensive risk and safety assessments of nuclear power plants in the European Union.

The main elements of the proposal are as follows:

- Ensuring the avoidance of radioactive releases during all stages of the lifecycle of nuclear installations (siting, design, construction, commissioning, operation, decommissioning).

- Criteria and requirements to guarantee the effective independence of regulators, including ensuring effective independence in decision-making, own appropriate budget allocations and autonomy in implementation, requirements for the appointment and dismissal of staff, avoidance and resolution of conflicts of interests, and staffing levels with the necessary qualifications, experience and expertise.

- The proposal provides that both the competent regulatory authority and the licence holder are required to develop a transparency strategy, which covers information provision under normal operating conditions of nuclear installations as well as communication in case of accident or abnormal event conditions. The role of the public is emphasised through the requirement that it effectively participates in the licensing process of nuclear installations.

- The introduction of general safety objectives for nuclear installations and laying down more detailed provisions for different life-cycle phases of nuclear installations, including methodological requirements concerning the siting, design, construction, commissioning, operation and decommissioning of nuclear installations.

- An on-site emergency response centre is required for a nuclear installation, sufficiently protected against the effects from external events and severe accidents, including radiological ones, and equipped with the necessary material to mitigate the effects of severe accidents.

- New provisions are set out on self-assessments and peer-reviews of nuclear installations based on nuclear safety topics selected by the Member States jointly and in close coordination with the Commission.

III. The amendments to the draft report

There are, first of all, amendments tabled to the draft report in ITRE which explicitly seek to change the legal basis of the proposed Directive and its institutional character. Thus, amendment 33 by Kathleen Van Brempt and Teresa Riera Madurell and amendment 34 by Michèle Rivasi and Corinne Lepage seek to change the title of the Directive from a Council Directive to a Directive of the European Parliament and the Council.

Concretely, amendment 35 by the first mentioned authors seeks to change the legal basis by replacing the references made in Citation 1 to Articles 31 and 32 of the Euratom Treaty by a reference to Articles 191 and 192 TFEU, whereas amendment 36 to Citation 1 by the second
two authors mentioned above proposes Articles 191, 192 and 153 as legal bases for the Directive. One could also mention amendment 85 by Bernd Lange, which advocates the Treaty on the Functioning of the European Union as the appropriate legal basis for the Directive.

Amendments have also been tabled with a view to adapting the procedure for the adoption of the Directive to suit the changed legal bases. Thus, amendments 37 and 38 to Citation 2 would delete the reference to the opinion of a committee of experts, designated by the scientific and technical committee among scientific experts of the Member States, which is an obligatory requirement under the Euratom Treaty, while amendment 39 to Citation 3 refers to the ordinary legislative procedure for the adoption of the Directive itself.

Further amendments have been tabled which can be conceived of as seeking to change the content of the Directive in line with the proposed alternative legal bases. Amendments 40 (recital 4a new) and 41 (recital 4b new) refer to the transparency and public participation requirements of the Aarhus Convention; to which the European Union, but not the European Atomic Energy Community, is a party.

Amendment 42 to recital 1 seeks to change the definition of the objectives to correspond to the amendment by the same authors seeking to introduce the environment articles of the TFEU as the legal basis for the Directive. The amendment would replace the reference in the proposal to the establishment of safety norms for the public and workers pursuant to Article 2(b) of the Euratom Treaty by a reference to Article 191 TFEU and a definition of the objectives of the Directive which corresponds to the objectives of Article 191 TFEU.

Similarly, amendment 44 to recital 2 would base the norms for the protection of the health and safety of the public and workers on Article 153 TFEU. Amendment 43 (recital 1a new) can also be mentioned, as it calls for nuclear energy to be treated as an energy source "on the same basis as other energy sources" under the TFEU.

The Members who tabled the amendments seeking to change the legal basis and the definition of the objectives of the Directive have also tabled amendments to the articles, which could be considered to support the choice of the proposed alternative legal bases. Among these the following could be mentioned:

- amendment 89 to Article 1, paragraph 1 - point a (new) of the proposal, which would replace the terminology of the Euratom Treaty as regards the purpose of the Directive, adding a reference to the environment and requiring the protection of the public, workers and the environment from "any risk" of radiation from nuclear installations;

- amendment 132 to Article 1, paragraph 1 - point 9, which would require conformity with the Aarhus Convention as regards, notably, public participation, and amendments 152 and 165 to Article 1, paragraph 1 - point 10, which would replace two references to "air water and soil" taken from the Euratom Treaty by a reference to "the environment";

- amendment 164 to Article 1, paragraph 1 - point 10, adding a new subparagraph according to which licence holders would be required to "authorise, permit and favour" the participation of the public and of non-governmental organisations concerned by nuclear safety in the
required 'on-site emergency preparedness and response' activities and amendment 181 to Article 1, paragraph 1 - point 11, which would provide for a central role for governmental organisations in the procedure for selecting specific themes connected to the verification of the safety of nuclear installations.

VI. The proposed legal bases

a) The original legal basis of the proposal

The Commission proposal is based on Articles 31 and 32 of the Euratom Treaty (Title II Chapter 3: Health and Safety), which read as follows:

Article 31
The basic standards shall be worked out by the Commission after it has obtained the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts, and in particular public health experts, in the Member States. The Commission shall obtain the opinion of the Economic and Social Committee on these basic standards.

After consulting the European Parliament the Council shall, on a proposal from the Commission, which shall forward to it the opinions obtained from these Committees, establish the basic standards; the Council shall act by a qualified majority.

Article 32
At the request of the Commission or of a Member State, the basic standards may be revised or supplemented in accordance with the procedure laid down in Article 31.

The Commission shall examine any request made by a Member State.

Basic standards referred to in Article 31 are defined in Article 30 of the Euratom Treaty which reads as follows:

Article 30
Basic standards shall be laid down within the Community for the protection of the health of workers and the general public against the dangers arising from ionizing radiations.

The expression 'basic standards' means:
(a) maximum permissible doses compatible with adequate safety;
(b) maximum permissible levels of exposure and contamination;
(c) the fundamental principles governing the health surveillance of workers.

b) The legal bases proposed in amendments

The amendments seeking to change the legal basis propose Articles 191 and 192 TFEU on the protection of the environment, as well as Article 153 on social policy as legal bases. The articles read as follows:

Article 191
(ex Article 174 TEC)

1. Union policy on the environment shall contribute to pursuit of the following objectives:
— preserving, protecting and improving the quality of the environment,
— protecting human health,
— prudent and rational utilisation of natural resources,
— promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

   In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. In preparing its policy on the environment, the Union shall take account of:
— available scientific and technical data,
— environmental conditions in the various regions of the Union,
— the potential benefits and costs of action or lack of action,
— the economic and social development of the Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

   The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

Article 192
(ex Article 175 TEC)

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 114, the Council acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:
   (a) provisions primarily of a fiscal nature;
   (b) measures affecting:
      — town and country planning,
      — quantitative management of water resources or affecting, directly or indirectly, the availability of those resources,
      — land use, with the exception of waste management;
   (c) measures significantly affecting a Member State's choice between different energy sources
and the general structure of its energy supply.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, may make the ordinary legislative procedure applicable to the matters referred to in the first subparagraph.

3. General action programmes setting out priority objectives to be attained shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions.

The measures necessary for the implementation of these programmes shall be adopted under the terms of paragraph 1 or 2, as the case may be.

4. Without prejudice to certain measures adopted by the Union, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, such measure shall lay down appropriate provisions in the form of:
— temporary derogations, and/or
— financial support from the Cohesion Fund set up pursuant to Article 177.

Article 153
(ex Article 137 TEC)

1. With a view to achieving the objectives of Article 151, the Union shall support and complement the activities of the Member States in the following fields:
(a) improvement in particular of the working environment to protect workers' health and safety;
(b) working conditions;
(c) social security and social protection of workers;
(d) protection of workers where their employment contract is terminated;
(e) the information and consultation of workers;
(f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;
(g) conditions of employment for third-country nationals legally residing in Union territory;
(h) the integration of persons excluded from the labour market, without prejudice to Article 166;
(i) equality between men and women with regard to labour market opportunities and treatment at work;
(j) the combating of social exclusion;
(k) the modernisation of social protection systems without prejudice to point (c).

2. To this end, the European Parliament and the Council:
(a) may adopt measures designed to encourage cooperation between Member States through initiatives aimed at improving knowledge, developing exchanges of information and best practices, promoting innovative approaches and evaluating experiences, excluding any harmonisation of the laws and regulations of the Member States;
(b) may adopt, in the fields referred to in paragraph 1(a) to (i), by means of directives, minimum requirements for gradual implementation, having regard to the conditions and technical rules obtaining in each of the Member States. Such directives shall avoid imposing administrative, financial and legal constraints in a way which would hold back the creation and development of small and medium-sized undertakings.
The European Parliament and the Council shall act in accordance with the ordinary legislative procedure after consulting the Economic and Social Committee and the Committee of the Regions.

In the fields referred to in paragraph 1(c), (d), (f) and (g), the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the said Committees.

The Council, acting unanimously on a proposal from the Commission, after consulting the European Parliament, may decide to render the ordinary legislative procedure applicable to paragraph 1(d), (f) and (g).

3. A Member State may entrust management and labour, at their joint request, with the implementation of directives adopted pursuant to paragraph 2, or, where appropriate, with the implementation of a Council decision adopted in accordance with Article 155.

In this case, it shall ensure that, no later than the date on which a directive or a decision must be transposed or implemented, management and labour have introduced the necessary measures by agreement, the Member State concerned being required to take any necessary measure enabling it at any time to be in a position to guarantee the results imposed by that directive or that decision.

4. The provisions adopted pursuant to this Article:
— shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof,
— shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with the Treaties.

5. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.

V. The case law

It is settled case law that the choice of the legal basis for a Union measure must rest on objective factors amenable to judicial review, which include in particular the aim and the content of the measure\(^1\). Subjective factors, such as the conviction of an institution as to the objective pursued are not relevant in this connection.\(^2\)

In principle, a measure is to be founded on only one legal basis. A dual legal basis can be used only if a measure simultaneously pursues a number of objectives or has several linked components, without one being secondary and indirect in relation to the other,\(^3\) subject to the condition that the procedures laid down for each legal basis are not incompatible.\(^4\)

VI. Analysis of the proposal and the amendments tabled to it

a) the proposal

As the Parliament's Legal Service notes in its opinion, the question of the legal basis of the Commission’s proposal was raised on the own-initiative of the Committee on Legal Affairs during the procedure for the adoption of Council Directive 2009/71/EURATOM. At that time

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\(^1\) Case C-440/05 Commission v. Council [2007] ECR I-9097.


the Legal Service, in a note dated 10 February 2009, concluded that Articles 31 and 32 Euratom Treaty were the appropriate legal basis for the proposal. At its meeting of 31 March 2009, the Committee on Legal Affairs decided, by 13 votes in favour, 6 votes against and no abstentions, to recommend that same conclusion.

The Legal Service concludes that there are "no elements that would call for a change of legal basis, since the aim is still linked to an improvement of nuclear safety". The Legal Service refers also to the judgments in Case C-70/88\(^1\), where the Court held that the purpose of those articles was to ensure consistent and effective protection of the health of the general public against the dangers arising from ionising radiations, whatever their source, and in Case C-29/99\(^2\), which concerned the accession of the European Atomic Energy Community to the Nuclear Safety Convention.

However, it is, nevertheless, worth noting that the entry into force of the Lisbon Treaty brought some changes to the relationship between the Euratom Treaty and the Treaties of the Union, notably the abrogation of Article 305 of the EC Treaty, according to which the EC treaty was to be "without prejudice" to the Euratom Treaty and the introduction of Article 106(a) in the Euratom Treaty, which states that the Union Treaties "may not derogate " from the Euratom Treaty, while listing a number of articles of the TEU and TFEU which apply to the EA Treaty.

The consequences of the introduction of Article 194 TFEU on energy has been the subject of an action brought by Parliament against Council, in which the Court concluded that the proposed legislation should have been based on that article and not on Article 337 TFEU and Article 187 Euratom.\(^3\)

The relationship between, on the one hand, the health and safety provisions in the Euratom Treaty and, on the other hand, the provisions on the environment in the TFEU has also been subject to an opinion of the Committee on Legal Affairs, which at its meeting of 6 November 2012 decided, by 22 votes in favour, one against and no abstentions to recommend that the appropriate legal basis for the proposal for a directive of the European Parliament and of the Council laying down requirements for the protection of the health of the general public with regard to radioactive substances in water intended for human consumption should be Article 192(1) TFEU.

It must, however, be noted that those two cases differ from the one at hand. In the former case the question was essentially about the relationship between the Euratom Treaty and the new Article 194 on energy, introduced by the Lisbon Treaty. In the second case general legislation had been adopted on the protection of the health of the general public with regard polluting substances in water intended for human consumption and the proposed Directive sought to include pollution from radioactive substances into that framework.

As the present proposal would amend an existing directive adopted on the basis of Articles 31


\(^{3}\) See Case C-490/10, European Parliament v Council, judgment of 6 September 2012. The Council was supported by the French Republic and the European Commission.
and 32 Euratom it must be concluded that the proposal, as such, has been correctly based on the same articles. The legal basis of the proposal could, thus, only be called in question if the changes proposed to be made by Parliament would change the objective and purpose of the proposal to such an extent that an alternative legal basis would be justified.

b) The amendments

It is clear from the case law referred to above that the mere desire to change the legal basis does not suffice as a justification for such a change. Therefore, it is worth noting that in addition to amendments which directly seek to change the legal basis or concern the institutional qualification of the proposed Directive or the procedural norms for its adoption, amendments have also been tabled, which seek to change the definition of the objectives of the Directive.

Considering first the amendments seeking to introduce Articles 191 and 192 TFEU as the legal basis, amendment 42 to recital 1 is worth noting, as it seeks to change the definition of the objectives of the proposal to correspond to the objectives of Article 191 TFEU.

The amendments that seek to subject the Directive to the Aarhus Convention and the requirements of access to information and the right to public participation under that Convention and in accordance with EU legislation adopted for the purpose of implementing the Convention are also noteworthy. In this context the fact might merit consideration that, while the European Union is a party to the Aarhus Convention, the European Atomic Energy Community is not, as this would seem to raise questions of the compatibility of these provisions with a legal basis in the Euratom Treaty.

As regards the proposal for a double legal basis, combining Articles 191 and 192 TFEU with Article 153 TFEU, it must be noted that fewer elements have been introduced into the content of the proposed Directive than in the case of Articles 191 and 192 alone. Bearing in mind that a multiple legal basis should only be used when distinct objectives are pursued, none of which is clearly dominant, and that the protection of human health is already included among the objectives set in Article 191 TFEU, it does not appear justified to consider Article 153 as a potential legal basis.

Owing to the timing of the vote in the Committee on Industry, Research and Energy,¹ any conclusions as regards the impact of the amendments tabled to the proposal must, by necessity, be hypothetical, and based on the assumption that they will be adopted.

Bearing in mind that the amendments go further than simply calling for a change of legal basis but also seek to change the objectives of the proposed Directive with a view to aligning it with the protection of the environment under the TFEU and, in particular, to subject nuclear safety measures to the requirements of access to information and public participation under the Aarhus Convention it is, in any case, clear that the authors of the amendments have sought to change the nature of the proposed Directive.

However, this does not necessarily mean that the amendments actually would change the basic purpose and nature of the legal act in question to the extent of justifying the

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¹ ITRE voted on 18 March 2014.
consideration of Articles 191 and 192 as legal bases. Otherwise, the principle of the priority of 
*lex specialis* would lead to considering Articles 31 and 31 Euratom as the correct legal basis.

It is worth recalling that a multiple legal basis is only possible when these are procedurally compatible. Thus, it would not be possible to combine Articles 31 and 32 Euratom with Articles 191 and 192 TFEU, as under the former Parliament would only be consulted, whereas under the latter adoption would take place in accordance with the ordinary legislative procedure.

It appears that the amendments tabled to the draft report in ITRE seeking to change the legal basis of the proposed Directive and to align it with other legislation in the field of environmental protection have been rejected in the vote in the committee. This does not necessarily make the opinion on the legal basis from JURI irrelevant, as according to Rule 37 amendments seeking to change the legal basis can be tabled to plenary if either the committee responsible or the Committee on Legal Affairs have contested the legal basis of a proposal.

**VII. Conclusion**

The Committee on Legal Affairs voted against the proposal to change the legal basis to Articles 191 and 192 TFEU by 8 votes in favour, 12 against and no abstentions\(^1\). Accordingly, the original legal basis as proposed by the Commission of Articles 31 and 32 Euratom stands.

Yours sincerely,

Evelyn Regner

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\(^1\) The following were present: Paolo Bartolozzi, Luigi Berlinguer, Françoise Castex, Christian Engström, Marielle Gallo, Lidia Joanna Geringer de Oedenberg, Richard Howitt, Sajjad Karim, Annette Koeuwius, Eva Lichtenberger, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Evelyn Regner (Acting Chair), Francesco Enrico Speroni, Rebecca Taylor, Alexandra Thein, Axel Voss, Rainer Wieland, Cecilia Wikström.
RESULT OF FINAL VOTE IN COMMITTEE

<table>
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<th>Date adopted</th>
<th>18.3.2014</th>
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| Result of final vote | +: 37  
|                   | -: 15  
|                   | 0: 3    |

**Members present for the final vote**

**Substitute(s) present for the final vote**
António Fernando Correia de Campos, Francesco De Angelis, Věra Flasarová, Françoise Grossetête, Jolanta Emilia Hibner, Gunnar Hökmark, Werner Langen, Zofija Mazej Kukovič, Alajos Mészáros, Vladko Todorov Panayotov, Silvia-Adriana Ţicău