

NUCLEAR
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Nuclear Energy Agency

Organisation for Economic Co-operation and Development

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LEGISLATIVE AND REGULATORY ACTIVITIES

• *Austria*

REGIME OF RADIOACTIVE MATERIALS

Amendment of the 1972 Act establishing a Safeguards System for ensuring the peaceful use of nuclear energy

The amending Act was published on 7th July 1978 in the Federal Law Gazette for the Republic of Austria (FLG 315/1978 No. 113) and is concerned largely with authorisation procedures for the exportation of, or trade in, nuclear material.

The 1972 Act, as amended, provides that insofar as is necessary for the fulfilment of Austria's international obligations, the exportation of nuclear material requires the authorisation of the Austrian Chancellor. Such authorisation may be made subject to any conditions thought necessary. Authorisation will be given when it is established that appropriate safeguards (reference being made to the Treaty on the Non-Proliferation of Nuclear Weapons) exist in the country of destination.

Trade in nuclear material, inasmuch as it is not already covered by special procedures under the European Agreement concerning the International Carriage of Dangerous Goods by Road or the International Convention concerning the Carriage of Goods by Rail, requires the authorisation of the Minister of the Interior who may impose whatever conditions he thinks necessary to ensure the safeguarding of the material and, generally, the protection of Austria's interests and people.

The Security Police are charged with controlling the observance of any conditions imposed, and in cases of non-observance or of trading without authorisation, an administrative fine of up to 500,000 Austrian schillings is payable in those instances where there has been no imposition of a judicial sanction.

Where there has been a contravention, or in cases of imminent danger to life or health, the authorities have wide powers to take all necessary steps to ensure safety. Normally, such measures may be taken only after publication of an appropriate decision, but where warranted by the gravity of the situation, prior publication may be dispensed with. Publication must, however, follow within two weeks of the adoption of the measures, otherwise they will be deemed to be of no further application.

• *Belgium*

TRANSPORT OF RADIOACTIVE MATERIALS

Ministerial Order of 9th May 1977 designating the Customs Office through which radioactive materials may be imported

This Order by the Minister of Public Health and the Family was made under the Royal Order of 28th February 1963 regulating the protection of the population and workers against the hazards of ionizing radiation, and designates the Customs Offices through which licenced radioactive substances and devices containing them may be imported. It lists the authorised points of access into Belgium for each type of transport: by road, rail, sea, waterways and air. This Order repeals the former Order dated 6th November 1966 (see Nuclear Law Bulletin No. 2).

• *Denmark*

RADIATION PROTECTION

Order of 17th February 1977 on the use of X-ray installations etc

Order No. 56 made by the Minister of the Interior under Act No. 147 of 15th April 1930 on the use of X-rays etc, repeals Order No. 141 of 27th March 1956 on X-ray regulations, and was published in the Danish Official Gazette of 5th May 1977 (Lovtidende for Kongeriget Danmark).

This Order is applicable to all X-ray producing installations other than those which produce X-rays with a maximum energy of 5 keV. It lays down that safety measures must be adopted to ensure protection in accordance with the recommendations of the International Commission on Radiological Protection (ICRP).

The National Health Service will have access to all X-ray generating installations whether or not within the scope of this Order. It is empowered to make plans for setting up new X-ray installations or for modifying existing ones from the viewpoint of radiation protection, and must be notified when new installations are completed or existing ones modified. Such installations must be inspected and approved by the National Health Service and their directors must be approved by it.

Finally, the National Health Service will lay down rules for personal dosimetry for exposed staff.

Order of 29th April 1977 on X-ray diagnostic equipment for medical use

Order No. 217, made by the National Health Service under Order No. 56 of 17th February 1977 (see above) was published in the Danish Official Gazette of 1st June 1977.

This Order is divided into several parts covering, inter alia, approval and notification of X-ray installations, conditions of liability, occupational radiation protection, construction of X-ray apparatus and its shielding, inspection of such equipment by the National Health Service.

The Order specifies that dental X-ray equipment not exceeding 70 kV and that for veterinary purposes are subject to separate provisions.

• *Finland*

NUCLEAR LEGISLATION

Amendment of the 1957 Atomic Energy Act

The Finnish Parliament promulgated Act No. 430 on 7th June 1978 amending Sections 4 and 5 of the 1957 Atomic Energy Act (see Nuclear Law Bulletin Nos. 11 and 19). In accordance with Section 4 as amended, a permit issued by virtue of the Atomic Energy Act may now be granted for specified reasons for a stated period of time. The possibility of granting permits for a period is considered important in the light of the uncertainties relating to nuclear waste management. Such permits may be renewed permanently provided the reasons for their periodic validity have ceased to exist.

The amended Section 5 lays down the manner in which the responsibility for nuclear waste has been divided between the waste producer and the State. The waste producer has overall responsibility for the expenses caused by nuclear waste management. The State may, however, take over the nuclear waste, provided that the conditions approved by the Council of State have been fulfilled and provision for payment of expenses arising from the treatment and disposal of such waste has been made in a satisfactory manner.

ENVIRONMENTAL PROTECTION

Governmental Decision "in principle" on the organisation of radioactive waste management

Special legislation on nuclear waste management (organisational and economic aspects) is under preparation. Meanwhile, it was seen necessary to decide on general guidelines to be followed for waste management in nuclear facilities coming into operation before the enforcement of the new legislation. The main purpose of the decision "in principle" is to make sure that the funds for the financing of the radioactive waste management are collected already during the commercial operation of the installation and that maintenance of the real value of the funds is secured.

The Government proposed early this year that the Council of State should take a decision "in principle" on the necessary measures for organising radioactive waste management according to the set of guidelines which are summarised below.

Permits issued for any operation involving radioactive waste production must take into account the latest developments in the management of such waste at international level. Producers of radioactive waste will bear all practical and financial responsibility for all waste produced by them, from spent nuclear fuel to decommissioning of their installation and ultimate waste disposal after treatment and storage. Operators must take the necessary steps to collect funds for waste management from the time their installation comes into operation and must ensure that the real value of such funds is maintained.

A governmental organisation will be set up which will be responsible for the continuous supervision of an ultimate waste repository and of installations to ensure that they will be maintained in conditions enabling their ultimate disposal appropriately. This organisation and "waste producers" will be released from all their obligations in cases where waste they are responsible for is irrevocably transferred to a foreign country.

All expenses incurred by the governmental organisation, including construction of the repository, will be drawn from a governmental Fund for Radioactive Waste to be established outside the State budget and financed by the waste producers. The latter must provide the Government with acceptable securities to cover their liability for radioactive waste management. The amounts will be adjusted on a yearly basis by the Ministry of Trade and Industry to take account of changes in monetary value.

Intensified R and D work on radioactive waste management will be financed and undertaken by waste producers under the surveillance of the Ministry of Trade and Industry.

Finally, implementation of the above guidelines will be expedited by necessary legislation and other measures. During the period preceding the entry into force of the required regulations, the terms of this decision (28th April 1978) will be included in all permits for nuclear installations.

THIRD PARTY LIABILITY

Council of State Decision of 22nd June 1978 concerning the exclusion of certain nuclear substances from the application of the Nuclear Liability Act of 8th June 1972

This Decision was made in order to implement internally the two Decisions of 27th October 1977 of the OECD Nuclear Energy Agency's Steering Committee on the exclusion of certain kinds and small quantities of nuclear substances from the application of the Paris Convention (see Nuclear Law Bulletin No. 21).

Ministerial Decision of 22nd June 1978 on a Certificate of Financial Security for the Carriage of Nuclear Substances

This Decision of the Ministry of Trade and Industry (No. 512/78) was made by virtue of Section 40 of the Nuclear Liability Act of 8th June 1972 (see Supplement to Nuclear Law Bulletin No. 19). The certificate complies very closely with the model certificate elaborated by OECD Nuclear Energy Agency Steering Committee. However, the optional second part of the model certificate has not been included.

• *France*

ORGANISATION AND STRUCTURE

Decree of 10th November 1977 setting up a Council for Information on Nuclear Electricity Generation

This Decree was published in the French Official Gazette on 11th November 1977. The Council is placed directly under the Prime Minister. Its object is to ensure that the public has access to information on the technical, health, ecological, economic and financial aspects of nuclear electricity generations.

The Council advises the Government on the public's conditions of access to such information and on methods for its dissemination. A report, which is published, is submitted to the Prime Minister every year.

The Council is kept fully informed of the conditions and prospects for the development of nuclear electricity generation in France; it has access to all documents pertinent to its duties, in the competent Ministries and public organisations.

The Council is made up of a Chairman and eighteen members. The Chairman is appointed for three years, in the Council of Ministers on proposal of the Prime Minister. The other members, also appointed for three years, are for the most part designated by the Prime Minister; they include local representatives of the communes concerned by the siting of nuclear power plants, representatives of the nature and environmental protection associations as well as experts from scientific circles.

RADIATION PROTECTION

Interministerial Order of 10th October 1977 on Approval of Devices and Facilities using Ionizing Radiation for Medical Purposes

This Order made by the Ministers of Health and Social Security, Agriculture and Labour, was published in the French Official Gazette of 23rd November 1977. It amends the previous Decree of 23rd April 1969 (see Nuclear Law Bulletin No. 4) in particular concerning the classification of medical or dental radiodiagnostic devices subject to approval. The technical conditions to be complied with for such devices and facilities have also been amended. Finally, it is provided that, as regards facilities with heavy equipment subject to licensing (Act of 31st December 1970), approval is subject to compliance with the licensing conditions and is requested together with the application for a licence.

TRANSPORT OF RADIOACTIVE MATERIALS

Amendment of the 1945 Regulations on the Transport of Dangerous Goods

The Minister of Transport amended the Regulations on the Transport of Dangerous Goods of 15th April 1945 by an Order dated 24th August 1978 (published in the French Official Gazette of 30th September 1978). The modifications concern the safety conditions to be complied with for the transport of portable industrial gamma radiography apparatus containing sealed radioactive sources.

ENVIRONMENTAL PROTECTION

Implementation of the Paris Convention and the Barcelona Convention

Decree No. 78-605 of 3rd May 1978 authorised publication in the Official Gazette (24th May 1978) of the Convention for the Prevention of Marine Pollution from Land-based Sources, opened for signature in Paris on 4th June 1974. It is recalled that the Paris Convention lays down that radioactive substances and waste (Annex A, Part III) should be subjected to stringent control to eliminate pollution which they cause (see Nuclear Law Bulletin No. 13). The Paris Convention came into force on 6th May 1978.

Furthermore, Decree No. 78-1000 of 29th September 1978 authorised publication in the Official Gazette (9th and 10th October 1978) of the Convention for the Protection of the Mediterranean Sea against Pollution and its two annexed Protocols, adopted in Barcelona on 16th February 1976 (see Nuclear Law Bulletin Nos. 18 and 20). The Barcelona Convention came into force on 12th February 1978.

• Greece

REGIME OF NUCLEAR INSTALLATIONS

1978 Presidential Decree establishing the requirements and procedures for granting a site licence for the establishment of a nuclear power plant

This Presidential Decree, made under Act No. 854 of 15th March 1971 relating to the construction and operation of nuclear installations (see Nuclear Law Bulletin No. 8), was published in the Greek Official Gazette of 23rd August 1978 (Part A, No. 130).

The Decree lays down the requirement to be complied with by the Public Power Corporation (PPC) to obtain a licence for the siting of a nuclear power plant. The Decree makes it clear that in Greece the PPC is the only recognised operator, responsible for the production and supply of electricity; and it refers specifically only to one type of nuclear installation - an electricity generating plant.

The Ministry of Industry and Energy, in consultation with the Greek Atomic Energy Commission (GAEC), is the competent body for granting such licence.

The application for a licence, to be submitted to the Minister, must be accompanied by a report proving the suitability of the proposed site and providing the necessary data for its evaluation from the viewpoint of plant safety and protection of the population and the environment.

The evaluation must include information on floods, geological, seismological, hydrological, meteorological characteristics of the site, data on the probability of aeroplane crashes and other hazards attributable to human activities, availability and suitability of cooling waters for the plant. Information must also be provided on existing industrial, military, transport and tourist facilities, archeological monuments in the area as well as its planned development during the expected life of the plant.

The application is studied by the competent department of the Ministry of Industry and Energy which ascertains that the accompanying documents are duly complete. The file is then forwarded to the GAEC for advice within a given time limit, which is set by agreement between the Ministry and the GAEC.

The GAEC submits its conclusions to the Ministry and specifies the safety measures to be applied; if necessary it invites the PPC to provide further clarifications on certain investigations made for the report and may ask that the latter be amended or added to.

Following the advice of the GAEC, and if the application is favourably received, the Minister publishes his decision in the Official Gazette, granting the licence for a specific site and specifying its boundaries. If the application is rejected, he notifies the PPC accordingly, giving the reasons for his refusal.

When the site licence is granted, this means that the area proposed is considered suitable for locating a nuclear power plant on that site and also enables preparatory work to be started for constructing the plant proper.

The licence which is granted for a specific period may be extended by the Minister at the request of the PPC; the request must include proof that the PPC has acquired ownership of or the right to use the site involved.

• *Italy*

RADIATION PROTECTION

Ministerial Decree of 24th June 1978 on examinations for qualified experts and approved physicians in radiation protection

This Decree by the Minister of Labour and Social Welfare was published in the Italian Official Gazette of 30th August 1978 and made in implementation of Section 7 of Presidential Decree No. 1150 of 12th December 1972 fixing the conditions for inclusion of qualified experts and approved physicians in the list of persons authorised to be in charge of surveillance of radiation protection from the viewpoint of physics and medicine (see Nuclear Law Bulletin No. 12). This list was established by a Ministerial Decree of 15th February 1974 (see Nuclear Law Bulletin No. 13).

The 1978 Decree determines the frequency of sessions for examination of the qualification of experts and physicians who wish to be included in the list, the procedures for application, the documents required, and the time within which successful candidates are notified of their inclusion in the list.

REGIME OF NUCLEAR INSTALLATIONS

Ministerial Circular of 1978 on the licensing procedure for construction and operation of certain nuclear installations

This Circular by the Minister of Industry, Commerce and Crafts lays down the licensing procedure to be complied with for construction and operation of nuclear installations, determined by a Ministerial Decree of 4th January 1977 subjecting certain installations to Section 55 of Presidential Decree No. 185 of 13th February 1964 (see Nuclear Law Bulletin No. 20).

It lists the documents to be supplied by applicants for a licence and describes the technical enquiry to be undertaken by the Comitato Nazionale per l'Energia Nucleare (CNEN). The results of the enquiry are submitted to the different Ministries concerned (Ministries of Industry, Commerce and Crafts; Interior; Labour and Social Welfare; Health) for their opinion. If it is favourable the licence is issued by the Ministry of Industry, Commerce and Crafts.

As regards installations already constructed or in operation before publication of the above-mentioned Decree and which fall within its scope, the Circular specifies the procedures to be carried out by the operators concerned and the subsequent report to be prepared by the CNEN; the purpose is to ensure that such installations comply with the Decree.

ENVIRONMENTAL PROTECTION

Ministerial directives of 26th July 1978 on sea dumping

A set of directives by the Ministry of Public Works (Committee of Ministers for the protection of waters against pollution) were published in the Italian Official Gazette of 9th August 1978. They lay down criteria to be met in implementation of Act No. 319 of 10th May 1976 on the protection of waters against pollution.

In accordance with the Act, and until the 1972 London Convention on the Prevention of Marine Pollution by the Dumping of Wastes and other Matter and other international regulations on protection of the Mediterranean Sea are implemented in Italy, the above-mentioned Committee of Ministers grants dumping permits. The application for a permit is sent to the Ministry of the Merchant Navy which is responsible for the relevant enquiry. The permit is granted following consultation of the Ministry of Foreign Affairs and the region concerned.

The Ministerial provisions prohibit the dumping of radioactive waste, except under certain conditions. Also, the definition of radioactive materials is the same as that contained in the recommendations of the International Atomic Energy Agency.

The directives are supplemented by two Annexes respectively concerning the list of substances and materials which cannot be dumped at sea or which require a permit, and the criteria to be complied with for such dumping.

• Japan

NUCLEAR LEGISLATION

Amendment of various nuclear laws in 1978

In order to guarantee further the safe utilisation of atomic energy, amendment of the relevant laws was approved by the Diet during its 81st session from December 1977 to June 1978 (the amendments had been submitted to the Diet at its previous year's session). The main amendments concern the establishment of a Nuclear Safety Commission and the modification of licensing procedures for nuclear reactors to make them more efficient.

The main laws amended are the following:

- 1958 Basic Law on Atomic Energy referred to as the Basic Law;
- 1955 Law on the Establishment of the Atomic Energy Commission (the Establishment Law);
- 1957 Law for the Regulation of Nuclear Source Material, Nuclear Fuel Material and Nuclear Reactors (the Regulation Law) (see Nuclear Law Bulletin No. 11).

I. Amendments of the Basic Law and the Establishment Law

The purpose of amending the Basic Law is to set up a Nuclear Safety Commission. The Establishment Law was amended under the Basic Law to provide detailed provisions on the new Commission. The Nuclear Safety Commission will replace the current Atomic Energy Commission in the following areas:

- 1) Matters concerning policies in the regulation of the safe utilisation of atomic energy;
- 2) Matters concerning the safety aspects of the regulations on nuclear fuel (and source) materials and reactors;
- 3) Matters concerning the fundamentals of protection against hazards occurring from the utilisation of atomic energy;
- 4) Matters concerning the fundamentals of measures for protection against hazards from radioactive fallout;
- 5) Any other matters of importance in the regulation of the safe utilisation of atomic energy.

The Commission will consist of five Commissioners who will be appointed by the Prime Minister with the consent of both Houses of the Diet.

In parallel with the Nuclear Safety Commission, the Atomic Energy Commission (with one Chairman and four Commissioners) will continue its role in the following areas:

- 1) Matters concerning policies on the utilisation of atomic energy;
- 2) Matters concerning the overall adjustment of affairs relating to the utilisation of atomic energy in the relevant administrative government organisations;
- 3) Matters concerning the estimates and planning distribution of the expenditure for the utilisation of atomic energy in the relevant administrative government organisations;
- 4) Matters concerning the regulations on nuclear fuel and source materials and reactors (excluding questions within the competence of the Nuclear Safety Commission);
- 5) Matters concerning the promotion of experiments and research on the utilisation of atomic energy;
- 6) Matters concerning the education and training (excluding matters concerning education and research at universities) of researchers and engineers specialised in the utilisation of atomic energy;
- 7) Matters concerning collection of data, preparation of statistics and surveys on the utilisation of atomic energy;
- 8) Any other matters of importance in the utilisation of atomic energy (excluding questions within the competence of the Nuclear Safety Commission).

This reorganisation became effective on 4th October 1978.

II. Amendment of the Regulation Law

Modification of Licensing Procedures

Under the current Regulation Law, the Prime Minister is empowered to make regulations on all nuclear activities. However, it was agreed that regulations on reactors for commercial electricity generation or ship propulsion should be harmonised with the regulations for conventional electricity generating facilities and ships.

The main purpose of amending the Regulation Law is to authorise the Minister for International Trade and Industry (MITI) and the Minister for Transport to make regulations on reactors for commercial electricity generation and reactors for ship propulsion, respectively.

Thus, regulations on commercial electricity generating reactors will be under the overall responsibility of the Minister for International Trade and Industry who is competent for electricity utilities under the Electricity Utilities Law, and regulations on ship propulsion reactors will be under the overall responsibility of the Minister for Transport who is competent for the safety of ships under the Law on Ships.

The Prime Minister will continue to make regulations on experimental and research reactors and reactors at the research and development stage.

It is also laid down as previously that, when granting licences, the competent Ministers should obtain the prior opinions of the Atomic Energy Commission and the Nuclear Safety Commission and comply with them. In this connection, the Minister for Transport, and no longer the Prime Minister, will be responsible for licensing in respect of foreign nuclear ships.

Provisions on Radioactive Waste Disposal

Another important amendment concerns disposal of radioactive waste. The current Regulation Law provides the safety criteria for dilution and dispersion into the environment and interim storage of waste in technical facilities and lays down only technical criteria for sea disposal of solidified radioactive waste.

As there are no provisions on geological disposal of waste and also the requirements under the London Convention on Dumping of Wastes and other Matter have not yet been adopted for sea disposal, the purpose of amending the Regulation Law is to lay down the necessary provisions for geological disposal and sea disposal. Moreover it has been decided that detailed provisions and criteria for disposal from facilities will be laid down by the Prime Minister's Order; the Prime Minister is furthermore empowered to order suspension of any such disposal if it is not undertaken in compliance with his Order. For the time being, it is not clear what provisions will be fixed; however, any plans for disposal into geological formations and into the sea must be submitted to the Prime Minister for prior examination.

Inspection of Nuclear Facilities

One minor amendment concerns the inspection of nuclear facilities. The current Regulation Law lays down that the competent Ministers (mainly the Prime Minister), may authorise their officials to enter offices, factories or places of business (a vessel, where the vessel is equipped with a reactor) to inspect their books, documents and necessary objects or to make enquiries. From now onwards, the Local Public Safety Commission (Local Police Office) will also be authorised to undertake such inspections. This measure has been taken with a view to the physical protection of nuclear materials.

• Kuwait

RADIATION PROTECTION

Decree of 1977 promulgating Act No. 131/977 on the use of ionizing radiation and protection against its hazards

This Decree of 12th November 1977 implementing Act No. 131/977 was published in the Kuwait Official Gazette (Al Kuwait Al Yom, Vol. 23, No. 1167). This Act lays down in detail all the provisions to be complied with in any activities involving the use of ionizing radiation.

The import, export, manufacture, possession, transport and disposal of radiation equipment or radioactive material are subject to a licence granted by the Ministry of Public Health. The Minister of Public Health lays down by Order the conditions governing such licences.

He is furthermore empowered to issue all necessary Orders in implementation of the Act. It is provided that a Radiation Protection Committee will be set up within the Ministry with the following tasks: to review matters connected with radiation protection and formulate policies related thereto; to approve, amend, cancel or suspend licences issued under the Act; to prepare draft regulations under the Act and make relevant recommendations.

Licensees must take the necessary precautions to ensure the safety of the public and of professionally occupied persons and in so doing, must comply with the conditions laid down by Order of the Minister.

Licensees must ensure that any person involved in radiation work has undergone a medical examination and has been pronounced fit for such work prior to commencing it, in accordance with the procedures laid down by Order of the Minister. No person under eighteen may be employed in work exposing him to radiation.

Licensees are required to notify the Minister or the competent authority designated by him of any loss of radiation equipment or radioactive material as well as of any incident involving the exposure of persons to a dose in excess of the prescribed limit within 24 hours of such occurrence, in order that the necessary measures should be taken to avoid undue hazards.

Inspection and surveillance procedures under the Act will be implemented by officials designated by the Minister. They are empowered to inspect premises containing radiation equipment and radioactive materials, and may have access to all documents required in the discharge of their duties. If necessary they may call upon the police for assistance.

Finally, penal provisions are laid down in case of non-compliance with the Act.

● *Malaysia*

RADIATION PROTECTION

Radiation Protection Rules, 1974

These radiation protection rules were issued on 15th July 1974 by the Minister of Health and were made under the Radioactive Substances Act, 1968. They lay down the conditions to be complied with by holders of permits involving the use of radioactive substances and implement the provisions of the above-mentioned Act in this respect.

Notwithstanding any measures which may be imposed by the Director General of Health under the Act, the conditions laid down in Part III of the Act shall apply for every permit issued thereunder.

Permit holders must, in all cases, comply with the latest relevant International Atomic Energy Agency (IAEA) regulations and safety standards.

Permit holders must keep records of staff employed, setting out the general nature of their work and the type of radiation involved, the extent to which such persons have been exposed to radiation, based on individual or area monitoring methods, the result of periodical medical examinations and all emergency and accidental exposure doses, such doses being distinguished from those received from normal exposure. Records must be kept for a minimum period of 30 years after such persons have ceased to be employed. No records are required if the exposure of the persons employed is not likely to exceed 3/10 of the annual maximum permissible dose.

Persons engaged in work involving irradiating apparatus and radioactive substances must be over 18 years of age; they must undergo a medical examination to ensure they are fitted for such work before they begin it, and in the event of overexposure to radiation they must report it to the responsible authority immediately.

Permit holders must ensure that installations are provided with primary or secondary barriers, and that working premises are adequately lit and ventilated. Exposure doses from irradiating apparatus and radioactive substances must remain within the limits specified by the IAEA safety standards at all times.

All controlled areas must be clearly marked with the radioactive symbol and with the required language describing it. The symbol must also be displayed to mark areas where radioisotopes and radioactive sources are stored or used.

As regards radioactive substances in transit, it must be ensured that they are packaged and transported in accordance with the IAEA Regulations on the Safe Transport of Radioactive Materials. If packages received do not comply with these requirements, the Director General of Health must be notified immediately. He must also be notified within 24 hours of any damage to a container holding such substances and of their loss.

Records must be maintained of the stocks of radioactive substances, their location and form.

Radioactive waste must be disposed of in a manner approved by the Director General of Health.

The Minister of Health may exempt by Order any person or class of persons, any radioactive substances or any radioactive substances below a specified activity, and any irradiating apparatus from the scope of these Rules.

• *Mexico*

ORGANISATION AND STRUCTURE

Replacement of the National Institute of Nuclear Energy

The National Institute of Nuclear Energy set up in 1971 (see Nuclear Law Bulletin No. 11) has been replaced by three new organisations which will carry out future governmental projects.

The organisations created are the following: the National Institute of Nuclear Research which will be responsible for all nuclear R and D programmes; Uranio de Mexico (URAMEX) which will be in charge of uranium exploration and exploitation; and the National Commission of Nuclear Security and Safeguards.

• *Philippines*

REGIME OF NUCLEAR INSTALLATIONS

Administrative Order of 1978 amending the 1974 Regulations for the Licensing of Atomic Energy Facilities

Administrative Order No. 01 of 3rd March 1978 by the Atomic Energy Commission amends the Regulations for the Licensing of Atomic Energy Facilities (see Nuclear Law Bulletin No. 19) to provide for further safety in plant design.

The holder of a construction permit for a nuclear power plant must notify the Atomic Energy Commission of each significant deficiency found in the design and construction of the plant which, if uncorrected,

could adversely affect the safe operation of the plant at any time throughout its expected life. Significant deficiency under the Order means, inter alia, a breakdown in the quality assurance programme conducted in accordance with Appendix C of the Regulations, non-conformity with the criteria of the final design approved on the basis of the safety analysis report, significant damage to a structure, system or component requiring extensive evaluation, redesign or repair to meet the criteria in the safety analysis report.

The permit holder must notify the Commission within 24 hours of the discovery of the deficiency and submit a written report in its respect within thirty days.

THIRD PARTY LIABILITY

Presidential Decree of 1977 amending the Atomic Energy Regulatory and Liability Act of 1968

Presidential Decree No. 1484 of 11th June 1977 amends certain liability provisions of the Atomic Energy Regulatory and Liability Act No. 5207 of 1968 (see Nuclear Law Bulletin Nos. 6 and 9).

It is recalled that the liability provisions of the Act are based on the Vienna Convention on Civil Liability for Nuclear Damage and the amendments to the Act align its provisions more closely with those of the Vienna Convention and also provide further clarifications.

The definition of "nuclear damage" is more detailed and the term "personal injury" within the meaning of the Act covers physical and mental injury, including death, as well as sickness whether caused by a physical trauma or otherwise. It is now specified that the operator's right of recourse against an individual who has willfully caused damage can only be exercised against the individual himself and not against any other person who may be liable for the acts of such individual. As regards the exclusion limits, the relevant provision now lays down that such limits are those which have been established by the Board of Governors of the International Atomic Energy Agency.

Finally, a new Section has been added to provide for the conclusion of indemnification agreements between the Government and suppliers of a government-owned nuclear facility.

• Portugal

ORGANISATION AND STRUCTURE

Reorganisation of nuclear activities in Portugal

The Ministry for Industry and Technology has recently been reorganised under Decree-Law No. 548/77 of 31st December 1977. This Decree-Law decided the creation of new departments in the Ministry and the abolition of others, including the Junta de Energia Nuclear.

Pending actual abolition of the Junta, to be fixed by Decree of the Minister for Industry and Technology as soon as the different pending organisational problems are settled, the Junta's activities have been divided up among a number of administrative departments under Decree No. 126/78 of 22nd May 1978. This reorganisation takes the following form:

- The Junta's Nuclear Physics and Engineering Laboratory is transferred to the National Engineering and Industrial Technology Laboratory;
- The General Directorate for Energy (GDE) takes over the Junta's responsibilities, in particular regarding external relations, licensing and inspection of nuclear installations, technical and economic studies on nuclear power plants and fuels (Decrees No. 48568 of 4th September 1968 and No. 49398 of 24th November 1969); the GDE also advises the Minister for Industry and Technology on the management of mineral resources and uranium concentrates;
- The General Directorate for Geology and Mines takes over the Junta's mining and prospecting activities, with the exception of those entrusted to the National Uranium Undertaking under the Decree of 6th May 1977 (see Nuclear Law Bulletin No. 20) and to the GDE;
- The Bureau for Nuclear Prospecting and Safety is responsible for matters relating to nuclear power plant safety; it also takes part in the licensing procedure for such plants (Decree No. 487 of 5th December 1972);
- The General Directorate for Health will take over the duties of the Junta's Radiation Protection Committee under a Decree to be made.

• *South Africa*

NUCLEAR LEGISLATION

Atomic Energy Amendment Act, 1978

Atomic Energy Amendment Act No. 46 of 5th April 1978, amending the Atomic Energy Act, 1967 (see Nuclear Law Bulletin Nos. 15 and 20), was published in the Government Gazette of 12th April 1978. The main purpose of the amendments is to extend the secrecy provisions of the 1967 Act.

Under the Amendment Act, without the consent of the competent authorities:

- no information may be published or disclosed on the locality, extent, and source material content of ore reserves, on the importance of the production or the price and conditions of acquisition of such material, in or outside South Africa;
- no person may disclose information on activities or transactions carried out in the past connected with source material;
- no information may be communicated which is connected with any investigation or negotiations with a view to acquiring a site licence or with any licensed site under the Nuclear Installations (Licensing and Security) Act, 1963.

The competent authorities (the Atomic Energy Board and the Minister of Mines) may furthermore direct that in any proceedings, evidence in connection with transactions in any company producing source material be given in camera.

In the exercise of their powers within the Act, the competent authorities may also, if in their opinion it is in the interests of the security of the State, decide not to disclose the reasons for exercising such powers in any direction in matters of secrecy to any person likely to be affected thereby, and this decision will not be subject to review.

REGIME OF NUCLEAR INSTALLATIONS

Nuclear Installations (Licensing and Security) Amendment Act, 1978

The Nuclear Installations (Licensing and Security) Amendment Act No. 22 of 7th March 1978, amending the Nuclear Installations (Licensing and Security) Act, 1963 (see Nuclear Law Bulletin Nos. 15 and 18) was published in the Government Gazette of 15th March 1978. It lays down that any person who, without the authority of the Atomic Energy Board, discloses any information obtained by him in the exercise of his powers under the 1963 Act, will be subject to the penalties prescribed by the Atomic Energy Act, 1967.

• *Switzerland*

REGIME OF NUCLEAR INSTALLATIONS

1978 Federal Order concerning the Atomic Energy Act

It is recalled that the reasons for making this Order, pending overall amendment of the 1959 Atomic Energy Act, have been analysed in previous issues of the Bulletin, and the text of the draft Order itself has been reproduced (see Nuclear Law Bulletin Nos. 19 and 20).

The Order was approved by the Federal Assembly on 6th October 1978 with several amendments as compared to the original draft. It will be submitted to an optional referendum (initiative vote by the population) on 18th February 1979, and according to the results, the date of its entry into force will be fixed by the Federal Council.

The Order will remain valid until entry into force of a new Atomic Energy Act but no later than 31st December 1983.

REGIME OF RADIOACTIVE MATERIALS

1978 Ordinance on Definitions and Licences in the Atomic Energy Field

The Ordinance on Definitions and Licences in the Atomic Energy Field of 17th May 1978 came into force on 1st July 1978. It enables the Swiss authorities to apply the provisions of the Treaty on the Non-Proliferation of Nuclear Weapons and the guidelines on the transfer of nuclear material and equipment of the group of nuclear supplier countries (London Club) in accordance with the International Atomic Energy Agency document INFCIRC 254. However, as regards the guidelines, it is not possible at present for the Swiss authorities to control the transfer of sensitive technologies because of the lack of a legal structure in this respect.

The Ordinance is supplemented by a series of Annexes and Appendices which list and specify source material and special fissionable material, as well as nuclear reactors and equipment for the treatment and production of special fissionable material which are subject to export licence.

The Federal Office of Energy Economy issues the licences required for the import and export of such material and equipment. However, the authorisation of the Trade Division of the Federal Ministry of Public Economy is required for the export of fissionable material and nuclear equipment. Licences are not transferable and are granted for six months. This period may be extended on request.

This Ordinance repeals the Ordinance of 13th June 1960 on Definitions and Permits in the Atomic Energy Field.

• Turkey

ORGANISATION AND STRUCTURE

1978 Regulations on the operational principles of the Nuclear Safety Committee

These Regulations were published in the Turkish Official Gazette of 19th August 1978, and were made pursuant to Decree No. 7/9141 on the licensing of nuclear installations, which established the Nuclear Safety Committee (see Nuclear Law Bulletin Nos. 15 and 16).

The Regulations determine the duties and responsibilities of the Nuclear Safety Committee together with the Nuclear Safety Assistance Service within the Turkish Atomic Energy Commission, which was set up to assist the Secretary-General of the Commission. The Regulations determine the qualifications of the Nuclear Safety Committee, its operating principles and its relations with the Nuclear Safety Assistance Service. They also lay down the procedures to be applied in respect of consultations on the granting of licences.

REGIME OF NUCLEAR INSTALLATIONS

1978 Regulations on the issue of licences to operators of nuclear facilities

These Regulations were published in the Turkish Official Gazette of 1st September 1978. They were made for the purpose of regulating the granting of licences to authorised technicians and approved operators in accordance with Decree No. 7/9141 mentioned above.

The Regulations lay down the procedure for applying for a licence, the conditions to be complied with by applicants, the documents to be supplied and the exemptions from such licensing requirements. Applicants for such licences are required to sit for examinations and pass operating tests and must have specified qualifications. A specialised committee is responsible for assessing the results of these examinations.

Finally, the Regulations lay down the period of validity of the licences and the procedures for their renewal.

• *United Kingdom*

RADIATION PROTECTION

The Medicines (Radioactive Substances) Order, 1978

This Order (Statutory Instrument 1978 No. 1004) extends the application of certain provisions of the Medicines Act 1968 to certain articles and substances, listed in the Schedule to the Order, which are, contain or generate radioactive substances and are used for medicinal purposes.

The provisions so applied are Part I of the Act, which deals with the administration of the Act and provides for the establishment of committees; Section 60, which enables regulations to be made prohibiting the sale, supply or administration of medicinal products except by a duly certified practitioner; Section 67 dealing with offences against such regulations; and Part VIII, which contains miscellaneous and supplementary provisions.

The specified articles and substances include interstitial and intracavitary appliances (other than cardiac pacemakers) containing a radioactive substance; plates and ophthalmic applicators containing a radioactive substance for application to the surface of the body; apparatus for administering neutrons to human beings in order to generate a radioactive substance in the person for the purpose of diagnosis or research; and other substances and articles which consist of or contain or generate a radioactive substance and which are to be administered to human beings in order to utilise the radiation emitted therefrom for the purpose of tests.

The Medicines (Committee on Radiation from Radioactive Medicinal Products) Order, 1978

This Order (Statutory Instrument 1978 No. 1005), made under Part I of the Medicines Act 1968, establishes a Committee on Radiation from Radioactive Medicinal Products, for the purpose of giving advice with respect to the safety, quality and efficacy, in relation to radiation, of any substance or article for human use to which the 1968 Act is applicable. A list of such substances and articles is contained in the Schedule to the above-mentioned Statutory Instrument No. 1004.

The Medicines (Administration of Radioactive Substances) Regulations 1978

These Regulations (Statutory Instrument 1978 No. 1006) prohibit the administration of radioactive medicinal products except by doctors or dentists holding a certificate issued by the Health Ministers of the United Kingdom under Section 60 of the Medicines Act 1968 in respect of such products, or persons acting under the direction of such a doctor or dentist.

The Regulations also include provisions as to the grant, duration, renewal, suspension, variation and revocation of such certificates, with provision for applicants for the holders of such certificates to make representations to the Health Ministers when such action is contemplated; and for the appointment of an Administration of Radioactive Substances Advisory Committee to advise the Health Ministers.

The Regulations have been made in pursuance of Council Directive 76/579/Euratom, issued under Articles 30 and 31 of the Treaty establishing the European Atomic Energy Community, which lays down revised basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation. They implement Article 5(a) of this Directive, which provides that a system of prior authorisation must be applied in respect of the administration of radioactive substances to persons for purposes of diagnosis, treatment or research.

REGIME OF RADIOACTIVE MATERIALS

The Nuclear Safeguards and Electricity (Finance) Act, 1978

This Act confers rights of entry to civil nuclear installations in the United Kingdom on inspectors of the International Atomic Energy Agency (IAEA), and contains other provisions necessary to enable effect to be given in the United Kingdom to the Agreement, concluded on 6th September 1976 between the United Kingdom, the European Atomic Energy Community (Euratom) and the IAEA, for the application of safeguards in connection with the Treaty on the Non-Proliferation of Nuclear Weapons (see Nuclear Law Bulletin No. 19). The Agreement entered into force on 14th August 1978.

Nuclear materials in the United Kingdom are subject to Euratom safeguards under Chapter VII of the Euratom Treaty, which has direct effect in the United Kingdom by virtue of Section 2(1) of the European Communities Act 1972, and Euratom inspectors enjoy rights of access to nuclear installations in the United Kingdom under these provisions. The Agreement, in providing for the application of Agency safeguards, takes account of this and, as in other Member States of Euratom, provides for a system of safeguards in which both Euratom and the IAEA play a part. As is customary, it provides that IAEA inspectors shall have rights of access to nuclear installations in the United Kingdom for the purposes of the Agreement. The Act confers those rights on IAEA inspectors as part of the domestic law of the United Kingdom.

The Act also makes provision for grants in connection with the completion of a coal-fired electricity generating station at Drax in North Yorkshire.

CASE LAW

• Belgium

APPEAL TO CANCEL THE LICENCE EXTENDING THE TIHANGE NUCLEAR POWER PLANT

In June 1975, the INTERCOM Company which operates a nuclear reactor on the Tihange site submitted an application to the Mayor of the Tihange Commune for a construction permit for industrial and administrative facilities constituting an extension of the power plant and intended for a new nuclear reactor. The permit was issued in August 1975.

In July 1976, several persons and the Belgian "Friends of the Earth" Association requested the Mayor to order immediate suspension of the work which they considered had been undertaken irregularly. The Commune administration having remained silent over a long period, this was interpreted as a refusal (four months' delay), and a petition was put before the Council of State on 7th January 1977. The latter rendered its decision on 17th March 1978.

The plaintiffs based their request for cancellation of the construction permit on the fact that the permit which is issued under the Town and Country Planning Act of 29th March 1962, had been granted before delivery of the "nuclear" licence required under the Royal Order of 28th February 1963 embodying the General Regulations for the Protection of the Population and Workers against the Hazards of Ionizing Radiations. According to the plaintiffs, therefore, the Mayor should have acceded to their request to suspend the construction work.

When rendering its decision on the appeal, the Administrative Section of the Council of State first noted that the Act of 29th March 1958 on Protection of the Population against the Hazards of Ionizing Radiations, implemented by the Royal Order of 28th February 1963 policing classified establishment has a purpose quite distinct from that of the Town and Country Planning Act of 29th March 1962. In consequence there was no requirement to establish a link between the Acts at the implementing level and hence to subject operation of the 1962 Act to the 1958 Act and its implementing Order, as the plaintiffs contended.

According to the Counsellors, buildings governed by the construction permit within the meaning of the 1962 Act are buildings in the generic sense, while the 1958 Act and its 1963 Order govern specifically nuclear installations. Furthermore, there was no guarantee that the buildings erected by the INTERCOM Company in accordance with the construction permit would in fact satisfy the conditions of the nuclear safety investigation required under the 1963 Order, and the INTERCOM Company, by beginning construction work before having obtained the licence required, had taken the risk that it might not obtain it.

In conclusion, the Council of State decided that the Mayor of Tihange was quite right in considering that he was not empowered to suspend work undertaken in accordance with the 1962 Act, and that the fact that he had not made a decision could not be taken as an implicit refusal justifying an administrative appeal; the petition was therefore rejected. According to the Council of State, in order to subject the granting of the construction permit to compliance with the conditions laid down by the 1958 Act, the 1962 Act should have made express provision therefor, and it is undoubtedly this assertion of the principle of total autonomy of these two types of legislation which constitutes the most notable aspect of this judgment.

• Japan

COURT DECISION ON ITAKA-1 NUCLEAR POWER PLANT

On 27th August 1973, 33 residents of Nishiwazima District in Ehime Prefecture filed a suit demanding annulment of the construction permit for ITAKA-1 nuclear power plant (a 566 MWe BWR) located in the area, which had been granted by the Prime Minister* on 28th November 1972. In the meantime, during the procedure, construction of the plant was completed and it went into operation on 30th September 1977.

The main points at issue in the case were briefly the following: whether the plaintiffs were qualified as third parties in requiring annulment of the Government's permit; whether the granting of such permit fell exclusively within the administration's discretionary powers (discretionary disposition); and whether governmental approval had been given in compliance with the Regulation Law and other related laws (licensing procedures).

The plaintiffs also contested that the nuclear power plant technology was sufficiently advanced to guarantee the safety of the public. They doubted in particular that the plant's emergency core cooling system was sufficiently reliable and supported their claim by referring to past incidents in other plants. The radiation protection safety standards were also considered insufficient and finally, the site selected for the plant was deemed inadequate in view of the risk of earthquakes.

On 25th April 1978, the Matsuyama District Court rendered its decision. The Court ruled that while the plaintiffs' suit was admissible it should be turned down on the following grounds:

- a very specialized technology was required to make a proper assessment of the safety of nuclear reactors; the erection

* When acting for an administrative agency in granting a nuclear power plant construction permit, the Prime Minister acts in his capacity of Head of the Prime Minister's Office and not as head of the Cabinet. He may not grant this permit without the prior opinion of his advisory body, the Atomic Energy Commission.

of such reactors was a matter of Governmental policy of the highest importance and this question came within the defendant's (i.e. the Government) discretionary activities which were strictly regulated so as to guarantee safety by means of extensive controls;

- the construction permit had been granted in full compliance with the relevant laws, with the required safety assessments and tests carried out prior to its delivery.

The Court was satisfied that the estimated radiation exposure levels for the ITAKA plant were reasonable, that it had been constructed with due regard to safety, and that appropriate measures had been taken for the treatment and storage of spent fuel and solid radioactive waste. Although the question of the final treatment of the solid waste had not been examined, the Court decided that this was not a sufficient reason to require annulment of the permit insofar as this was not a direct threat to the plaintiffs. Finally, the Court found that the plaintiffs had no reason to require annulment of the permit on the grounds that the nuclear reactor invaded their basic human rights.

After studying the contents of this decision, the plaintiffs lodged an appeal before the Takamatsu High Court (an intermediate appeal court) on 30th April 1978, having concluded that the Court had not responded directly to the results of verbal battles of scientists, that mistakes in fact-finding and contradictions in logic were obvious and that contempt for human life was apparent throughout the judgment.

The plaintiffs have shown strong dissatisfaction with the District Court's treatment of safety issues and look to the High Court to make a searching inquiry into the matter, while the Government is dissatisfied with the District Court's confirmation of the qualifications of the plaintiffs, contending that the qualifications of the plaintiffs could not be accepted unless details of actual damage had been established. It is expected therefore that the High Court will undertake a thorough investigation.

There are other similar administrative suits pending, calling for the annulment of Government approval for construction of nuclear power plants, on the grounds of inadequate examination of the questions of safety. These include the TOKAI Nuclear Power Plant-2 and the FUKUSHIMA Nuclear Power Plant II-1 (both 1,100 MWe, BWRs).

• *United States*

LITIGATION ON THE PRICE-ANDERSON ACT

Background

It is recalled that the Carolina Environmental Study Group initiated this case against the Duke Power Company and the then Atomic Energy Commission (now the Nuclear Regulatory Commission - NRC) in 1973 seeking, among other things, a declaration that the liability limit provisions of the Price-Anderson Act were unconstitutional, primarily in that they unfairly permitted members of the public to suffer damage without guarantee of compensation in the event of a severe nuclear incident. The District Court for the Western District of North Carolina so ruled by Memorandum of Decision dated 31st March 1977. The Decision was appealed directly to the Supreme Court since it invalidated an Act of Congress.

The Supreme Court noted probable jurisdiction in November 1977 and heard oral argument in March 1978. Its Decision of 26th June 1978 upholds the lower court's determination that the constitutionality issue was suitable for resolution at that time, but reversed the judgment that the challenged portion of the Act is unconstitutional as violative of the due process and equal protection principles by being unfair to certain members of the public. The net result is a foreclosure for the foreseeable future of judicial challenges to the validity of the Act in its present form and to Congressional authority to enact such financial protection regimes, as well as an express determination that the present system is fair and reasonable.

The Note below analyses the Supreme Court Decision in this respect.

Supreme Court affirms Price-Anderson Act's constitutionality*

The Price-Anderson Act is constitutional, the U.S. Supreme Court said by a 9-0 decision. In ruling on the appeal by Duke Power Company and the Nuclear Regulatory Commission of the original ruling by the U.S. District Court for the Western District of North Carolina (see Nucl. Law Bull. No. 19), the Court found that while the complaint brought by the Carolina Environmental Study Group raised two basic challenges derived from the Fifth Amendment's "due process" clause, the Act did not in fact

* This Note has been reproduced from "Nuclear News", August 1978, by kind permission of the Editor and the author, Mrs Ellen Thro.

violate the clause. The Court's decision, handed down on June 26, was written by Chief Justice Warren Burger, and joined by Justices William Brennan, Byron White, Thurgood Marshall, Harry Blackmun, and Lewis Powell. The remaining justices, William Rehnquist, Potter Stewart, and John Paul Stevens, agreed that the law should stand, but did so for different reasons.

Due process argument

In deciding that the Fifth Amendment's due process clause was not violated, the majority ruled that the record supports the need for the imposition of a statutory limit on liability to encourage private industry, and so bears a rational relationship to Congress' concern for stimulating industry participation, a point that had been stressed by the Duke Power attorney. The Court also said that even if the \$560 million liability limitation would not insure full recovery in all conceivable circumstances, it does not follow that the limitation is irrational or a violation of due process. The Court noted Congress' intent to take any necessary action to protect the public from the consequences of a disaster that exceeded the limitation - a proviso that was written into the Act when it was renewed in 1975.

The Act, the Court concluded, provides a reasonably just substitute for the remedies of common or state tort law that it replaces, and nothing further is required by the due process clause. The concept of equal protection has not been violated, either, the Court said, because the rationality of the limitation, together with the Congressional purpose of encouraging industry, is ample justification for the difference in treatment between those injured in nuclear accidents and those whose injuries are derived from other causes.

The Court rejected the environmental group's contention that a stricter than usual standard of review is required in the case of nuclear power.

In the majority opinion, Chief Justice Burger, as had been anticipated by some who have observed the tenor of recent Supreme Court rulings, stayed with the idea that the Court should not intrude on the legislative process: "As we read the Act and its legislative history, it is clear that Congress' purpose was to remove the economic impediments in order to stimulate the private development of electric energy by nuclear power while simultaneously providing the public compensation in the event of a catastrophic nuclear incident The liability limitation provisions thus emerges as a classic example of an economic regulation - a legislative effort to structure and accommodate 'the burdens and benefits of economic life,' " he said, quoting from a previous decision. "That the accommodation struck may have profound and far-reaching consequences, contrary to the appellees' suggestion, provides all the more reason for this Court to defer to the Congressional judgment unless it is demonstrably arbitrary or irrational."

The Court continued, "When examined in the light of this standard of review, the Price-Anderson Act, in our view, passes constitutional muster. The record before us fully supports the need for the imposition of a statutory limit on liability to encourage private industry participation and hence bears a rational relationship to Congress' concern for stimulating the involvement of private enterprise in the production of electric energy through the use of atomic power;

nor do we understand appellees or the District Court to be of a different view. Rather their challenge is to the alleged arbitrariness of the particular figure of \$560 million, which is the statutory ceiling on liability." [Emphasis the Court's.]

Following an examination of the District Court decision and the legislative record, the majority opinion continued, "Given our conclusion that in general limiting liability is an acceptable method for Congress to utilize in encouraging the private development of electric energy by atomic power, candor requires acknowledgment that whatever ceiling figure is selected will, of necessity, be arbitrary in the sense that any choice of a figure based on imponderables like those at issue here can always be so characterized. This is not, however, the kind of arbitrariness which flaws otherwise constitutional action," especially with the Congressional commitment to reexamine the limitation should a disaster occur.

Irresponsibility argument

Quoting the recent Vermont Yankee decision (see Nuclear Law Bull. No. 21), the Court concluded that the District Court's ruling that Price-Anderson tended to encourage irresponsibility on the part of the builders and owners of nuclear power plants "simply cannot withstand careful scrutiny"; the "rigor and integrity" of the detailed licensing process is not undermined or altered by the limitation, and the utility itself would suffer "perhaps the largest damages" in the event of an accident. "While obviously not to be compared with the loss of human life and injury to health, the risk of financial loss and possible bankruptcy to the utility is in itself no small incentive to avoid the kind of irresponsible and cavalier conduct implicitly attributed to licensees by the District Court."

In agreeing with Congress that the Price-Anderson Act is an improvement on state laws and state courts in assuring public compensation for nuclear accidents, the Court stated, "We view the Congressional assurance [emphasis the Court's] of a \$560 million fund for recovery," plus the guarantee of further action if necessary, "to be a fair and reasonable substitute for the uncertain recovery of damages of this magnitude from a utility or component manufacturer, whose resources might well be exhausted at an early stage. The record in this case raises serious questions about the ability of a utility or component manufacturer to satisfy a judgment approaching \$560 million Nor are we persuaded that the mandatory waiver of defenses required by the Act is of no benefit to potential claimants" (as argued by the CESC).

"At the minimum," the Court continued, "the statutorily mandated waiver of defense establishes at the threshold the right of injured parties to compensation without proof of fault and eliminates the burden of delay and uncertainty which would follow from the need to litigate the question of liability after an accident. Further, even if strict liability were routinely applied, the common-law doctrine is subject to exceptions for acts of God or of third parties - two of the very factors which appellees emphasized in the District Court in the course of arguing that the risks of a nuclear accident are greater than generally admitted. All of these considerations belie the suggestion that the Act leaves the potential victims of a nuclear disaster in a more disadvantageous position than they would be in if left to their common-law remedies - not known in modern times for either their speed or economy."

Individual opinions

In his concurring opinion, Potter Stewart rejected the idea that the case should have ever been heard in court in the first place. The claim under federal law was that the Act, by limiting liability, would deprive the appellees of certain Fifth Amendment property rights, one of which is the right to recover compensation for injuries. "But," Stewart wrote, "there never has been such an accident, and it is sheer speculation that one will ever occur. For this reason I think there is no present justiciable controversy, and that the appellees were without standing to initiate this litigation."

William Rehnquist, joined by John Paul Stevens, thought the District Court decision should be reversed and returned to that court with instructions "to dismiss the complaint for want of jurisdiction." Rehnquist makes two points: first, "Appellees do not contend that the Price-Anderson Act itself grants to them personal rights which may be vindicated in a federal proceeding. Since the only property rights they assert arise under North Carolina law, the District Court had no jurisdiction to consider whether the setting up of an Act of Congress as a defense against those rights would deny them due process of law under the Fifth Amendment." Rehnquist goes on, "More importantly, there is no allegation in this complaint that the Nuclear Regulatory Commission has taken or will take any unconstitutional action at all. The complaint alleges only that the Commission granted construction permits to Duke, and that it will enter into an agreement 'to indemnify Duke for any nuclear incident exceeding the amount of \$125,000,000, subject to a maximum liability of \$560,000,000' Neither of these actions is alleged to be unconstitutional."

Justice Stevens wrote perhaps the most trenchant concurring opinion: "The string of contingencies that supposedly holds this case together is too delicate for me. We are told that but for the Price-Anderson Act there would be no financing of nuclear power plants, no development of those plants by private parties, and hence no present injury to persons such as the appellees; we are then asked to remedy an alleged due process violation that may possibly occur at some uncertain time in the future, and may possibly injure the appellees in a way that has no significant connection with any present injury. It is remarkable that such a series of speculations is considered sufficient either to make this case ripe for decision or to establish appellees' standing; it is even more remarkable that this occurs in a case in which, as Mr. Justice Rehnquist demonstrates, there is no federal jurisdiction in the first place."

"The Court's opinion will serve the national interest in removing doubts concerning the constitutionality of the Price-Anderson Act. I cannot, therefore, criticize the statesmanship of the Court's decision to provide the country with an advisory opinion on an important subject. Nevertheless, my view of the proper function of this Court, or of any other federal court, in the structure of our government is more limited. We are not statesmen; we are judges. When it is necessary to resolve a constitutional issue in the adjudication of an actual case or controversy, it is our duty to do so. But whenever we are persuaded by reasons of expediency to engage in the business of giving legal advice, we chip away a part of the foundation of our independence and our strength."

INTERNATIONAL ORGANISATIONS AND AGREEMENTS

INTERNATIONAL ORGANISATIONS

• *The OECD Nuclear Energy Agency*

APPOINTMENT OF THE JUDGES OF THE EUROPEAN NUCLEAR ENERGY TRIBUNAL

On 21st September 1978, the OECD Council appointed the judges for the third term of office of the European Nuclear Energy Tribunal for a period of five years as from 1st March 1978.

The European Nuclear Energy Tribunal was set up under the Convention of 20th December 1957 on the Establishment of a Security Control in the Field of Nuclear Energy, elaborated under the auspices of NEA. The Convention provides that the Tribunal shall consist of seven independent judges appointed for a term of five years by the OECD Council. The Tribunal has competence to hear appeals by the Governments* party to the Security Control Convention or by any NEA joint undertaking concerned, against decisions taken by NEA in the exercise of control. Its jurisdiction may be extended to cover any matter relating to the joint actions in the nuclear energy field taken by NEA Member countries, which may be submitted to it with the agreement of the Parties to the Security Control Convention. This applies in particular to disputes concerning the interpretation and application of the Convention on the Constitution of the Eurochemic Company, the Paris Convention on Third Party Liability in the Field of Nuclear Energy and the Brussels Convention Supplementary to the Paris Convention.

The Tribunal was constituted in 1960, but has not yet been called upon to decide a case.

* The Governments of Austria, Belgium, Denmark, France, the Federal Republic of Germany, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Sweden, Switzerland, Spain, Turkey and the United Kingdom.

AGREEMENTS

AGREEMENTS FOR CO-OPERATION AND CONSULTATION ON MATTERS OF NUCLEAR SAFETY

In recent years, there has been an increasing awareness of the need for mutual consultations between neighbouring countries on the construction and operation of nuclear installations near their borders. This has resulted in a number of mechanisms being set up for this purpose.

These mechanisms either take the form of fully-fledged agreements between the countries concerned, such as the Convention between France and Belgium on Radiological Protection relating to the Ardennes Nuclear Power Plant (see Nuclear Law Bulletin No. 1), and the Agreement setting up a Tripartite Commission for Neighbourhood Problems in Border Areas (Upper Rhine Region) concluded by an Exchange of Notes between France, the Federal Republic of Germany and Switzerland (see Nuclear Law Bulletin No. 19), or take a less formal aspect such as the Guidelines for Nordic Co-operation signed by Denmark, Finland, Norway and Sweden (see Nuclear Law Bulletin No. 19) or an arrangement between countries for their representatives to meet regularly to exchange information and to consult each other, which is the case for Portugal and Spain (see Nuclear Law Bulletin No. 20).

Three new agreements of this type have been concluded recently and are summarised below.

• *Denmark-F.R. of Germany*

AGREEMENT REGULATING THE EXCHANGE OF INFORMATION ON THE CONSTRUCTION OF NUCLEAR INSTALLATIONS ALONG THE BORDER

Denmark and the Federal Republic of Germany signed the above Agreement on 4th July 1977 for the purpose of co-operating in the safety of nuclear installations and preventing environmental damage. They undertake to take into account concerns of importance to the other party when deciding upon the location, construction and operation of a nuclear installation in the border area, that is, within a radius of about 30 km from the frontier. Within 30 to 100 km the Parties will exchange information on their installations. Within the meaning of the Agreement, nuclear installations are installations for the production, processing, reprocessing, manufacture or fission of nuclear fuels.

The information to be mutually communicated includes plans and decisions on siting, construction and operation of such installations and relevant documents. The Agreement also provides for consultation between the Parties on all safety aspects and lays down in detail all the conditions for communication of information.

The Agreement, which came into force on its day of signature, was concluded for five years; it may be terminated by either Contracting Party at six months' notice.

• *F.R. of Germany-Netherlands*

MEMORANDUM ON EXCHANGE OF INFORMATION AND CONSULTATION ON NUCLEAR INSTALLATIONS NEAR BORDERS

The Federal Republic of Germany and the Netherlands entered into the above Memorandum by an Exchange of Notes dated 27th September 1977. The Contracting Parties, with a view to establishing the safety of nuclear installations and to protecting the environment, have agreed to consult each other on regional planning for nuclear installations and to endeavour to harmonize such planning in border areas.

The Contracting Parties will inform each other about the site selection, the construction, the operation and the decommissioning of nuclear installations in the border area within a radius of 30 km from the frontier. From 30 to 100 km of the frontier, they will simply keep each other informed on existing installations. Nuclear installations for the purposes of the Agreement are installations for the production of nuclear energy, for the fabrication and fission of nuclear fuels, for the reprocessing of irradiated fuels as well as for the storage of radioactive waste.

It is provided that a German/Dutch Commission will meet once a year, or at either Contracting Party's request for exchanges of information and consultation. The Commission may nominate working groups for specific tasks.

• *F.R. of Germany-Switzerland*

AGREEMENT ON RADIATION PROTECTION IN CASE OF EMERGENCY

This Convention was concluded by the Government of the Federal Republic of Germany and the Swiss Federal Council on 31st May 1978. In view of the risk of radioactive contamination of air and water which might arise from the operation of nuclear installations and the transport of nuclear material, and also because the population in the neighbouring country might be affected, in particular in the case of international transport, both Parties have undertaken to take a number of measures to meet this contingency.

Both Governments will inform each other in case of a radioactive emergency on their territory which is likely to have harmful consequences for the neighbouring country. An appropriate information system in charge of liaising will be set up in each country.

Information in case of a radioactive emergency must specify the nature and time of the occurrence, the locality, the importance, the physical and chemical characteristics as well as the type of transport of the radioactive emission. Indications on the planned protection measures must also be communicated.

In case of emergency or as an exercise, each Party is authorised to send a liaison group to the other Party, which will contact the bodies competent for combating radioactive contamination.

This Convention is reproduced in the "Texts" Chapter of this issue of the Nuclear Law Bulletin.

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• *Austria-France*

AGREEMENT CONCERNING THE GKT - COGEMA REPROCESSING CONTRACT

By an exchange of letters, both dated 18th May 1978, published on 5th September 1978 in the Federal Law Gazette for the Republic of Austria (FLG 465/1978 No. 153) France and Austria concluded an Agreement relating to the reprocessing contract of 31st March 1978 between the "Compagnie Générale des Matières Nucléaires (COGEMA) and the Gemeinschaftskernkraftwerk Tullnerfeld Gesellschaft mbH (GKT).

The Agreement first of all stipulates that the two Governments will apply, to all the nuclear materials concerned in the contract of 31st March 1978, those provisions contained in the information circular published in February 1978 by IAEA (INFCIRC/254) relating to non-explosive use, physical protection, transfer and retransfer.

The Agreement goes on to state that notwithstanding the provisions of the said contract, the rules concerning the storage, transfer, and use of the reprocessed plutonium on its being returned from France, as well as the form in which the plutonium will be returned, will be decided, at the appropriate time, by an agreement between the two Governments.

Finally, the question of the delivery of the nuclear waste produced by the reprocessing is dealt with. The contract itself allowed for such delivery by COGEMA to GKT provided that agreement was reached on the form in which it could be safely transported and later stored. In the exchange of letters, the French Government emphasizes that reprocessing will not commence until such agreement has been reached (a condition already laid down in the contract itself) and the Austrian Government gives an assurance, not only that it will not take any measures to impede the delivery of the waste material, but that it will do what it can to facilitate such delivery.

The Agreement constituted by this exchange of letters entered into force on 21st August 1978.

• *Finland-Australia*

AGREEMENT CONCERNING THE TRANSFER OF NUCLEAR MATERIAL BETWEEN FINLAND AND AUSTRALIA

On 20th July 1978, Finland and Australia signed an Agreement concerning the transfer of nuclear material between the two countries. The Agreement was the first one concluded on the basis of the new Australian export policy announced on 24th May 1977. Australia is expected to become one of the most significant uranium exporters by the mid-1980s. The Australian Government has clearly indicated that Australian uranium can be sold only to countries which are prepared to submit the exported uranium to very stringent safeguards obligations. The Agreement must be ratified before coming into force. The Agreement is reproduced in the "Texts" Chapter of this Bulletin.

• *The OECD Nuclear Energy Agency*

EXTENSION OF THE AGREEMENT ON THE OECD HALDEN PROJECT

A new Agreement was concluded on 13th June 1978 to extend the operation of the OECD Halden Reactor Project (Norway) for a period of three years. It will come into force on 1st January 1979 as the previous Agreement expires on 31st December 1978 (see Nuclear Law Bulletin No. 16).

The parties to the present Agreement are national authorities responsible for nuclear matters or research institutes in the following countries: Austria, Denmark, Federal Republic of Germany, Finland, Italy, Japan, the Netherlands, Norway, Sweden and the United States. The Agreement also includes an Annex concerning a new research programme and experiments to be carried out during the new extension period.

It is recalled that the Project was set up in July 1958 under the auspices of the OECD Nuclear Energy Agency for the purpose of carrying out a joint programme of research and experiments with the reactor constructed by Norway at Halden, and covering in particular, fuel element tests and integrated computer-based control of the reactor.

• *Eurochemic - Belgium*

CONVENTION BETWEEN THE GOVERNMENT OF BELGIUM AND THE EUROCHEMIC COMPANY ON TAKEOVER OF THE COMPANY'S INSTALLATIONS AND EXECUTION OF ITS LEGAL OBLIGATIONS

A Convention was concluded on 24th July 1978 between the Belgian Government and the European Company for the Chemical Processing of Irradiated Fuels (Eurochemic). The purpose of this Convention, which came into force on 30th October 1978, is to transfer to Belgium the industrial site owned by the Eurochemic Company in Belgium and all the installations for reprocessing irradiated fuels constructed on that site, as well as to define and provide for the execution of the obligations of that Company to the Host State to decontaminate these installations, to treat, condition and put into storage the radioactive waste accumulated on the site.

It is recalled that Eurochemic is a joint undertaking of the Organisation for Economic Co-operation and Development (OECD) constituted in the form of an international shareholding company on the initiative of the European Nuclear Energy Agency, the predecessor of the OECD Nuclear Energy Agency. Eurochemic was set up by an International Convention signed in Paris on 20th December 1957 which came into force

on 27th July 1959*. The Company constructed at Mol a pilot plant for irradiated fuel reprocessing of a nominal capacity of 70 tonnes per year as well as facilities for nuclear chemistry research. During the initial fifteen-year period for which Eurochemic was set up and which came to an end in July 1974, the plant treated since 1966 a variety of nuclear fuels for its participating countries. After it was decided to cease reprocessing activities in 1974, the life of the Company was extended for a period of five years, to treat the wastes produced by eight years' operation. It has now been further extended for a three-year period until July 1982 to enable it to fulfil its obligations under the Convention signed with Belgium.

Under the Convention, the installations will be transferred in successive stages taking into account the time-schedule fixed for completion of the work currently being carried out by Eurochemic. In return for this transfer of ownership, Eurochemic will be discharged from the obligations relating to the dismantling of the installations transferred (subject to a lump sum contribution covering part of the corresponding work) and from any obligations relating to surveillance of the waste put into storage and to final disposal of such waste. The obligations incumbent on Eurochemic are set out in the Convention and cover all the work on conditioning and storage of the radioactive waste resulting from its operation. The Convention provides that Eurochemic itself will condition and store the low- and medium-level waste, while the lengthier operations required for solidifying the high-level waste will be undertaken by Belgium on behalf of Eurochemic. Belgium will acquire for its part installations whose technical qualities have been demonstrated by several years' active operation.

With this Convention, the important question of leaving the site in a safe condition in accordance with Belgian Regulations on protection of the population and workers against the hazards of ionizing radiations is now satisfactorily settled.

• *Euratom*

JOINT EUROPEAN TORUS (JET) JOINT UNDERTAKING

By Decision of the Council of the European Communities on 30th May 1978 (78/471/Euratom), a Joint Undertaking was established within the meaning of Chapter V of the Euratom Treaty. Its name is "Joint European Torus (JET) Joint Undertaking" and its duration is to be for twelve years beginning on 1st June 1978. Its aim is to construct, operate and exploit, as part of the Community's Fusion Programme and for the benefit of the participants, a large torus facility of a Tokamak type and auxiliary facilities, in order to extend the parameter range applicable to controlled thermonuclear fusion experiments up to conditions close to those needed in a thermonuclear reactor. The Decision was published in the OJEC of 7th June 1978.

* The following countries participated in Eurochemic: Austria, Belgium, Denmark, Federal Republic of Germany, France, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and Turkey.

JET will be constructed at the seat of the Joint Undertaking at Culham, Oxfordshire, England. The Council's Decision also adopted the Statutes of JET.

The members of the Joint Undertaking are Euratom, Belgium, the Commissariat à l'Energie Atomique (France), the Comitato Nazionale per l'Energia Nucleare and the Consiglio Nazionale delle Ricerche (Italy), Risø (Denmark), Luxembourg, Ireland, the Kernforschungsanlage Jülich GmbH and the Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V. - Institut für Plasmaphysik (Federal Republic of Germany), the National Swedish Board for Energy Source Development, the Stichting voor Fundamenteel Onderzoek der Materie (Netherlands) and the United Kingdom Atomic Energy Authority (UKAEA - the host organisation).*

The Statutes provide that the organs of the Joint Undertaking shall be the JET Council and the Director of the Project, with the JET Council being assisted by a JET Executive Committee with advice from a JET Scientific Council. The respective composition and functions of these bodies are set out in the Statutes.

The financing of JET is to be borne 80% by Euratom, 10% by the UKAEA and the remaining 10% shared between the members of JET other than Euratom. Provisions are included concerning financial matters, budget and accounts, and concerning the use of information and patent rights. New members can accede and existing members (except the host organisation) may withdraw from membership subject to conditions. Provision is made for winding up the Joint Undertaking on its termination.

The text of the Council Decision establishing the Joint Undertaking and adopting its Statutes is set out in the Supplement to this issue of the Nuclear Law Bulletin.

The Annex to the Statutes has not been reproduced as it concerns material arrangements and provides inter alia that the host organisation has to make available land, buildings and services required for the implementation of the Project. These matters are covered in detail by an agreement between JET and the host organisation.

Two other Decisions by the Council of the Communities were adopted on the same date but have not been reproduced in the Supplement. The first (78/472/Euratom) confers certain exemptions from customs duties and taxes on the JET Joint Undertaking in accordance with Annex III to the Euratom Treaty. The second (78/470/Euratom) amends Decision 76/345/Euratom adopting a research and training programme (1976 to 1980) for the European Atomic Energy Community in the field of fusion and plasma physics.

* For Switzerland see below.

• *Euratom-Switzerland*

ACCESSION OF SWITZERLAND TO THE JOINT EUROPEAN TORUS (JET)

JOINT UNDERTAKING

By Decision of 11th August 1978,* the Council of the European Communities approved the conclusion by the Commission of a Co-operation Agreement between the European Atomic Energy Community and the Swiss Confederation in the field of controlled thermonuclear fusion and plasma physics, following the approval by the JET Council of the accession of Switzerland to the Joint European Torus (JET) Joint Undertaking.

The purpose of this Agreement is to associate the Euratom programme and the Swiss programme in this field to derive a maximum benefit from their respective resources by avoiding duplication and thereby hastening attainment of the common objective: competitive electricity generation by controlled thermonuclear fusion.

The Swiss programme will adopt the long term objectives of the Euratom programme and, where appropriate, will be extended or modified to include new activities relevant to that programme.

The Agreement provides that this association will include participation by the Contracting Parties in the preparation and implementation of the other Party's programme, staff mobility in the different Euratom and Swiss laboratories, as well as in those of other countries with which Euratom has signed a similar agreement (associated non-Member States, see Note on JET above), reciprocal financing and rights of access to scientific and technological results of the respective programmes.

On entry into force of the Agreement, Switzerland will become a member of the JET Joint Undertaking. Euratom will furthermore ensure that Switzerland may become a party to any contract it concludes within the scope of the Agreement throughout the latter's period of validity.

Under a contract of association to be concluded between the Commission and Switzerland, a Steering Committee will be set up, made up of representatives of both Parties, to implement the contract, to prepare the programmes thereunder and to supervise and guide the required R and D work.

Switzerland will be represented in the Liaison Group (LG) set up within the framework of the Euratom programme. The task of the LG is to ensure information exchange and co-operation in all matters concerning programmes, operations and R and D work in the Euratom programme. If it so requires, Switzerland will also be represented in the Advisory Groups to the LG, as well as in any Euratom Co-ordinating Committee, and the Consultative Committee on Fusion (CCF), composed of representatives of Euratom Member States and other associated non-members who are responsible for nuclear and energy research.

* Published in the OJEC of 4th September 1978.

In addition, a joint body will be set up, called the Euratom/Switzerland Fusion Committee, consisting of representatives of the Commission and the Swiss Federal Council, to ensure proper implementation of the Agreement and to formulate recommendations as regards the adoption of programmes and budgets in the field of research covered by the Agreement. The Committee will meet at the request of either Party, and at least once a year.

The Agreement contains a set of provisions concerning the Parties' financial contributions to their respective programmes, access to information, patent rights, arbitration on disputes, customs exemptions for Euratom, etc. It is supplemented by Annexes relating to the subjects of the Euratom programme (1976-1980), the Swiss programme, and to the arrangements for the financial contributions.

The Agreement will enter into force upon mutual notification by the Contracting Parties that the necessary procedures have been completed; the Parties may terminate it at six months' notice at any time.

• *European Insurance Committee*

MODEL BILATERAL AGREEMENT REGARDING THE LIABILITY INSURANCE OF CARRIAGE OF NUCLEAR SUBSTANCES

While the Paris Convention lays down the general principles governing third party liability for damage caused by an incident during the carriage of nuclear substances, it provides that a number of decisions are to be taken by the national authorities. The result is that important provisions such as the maximum amount of liability and that of the security required, certain exclusions, time limits for bringing actions for compensation, and the territorial competence of insurers are not identical in the different countries.

The legal or regulatory provisions presently applied for carriage of nuclear substances in most countries are briefly the following:

- such substances may not be carried without prior authorisation from a competent public authority and the application must include the insurance taken out to cover the consequences of any incident caused by the nature of such materials;
- the conditions of insurance must be approved by the competent public authority, and clearly, the conditions vary according to the national laws;
- generally the amount of the security is the same as the maximum amount of liability of the nuclear operator, but certain laws have provisions on the amount of security required for transport;

- also, cover for damage to the means of transport may vary; third party liability for transport is generally covered by a special policy separate from the operator's third party liability policy;
- third party liability policies for transport are generally, directly or otherwise, issued by nuclear insurance pools. In certain countries these policies are taken out on the ordinary market and most important, certain national laws require that third party liability on their territory be covered by an insurer established in their country.

The result of this situation is that operators liable are often obliged to take out several successive insurance policies for one single international transport operation.

Therefore, in order to simplify insurance against the risk of third party liability arising from international carriage of nuclear substances and to avoid multiple insurance policies, the Standing Committee on Atomic Risk of the European Insurance Committee has established a model bilateral Agreement for such carriage.

The model Agreement refers to the Paris Convention for the technical definitions, and establishes two insurers. The first is the "primary insurer" meaning the insurer or group of insurers competent to insure the public liability arising from carriage of nuclear substances, either in the country of departure or the country of destination provided the Paris Convention is in force in either country. The second is the "guarantor insurer" namely an insurer or group of insurers authorised to carry on activities in the given country, covering jointly with the primary insurer the obligations to insure public liability for carriage of nuclear substances in that country.

The insurance policy is issued by the primary insurer, and notwithstanding its terms, it is deemed to cover insurance normally granted under a policy the guarantor insurer would issue under his national nuclear public liability laws. When the Agreement is entered into, the guarantor insurer must send the primary insurer a copy of the conditions of transport liability insurance applied in his country.

If an incident in course of carriage occurs in the country of the guarantor insurer, he will deal with all the procedures and settle all claims on behalf of the primary insurer who will in turn reimburse to the guarantor insurer all expenses in this connection.

Finally, the Annex to the Agreement contains a model certificate of financial security established in accordance with the Paris Convention, which is issued by the primary insurer, as well as a model certificate of confirmation of security issued by the guarantor insurer.

By establishing this model bilateral Agreement designated to do away with multiple insurance policies, insurers hope that, although it might not solve all cases, the Agreement will facilitate insurance of the numerous international transports of nuclear substances. This Agreement has not yet been implemented.

• **IMCO**

**CONVENTION ON THE PREVENTION OF MARINE POLLUTION BY THE DUMPING OF
WASTES AND OTHER MATTER**

The third Consultative Meeting of the Contracting Parties to the London Convention was held at the Headquarters of the Inter-Governmental Maritime Consultative Organisation (IMCO) in London from 9th to 13th October 1978 (see Nuclear Law Bulletin Nos. 17, 18 and 20).

The meeting was informed that thirty-seven Governments had ratified or acceded to the Convention. Twelve of the Contracting Parties are NEA Member countries. The status of ratifications and accessions at the date of the meeting was the following:

Afghanistan	Monaco
Byelorussian SSR	Morocco
Canada	Netherlands
Capverde	New Zealand
Chile	Nigeria
Cuba	Norway
Denmark	Panama
Dominican Republic	Philippines
France	Spain
German Democratic Republic	Sweden
German Federal Republic	Tunisia
Guatemala	Ukrainian SSR
Haiti	Union of Soviet Socialist Republics
Hungary	United Arab Emirates
Iceland	United Kingdom
Jordan	United States of America
Kenya	Yugoslavia
Lybian Arab Republic	Zaire
Mexico	

TEXTS

• *Finland-Australia*

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF FINLAND
AND THE GOVERNMENT OF AUSTRALIA CONCERNING THE TRANSFER OF
NUCLEAR MATERIAL BETWEEN FINLAND AND AUSTRALIA

The Government of the Republic of Finland and the Government of Australia

Mindful that both Finland and Australia are non-nuclear weapon States which are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons;

Recognising that Finland and Australia have under that Treaty undertaken not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices and that both Governments have concluded agreements with the International Atomic Energy Agency for the application of safeguards in their respective countries in connection with the Treaty on the Non-Proliferation of Nuclear Weapons;

Affirming their support for the objectives of the Treaty on the Non-Proliferation of Nuclear Weapons and their desire to promote universal adherence to that Treaty;

Pending international acceptance of new international arrangements and institutions to provide more effective measures against the proliferation of nuclear weapons;

Desiring to establish conditions under which nuclear material can be transferred between their two countries for peaceful purposes, consistent with their commitment to non-proliferation;

Have agreed as follows:

Article 1

1. This Agreement shall apply to:
 - a) nuclear material transferred between the two Parties, whether directly or through a third country, in accordance with paragraphs 2 and 3 of this Article;

- b) quantities of derived nuclear material directly proportional to the transferred nuclear material used for their production; and
- c) quantities of all subsequent generations of nuclear material determined on the same proportional principle referred to in sub-paragraph b) of paragraph 1 of this Article.

2. Nuclear material shall be transferred between the Parties only to a natural or legal person identified by the appropriate governmental authority of the recipient Party to the appropriate governmental authority of the supplier Party as duly authorised to receive that material.

3. Prior to the transfer of nuclear material between the Parties the appropriate governmental authorities of both Parties shall agree in writing upon the point when the material will become subject to the provisions of this Agreement.

Article 2

Nuclear material referred to in Article 1 of this Agreement shall remain subject to the provisions of this Agreement until:

- a) it is no longer usable for any nuclear activity relevant from the point of view of the safeguards referred to in Article 4 of this Agreement; that is, until it shall be determined by the International Atomic Energy Agency that the material is no longer so usable as a result of its being
 - i) practicably irrecoverable,
 - ii) consumed,
 - iii) diluted, or
 - iv) converted to non-nuclear use, such as the production of alloys or ceramics;
- b) it has been transferred beyond the jurisdiction of the recipient Party in accordance with the provisions of Article 7 of this Agreement; or
- c) otherwise agreed between the Parties.

Article 3

Nuclear material subject to this Agreement shall not be diverted to nuclear weapons or other nuclear explosive devices, to research on or development of nuclear weapons or other nuclear explosive devices, or used for any military purpose.

Article 4

Nuclear material subject to this Agreement shall be subject while within the territory or under the jurisdiction or control of the recipient Party to safeguards applied by the International Atomic Energy Agency under a Non-Proliferation Treaty safeguards agreement, or, if the International Atomic Energy Agency is not administering a Non-Proliferation Treaty safeguards agreement in the territory of that Party, under an agreement or agreements to which that Party and the International Atomic Energy Agency are parties which will provide safeguards equivalent in scope and effect to those provided by a Non-Proliferation Treaty safeguards agreement.

Article 5

Notwithstanding the provisions of Article 4 of this Agreement, if nuclear material subject to this Agreement is present in the territory of a Party and the International Atomic Energy Agency is not administering safeguards in the territory of that Party pursuant to a safeguards agreement or agreements referred to in Article 4 of this Agreement, the other Party shall have the right to administer in the territory of that Party safeguards based on the procedures of the Agency's safeguards system for the exclusive purpose of verifying that nuclear material subject to this Agreement is not diverted to nuclear weapons or other nuclear explosive devices or used for any military purpose. The two Parties shall consult and assist each other to establish and apply such safeguards.

Article 6

1. Each Party shall take such measures as are necessary to ensure adequate physical protection of nuclear material within its jurisdiction and to apply as a minimum measures of physical protection which satisfy the requirements of the recommendations of the International Atomic Energy Agency.

2. The Parties shall consult at the request of either Party concerning matters relating to physical protection.

Article 7

1. Nuclear material subject to this Agreement shall be
 - a) transferred beyond the jurisdiction of the recipient Party,
 - b) enriched to more than 20 percent in the isotope U235, or
 - c) reprocessed,

only with the prior written consent of the supplier Party.

2. In considering a request for consent in relation to the matters referred to in paragraph 1 of this Article, the supplier Party will take into account non-proliferation considerations, energy requirements and the needs of the recipient Party for proper management of spent nuclear

fuel and for nuclear waste disposal. A Party shall not withhold its consent to a matter referred to in paragraph 1 of this Article for the purpose of securing commercial advantage.

3. If a Party considers that it is unable to grant consent to a matter referred to in paragraph 1 of this Article, that Party shall provide the other Party with an immediate opportunity for full consultation on that issue.

Article 8

1. The appropriate governmental authorities of both Parties shall consult annually, or at any other time at the request of either Party, to ensure the effective implementation of this Agreement. Either Party may invite the International Atomic Energy Agency to participate in such consultations.

2. Each Party shall, upon request, inform the other Party of the overall conclusions of the most recent report by the International Atomic Energy Agency on its verification activities in the territory of that Party, relevant to the material subject to this Agreement.

3. The appropriate governmental authorities of both Parties shall establish an administrative arrangement to ensure the effective fulfilment of the obligations of this Agreement. An administrative arrangement established pursuant to this paragraph may be changed with the agreement of the appropriate governmental authorities of both Parties.

4. The cost of reports and records which either Party is required to provide pursuant to the administrative arrangement referred to in paragraph 3 of this Article shall be borne by the Party which is required to provide the reports or records.

5. The Parties shall take all appropriate precautions to preserve the confidentiality of commercial and industrial secrets and other confidential information received as a result of the operation of this Agreement.

Article 9

1. A supplier Party shall have the right in the event of
- a) detonation by the recipient Party of a nuclear explosive device, or
 - b) determination in accordance with paragraph C of Article XII of the Statute of the International Atomic Energy Agency, that there has been non-compliance with, or repudiation of, a relevant safeguards agreement concluded with the International Atomic Energy Agency, by the recipient Party,

to suspend or cancel further transfer of nuclear material and to require the return of nuclear material subject to this Agreement, subject to payment therefor at prices then current.

2. In the event of material non-compliance by the recipient Party with the provisions of Article 3 to 7 inclusive of this Agreement, the supplier Party shall have the right to suspend or cancel further transfers of nuclear material and to require the recipient Party to take corrective steps. If, following consultation between the Parties, such corrective steps are not taken within a reasonable time, the supplier Party shall thereupon have the right to require the return of nuclear material subject to this Agreement subject to payment therefor at prices then current.

Article 10

Any dispute arising out of the interpretation or application of this Agreement which is not settled by negotiation shall, on request of either Party, be submitted to an arbitral tribunal which shall be composed of three arbitrators. Each Party shall designate one arbitrator and the two arbitrators so designated shall elect a third, who shall be the Chairman. If within 30 days of the request for arbitration either Party has not designated an arbitrator, either party to the dispute may request the President of the International Court of Justice to appoint an arbitrator. The same procedure shall apply if, within 30 days of the designation or appointment of the second arbitrator, the third arbitrator has not been elected. A majority of the members of the arbitral tribunal shall constitute a quorum and all decisions shall be made by majority vote of all the members of the arbitral tribunal. The arbitral procedure shall be fixed by the tribunal. The decisions of the tribunal, including all rulings concerning its constitution, procedure, jurisdiction and the division of the expenses of arbitration between the Parties shall be binding on both Parties and shall be implemented by them, in accordance with their respective constitutional procedures. The remuneration of the arbitrators shall be determined on the same basis as that for ad hoc Judges of the International Court of Justice.

Article 11

For the purposes of this Agreement:

- a) "appropriate governmental authority" means, in the case of Finland, the Ministry of Trade and Industry or its designated representative, and in the case of Australia, the Australian Safeguards Office;
- b) "nuclear material" means any "source material" or "special fissionable material" as those terms are defined in Article XX of the Statute of the International Atomic Energy Agency. Any determination by the Board of Governors of the International Atomic Energy Agency under Article XX of the Agency's Statute which amends the list of materials considered to be "source material" or "special fissionable material" shall only have effect under this Agreement when both Parties to this Agreement have informed each other in writing that they accept that amendment;
- c) "Non-Proliferation Treaty safeguards agreement" means an agreement concluded in accordance with paragraph 1 of Article III of the Treaty on the Non-Proliferation of Nuclear Weapons, done at London, Moscow and Washington on 1 July 1968;

- d) "the Agency's safeguards system" means the safeguards system set out in International Atomic Energy Agency document INFCIRC/66/Rev.2 as well as any subsequent amendments thereto which are accepted by the Government of Finland and by the Government of Australia.

Article 12

This Agreement shall enter into force 30 days after the date the Parties by an exchange of diplomatic notes have informed each other that they have complied with all constitutional requirements for its entry into force, and shall remain in force thereafter for a period of 30 years. If neither Party has notified the other Party at least 180 days prior to the expiry of such period, the present Agreement shall continue in force thereafter until 180 days after notice of termination has been given by either Party to the other Party; provided, however, that termination of the Agreement shall not release the Parties from obligations under the Agreement in respect of nuclear material referred to in Article 1 of the Agreement which remains relevant from the point of view of safeguards in accordance with Article 2 of the Agreement.

In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed the present Agreement.

Done at Helsinki on the 20th of July, 1978 in the Finnish and English languages, both language versions being equally authentic.

• *Switzerland-F.R. of Germany*

AGREEMENT BETWEEN THE SWISS FEDERAL COUNCIL
AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY
ON RADIATION PROTECTION IN CASE OF EMERGENCY*

The Swiss Federal Council
and
the Government of the Federal Republic of Germany

Considering

- that incidents during the transport of radioactive substances or occurring in the nuclear industry or other incidents in connection with nuclear materials may cause the emission of large quantities of radioactive substances into the air and into water;
- that radioactive substances are transported by air and water;
- that the inhabitants of a neighbouring country may also be threatened if large quantities of radioactive substances are carried beyond the national frontiers, and desirous of protecting insofar as possible the populations of both countries against the effects of radiation,

have agreed as follows

1. The Contracting Parties shall inform each other in the event of a radioactive emergency occurring on their national territory that could have adverse effects for the neighbouring country.
2. Each Contracting Party shall set up and maintain a suitable information system with a central unit.
3. The Contracting Parties shall inform each other when the central unit of their information system is installed and whenever any change is made to it that could affect the rapidity and usefulness of the information given to the neighbouring country.
4. The Contracting Parties shall set up a link between the central units.
5. The central unit of the system of information shall receive information regarding radiation in the event of an emergency twenty-four hours out of twenty-four and transmit it to the responsible authorities.
6. Information in the event of an emergency shall contain all available facts of importance in assessing the danger, and in particular:

* Unofficial translation by the Secretariat.

- the nature of the incident and the time at which it occurred;
 - the geographical location of the emission;
 - the way in which it could be transported (e.g. by air or water);
 - information about the weather and water situation, necessary for forecasting displacement and dilution;
 - the nature, and chemical and physical form and, if possible, quantity of the radioactive substances emitted;
 - foreseeable behaviour over time of the source of emission.
7. This information in the event of an emergency should be supplemented by any available particulars regarding protective measures taken or planned on the country's own territory.
 8. Information obtained subsequently and any changes in the emergency situation and its termination shall be communicated by further reports.
 9. Each Contracting Party shall, in the event of an emergency, be entitled to send a liaison group to the neighbouring country for purposes of practical experience. The liaison group shall have access to the responsible bodies, for example the command posts and the information service of the emergency headquarters and may communicate the information it obtains to the bodies responsible in its own country. The crossing of the frontier and the bringing in of equipment necessary for the group's activity shall be subject to the regulations in this respect in the country concerned.
 10. The responsibilities of the authorities instructed to implement this agreement shall be laid down by the internal legislation of the Contracting Parties.
 11. This Agreement applies to "Land Berlin" failing notification to the contrary by the Government of the Federal Republic of Germany to the Swiss Federal Council within three months of the entry into force of the Agreement.
 12. This Agreement shall enter into force on the day on which the Contracting Parties inform each other that the internal conditions for its entry into force are met. It may be terminated at any time by either Party, such termination taking effect one year after notification to the other Party.

Done in Bonn on 31st May 1978
in two originals in the German language.

STUDIES AND ARTICLES

ARTICLES

LEGAL PROBLEMS ARISING IN THE
FEDERAL REPUBLIC OF GERMANY IN CONNECTION
WITH THE CONSTRUCTION AND MANAGEMENT OF RADIOACTIVE
WASTE FINAL STORAGE FACILITIES BY A THIRD PARTY*

Rechtsanwalt Dr. W. Strassburg

Deutsche Gesellschaft für Wiederaufarbeitung
von Kernbrennstoffen mbH (DWK)

Under the Atomic Energy Act the construction and operation of installations for the final storage of radioactive waste are the responsibility of the State (Bund). Varying opinions have been expressed on the question of whether and to what extent the Federal authorities may entrust this task to a third party. The view of the writer is that the amended Atomic Energy Act of 1976 makes it clear that intervention by legal persons formed under private law is indeed considered reasonable for final storage facilities so that know-how and experience developed in research and development projects may be more easily used. However this may be, the existing legal uncertainty needs to be cleared up immediately, if necessary by legislation, to avoid the delay that would be involved if, as might happen, the law had to be clarified in the courts.

1. Introduction

Under Section 9a(3) (1st sentence) of the Atomic Energy Act (AtG) the Bund is required to "establish" facilities for the safekeeping and final storage of radioactive wastes. This responsibility of the State corresponds to the general requirement that substances be transferred to such facilities (Section 9a(2) of the Atomic Energy Act), the purpose being to ensure that this can in fact be done. The use of

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the services of third parties in fulfilling this duty accords not only with general principles but is expressly permitted by the second sentence of Section 9a(3) of the Atomic Energy Act. This clarification was thought necessary in order to stress that the intervention of legal persons formed under private law may be reasonable for final storage facilities for radioactive waste, so that the know-how and experience gained from research and development projects may be more easily used in the way it should. For this reason, the commentary by the Bundesrat specifically refers in this connection to a body already active in this field, the "Gesellschaft für Strahlen- und Umweltforschung mbH" of Munich, which is part of the Institut für Tieflagerung of Clausthal-Zellerfeld^[1]. For further clarification it also refers to Section 3(2) sentence 2 of the Waste Disposal Act (AbfG) which was clearly used as a model in amending the Atomic Energy Act^[2]. The former Act states that the competent authorities in the Länder may avail themselves of the services of third parties for waste disposal.

But the only question this appears to dispose of is whether it is legal to resort to the services of a third party. After it was established that the task did not necessarily have to be carried out by the Bund itself, or by the Federal Institute of Physics and Technology (PTB) of Braunschweig, responsible under Section 23(1) No. 2 of the Atomic Energy Act, more and more questions have arisen about the permissible division of responsibility between the State and private industry. Legal misgivings go as far as doubting whether there is in fact an adequate legal basis for the reasonable involvement of third parties in connection with Federal final storage facilities^[3]. This is all the more disturbing when it is considered that it was only in 1976 that the provisions for the safekeeping and final storage of radioactive waste contained in the Atomic Energy Act were amended and expanded with an eye to future projects. In what follows an attempt is made to answer some of these questions. There can be no doubt that the present legal uncertainty must be resolved immediately, for it would be unacceptable for errors resulting from that uncertainty to lead in the end to major delays in the construction and commissioning of final storage facilities.

2. Basic principles of contracting to third parties

Bischof/Pelzer/Rauschnig^[4] have discussed the legal position of third parties in regard to the construction and operation of Federal final storage installations under Section 9a(3) of the Atomic Energy Act. In essence they reach the conclusion that under the Act in its present form the Bund always remains the owner of the final storage facility and that therefore there can be no "real" transfer of the responsibility for building and operating a final storage facility to a third party, i.e. to a "Betriebsführungsgesellschaft" (management company). In their

^[1] See BT- Drucksache 7/4911 S.2.

^[2] 4 Novelle - 4 Gesetz zur Änderung des AtG vom 30.8.1978 (BGBl. I 2573).

^[3] Bischof/Pelzer/Rauschnig: Das Recht der Beseitigung radioaktiver Abfälle, Hanau 1977, S. 56/60 (Systemstudie Radioaktive Abfälle in der Bundesrepublik Deutschland, volume 4); and Pelzer, Atomwirtschaft 1977, p. 393 (395 s.).

^[4] See footnote ^[3].

opinion, the third party can only have the capacity of a "servant" since this would not affect the Bund's capacity as owner. Bischof/Pelzer/Rauschnig find confirmation of their view in the fact that the Act involves two separate provisions: firstly, Section 9b(1) whereby, they say, only the Bund may be granted the planning decree and secondly, the exemption from the requirement to provide financial security which emerges from Section 9b(3) taken with Section 13(4) and which, they claim, is meaningful only if the Bund rather than a third party can be granted a planning decree.

Against this view it may, however, be objected that a different systematic interpretation of the Atomic Energy Act would have suggested itself more readily. The model for the amendment of the Atomic Energy Act - and this is not disputed^[5] - was Section 3(2) (second sentence) of the Waste Disposal Act. That provision states that the use of the services of a private third party will not affect the responsibility of the corporation. It has a duty to dispose of the waste and is automatically responsible in cases of dispute^[6]. No "real" delegation of responsibility therefore takes place. It is thus more than likely that, in the Atomic Energy Act too, the intention is that responsibility for the safekeeping and removal of radioactive waste remain with the Bund or the Federal Institute of Physics and Technology. This view is supported firstly, by the wording of Section 9a(3) (second sentence) of the Atomic Energy Act, which states that the Bund may avail itself of the services of third persons for the purpose of carrying out its responsibilities, and secondly by the absence of any need for the provision of financial security together with the fact that the planning procedure in Section 9b of the Act relates only to Federal installations. The latter two provisions make sense if the Bund, or the Federal Institute of Physics and Technology responsible under Section 23(1) No. 2, in every case remains responsible as financing authority and owner of the final storage facility. The question that now remains to be answered is whether clear rules for contracting to third parties have been laid down and whether it is practical from the organisational and economic standpoints.

3. Construction and/or operation by a third party

The fact that the Act intentionally does not provide for any real delegation prompts the question of whether a third party can be given overall responsibility or merely commissioned to plan and construct the final storage facility.

Section 9a(3) (first sentence) of the Atomic Energy Act states that the Bund shall "establish" facilities for the safekeeping and final storage of radioactive waste. "Establish" does not necessarily mean only construct, although this interpretation comes readily to mind. Doubt as to a wider interpretation of the term to cover both construction and operation stems in particular from the Atomic Energy Act itself. Thus in Section 9b(1) and in Section 23(1) No. 2 of the Act the "construction" and "operation" of such facilities are expressly referred to in association with one another.

^[5] Not even by Bischof/Pelzer/Rauschnig (footnote ^[3]).

^[6] cf. Vgl/von Lersner: Recht der Abfallbeseitigung, Berlin 1972, Note 12 to Section 3 of the Atomic Energy Act.

But that the concept also covers operation of the final storage facility follows from the sense and purpose of Section 9a of the Act. The general obligation to transfer set out in that Section necessarily requires that the State has to create all the necessary conditions to allow such transfers to be made. The term "establish" in Section 9a(3) (first sentence) therefore means both construct and operate. But this does not answer the question of whether it is also permissible to entrust operation to a third party. There might after all have been reasons for precluding the transfer of at least the management function to a private third party. Considerations of safety in relation to long-term final storage might have argued for leaving this responsibility, with no exceptions, in the hands of the public authorities. The untimely cessation of management by a private firm would undoubtedly lead to claims for damages, rather than the trouble-free, continuous management that is wanted. Nevertheless, the clear wording of Section 9a(3) of the Atomic Energy Act shows that it was intended to provide for the possible handover of the planning, and construction and also the running of the final storage facility to a private undertaking. This is also supported, for example, by the fact that the commentary of the Bundesrat expressly refers in this connection to the Gesellschaft für Strahlen- und Umweltforschung mbH, which is already active in this field, and to similar regulations in the Waste Disposal Act^[7]. A further point to be borne in mind here is that the Atomic Energy Act, unlike the Waste Disposal Act, did not have to take express account of the maintenance of an existing industry, e.g. private refuse disposal firms^[8]. It should also be noted that in providing for possible resort to third parties it was intended to ensure that best possible use was made of the existing planning, construction and management know-how in private enterprise^[9].

Even if there were no need to clarify the Act, it would have been better if the Act had employed the same terms for provisions with the same meaning.

4. Division of responsibility between the Bund and third parties

For both legal and economic reasons it is necessary that there should be a clear division of responsibilities between the Bund and the third parties concerned. First and foremost there should be no doubt about the Bund's ownership under atomic energy law. This is based on considerations concerning the long-term final storage of radioactive waste.

The Bund's ownership does not, on the other hand, also imply that if the services of third parties are used then the latter may, in law, act only in the capacity of "servants". Bischof/Pelzer/Rauschnig^[10] draw this conclusion in particular from Section 9b of the Atomic Energy Act, under which they say a planning decree for the construction and operation of a final storage facility can be granted only to the Bund and management of such a facility would not therefore be transferable to a "management company". But Section 9b(1) of the Atomic Energy Act

^[7] BT-Drucksache 7/4911 p. 2.

^[8] See Hüssel/von Lersner (footnote ^[6]).

^[9] BR-Drucksache 101/76 p. 9; BT Drucksache 7/4794, p. 9.

^[10] (footnote ^[3]); also Pelzer, Atomwirtschaft 1977, p. 395.

simply makes the construction and operation of such facilities by the Bund subject to planning decree; it does not say that only the Bund can be granted such a decree. It seems right that the Bund must be the owner of the facility and, as financing authority, should also be required to apply for planning consent (Section 9b Atomic Energy Act and Section 21 Waste Disposal Act). The latter was done by the Federal Institute of Physics and Technology on 28th July 1977.

In the event of the Bund making use of the services of a third party for the purposes of planning, construction and/or operation, it is, of course, required to establish the existence of the appropriate technical qualifications and reliability of such third party as part of the planning procedure (Section 9b(3), Section 7(2) No. 1 of the Atomic Energy Act). It is therefore also necessary to include the third party in the planning decree, where necessary as the person in whose favour the decree is made, though this does not encroach on the Bund's ownership. In the event, the result is a form of joint ownership, but the Bund remains fully responsible. This, finally, explains why there is exemption from the requirement to provide financial security.

That these are not purely theoretical considerations is shown by the example of the Karlsruhe reprocessing plant (WAK). This facility is the property of the Gesellschaft für Kernforschung mbH (GfK) [11] which is 90 per cent owned by the Federal Republic of Germany and 10 per cent by the Land of Baden-Württemberg. Operation is the responsibility of the Gesellschaft zur Wiederaufarbeitung von Kernbrennstoffen mbH (GWK) which is owned exclusively by private enterprise [12]. The GWK is a joint licensee and beneficiary of the planning decree together with the GfK. Since, on this basis, there is nothing in the planning procedure that is inconsistent with the licensing procedure as set out in Section 7 of the Atomic Energy Act, it remains to be shown that ownership by the Bund does not exclude delegating a third party as the planning, construction and management company for the final storage facility. The intention of the Act to ensure, by contracting to third parties, that experience available in the Federal Republic of Germany is applied to the final storage facility project in the best possible way, will clearly not be achieved if the status of the third party is that of "servant". The legislator must clearly have been thinking in terms of resorting to a management company, for express reference is made to resort to third parties in Section 9a(3) (second sentence), even though this is already accepted as a matter of general principle. It was not a question - as it was in the Waste Disposal Act - of confirming that an existing business should continue to exist. The reference to the Gesellschaft für Strahlen- und Umweltforschung mbH, already active in this field, is to be understood accordingly.

The aim must undoubtedly be to guarantee secure and tight control by the Bund or the Federal Institute of Physics and Technology over planning, construction and operation of the final storage facility. In so doing it would be wrong to forgo the advantages of resorting to

[11] From 1st January 1978 the "Kernforschungszentrum Karlsruhe GmbH".

[12] Bayer AG, Deutsche Gesellschaft für Wiederaufarbeitung von Kernbrennstoffen mbH, Gelsengerg AG, Hoechst AG, NUKEM GmbH; for examples of other organisations see NUKEM: Mögliche Organisationsformen bei der Sicherstellung und Endlagerung radioaktiver Abfälle in der Bundesrepublik Deutschland, Hanau 1977 (Management Study) p. 40.

private construction and/or management firms^[13]. The Management Agreement between GfK and GWK since 1966 is a good example. There are no grounds at all for criticism of the terms of the private contract involved, but it is also conceivable to have the third party bound by public law contract which would ensure full legal and technical supervision of the third party. Under both private and public law it is possible to ensure strict State control, without the construction and operation of the final storage facility being hampered by excessive exercise of authority, particularly where not called for by safety considerations, or burdened with the unjustified costs of a parallel organisation, except where unavoidable.

The removal of any remaining doubts about the nature and extent of possible resort to the services of third parties is an urgent priority if necessary through further legislation. For it seems unacceptable for the answers to such question to have to await lengthy court proceedings concerning the validity of the planning decree^[14].

^[13] Here also see NUKEM: Management Study (footnote ^[12]), p. 39.

^[14] The appeal along the same lines in Bischof/Pelzer/Rauschnig (footnote ^[3]) therefore has our unreserved support.

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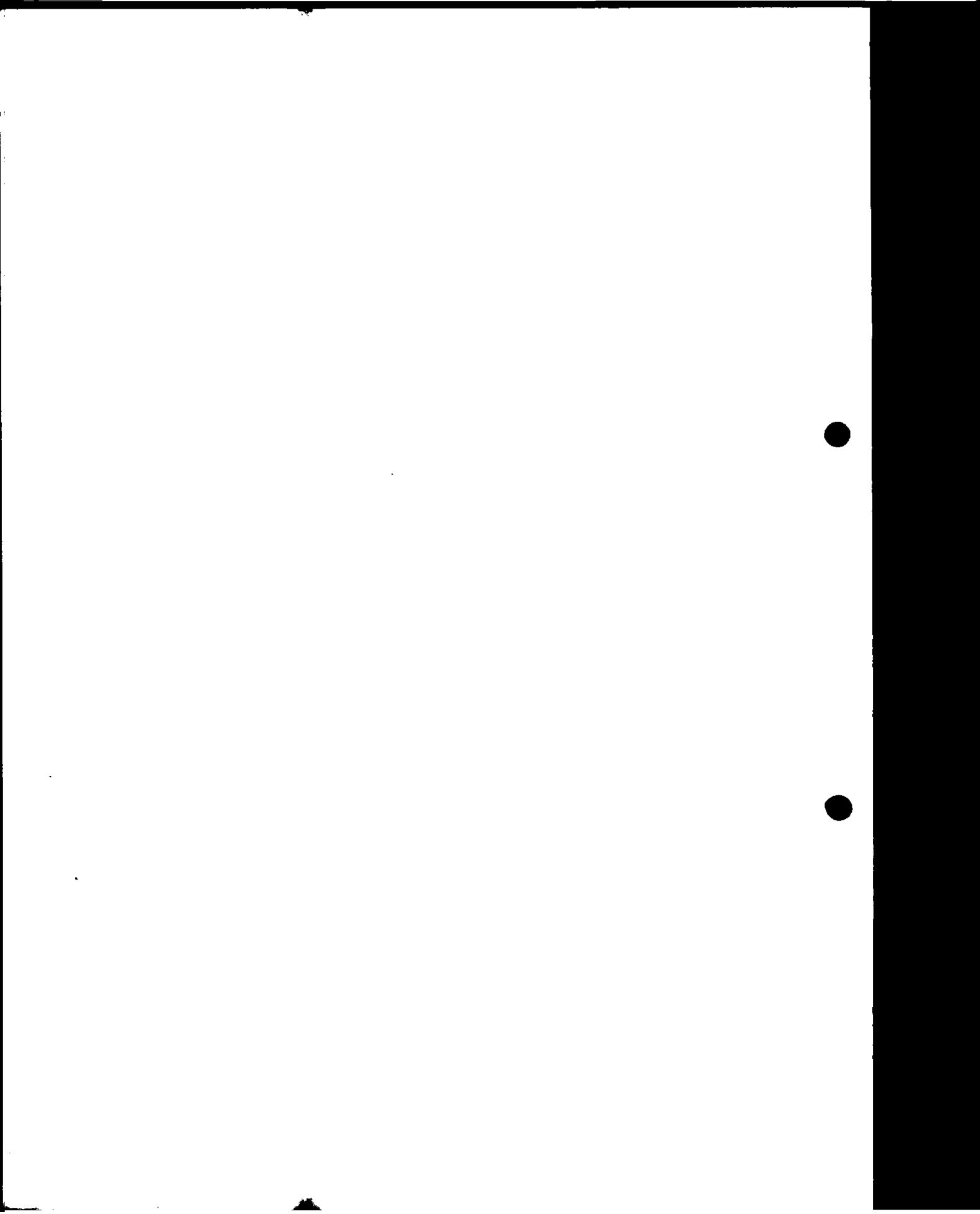
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COMMISSION OF THE EUROPEAN COMMUNITIES

PAGE

Council Decision of 30th May 1978 on
the establishment of the Joint European
Torus (JET), Joint Undertaking,
including Statutes of Project

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COMMISSION OF THE EUROPEAN COMMUNITIES

COUNCIL DECISION

of 30 May 1978

on the establishment of the

"Joint European Torus (JET), Joint Undertaking"

(78/471/Euratom)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 46, 47 and 49 thereof,

Having regard to the opinion of the Commission, in particular upon the size and the timetable of financing of the Joint Undertaking,

Having regard to the report from the Commission,

Having regard to the proposal from the Commission,

Whereas the Fusion Programme of the European Atomic Energy Community provides for the construction, operation and exploitation of a large Tokamak machine ("Joint European Torus": JET Project);

Whereas the implementation of the JET Project will constitute an important stage in the aim of the Fusion Programme to reach the status of controlled thermonuclear fusion applications from which the Community could derive benefit, in particular in the more general context of the security of its long-term energy supply;

Whereas the scale and scientific and technological complexity of the Project as well as its dimensions and cost render necessary a joint effort in the form of an organization able to guarantee the maintenance of the Community character of the Project and permit, on the one hand, effective interaction and cooperation between the Project and the

laboratories associated with the Fusion Programme and, on the other hand, the concentration of the financial and personnel resources under one management which shall be entirely responsible for the execution of the Project;

Whereas the Community and Sweden concluded an Agreement on 10 May 1976 for cooperation in the field of controlled thermonuclear fusion and plasma physics, and that consequently a Swedish organization is participating in the JET Project,

HAS DECIDED AS FOLLOWS:

Article 1

For the implementation of the JET Project, there shall be established a Joint Undertaking within the meaning of Chapter V of the Treaty for a duration of 12 years beginning on 1 June 1978.

The name of the Undertaking shall be "Joint European Torus (JET), Joint Undertaking".

Its aim shall be to construct, operate and exploit, as part of the Community Fusion Programme and for the benefit of the participants therein, a large torus facility of Tokamak-type and its auxiliary facilities (Joint European Torus - JET) in order to extend the parameter range applicable to controlled thermonuclear fusion experiments up to conditions close to those needed in a thermonuclear reactor.

JET will be constructed at the seat of the Joint Undertaking, situated in the United Kingdom of Great Britain and Northern Ireland at Culham in Oxfordshire.

Article 2

The Statutes of the "Joint European Torus (JET), Joint Undertaking", annexed to the present Decision, are hereby adopted.

Article 3

This Decision shall be published in the Official Journal of the European Communities and shall take effect from 1 June 1978.

A N N E X

STATUTES OF THE
"JOINT EUROPEAN TORUS (JET), JOINT UNDERTAKING"

Article 1

Name, Seat, Members

- 1.1. The name of the Joint Undertaking shall be "Joint European Torus (JET), Joint Undertaking".
- 1.2. The seat of the Joint Undertaking shall be at Culham, Oxfordshire, in the United Kingdom of Great Britain and Northern Ireland.
- 1.3. The Joint Undertaking shall have the following Members:
 - the European Atomic Energy Community (hereinafter referred to as Euratom),
 - the Belgian State (hereinafter referred to as Belgium), acting for its own part (Laboratoire de Physique des Plasmas of the Ecole Royale Militaire) and on behalf of the Université Libre de Bruxelles (Service de Chimie-Physique II of the ULB),
 - the Commissariat à l'Energie Atomique, France, (hereinafter referred to as CEA),
 - the Comitato Nazionale per l'Energia Nucleare, Italy, (hereinafter referred to as CNEN),
 - the Consiglio Nazionale delle Ricerche, Italy, (hereinafter referred to as CNR),
 - the Forsøgsanlaeg Risø, Denmark, (hereinafter referred to as Risø),
 - the Grand Duchy of Luxembourg (hereinafter referred to as Luxembourg),
 - Ireland,
 - the Kernforschungsanlage Jülich GmbH, Federal Republic of Germany, (hereinafter referred to as KFA),

the Max-Planck-Gesellschaft zur Förderung der Wissenschaften e.V. - Institut für Plasmaphysik, Federal Republic of Germany, (hereinafter referred to as IPP),

the National Swedish Board for Energy Source Development (hereinafter referred to as the Board),

the Stichting voor Fundamenteel Onderzoek der Materie, the Netherlands, (hereinafter referred to as FOM),

the United Kingdom Atomic Energy Authority (hereinafter referred to as the Authority or the host organization).

Article 2

Object and location

- 2.1. The object of the Joint Undertaking shall be to construct, operate and exploit as part of the Euratom Fusion Programme and for the benefit of the participants in this programme a large torus facility of Tokamak-type and its auxiliary facilities (Joint European Torus - JET) (hereinafter referred to as "the Project") in order to extend the parameter range applicable to controlled thermonuclear fusion experiments up to conditions close to those needed in a thermonuclear reactor.
- 2.2. The JET device and its auxiliary facilities shall be constructed at Culham, according to the general design set out in the report EUR-JET-R5 "The JET Project - design proposal" as may be modified in accordance with the present Statutes.

Article 3

Organs

- 3.1. The organs of the Joint Undertaking shall be the JET Council and the Director of the Project.
- 3.2. The Jet Council shall be assisted by a JET Executive Committee and may seek the advice of a JET Scientific Council.

Article 4

JET Council

- 4.1. Composition, right of vote
 - 4.1.1. The Members of the Joint Undertaking shall be represented in the JET Council as follows, the vote of each pair of representatives being weighted as indicated:

Representing	Number of representatives	Weight- ing of vote
Euratom	2	4
Belgium	2	2
CNEN and CNR jointly	2	4
CEA	2	4
Risø	2	2
Ireland	2	1
Luxembourg	2	1
IPP and KFA jointly	2	4
the Board	2	2
FOM	2	2
Authority	2	4

4.1.2. For their adoption acts of the JET Council shall require at least 21 votes in favour.

4.2. Functions

4.2.1. The JET Council shall have the responsibility for the management of the Joint Undertaking. It shall take the basic decisions for implementing the Project and exercise overall supervision of the execution of the Project, and report to the Members.

4.2.2. In particular, the JET Council shall:

- (a) ensure the collaboration between the associated laboratories and the Joint Undertaking in the execution of the Project, including the establishment in due time of rules on the operation and exploitation of JET;
- (b) approve the agreements governing relations between the host country and/or the host organization and the Joint Undertaking;
- (c) approve the conclusion of agreements regarding cooperation with third countries and with institutions, undertakings or persons of third countries or with international organizations;
- (d) nominate the Director and the senior staff of the Project with a view to their appointment by the Commission or the host organization as appropriate and determine their period of assignment, approve the main structure of the Project Team and decide the procedures for the assignment and management of staff;
- (e) adopt the Financial Regulations in accordance with Article 11.4;

- (f) in accordance with Article 10 approve the annual budget including establishment of staff as well as the Project Development Plan and the Project Cost Estimates;
- (g) approve the annual accounts and balance sheet;
- (h) decide on any acquisition, sale and mortgaging of land and other titles to real property, as well as on the giving of any sureties or guarantees, taking out shares in other undertakings or institutions, and on any granting or taking of loans;
- (i) approve any proposal involving a significant change in the design of the JET device and its auxiliary facilities;
- (j) issue the annual reports on the current status of the Project and its financial situation, referred to in Article 1.3.2;
- (k) have such other powers and perform such other functions, including the establishment of subsidiary bodies, as may be necessary for the purposes of the Project.

4.3. Meetings, Rules of Procedure

- 4.3.1. The JET Council shall meet at least twice a year. Extraordinary meetings shall be convened either at the request of one third of the members of the JET Council or at the request of its chairman, or the Director of the Project. The meetings shall normally take place at the seat. The JET Council shall elect its chairman from among its members. Unless otherwise decided in a particular case the Chairman of the JET Executive Committee and the Director of the Project shall participate in the meetings.
- 4.3.2. The JET Council shall adopt its Rules of Procedure.

Article 5

JET Executive Committee

5.1. Composition, right of vote

The provisions of Article 4.1 shall apply to the representation of the members in the JET Executive Committee and its voting arrangements.

The Chairman of the JET Executive Committee shall be appointed by the JET Council.

5.2. Functions

The JET Executive Committee shall assist the JET Council in the preparation of its decisions and shall undertake any other tasks which the JET Council may entrust to it.

The JET Executive Committee shall in particular:

- (a) advise the JET Council and the Director of the Project on the status of the Project on the basis of regular reports;

- (b) comment and make recommendations to the JET Council on the Project Cost Estimates and the draft budget including the establishment of staff drawn up by the Director of the Project;
- (c) approve, in accordance with the rules on the award of contracts to be established by the JET Council, the tendering procedure and the award of contracts;
- (d) promote and develop collaboration between the associated laboratories and the Joint Undertaking in the execution of the Project.

5.3. Meetings, Rules of Procedure

The JET Executive Committee shall meet at least six times a year. The meetings shall normally take place at the seat of the Joint Undertaking. Subject to the approval of the JET Council, the JET Executive Committee shall draw up its Rules of Procedure.

Article 6

JET Scientific Council

6.1. Composition

The JET Council shall appoint the members of the JET Scientific Council and its chairman.

6.2. Functions

The JET Scientific Council shall:

- (a) upon the request of the JET Council advise on scientific and technical matters, including proposals involving a significant change in the design of JET, its exploitation and its long-term scientific implications;
- (b) perform such other tasks as the JET Council may request it to undertake.

6.3. Rules of Procedure

Subject to the approval of the JET Council, the JET Scientific Council shall draw up its Rules of Procedure.

Article 7

The Director of the Project

- 7.1. The Director of the Project shall be the chief executive of the Joint Undertaking and its legal representative.
- 7.2. He shall execute the Project Development Plan and direct the execution of the Project within guidelines established by the JET Council to whom he shall be responsible, and he shall supply the JET Council, the JET Executive Committee, the JET Scientific Council and other subsidiary bodies with all information necessary for the performance of their functions.

7.3. In particular, the Director of the Project shall:

- (a) organize, direct and supervise the Project Team;
- (b) submit to the JET Council proposals on the main structure of the Project Team, and propose to the JET Council the nomination of senior staff;
- (c) draw up and regularly update the Project Development Plan and the Project Cost Estimates in accordance with the Financial Regulations and submit them to the JET Council;
- (d) draw up, in accordance with the Financial Regulations, the annual draft budget including establishment of staff, and submit it to the JET Council;
- (e) in accordance with the Financial Regulations, keep accounts and inventory records, draw up the annual accounts and the balance sheet, and submit them to the JET Council;
- (f) submit to the JET Council any proposal involving a significant change in the design of JET;
- (g) organize, together with the associated laboratories, special meetings ("workshops") on scientific and technical topics relating to the Project and submit reports on these meetings to the JET Council;
- (h) undertake, where necessary in conjunction with the host organization, steps to obtain the permits and licences required for the construction, operation and exploitation of JET, including buildings, as well as draw up any reports required in this respect;
- (i) be responsible for safety and undertake all organizational measures to meet the relevant safety requirements;
- (j) draw up in accordance with Article 16 rules on the dissemination of information and submit them to the JET Council;
- (k) draw up the annual report on the current status of the Project and its financial situation and such other reports as may be requested by the JET Council and submit them to the JET Council.

Article 8

Project Team

8.1. The Project Team shall assist the Director of the Project in the performance of his duties. Its staff shall be fixed in the staff establishment as defined in the annual budget. It shall be composed of staff coming from the Members of the Joint Undertaking as provided for in point 8.3 and of other personnel. The staff of the Project Team shall be recruited in accordance with the provisions of points 8.4 and 8.5 below.

- 8.2. The composition of the Project Team shall strike a reasonable balance between the need to guarantee the Community nature of the Project, especially in the case of posts for which qualifications of a certain level are required (physicists, engineers, administrative staff at an equivalent level) and the need to give the Director of the Project the widest possible authority in the matter of staff selection in the interests of efficient management. In applying this principle account shall also be taken of the interests of the non-Community Members of the Joint Undertaking.
- 8.3. The Members of the Joint Undertaking shall make available to the Joint Undertaking qualified scientific, technical and administrative staff.
- 8.4. Staff made available by the host organization shall remain in the employment of the host organization on the terms and conditions of service of that organization and be assigned by the latter to the Joint Undertaking.
- 8.5. Unless decided otherwise in special cases in accordance with the procedures for the assignment and management of staff to be decided by the JET Council, staff made available by the Members of the Joint Undertaking other than the host organization as well as other personnel shall be recruited by the Commission for temporary posts in accordance with the "conditions of employment of other servants of the European Communities" and assigned by the Commission to the Joint Undertaking.
- 8.6. All staff forming part of the Project Team shall come under the sole management authority of the Director of the Project.
- 8.7. All staff expenditure, including expenditure related to staff assigned to the Joint Undertaking by the Commission and the host organization shall be borne by the Joint Undertaking.
- 8.8. Each Member having a contract of Association with Euratom shall undertake to re-employ the staff whom it placed at the disposal of the Project and who were recruited by the Commission for temporary posts, as soon as the work of such staff on the Project has been completed.
- 8.9. The JET Council shall establish the detailed procedures for assignment and management of staff.

Article 9

Financing

- 9.1. The expenditure of the Joint Undertaking shall be borne by Euratom 80% and the Authority 10%.

The remaining 10% shall be shared between all Members other than Euratom, having contracts of Association with Euratom in proportion to the Euratom financial participation in the total costs of the Associations, including the general support for priority actions but excluding any additional support for these actions. The annual contribution of such a Member shall be calculated year by year and relate to the Euratom participation in its Association for the previous year, expressed in European units of account.

- 9.2. All revenue of the Joint Undertaking shall be applied in promoting the objects as defined in Article 2. Subject to Article 21 no payment by way of division of any excess of revenue over expenditure of the Joint Undertaking shall be made to the Members of the Joint Undertaking.

Article 10

Financial year, budgetary procedure

- 10.1. The financial year shall correspond to the calendar year.
- 10.2. The Director of the Project shall, before 31 March of each year, transmit to the Members the Project Cost Estimates as approved by the JET Council. The Project Cost Estimates shall include a forecast of annual expenditure for the following five years, taking into account the relevant decisions concerning the Euratom fusion programme. Within this forecast the estimates of revenue and expenditure for the first of those five financial years (preliminary draft budget) shall be drawn up in such detail as is necessary for the internal budgetary procedure of each Member regarding its financial contribution to the Joint Undertaking. The Director of the Project shall supply the Members with all supplementary information needed for this purpose.
- 10.3. The Members shall communicate to the Director of the Project forthwith their comments on the Project Cost Estimates and in particular on the estimates of revenue and expenditure for the following year.
- 10.4. Based upon the approved Project Cost Estimates, and taking into account the comments received from the Members, the Director of the Project shall prepare the draft budget for the following year and submit it to the JET Council before 30 September.
- 10.5. After notification by the Commission of the appropriation relating to its financial contribution to the Joint Undertaking as shown in the finally adopted budget of the European Communities, the JET Council shall adopt the budget of the Joint Undertaking.
- 10.6. To meet the requirements of Article 171 (3) of the Euratom Treaty, the Director of the Project shall send to the Commission before 31 March of each year the budget adopted for the current year including the estimates of revenue and expenditure referred to in that Article, together with the operating accounts and the balance sheet of the previous year. The Commission shall place them, at the latest together with its preliminary draft budget for the following year, before the Council of the European Communities and the European Parliament.

Article 11

Financial Regulations

- 11.1. The purpose of the Financial Regulations is to ensure the economic and sound financial management of the Joint Undertaking.

- 11.2. In particular, they shall include the principal rules on:
- (a) the unit of account or currency in which the accounts of the Joint Undertaking shall be kept,
 - (b) the presentation and structure of the Project Cost Estimates and the annual budget,
 - (c) the implementation of the annual budget and an internal financial control,
 - (d) the calculation and payments of contributions by the Members of the Joint Undertaking in accordance with Article 9,
 - (e) the keeping and presentation of accounts and inventory records as well as the drawing up and presentation of the annual balance sheet,
 - (f) the procedure regarding calls for tenders, based on non-discrimination among the countries of the Members of the Joint Undertaking, the placing and the terms and conditions of contracts and orders on behalf of the Joint Undertaking.
- 11.3. As regards the placing of contracts, the Financial Regulations shall provide for the selection of the tenders giving the economically and technically most efficient solution. The Director of the Project shall, in collaboration with the JET Executive Committee and the Members, strive to achieve as wide as possible a distribution of contracts, taking into account the Community nature of the Project.
- 11.4. The Financial Regulations shall be adopted by the JET Council in agreement with the Commission.

Article 12

Auditing

Within two months after the end of each financial year the Director of the Project shall submit the annual accounts of the preceding year and the annual balance sheet to the Court of Auditors of the European Communities. The audit executed by the Court of Auditors shall be based on records and performed on the spot. The Director of the Project shall present the annual accounts and the annual balance sheet together with the report of the Court of Auditors to the JET Council for approval. The Director of the Project is entitled and, if requested by the JET Council, obliged to comment on the report. The Court of Auditors shall send its report to the Members of the Joint Undertaking, to the Council of the European Communities and to the European Parliament.

Article 13

Project Development Plan, status and other reports

- 13.1. The Project Development Plan shall specify the plan for the execution of all elements of the Project, in particular work to be performed by the Project Team, by third parties and by the Members of the Joint Undertaking. It shall cover the whole term of the Joint Undertaking and regularly be updated.
- 13.2. The annual report shall show the current status of the Project, in particular with regard to timetables, cost, performance of the scientific programme, and its position in the Euratom Fusion Programme and in the world-wide development of fusion research.

Article 14

Work to be performed by the Associations

Where contracts of Association contain provisions for work to be carried out in support of the Project, such work shall be specified and controlled by arrangements concluded between the Joint Undertaking and the Association concerned, and the cost of such work shall be borne in accordance with the relevant provisions of the contract of Association.

Article 15

Support from the host organization

- 15.1. The host organization shall make available to the Joint Undertaking land, buildings, goods and services required for the implementation of the Project as summarized in the Annex to the present Statutes and under terms outlined therein. The Annex shall form an integral part of the present Statutes.
- 15.2. Subject to the approval of the JET Council in accordance with Article 4.2.2(b), the details of such support, as well as the procedures of cooperation between the Joint Undertaking and the host organization, shall be covered by an agreement to be concluded between them.

Article 16

Information and patent rights

- 16.1. Information
 - 16.1.1. All information generated in the execution of the Project, including but not limited to drawings, designs, computations, reports and other documents, know-how and inventions, whether or not patentable, shall be the property of Euratom, subject to the following provisions of this Article.

- 16.1.2. The Joint Undertaking shall be entitled to use the information referred to in point 16.1.1 without charge for the execution of the Project. The Members of the Joint Undertaking shall be entitled to use such information without charge for their own research purposes.
- 16.1.3. Each Member of the Joint Undertaking shall be duly kept informed on the progress of the Project through the JET Council and at regular intervals be provided with reports on the progress made and the results obtained (including the reports specified in Article 13 of the present Statutes).
- 16.1.4.1. The Commission will, in accordance with the provisions of Article 13 of the Euratom Treaty and subject to the conditions contained therein, communicate the reports referred to in point 16.1.3 to the Member States, to persons and undertakings (as defined in Article 196 of that Treaty) as well as to the Government of Sweden and to persons and undertakings established on its territory.

Dissemination of such reports by the Commission to States and to persons and undertakings other than those specified above and dissemination as such of the report by the Joint Undertaking and by its other Members shall be at the discretion of and on conditions approved by the JET Council, but without preventing the customary exchange of views and ideas between scientists.

- 16.1.4.2. The JET Council shall establish terms and conditions under which the Joint Undertaking and its Members may proceed to dissemination and/or licensing of the information and in particular of the drawings, designs, computations, documents, knowhow and non-patentable inventions referred to in point 16.1.1.

16.2. Patents

- 16.2.1. Where patentable inventions are made in the execution of the Project the Commission may, on behalf and at the cost of Euratom, file patent applications and obtain patents. The Joint Undertaking shall promptly inform the Commission about inventions and shall in due time forward to the latter any document and information required for filing of the patent applications. The Commission shall transmit to the Joint Undertaking the administrative data and a copy of such patent applications or patents.
- 16.2.2. Under the patent applications and patents referred to in point 16.2.1 the Joint Undertaking and the Members thereof shall be entitled to royalty-free, non-exclusive, irrevocable licences with the right to grant sublicences after consultation with the Commission.
- 16.2.3. Under the patent applications and patents referred to in point 16.2.1, the Commission may, in accordance with the provisions of Article 12 of the Euratom Treaty and subject to the conditions contained therein, grant on request non-exclusive licences to the Member States of Euratom, to persons and undertakings (as defined in Article 196 of that Treaty), as well as to the Government of Sweden and to persons and undertakings established on its territory. Granting of

non-exclusive licences by the Commission to States, persons and enterprises other than those specified above shall be on the conditions approved by the JET Council.

- 16.2.4. Should the Commission in regard to any invention, patent application or patent referred to in point 16.2.1 for adequate reasons (including in particular lack of budgetary allocations) intend to waive its right to file, or to abandon patent applications and/or patents, it shall inform the Joint Undertaking and the other Members thereof in due time. If in such event a Member requests assignment of the pertinent Euratom rights, the Commission shall comply with such request and the Member involved shall then be entitled to file patent applications and to pursue or maintain such patent applications and patents as were already filed or granted. If the request for assignment is made by several Members and no agreement can be reached among them on a sole assignee, then the Commission shall refer the matter to the JET Council for decision.
- 16.2.5. In regard to any invention, patent application or patent referred to in point 16.2.4 and assigned to a Member of the Joint Undertaking, or filed and obtained by such Member after assignment, Euratom shall be granted a royalty-free, non-exclusive licence for its own research purposes, and the licence and sublicensing rights granted to the Joint Undertaking and the other Members thereof shall be maintained and extended to the inventions, patent applications and patents filed and obtained after assignment.
- 16.3. Other provisions
- 16.3.1. Any contract or order concluded by the Joint Undertaking shall contain provisions to the effect that the rights conferred and obligations laid upon the Joint Undertaking and its Members under this Article shall not be affected by the terms and conditions of such contracts and orders.
- 16.3.2. The rights conferred and obligations laid upon the Members of the Joint Undertaking by the provisions of this Article shall subsist after the winding up of the Joint Undertaking.
- 16.3.3. Each Member of the Joint Undertaking, while retaining full ownership, shall undertake to make available free of charge to the Joint Undertaking any information and invention required for the sole purpose of the execution of the Project unless it cannot do so by reasons of obligations to third parties.
- In particular, the Commission shall make available free of charge to the Joint Undertaking all information acquired under contracts and orders implemented under the JET Design Agreement.
- 16.3.4. The provisions of this Article shall apply without prejudice to applicable national laws relating to inventions made by employed inventors.

Article 17

Liability and insurance

- 17.1. The contractual liability of the Joint Undertaking shall be governed by the relevant contractual provisions and by the law applicable to the contract in question.
- 17.2. In the case of non-contractual liability, the Joint Undertaking shall make good any damage caused by it, to such extent as the Joint Undertaking is subject to a legal liability under the relevant national law.
- 17.3. Any payment by the Joint Undertaking for covering the liability referred to in points 17.1 and 17.2 and the costs and expenses incurred in connection therewith shall be considered as expenditure of the Joint Undertaking within the meaning of Article 9.
- 17.4. The Director of the Project shall propose to the JET Council any necessary fire and other insurance, and the Joint Undertaking shall take out such insurance as the JET Council may direct.

Article 18

Accession by new Members

- 18.1. The Joint Undertaking is open for accession by new Members which can provide a useful contribution to the object of the Joint Undertaking.
- 18.2. Any request for accession shall be addressed to the Director of the Project, who shall transmit it to the JET Council. The JET Council shall decide whether the Joint Undertaking shall start negotiations with the applicant on the conditions of accession. In case of a positive decision, the Joint Undertaking shall negotiate the conditions of accession and submit them to the JET Council for agreement. If the JET Council agrees the Commission shall submit to the Council of the European Communities the proposal on the amendment of the present Statutes required for the accession of the applicant concerned.

Article 19

Duration of the Joint Undertaking

- 19.1. The Joint Undertaking shall be established for a period of 12 years.
- 19.2. According to progress in achieving the object of the Joint Undertaking as defined in Article 2 that period may be prolonged by amending the present Statutes in accordance with the provisions of Article 24. It may be shortened either by such an amendment or by action under Article 20.6 or Article 21.1.

Article 20

Withdrawal of membership

- 20.1. For a period of five years from the establishment of the Joint Undertaking, its Members shall not be allowed to withdraw their membership.
- 20.2. After that period each Member shall be entitled to give notice of withdrawal by registered letter to the Director of the Project, such withdrawal taking effect at the end of the financial year following that in which notice of withdrawal is given. However, the host organization shall not be allowed to withdraw.
- 20.3. If a Member gives notice of withdrawal, the JET Council shall decide within six months whether the Joint Undertaking should continue or be wound up.
- 20.4. If the JET Council decides that the Joint Undertaking should continue the Commission, acting on a proposal from the JET Council, shall submit to the Council of the European Communities the amendments to the present Statutes required for the continuation of the Joint Undertaking.
- 20.5. The Member so withdrawing shall bear its share as specified in Article 9 of all commitments and liabilities incurred by the Joint Undertaking up to the date when its withdrawal becomes effective. Furthermore it shall not be entitled to claim from the Joint Undertaking or from any of its Members any compensatory payment with respect to the assets of the Joint Undertaking.
- 20.6. If the JET Council requests the winding up of the Joint Undertaking the Commission will submit to the Council of the European Communities the proposal on the winding up of the Joint Undertaking. If the Council of the European Communities decides to wind up the Joint Undertaking, Article 21 shall apply.
- 20.7. Subject to point 20.5 Members, having concluded with Euratom a cooperation agreement in accordance with Article 101 of the Euratom Treaty or a contract of Association pursuant to such an agreement, shall cease to be a Member of the Joint Undertaking upon termination of that cooperation agreement.

Article 21

Winding up

- 21.1. If the Joint Undertaking terminates, either by expiry of its term as specified in Article 19 or by decision of the Council of the European Communities, the Joint Undertaking shall be wound up.
- 21.2. For the purpose of conducting the proceedings in winding up the Joint Undertaking the JET Council shall appoint one or more liquidators, who shall comply with the instructions issued by the JET Council.

- 21.3. When the Joint Undertaking is being wound up, it shall:
- return to the host organization any physical support item made available to it in accordance with Article 15,
 - assign to the host organization the JET device, buildings and any other fixed or movable assets acquired by the Joint Undertaking.
- The host organization shall at its own cost and liability:
- recover possession of the physical support items mentioned above,
 - take over and assume responsibility for the JET device, buildings and any other fixed or movable assets assigned to it.
- 21.4. If the Joint Undertaking decides to cease using any support item or any fixed or movable asset before the winding up, the provisions of point 21.3 shall apply to such specific support item or asset unless the Joint Undertaking decides to dispose otherwise of assets acquired by it.
- 21.5. If within a period of six months after the termination of the Joint Undertaking in accordance with point 21.1, the Commission requests the use for the Community fusion activity of any asset acquired by the Joint Undertaking and assigned to the host organization in accordance with points 21.3 and 21.4, the host organization shall make such asset available without any charge for depreciation or rent. This shall not prevent the decommissioning of the JET device.
- 21.6. When fixed and movable assets have been dealt with as provided in point 21.3, any further assets (cash, amounts receivable, intangible assets) shall be used to cover the liability of the Joint Undertaking and the costs relating to its winding up except those to be borne by the host organization in accordance with point 21.3. Any surplus shall be distributed among the Members existing at the time of the winding up in proportion to their total contribution actually made by them in accordance with Article 9. In the event of a deficit, this shall be met by the existing Members in the same proportions as those in which their contributions have been assessed for the financial year then current in accordance with Article 9.

Article 22

Subsidiary reference to national law

- 22.1. In any matter not covered by these Statutes, English law shall apply.
- 22.2. Without prejudice to the provisions of the third paragraph of Article 49 of the Euratom Treaty, for the avoidance of doubt the Joint Undertaking shall not be regarded as a company within the meaning of the Companies Act 1948 and 1967 of the United Kingdom.

Article 23

Assignment of Commission rights

- 23.1. The Commission shall assign free of charge to the Joint Undertaking any title, rights and obligations with respect to the ownership of materials and other goods supplied or to be supplied under contracts and orders placed for the Project prior to the establishment of the Joint Undertaking to the extent allowed in such contracts and orders.
- 23.2. The Joint Undertaking shall take over any contract and order placed by the Commission for the Project prior to the establishment of the Joint Undertaking. Immediately after the establishment of the Joint Undertaking the latter and the Commission shall take all necessary steps for this purpose.

Article 24

Amendments

- 24.1. Any Member of the Joint Undertaking may submit to the Jet Council proposals for amendment of the present Statutes.
- 24.2. If the JET Council agrees to the proposals, the Commission will make a proposal to the Council of the European Communities for their approval in accordance with Article 50 of the Euratom Treaty.
- 24.3. The amendments shall enter into force on the date on which the Council of the European Communities shall have approved the amendments, or on such other date as that Council may decide.

Article 25

Disputes

- 25.1. Any dispute either between Members of the Joint Undertaking or between one or more Members and the Joint Undertaking concerning the interpretation or application of the present Statutes, which is not settled by the good offices of the JET Council, shall, at the request of any party to the dispute, be submitted to an arbitration tribunal.
- 25.2. The arbitration tribunal shall be established in each individual case. It shall be composed of three members nominated jointly by the parties to the dispute. The members of the arbitration tribunal shall elect the chairman from amongst themselves.
- 25.3. If the parties in the dispute fail to nominate one or several members of the arbitration tribunal within two months of the request for submission of a dispute to the arbitration tribunal, or if within one month of the nomination of the members these members do not elect a chairman, such member or members or the chairman shall be nominated by the President of the Court of Justice of the European Communities at the request of one of the parties to the dispute.

- 25.4. The arbitration tribunal shall reach its decision by a majority of votes. Such decision shall be binding and final.

Article 26

Definitions

For the purpose of these Statutes the following terms shall have the following meaning:

- (a) "Euratom Fusion Programme" means the research and training programme (1976 to 1980) in the field of fusion and plasma physics adopted by decision of the Council of the European Communities, pursuant to Article 7 of the Euratom Treaty, as well as any further programme in that field adopted by Council Decision;
- (b) "Contract of Association" means a Contract of Association concluded between Euratom and any Member of the Joint Undertaking which provides for the execution of part of the Euratom Fusion Programme;
- (c) "Association" means the Association established by such a Contract of Association;
- (d) "Associated Laboratory" means the laboratory or laboratories of each Member of the Joint Undertaking associated with Euratom by a Contract of Association, in which the programme of that Association is being executed;
- (e) "JET Design Agreement" means the Agreement No 030-74-1 FUAC (Doc. XII/524/73) concluded between Euratom and the Members of the Joint Undertaking (other than Ireland and Luxembourg) on 4 April 1974 and modified by successive Supplementary Agreements;
- (f) "Commission" means the Commission of the European Communities.