

SPAIN

Act Creating the Nuclear Safety Council

Act 15/1980 of 22 April, Creating the Nuclear Safety Council, amended by Act 33/2007 of 7 November

Preliminary note

The content of this act has been partially amended since it was enacted, by means of successive legislative decrees, whose derogations, or express alterations, or rephrasing, are officially recorded through the inserted footnotes.

The last that entailed a true reform was, Act 33/2007 November, which amended Articles 1, 2, 3, 4, 5, 6, 7, 8 and 11, giving them a new phrasing.

This act had been previously modified by:

- Act 14/1999 of 4 May, on Fees and Public Prices for services rendered by the Nuclear Safety Council.
- Act 34/1998 of 7 October on the Hydrocarbons Sector.

On the other hand, it is worth mentioning that the act has already been affected by the following regulations:

- Royal Decree 1339/1999 of 31 July, establishing the Regulation of the National Energy Commission, which develops the compensation package corresponding to the Chairman, Commissioners and Secretary General of the Nuclear Safety Council, as amended by Royal Decree 1204/2006 of 20 October.
- Royal Decree 1554/2004, of the Ministry of Industry, Trade, and Tourism (today the Ministry of Industry, Tourism and Trade), developing its basic organisational structure. Specifically, the fourth additional provision states that the Nuclear Safety Council interacts with the Government through the Ministry of Industry, Tourism and Trade.
- Royal Decree 562/2004 of 19 April, of the Government, approving the basic organisational structure of ministry departments.

Act 15/1980 of 22 April, Creating the Nuclear Safety Council, amended by Act 33/2007 of 7 November

DON JUAN CARLOS I, KING OF SPAIN

Be it known to all concerned
that the Cortes Generales have enacted, and we hereby grant our assent to the following act:

Preamble

The creation of the Nuclear Safety Council, by Act 15/1980 of 22 April, as the sole body competent in nuclear safety and radiation protection matters, independent from the central administration of the state, represented a fundamental milestone in the development of nuclear safety in Spain, and allowed to put the Spanish nuclear energy regulatory framework at a level comparable with the most advanced countries in this field.

Although some aspects of this act have been modified – mainly by Act 14/1999 of 4 May, on Fees and Prices Charged to the Public for Services Rendered by the Council for Nuclear Safety –, the time elapsed since it was enacted called for an update to take into account the experience built up during this period of time, incorporate certain amendments to its articles which have been implemented over time, adapt it to growing social sensitivity regarding environmental issues and to introduce and develop some aspects with the aim of ensuring the preservation of its effective independence and strengthening the transparency and effectiveness of the organisation.

Bearing in mind the functions with which the Nuclear Safety Council has been entrusted with, it is essential that its actions should have the necessary credibility and trust of that very society which it has the mission to preserve from undesired effects of ionising radiation.

To that end, appropriate mechanisms need to be established enabling the Nuclear Safety Council operations to operate under the condition of transparency needed as to promote that trust. In line with the provisions of the Aarhus Convention, ratified by Spain on 15 November 2004 and enshrined in Act 27/2006 of 18 July, regulating rights of access to information, public participation and access to courts in environmental issues.

The definitions in the regulatory instruments of the Nuclear Safety Council are developed, its role regarding physical protection of materials and nuclear and radioactive facilities is reinforced, and in order to ensure the required independence, the requirements that have to be fulfilled when contracting external services are specified.

Furthermore, with regard to the essential objective of ensuring nuclear and radioactive facility operate under the safest possible conditions, it establishes the obligation of workers to report any fact that could compromise their safe operation and protects them against possible reprisals.

Finally, this act considers the setting up of an Advisory Committee, as an advisory and consultative body, open to the participation of representatives from institutional, regional, scientific, technical, business, trade union and environmental bodies, whose mission will be to make recommendations to the Nuclear Safety Council in order to enhance transparency, access to information and public involvement in matters within its competence.

Single Article

Modification of Act 15/1980 of 22 April Creating the Nuclear Safety Council

Article 1

1. The Nuclear Safety Council is created as a body under public act, independent of the central state administration, with its own legal personality and its own assets, independent from those of the state, as the only competent body in matters pertaining to nuclear safety and radiological protection.

It shall be governed by its own statute, prepared by the Council and approved by the Government, whose text shall be submitted to the competent Committees of the Congress and the Senate before its publication, with respect to such specific provisions as apply to it, without prejudice to additional application of legal principles of the ordinary act or special legislation.

2. The Council shall prepare the preliminary draft of its annual budget according to the provisions included in the General Budgetary Law, and shall remit it to the Government for its incorporation into the general state budgets.

Article 2

The functions of the Nuclear Safety Council shall be as follows:

- a) To propose to the Government such regulations regarding nuclear safety and radiological protection as may be necessary, as well as such revisions that it considers advisable. These regulations shall include objective criteria for the selection of sites for nuclear and first category radioactive installations, following reports from the Autonomous Communities, in the manner and within the time limits determined by regulations. Similarly, it may prepare and approve the instructions, circulars and guides of a technical nature, relative to nuclear and radioactive installations and for those activities related to nuclear safety and radiological protection.

Instructions are technical standards on nuclear safety and radiological protection issues, which will be binding for the parties falling within their scope of application, once notified or, if applicable, published in the *Official State Gazette*. Involvement of stakeholders and the public in the preparation of Council instructions will be promoted in the terms provided by Act 27/2006 of 18 July, regulating rights of access to information, public participation and access to justice in environmental issues. Instructions will be submitted to the Congress of Deputies prior to their approval by the Council.

Circulars are technical documents of an information nature which the Council may address to one or more parties falling within their scope of application, in order to inform them of events or circumstances related to nuclear safety or radiological protection.

Guides are technical documents of advisory nature whereby the Council may provide guidance to the affected parties in relation to current regulations on nuclear safety and radiological protection.

Additionally, the Nuclear Safety Council may forward supplementary technical instructions directly to the holders of the authorisations to which Section b) of this article refers to ensure that safety conditions and requirements are met.

- b) To issue reports to the Ministry of Industry, Tourism and Trade on nuclear safety, radiological protection, and physical protection, prior to the adoption of the resolutions as this body may approve on matters related to the grant of authorisations for nuclear and radioactive installations, transport of nuclear substances or radioactive materials, the manufacture and official approval of equipment containing radioactive sources or generating ionising radiation, the exploitation, restoration or closure of uranium mines, and in general, all activities related to the handling, processing, storage and transportation of nuclear and radioactive substances.

To issue reports, prior to resolutions of the Ministry of Industry, Tourism and Trade, regarding the authorisation of companies that provide technical assistance for X-ray equipment and installations for medical diagnosis, and other equipment destined for radioactive installations, and to carry out the inspection and control.

To issue the reports prior to the resolutions that are enacted in exceptional cases and circumstances by the Ministry of Industry, Tourism and Trade, on its own initiative or at the request of the Nuclear Safety Council, in relation to the removal and safe management of radioactive materials.

Such reports shall be mandatory in all cases, as well as binding, when they be of an adverse nature or deny authorisation for concessions, as well as with regard to the conditions that they establish if they are positive.

The procedures which require the issue of the reports referred to in this section, may be suspended by the body competent for the decision concerned, exceptionally, and indefinitely, until they are issued or for the period of time considered appropriate to allow their issue subject to justification of the reasons for suspension.

- c) To carry out all types of inspections in nuclear or radioactive installations, during the different project, construction and commissioning stages, in transportation, production and certification of equipment comprising radioactive sources or generating ionising radiations, and the approval or validation of packages intended for use in the transport radioactive substances, in order to ensure compliance with the applicable legislation and the conditions imposed in the corresponding authorisations, with the power to halt construction projects or activities when anomalies are detected that affect safety, and until they are corrected, and shall propose the cancellation of the authorisation if these anomalies cannot be corrected.
- d) To carry out inspection and control of nuclear and radioactive installations during their operation, and until their closure, in order to ensure compliance with all established standards and conditions, both of a general and specific nature, established for the installation, in order to ensure that the operation of the aforementioned installation does not give rise to undue risks to persons or the environment. The Nuclear Safety Council has the authority to suspend the operations of installations or of the activities that they perform, for safety reasons.
- e) To propose the initiation of such disciplinary proceedings it considers pertinent within the scope of its competences, according to the applicable legislation.

Furthermore, when initiating a disciplinary proceeding in matters relating to nuclear safety and radiological protection, the Nuclear Safety Council shall issue a report, of a mandatory nature, within three months, to analyse properly the events that are the object of the proceeding. This report shall be presented when the proceeding is initiated at the instances of another body, or in the case where, having been initiated as a result of a reasoned request from the Nuclear Safety Council itself, data other than that released by that body are included in that proceeding.

- f) To collaborate with the competent authorities in the elaboration of the criteria with which the off-site emergency plans and those for the physical protection of nuclear and radioactive installations, as well as transportation, must comply. Once these plans are formulated it shall participate in their approval.

To co-ordinate, in all those aspects related to nuclear safety and radiological protection, measures for assistance and response to emergency situations, integrating and co-ordinating the different bodies and public or private companies whose participation may be necessary for the implementation of the functions attributed to this body.

Furthermore, to carry out whatever other activities in emergency matters that may be assigned to it in the applicable regulations.

- g) To control the measures for the radiological protection of workers that are exposed in the course of their work, as well as the public and the environment. To monitor and control the doses of radiation received by the operating personnel and the offsite radioactive material discharges from nuclear and radioactive installations, as well as their incidence, specific or cumulative, in the areas of influence of these installations.

To assess the environmental radiological impact of nuclear and radioactive installations and those activities that involve the use of ionising radiation, according to the provisions of the applicable legislation.

To control and monitor the radiological quality of the environment throughout the national territory, in compliance with the international obligations of the Spanish State in this matter, without prejudice to the competencies that the different public administrations may have been entrusted to.

Similarly, to co-operate with the competent authorities in matters relating to environmental radiological supervision beyond the areas of influence of the nuclear or radioactive installations.

- h) To collaborate with competent authorities on programmes for the radiological protection of people subjected to medical diagnosis or treatment procedures with ionising radiation.
- i) To award, and when necessary, revoke authorisations to entities or companies that offer services in the field of radiological protection, as well as exercise inspection and control of the aforementioned entities, companies, services and authorised centres in matters of nuclear safety and radiological protection.

To collaborate with the competent authorities in relation to monitoring the health of workers that are professionally exposed as well as medical care of people potentially affected by ionising radiations.

To create and maintain the Register of External Companies for owners of nuclear or radioactive installations with workers classified as occupationally exposed, and to monitor or inspect the aforementioned companies insofar as it sees fit.

- j) To issue, at the request of an interested party, statements of favourable assessment regarding new designs, methodologies, simulation models or verification protocols related to nuclear safety and radiological protection.

- k) To inform the Ministry of Industry, Tourism and Trade on concentration or activity levels, for their consideration as radioactive waste, involving materials that contain or comprise radioactive substances, and for which no use is envisaged.
- l) To grant and renew, based on the conduct of the tests established by the Council itself, the licenses for operators and supervisors of nuclear or radioactive installations, the Diplomas for Heads of Radiological Protection Services, and accreditations to manage or operate X-ray facilities intended for medical diagnosis.

Likewise, to grant official approval for training and advanced training programmes and courses dealing specifically with matters of nuclear safety and radiological protection which qualify people to manage or to operate radioactive installations and the equipment of the X-ray installations destined for medical diagnosis, and to perform the functions of Head of Radiological Protection Services.

- ll) To carry out the studies, evaluations, and inspections of the plans, programmes and projects necessary in all the phases of radioactive waste management.
- m) To advise, whenever it is required to do so, the courts and organs of the public administration in matters relating to nuclear safety and radiological protection.
- n) To maintain official relationships with similar foreign bodies, and to participate in international organisations with competence in the field of nuclear safety and radiological protection.

Similarly, it shall collaborate with international bodies or organisations in programs of assistance on matters of nuclear safety and radiological protection, taking part in their execution, either directly, or by contracting third parties or entities for this end, always in compliance with the conditions determined by these organisations.

- ñ) To keep the public opinion informed on matters of its competence, to the extent and with the frequency that the Council determines, without prejudice to the publicising of its administrative actions as required by law.
- o) To be informed by the Government and to advise the Government regarding commitments to other countries or international organisations on nuclear safety and radiological protection, which shall be taken into account in the exercise of the functions that are attributed to the Council by this act.
- p) To set-up and monitor research plans within the field of nuclear safety and radiological protection.
- q) To gather accurate information, and to assist when required on health conditions that could affect people due to ionising radiations derived from the operation of nuclear or radioactive installations.
- r) To inspect, assess, control, propose, and adopt, if necessary, keeping competent authorities informed, as many preventive and corrective measures as are considered to be necessary in exceptional or emergency situations that may arise and which could compromise nuclear safety and radiological protection which originate in facilities, equipment, companies or activities that are not bound to the scheme of authorisations established by nuclear legislation.
- s) To file and keep the documentation which holders of licenses to operate nuclear facilities are required to submit to the Nuclear Safety Council on permanent cessation of activities, and prior to transfer of ownership, and to the grant of the authorisation to decommission the facility.

- t) To collaborate with competent authorities in undertaking nuclear safeguard inspections pursuant to the commitments assumed by the Spanish State.
- u) Any other that in the field of nuclear safety and radiological protection is legally entrusted to it.

Article 3

1. The processing of the proceedings and the concession of the necessary authorisations for nuclear and radioactive installations, for the transportation of nuclear substances or radioactive materials, and for the production of nuclear or radioactive components corresponds to the Ministry of Industry and Energy, without prejudice, if the case arises, to whatever is established in the respective statutes of the Autonomous Communities.
2. The prior authorisation, or the authorisation for the site, the construction and the provisional and final operating permits for nuclear and first category radioactive installations, as well as their dismantling, shall be awarded by the Minister of Industry and Energy, and the remainder by the Director General of Energy, without prejudice, if the case arises, of whatever is established in the respective statutes of the Autonomous Communities.
3. Regarding site authorisations, the Ministry of Industry and Energy shall require, for its ulterior delivery to the Nuclear Safety Council, the report of the Autonomous Communities, preautonomous bodies, or in their defect, the interested provinces, prior to the request for the Council's report. These bodies' report shall pronounce itself on the suitability of the proposal in terms of the existing standards and regulations, and in their case, regarding the competencies that have been attributed to them, incorporating the prior reports of the affected municipalities relating to their competencies with respect to the regulation of land and the environment.
4. In the cases that the present article contemplates, the Government shall be entitled to make use of the faculties foreseen in paragraph 2 of Article 180 of the Act on the Legal Status of Land Use and Urban Planning. The authorisations or licences whose award corresponds to any of the public administrations cannot be denied or conditioned for safety reasons whose appreciation corresponds to the Council.

Article 4

1. The Nuclear Safety Council shall consist of a Chairman and four Commissioners.
2. The legal framework of the Nuclear Safety Council shall comply with provisions of its statute and additionally the provisions in Chapter II, Title II of Act 30/1992 of 26 November on the Legal Regime of Public Administrations and Ordinary Administrative Procedure, as regards the system of adoption of decisions.
3. The relationship between the Plenary Meeting of the Nuclear Safety Council, as managing collegiate body thereof, and the Presidency is one of competence, and neither shall be hierarchically subordinated to the other. The relationships between the two governing bodies shall be ruled by principles of co-operation, deliberation and respect for the legitimate exercise of the competences of the other body.
4. The Council, upon recommendation of any of its members, shall appoint a Vice-chairman from among the Commissioners, who shall substitute the Chairman in case of absence, vacancy or illness.

5. The Council shall be assisted by a General Secretariat consisting of the administrative and legal bodies required for the accomplishment of its goals shall depend, as well as overseeing those internal or external technical bodies provided by the Statutes. The Secretary General will act as Secretary to the Council.

Article 5

1. The Chairman and Commissioners of the Nuclear Safety Council shall be chosen from among persons of acknowledged standing in the matters entrusted to the Council and with expertise in nuclear safety, technology, radiological and environmental protection, medicine, law or whatever other related field related as well as within the energy sector in general or industrial safety, particular importance being attached to their independence and objectivity.
2. They shall be appointed by the Government, on the proposal of the Minister of Industry, Tourism and Trade, following the appearance of the person proposed for the position before the corresponding Commission of the Congress of Deputies in accordance with the Rules of Procedure of the Congress. The Congress, through the competent Committee and with the agreement of three-fifths of its members, shall indicate its acceptance or reasoned veto, within one calendar month from the date of reception of the relevant communication.

Once this deadline has elapsed without an express decision from the Congress, the corresponding appointments shall be deemed as accepted.

The period of tenure shall be six years, with the possibility of re-appointment, by the same procedure, for a second six-year period at the most. Persons over seventy years of age shall not be appointed as Chairman or Commissioners.

3. The Secretary General of the Council, and the heads of any other technical body provided by the statutes shall be appointed by the Government on the proposal of the Minister of Industry, Tourism and Trade, subject to a favourable Council Report. No person over 70 years of age shall be eligible for the position of Secretary General of the Council, or any other Secretary General position provided in the statutes.

Article 6

The positions of Chairman, Commissioners and Secretary General of the Nuclear Safety Council and any other technical body provided by the statute, are incompatible with any other position or function, remunerated or otherwise, and, for the entire duration of their mandate or position, they shall receive exclusively, the remuneration established commensurate with their function. Upon termination of their office and for the two following years they shall not engage in any professional activity related to nuclear safety and radiological protection. The financial compensation reflecting this limitation shall be determined by regulation.

Article 7

1. The term of office of the Chairman and Commissioners of the Nuclear Safety Council shall terminate for the following reasons:
 - a) On their reaching seventy years of age.
 - b) At the end of their term of office.
 - c) At their own request.
 - d) On the occurrence of any one of the incompatibilities established in this act.
 - e) By a decision of the Government, following the same procedure established for their nomination, when they are considered incapable of carrying out their functions or because they have ceased to attend to the duties of their position diligently.

The Congress of Deputies, through the competent Committee and with the agreement of three-fifths of its members, shall urge the Government to dismiss the Chairman and Commissioners at any time.

When the term of office of the Chairman and Commissioners is terminated upon completion of the period for which they were appointed, they shall continue to undertake their duties until their successors take up on their functions. The Congress, through the relevant Committee, shall confirm the extension if it exceeds six months.

2. When a Commissioner resigns for one of the causes listed above, except for that referred to in letter b) of the previous number, a new Commissioner shall be appointed, according to the established procedure, for the period remaining until the end of the mandate of the resigned Commissioner.

Article 8

1. The technical personnel of the Nuclear Safety Council shall be made up of staff of the Nuclear Safety and Radiological Protection Agency. The system of entry, filling of vacancies, promotion, mobility and other rights and duties of the of the staff of this special body will be the same as that for staff of the central state administrations, taking into account the functional scope of said body.
2. The Council, under the regulations established in the statute, shall contract the services of staff, companies and organisations for specific work or studies, provided that they are not related in any way to the people assigned by the services contracted. Workers that do not belong to the Nuclear Safety Council shall in no case take direct part in the decision making process regarding ongoing administrative proceedings. The Nuclear Safety Council shall establish the means necessary to ensure that externally contracted staff, companies, and organisations always comply with the independence obligations required while rendering their services.

Article 9

The assets and economic resources which the Council shall have at its disposal for the accomplishment of its functions shall be the following:

- a) Those proceeding from the collection of the fee created by this present act.
- b) The assignments that are established annually in the General State Budgets.
- c) Whatever others can legally be attributed to it.

Article 10¹

Article 11

The Nuclear Safety Council shall keep the Government, the Congress of Deputies and the Senate informed in a timely manner of any circumstance or event affecting safety at nuclear and radioactive facilities, or environmental radiological quality of the environment at any place in the national territory, along with any Governments and Parliaments of the autonomous regions concerned.

As regards the Congress of Deputies and the Senate, this information shall be channelled through an *ad hoc* parliamentary panel or committee, to which a report on compliance with all resolutions enacted by the Chambers for whose execution the Nuclear Safety Council is responsible. This parliamentary panel or committee shall request Council officers and officials to appear before it as many times as it deems appropriate. In its turn, the Plenary Meeting of the Council may also request to appear before the same panel or committee to report any issue within its competence that it deems of interest to the two Houses.

The Nuclear Safety Council shall submit an annual report on its activities to both Houses of the Spanish Parliament, and to the Parliaments of those Autonomous Communities whose territory hosts nuclear facilities.

Article 12

The access to information and public participation in relation to Council competences referring to nuclear safety and radiological protection, shall be governed by the provisions of Act 27/2006 of 18 July, regulating rights of access to information, public participation and access to courts in environmental issues.

Article 13

1. Natural or legal persons in service at nuclear and radioactive facilities, irrespective of the employment and contractual relationship binding them to the latter, shall notify license holders of any known event which affects or which might affect safe operations thereof, and the fulfilment of current legislation on nuclear safety or radiological protection.

1. Single repealing provision of Act 14/1999, of 4 May, on Public Prices and Fees for services rendered by the Nuclear Safety Council, states that "Any provision that contravene that established in this act is repealed and, in particular, Article 10 of Act 15/1980, creating the Nuclear Safety Council, and Royal Decree 3229/1982, of 12 November, regulating the fee for the services rendered by the Nuclear Safety Council".

Should licence holders fail to undertake corrective measures diligently, the said persons shall notify the Nuclear Safety Council.

2. Employers taking reprisals against workers reporting any safety related event to the Nuclear Safety Council shall be sanctioned in accordance with the provisions of nuclear energy legislation.
3. The administrative mechanisms needed to provide for the exercise of this right shall be developed by regulations.
4. The exercise of this right shall not give rise adverse consequences for the worker in his/her position, unless he/she is proven to have acted in bad faith.

Any decision made by the licensee detrimental to, or to the prejudice of any labour rights of workers who have exercised the right provided in this article, shall be deemed as null and void.

Article 14

The Nuclear Safety Council shall provide access to information and facilitate involvement in its operation to citizens and the civil society. To that end:

1. It shall keep citizens informed of all relevant facts related to the operation of nuclear and radioactive facility, especially matters related to safe operation, radiological impact on people and the environment, events and incidents taking place therein, as well as the corrective measures taken to prevent a recurrence of such events. In order to facilitate access to the information, the Nuclear Safety Council shall employ information and communications technologies.
2. It shall provide information on all Council decisions, clearly stating the subjects and motives for the decision and the results of the voting.
3. It shall submit instructions and technical guides for public discussion during the preparation stage, making extensive use of the Nuclear Safety Council corporate website in order to facilitate public access.
4. It shall promote and take part in information forums in the areas surrounding nuclear facilities, in which issues related to their operation may be addressed, especially in relation to preparedness for emergency situations and the analysis of the events that have occurred.

Article 15

1. An Advisory Committee for public information and involvement regarding nuclear safety and radiological protection shall be created, chaired by the Chairman of the Nuclear Safety Council, whose mission will be to issue recommendations for the Nuclear Safety Council in order to increase transparency, access to information and public involvement in matters within its competence.

The recommendations of the Advisory Committee shall not be binding for the Nuclear Safety Council.

2. This Advisory Committee shall be comprised by the following members, which shall be appointed by the Chairman of the Nuclear Safety Council:
 - a) a representative nominated by the Ministry of Industry, Tourism and Trade;

- b) a representative nominated by the Ministry of Health and Consumer Affairs;
- c) a representative nominated by the Ministry of the Interior;
- d) a representative nominated by the Ministry of the Environment;
- e) a representative nominated by the Ministry of the Education and Science;
- f) a representative nominated by each of the Autonomous Communities hosting nuclear facilities within their territory, or which have established management agreements with the Nuclear Safety Council;
- g) a representative nominated by the Spanish Federation of Municipalities and Provinces and a representative nominated by the Association of Municipalities Affected by Nuclear Power Plants;
- h) two representatives nominated by the Spanish Electricity Industry Association;
- i) a representative nominated by ENRESA and another nominated by ENUSA;
- j) a representative nominated by each of the two largest nationwide labour organisations;
- k) a representative nominated by each of the two largest national non-governmental organisations, whose object is to protect the environment and sustainable development;
- l) five national or foreign experts, who shall be independent and of acknowledged standing in scientific, technical, economic or social spheres, or in information and communications.

Ministry representatives shall at least have the rank of Deputy Director General, or equivalent.

- 3. The Advisory Committee shall obtain from the Nuclear Safety Council all information it considers necessary to exercise its function.
- 4. The system of decisions and operating standards of the Advisory Committee shall be regulated by the Statute of the Nuclear Safety Council.
- 5. The Government is authorised to modify the composition of this Advisory Committee by Royal Decree.

First Additional Provision²

For the purposes of this act, the definitions included in Article 2 of Act 25/1964 of 29 April, on Nuclear Energy shall apply as well as the following:

- 1. First category radioactive installations are:
 - a) Factories for the production of uranium, thorium and their compounds.

2. Phrasing granted by the Third Additional Provision of Act 33/2007 of 7 November.

- b) Factories for the production of natural uranium fuel elements.
 - c) Facilities using radioactive sources with industrial irradiation purposes.
 - d) Complex facilities handling very large inventories of radioactive substances, or where radiation beams of very high energy fluency are produced, to an extent such that the potential radiological impact of the facility is significant.
2. Second category radioactive installations are:
- a) Installations where radioactive nuclides are handled or stored, which can be used for scientific, medical, agricultural, commercial or industrial use, and whose total activity is equal or exceeds a thousand times the exemption activity established by regulations.
 - b) Installations that use X-ray generating machines that can function with a peak tension superior to two hundred kilowatts
 - c) Particle accelerators and installations where neutron sources are stored.

Provided that there are no grounds for their classification as first-class radioactive installations.

3. Third category radioactive installations are:
- a) Installations where radioactive nuclides are manipulated or stored, whose total activity exceeds the exemption activity established by regulations and is lower than a thousand times said exemption activity.
 - b) Those installations that use X-ray generating machines, whose peak tension is less than two hundred kilowatts.

Second Additional Provision³

Third Additional Provision

The Nuclear Safety Council can assign to the Autonomous Communities the performance of the functions that are attributed to it, according to the general principles that the Council agrees on for their implementation.

Fourth Additional Provision⁴

The functions and faculties attributed to the Nuclear Safety Council by this act, in reference to nuclear and radioactive facilities, shall be carried out in the same terms with respect to the experimental devices and

3. Its content has been tacitly repealed by Articles 89 and 91 of Act 25/1964 of 29 April on Nuclear Energy, by the new phrasing given thereto by Act 33/2007 of 7 November, which comes to add a New Additional Provision, the fifth, to Act 15/1980 of 22 April.

4. Phrasing provided by Article 74 of Act 61/2003 of 30 December, Fiscal, Administrative and Social Measures (BOE – *Spanish Official Gazette* 31 December 2003).

facilities defined in Article 2 of the Nuclear Energy Act, Act 25/1964 of 29 April, unless a more specific regulation were legally established for such experimental devices and facilities.

Fifth Additional Provision *Amendment of Chapter XIV of the Nuclear Energy Act* Chapter XIV of Act 25/1964 of 29 April on Nuclear Energy, reads as follows:

Chapter XIV

Regarding infringements and sanctions in nuclear matters

Article 85 Liable Persons

Without prejudice to any civil, criminal or any other type of liability, and the material responsibility resulting from the commission of punishable acts, the owner of the facility or person for the activity shall be deemed as responsible for fulfilling its duties surveillance and control duties.

Article 86 Infringements

Any action or omission constituting failure to fulfil or comply with provisions of this act, Act 15/1980 of 22 April, creating the Nuclear Safety Council and its implementing regulations, as well as in treaties and conventions entered into and ratified by Spain shall be construed as an administrative infringement.

According to their gravity, infringements are classified as very grave, grave and minor.

a) The following are very grave infringements:

1. The exercise of any activity regulated by this act or its implementing regulations without having obtained the mandatory permit, or after its expiry, suspension or revocation where such exercise results in grave danger to the safety or health of persons or serious harm to material objects or the environment.
2. Failure to comply with an order of the Nuclear Safety Council, its agents or other competent authority, to cease in any ongoing activity, or to shut down operations in the nuclear or radioactive facility concerned.
3. Failure to fulfil the terms, limits or conditions attached to the authorisations, as well as failure to apply technical, administrative, or any other type of measures imposed on an activity or the operation of facility, or failure to comply with the deadlines set for their implementation, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
4. Failure to comply with instructions issued pursuant to the aforementioned authorisations or licenses, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
5. Failure to adopt technical, administrative or any other type of measure required to correct deficiencies in the activity known to the licensee, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
6. Operation of nuclear or radioactive facilities, or handling of radioactive materials without having the staff holding the required license, diploma or accreditation for managing or executing the

operations, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.

7. Failure by licensed staff to carry out their duties of fulfil the terms and conditions attached to the licence, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
8. The operation of facilities or the conduct of activities that could entail exposure to radiation of artificial or natural origin without adopting the necessary measures for their conduct in compliance with the principles, limits and procedures established in health protection against ionising radiations, both in normal situations, and in the case of accidental exposure or emergencies, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
9. Handling, transporting, or disposing of radiological material or equipment producing ionising radiations, which have been sealed or seized for nuclear safety or radiological protection reasons.
10. The abandonment or discharge of radioactive materials, whatever their physical condition or chemical formulation, in the atmosphere, water, soil, subsoil, which due to the magnitude and characteristics thereof give rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
11. Deliberate addition of radioactive material in the production of foodstuffs, toys, personal and cosmetic ornaments, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
12. The supply or transfer of radioactive materials to persons or entities who lack the required authorisations for their possession and use, or when those substances or materials fail to fulfil established identification and marking requirements, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
13. The lack of required systems for storage, processing, and, if needed, evacuation of effluent or radioactive waste, where such conduct gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
14. Failure to proceed with the decommissioning and closure of nuclear and radioactive facilities once the operation has ceased, or failure to have a safe destination for redundant radioactive materials, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
15. The exercise of any activity regulated by this act, or by the present Act 15/1980 of 22 April on the creation of the Nuclear Safety Council, and its implementing provisions, without having civil liability coverage for the damage that might arise thereof, as laid down in specific applicable regulations.

Should the infringement refer to transport of radioactive material, the present section shall only be applicable if it affects the transport of nuclear fuel, irradiated or not, or of radioactive waste with a concentration of radionuclides such that the generation of thermal energy during its storage and evacuation needs to be taken into account.

16. Impeding access of officials appointed by legally empowered national and international authorities, and their accompanying staff, accredited by those authorities, to nuclear and radioactive facilities or other premises or sites, irrespective of the activity carried on therein, where necessary for the purposes of inspection.
 17. Impeding inspections, assessments or controls carried out by officials appointed by legally empowered authorities, and their accompanying staff, accredited by those authorities, by preventing them from taking samples or measurements, or concealing or refusing to disclose documents or information, or furnishing false or deliberately incomplete documents or information, whether or not requested by those officials, whenever by nature or content that documentation is necessary to establish the conclusions of the inspection, assessment or control, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
 18. Failure to comply with the obligations of information and notification, in due time and form, to the legally empowered authorities or to their agents, which gives rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
 19. Deliberate failure to comply with the obligations to provide information, intentional provision of false or incomplete information, loss of control over special fissile material, where that material can have a direct application as part of a nuclear explosive device and is not recovered, obstruction of inspections, assessments or controls carried out by officials appointed by legally empowered authorities, and the conduct of activities subject to the nuclear non-proliferation system, when carried on voluntarily for the purpose of contributing to the manufacture of a nuclear explosive device, even if nuclear materials are not handled, where any of these failures to comply make it impossible to fulfil the obligations concerning nuclear non-proliferation under the international agreements entered into by Spain.
 20. Inadequacy or non-compliance with the measures required to prevent the presence of non-controlled materials in vital or protected areas of a nuclear and radioactive facility where, due to their nature and location, there arises a grave danger to safety or health of persons, or serious harm to material objects or the environment.
 21. Inadequacy of or failure to comply with the measures destined to prevent the presence of non-authorized personnel in vital or protected areas of a nuclear and radioactive facility, where that presence gives rise to a grave danger to the safety or health for persons, or serious harm to material objects or the environment.
- b) The following are grave infringements:
1. The actions or omissions specified in section a) of this article, with the exception of paragraphs 2, 9, 15, 16, 19 and 21, provided that they do not give rise to a grave danger to the safety or health for persons, or serious harm to material objects or the environment, and that the said conduct is not categorised as a minor infringement.
 2. Failure to adopt measures necessary for safely disposing of radioactive materials found in out of control situations, either because they have never been controlled, or because they have been abandoned, lost, diverted, stolen, or transferred illegally, except for those cases which give little rise to a grave danger to the safety or health for persons, or serious harm to material objects or the environment.

3. Failure to comply with the obligations related to the generation, filing and custody of the records required in order to carry on the activity or to control radioactive materials, where that failure to comply entails loss of the information concerned.
4. Failure to furnish workers with the training or information required to allow them to perform their duties in compliance with the established standards and procedures on nuclear safety, ionising radiological protection, physical protection, or emergency procedures, except where there arises little danger to the safety or health for persons, or serious harm to material objects or the environment.
5. Actions or omissions which prevent or hinder the staff of the organisation or external companies rendering services to the facility, onsite or off site, from exercising the right to communicate deficiencies or dysfunctions which might compromise nuclear safety or radiological protection, or their involvement in the clarification of facts, or which involve discriminatory measures against those who have exercised that right.
6. Transport of radioactive materials, without having the civil liability coverage for any damages that might result from the activity, as laid down in specific applicable regulations.

Should the transport affect nuclear fuel, whether irradiated or not, or radioactive waste with a concentration of radionuclides such that the generation of thermal energy during its storage and evacuation needs to be taken into account, the infringement shall be treated as very grave specified in paragraph 15 of Article 86.a).

7. Deliberate failure to comply with the obligations to provide information, intentional provision of false or incomplete information, loss of control over special fissile material, where it is recovered and obstruction of inspections, assessments or controls carried out by officials appointed by legally empowered national or international authorities where any of these failures to comply make it impossible to fulfil the obligations concerning nuclear non-proliferation under the international agreements entered into by Spain.
8. Insufficiency or lack of observance of measures aimed at preventing the presence of unauthorised staff in vital or protected areas of a nuclear or radioactive facility

c) The following are minor infringements:

1. The actions or omissions specified in epigraph a) of this article, with the exception of those included in numbers 2, 9, 15, 16, 19 and 21, provided that they do not give rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
2. Failure to adopt measures necessary for safely disposing of radioactive materials found in situations out of control, either because they have never been controlled, or because they have been abandoned, lost, diverted, stolen, or transferred illegally, in those cases which do not give rise to a grave danger to the safety or health of persons, or serious harm to material objects or the environment.
3. Failure to comply with the obligations related to the generation, filing and custody of the records required to carry on the activity or to control radioactive materials, where that information is recovered.

4. Failure to furnish workers with the training or information required to allow them to carry on their duties in compliance with established standards and procedures on nuclear safety, radiological protection, physical protection, or emergency procedures, where there arises no danger to the safety or health of persons or serious harm to material objects or the environment.
5. Merely technical failure to comply with the obligations in non-proliferation, provided that it does not hinder compliance with any of the obligations concerning nuclear non-proliferation under the international agreements entered into by Spain, or loss of control over basic material.

Article 87 Qualification

1. For the purposes of this Chapter, grave danger to the safety or health of persons shall be deemed to arise when safe operation of the activity is degraded to such an extent that all devices, mechanisms or other safety barriers, or available administrative measures, fail to ensure prevention of exposure to ionising radiations, at doses corresponding to the appearance of determinist effects.
2. For the purposes of this Chapter, serious harm to material objects or the environment shall be deemed to arise when, as a consequence of their exposure to ionising radiations, present or future use of objects or the environment is affected.
3. For the purposes of this Chapter, danger to the safety or health of persons shall be deemed as not having arisen, or little danger to the safety or health of persons not having arisen when the safety of the operation of facility are not significantly affected, and no situation occurs which results in undue exposure to ionising radiations or, if such situations occur, doses remain under limits established by the regulations.
4. For the purposes of this Chapter, little damage shall be deemed to have arisen, when present or future use of objects or the environment is not affected.

Article 88 Classification of sanctions

1. Sanctions shall be classified, in accordance with the principles of proportionality and the circumstances specified in paragraph 2 of this article, in three degrees: maximum, intermediate and minimum.
2. To classify the corresponding sanctions, the following circumstances shall be taken into account:
 - a) The magnitude of the harm caused to persons, objects or the environment.
 - b) The duration of the danger situation caused by an infringement.
 - c) The impact of the infringing conduct on the safety of the activity.
 - d) The existence or otherwise of previous cases of overexposure of employees or the public to ionising radiations within a two year period.
 - e) The safety management background in the activity within a two year period.
 - f) Failure to comply with previous notices, requests or warnings issued by competent authorities.

- g) Lack of consideration given to communications from employees, their legal representatives or third parties relating to nuclear safety or radiological protection.
- h) Profit obtained as a result of the commission of the infringement.
- i) The existence or otherwise of intent or negligence in the commission of an infringement, where these circumstances are not considered in the classification of the infringement and its reiteration.
- j) Diligence in the detection and identification of the facts constituting the infringement and their communication to competent authorities.
- k) Immediate rectification of the causes and effects of the infringement by the responsible person on his/her own initiative.
- l) Collaboration with the competent authority in the clarification of the events.
- m) Reoffending, by commission within a two year period, with respect to more than one infringement of the same nature, when it so declared so by final decision without recourse.
- n) The amount of nuclear material out of control, and its recovery or otherwise, when this latter circumstance is not foreseen in the classification of the infringement.

Article 89 *Sanctions*

1. In the case of power plants, the infringements typified in this act shall be subject to the following sanctions:

Very grave infringements, with a fine ranging, in minimum degree from EUR 9 000 001 up to EUR 15 000 000, in intermediate degree from EUR 15 000 001 up to EUR 20 000 000, and in maximum degree, from EUR 20 000 001 up to EUR 30 000 000.

Grave infringements, with a fine ranging, in minimum degree from EUR 300 001 up to EUR 1 500 000, in intermediate degree from 1 500 001 up to EUR 4 500 000, and in maximum degree, from EUR 4 500 001 up to EUR 9 000 000.

Minor infringements, in minimum degree with a fine of EUR 15 000, in intermediate degree from EUR 15 001 up to EUR 150 001, and in maximum degree, from EUR 150 001 up to EUR 30 000.

2. In the case of nuclear facilities, other than nuclear power plants, the infringements defined in this act shall be subject to the following sanctions:

Very grave infringements, with a fine ranging, in minimum degree from EUR 3 000 001 up to EUR 5 000 000, in intermediate degree from EUR 5 000 001 up to EUR 7 000 000, and in maximum degree from EUR 7 000 001 up to EUR 10 000 000.

Grave infringements, with a fine ranging, in minimum degree from EUR 100 001 up to EUR 500 000, in intermediate degree from 500,001 up to EUR 1 500 000, and in maximum degree, from EUR 1 500 001 up to EUR 3 000 000.

Minor infringements, in minimum degree with a fine of EUR 12 000, in intermediate degree from EUR 12 001 up to EUR 50 000, and in maximum degree, from EUR 50 001 up to EUR 100 000.

3. In the case of category two and three radioactive facilities are concerned, radiation protection technical units, radiological protection services, dosimetry centres, medical X-Ray equipment vendors and technical support companies, radioactive material transport, or any other activity and entity regulated by this act and its implementing regulations, the infringements typified in this act shall be subject to the following sanctions:

Very grave infringements: Fines of the minimum degree from EUR 150 001 up to EUR 200 000, of the intermediate degree from EUR 200 001 up to EUR 400 000, and of the maximum degree from EUR 400 001 up to EUR 600 000.

Grave infringements: Fines of the minimum degree from EUR 6 001 up to EUR 15 000, of the intermediate degree from EUR 15 001 up to EUR 30 000, and of the maximum degree from EUR 30 001 up to EUR 150 000.

Minor infringements: Fines of the minimum degree EUR 1 200, of the intermediate degree from EUR 1 201 up to EUR 3 000, and from EUR 3 001 up to EUR 6 000 in maximum degree.

4. In the case of category one radioactive facilities, or transports of radioactive sources corresponding to the main activity of said facilities, the fines shall be reduced, for all infringement degrees, to one third of those established by section 2 of this article.
5. In case of transports of nuclear fuel, whether irradiated or not, or radioactive waste with a concentration of radionuclides such that the generation of thermal energy during storage and evacuation thereof needs to be taken into account, fines shall be reduced, for all infringement degrees, to two thirds of those established in section 2 of this article.
6. Very grave infringements shall, along with the fines provided, result in the revocation, withdrawal, or temporary suspension of the authorisations, licences or registrations in registers. The effectiveness of these measures may be ensured by the intervention or sealing of nuclear substances, radioactive materials, or equipment units producing ionising radiations, or the implementation of any applicable provisional measure.

Likewise, they shall result in temporary or permanent barring of eligibility to hold any type of authorisation or license regulated by this act, by Act 15/1980 of 22 April on the Creation of the Nuclear Safety Council, and by its implementing regulations.

Article 90 Other Measures

Initiation of a proceeding for infringement of any of the provisions of this act or the regulations thereunder, shall result, if appropriate, following the agreement of the Ministry of Industry, Tourism and Trade, in immediate intervention with respect to nuclear fuel and radioactive materials, and subsequent prohibition of the purchase of further amounts of fuels and materials insofar as the causes that prompted the said intervention do not disappear.

Article 91 Procedure and competences

1. The procedure for imposing sanctions shall be in accordance with the principles of articles 127 through 138 of Act 30/1992 of 26 November on the Legal Regime of Public Administrations and Ordinary Administrative Procedure, and the provisions of Royal Decree 1398/1993, of 4 August

approving the procedure for the exercise of powers of sanction, with the exception of the maximum period for processing and notifying the relevant decision, which shall be one year.

2. The Nuclear Safety Council will propose, if necessary, the initiation of the corresponding sanctionary proceeding with regards to those facts that might constitute an infringement of nuclear safety, radiological protection, or physical protection matters, reporting to the authority responsible for initiating the proceeding both the events constituting the infringement observed, and the relevant circumstances necessary for its appropriate classification.

Furthermore, once a sanctionary proceeding in matters relating to nuclear safety and radiological protection is initiated, the Nuclear Safety Council shall issue a report, of a mandatory nature, within a period of three months, for the adequate classification of the events that are the subject of the proceeding. This report shall be issued when the proceeding is not initiated at the proposal of the Nuclear Safety Council, or in the event that, having been initiated at its proposal, the proceeding includes other data other than that communicated by it.

The Nuclear Safety Council report will result in the suspension of the period the sanctionary proceeding until it is issued, and in any case for a maximum three month period from the time when it was requested.

3. In the event of alleged infringements that could be qualified as minor, the Nuclear Safety Council, instead of proposing the initiation of the sanctionary proceeding, may warn the licensee for the activity and require the relevant corrective measures, where the circumstances so advise it, and that no direct harm or injury is caused to persons or the environment.

If this requirement is not fulfilled, the Nuclear Safety Council may impose mandatory fines of a sum of ten per cent, the first time, ten per cent, and on the second and subsequent occasions, twenty per cent of the average corresponding sanction, in the intermediate degree, in order to bring about the cessation of acts of commission or omission which conflict with the provisions of present act or Act 15/1980 of 22 of April on the Creation of the Nuclear Safety Council, and their implementing regulations.

4. Irrespective of the sanction that might be applicable to the licensee, the Nuclear Safety Council shall admonish in writing the physical person who, by grave negligence, is responsible for a bad practice resulting in the material commission of sanctionable acts.
5. Under the jurisdiction of the State Administration, the organisations and units comprising the Directorate General for Energy Policy and Mines shall be responsible for initiating and conducting the sanctionary proceedings set out in this chapter.
6. Under the jurisdiction of the state administration, sanctions for very grave infringements by licensees of first class nuclear or radioactive facility shall be imposed by the Council of Ministers, for grave infringements by the Ministry of Industry, Tourism and Trade, and from minor infringements, by the Chairman of the Directorate General for Energy Policy and Mines.

Sanctions resulting from very grave infringements by licensees of second and third class radioactive facility and the remaining activities regulated by this act or its implementing regulations shall be imposed by the Ministry of Industry, Tourism and Trade, and by the Chairman of the Directorate General for Energy Policy and Mines, in the case of grave and minor infringements.

7. Under the jurisdiction of the autonomous communities, the provisions of their own regulations shall apply.
8. The Government, by Royal Decree, shall revise the amounts of the fines established in this act in accordance with changes in the consumer price index.
9. With regard to transport of radioactive materials, this table of sanctions shall be applicable to those aspect specifically regulated by this act or its implementing regulations, without prejudice to the infringements and sanctions established in basic transport legislation.

Article 92 Precautionary Measures

The body competent for imposing sanctions, upon Nuclear Safety Council proposal, may, *inter alia*, impose the following precautionary measures:

- a) Corrective, safety or control measures to prevent the continuance of in the infringement, or the occurrence of the hazard or damage.
- b) Sealing of devices or equipment.
- c) Seizure of materials or equipment.
- d) Temporary, partial, or total suspension of operation of the facility or conduct of the activity.

The measures specified in the previous paragraph shall be agreed upon prior to initiation of or during the, administrative sanctionary proceeding, in accordance with the provisions of Articles 72 and 136 of Act 30/1992 on the Legal Regime of Public Administrations and Ordinary Administrative Procedures.

Article 93 Prescription

1. The infringements and sanctions provided in this chapter shall be time barred as follows:
 - a) Very grave infringements, after five years, grave infringements, after three years, and minor infringements, after one year.
 - b) Sanctions imposed for very grave infringements, after five years, those imposed for grave infringements, after three years, and those imposed for minor faults, after one year.
2. The period of prescription of infringements shall be counted from the day when the infringement occurred. For infringements resulting from an activity sustained over time, the starting date for the calculation shall be that on which the activity in which the infringement took place ended, or the moment in which the competent administration detected the existence of the infringement.

The initiation of a sanctionary proceeding shall interrupt the prescription period, upon notice to the interested parties, and the prescription period shall resume if the sanctionary proceeding is stopped for more than one month for causes not attributable to the alleged offender.

3. The prescription period of sanctions shall begin from the date on which the sanctionary decision becomes final without recourse, and the prescription shall be interrupted when the corresponding procedure is initiated, upon notice to the interested party.

Sole Repeal Provision

All provisions of equal or lower rank that contradict with the provisions of this act are repealed.

First Final Provision

The Government, within a maximum period of nine months from the date of entry into force of this act, shall approve the amendment of the Statute of the Nuclear Safety Council.

Second Final Provision

This act shall enter into force on the day following its publication in the *Official State Gazette*.

Wherefore,

We order all Spaniards, both individuals or authorities, to observe and ensure the observation of this act.

Madrid, 7 November 2007
JUAN CARLOS R

The President of the Government,
JOSÉ LUIS RODRÍGUEZ ZAPATERO