

Factsheet done for Dr Paul Dorfman, The Energy Institute, University College London

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Workshop on public participation in the area of Radioactive Waste Management

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- *Statement from Brigitte Artmann, Aarhus Konvention Initiative – from a public view*
- *Germany, 01 September 2015*

A. COUNCIL DIRECTIVE 2011/70/EURATOM vs. the Aarhus Convention and the SEA Directive 2001/42/EC

B. Emergency Preparedness & Response (See page 8)

A. COUNCIL DIRECTIVE 2011/70/EURATOM

vs. the Aarhus Convention and the SEA Directive 2001/42/EC

Keywords from the COUNCIL DIRECTIVE 2011/70/EURATOM are highlighted in yellow.

The COUNCIL DIRECTIVE 2011/70/EURATOM requires

1. “plans and programmes within the scope of Directive 2001/42/EC.”
 - This means a Strategic Environment Assessment procedure has to be done first, before a project-related Environmental Impact Assessment procedure. But the Directive 2001/42/EC itself is violating the Aarhus Convention because it offers no legal public participation “when all options are open” (Aarhus 6.4) and no “access to justice” (Aarhus 9).
2. “Plans, programmes” and “policies” done “in accordance with national and international obligations, ensuring effective public information and opportunities for all stakeholders concerned, including local authorities and the public, to participate”. And further “over-arching objectives of the national programme;”
 - This means, a Strategic Environment Assessment procedure done under the Directive 2001/42/EC. This means public participation under the Aarhus Convention Article 7 (Plans, programmes and policies) with legal public participation “when all options are open” (Aarhus 6.4) and “access to justice” (Aarhus 9).
3. “There shall be some form of legal instrument” and it mentions that “It is broadly accepted at the technical level that, at this time, deep geological disposal represents the safest and most sustainable option”.

- This means, the COUNCIL DIRECTIVE 2011/70/EURATOM is violating the Aarhus Convention (Aarhus Article 9 “access to justice” and Article 6.4 “when all options are open”).

4. “This should enable the identification of areas of uncertainty (...) based on a collection of arguments and evidence that seek to demonstrate that the required standard of safety is achieved.”

- This means a **transboundary** Strategic Environment Assessment is required from the COUNCIL DIRECTIVE 2011/70/EURATOM. Until today, far as known, only Denmark and Germany did one. (Who else did a transboundary SEA?)

5. “The Member States shall ensure that the public be given the necessary opportunities to participate effectively in the decision-making process regarding spent fuel and radioactive waste management in accordance with national legislation and international obligations.”

- This requires a Strategic Environment Assessment procedure and public participation under the Aarhus Convention Article 7 (plans, programmes and policies), under Article 6.4 (when all options are open) and under Article 9 (access to justice). Until today, only Denmark and Germany have done a Strategic Environment Assessment procedure. The German public (Brigitte Artmann, Ute Schlumpberger – by the way, some French citizens should demand this too, may be with a lawsuit) has demanded a transboundary Strategic Environment Assessment procedure from France in the case of CIGÉO Bure (Letter to Minister Royal attached). An informal Débat Public is no legal Strategic Environment Assessment procedure, which is ABSOLUTELY necessary for a correct planning procedure on which in the end the building and operation permission is based.

6. “Good practice” (!!!!!) –

- This means: Legal participating in a Strategic Environment Assessment procedure as required by international “obligations” (the Aarhus Convention) and the possibility to challenge a faulty procedure legally.

- This is possible in the Environmental Impact Procedure. Germany will make it possible to challenge a faulty procedure legally.

More keywords from the text below:

“Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 23 August 2013.”

“shall ensure the implementation of its national programme”

“The national programmes shall set out how the Member States intend to implement their national policies”

“assessment of the national programme”

COUNCIL DIRECTIVE 2011/70/EURATOM - of 19 July 2011

vs. the Aarhus Convention and the *SEA Directive 2001/42/EC* (Keywords)

- (3) Article 37 of the Euratom Treaty requires Member States to provide the Commission with general data relating to any plan for the disposal of radioactive waste.
- (11) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment (12) applies to certain plans and programmes within the scope of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (13).
- (23) The typical disposal concept for low and intermediate-level waste is near-surface disposal. It is broadly accepted at the technical level that, at this time, deep geological disposal represents the safest and most sustainable option as the end point of the management of high-level waste and spent fuel considered as waste. Member States, while retaining responsibility for their respective policies in respect of the management of their spent fuel and low, intermediate or high-level radioactive waste, should include planning and implementation of disposal options in their national policies. Since the implementation and development of a disposal facility will take place over many decades, many programmes recognise the necessity of remaining flexible and adaptable, e.g. in order to incorporate new knowledge about site conditions or the possible evolution of the disposal system. The activities conducted under the Implementing Geological Disposal of Radioactive Waste Technology Platform (IGD-TP) could facilitate access to expertise and technology in this respect. To that end, reversibility and retrievability as operating and design criteria may be used to guide the technical development of a disposal system. However, those criteria should not be a substitute for a well designed disposal facility that has a defensible basis for closure. A compromise is needed as the management of radioactive waste and spent fuel is based on state-of-the-art science and technology.
- (28) Member States should establish national programmes to ensure the transposition of political decisions into clear provisions for the timely implementation of all steps of spent fuel and radioactive waste management from generation to disposal. It should be possible for such national programmes to be in the form of a single reference document or a set of documents.
- (29) It is understood that national arrangements for the safety of spent fuel and radioactive waste management will be applied through some form of legal, regulatory or organisational instrument, the choice of which rests within the competence of the Member States.
- (31) Transparency is important in the management of spent fuel and radioactive waste. Transparency should be provided by ensuring effective public information and opportunities for all stakeholders concerned, including local authorities and the public, to participate in the decision-making processes in accordance with national and international obligations.

(34) The documentation of the decision-making process as it relates to safety should be commensurate with the levels of risk (graded approach) and should provide a basis for decisions related to the management of spent fuel and radioactive waste. This should enable the identification of areas of uncertainty on which attention needs to be focused in an assessment of safety. Safety decisions should be based on the findings of an assessment of safety and information on the robustness and reliability of that assessment and the assumptions made therein. The decision-making process should therefore be based on a collection of arguments and evidence that seek to demonstrate that the required standard of safety is achieved for a facility or activity related to the management of spent fuel and radioactive waste. In the particular case of a disposal facility, the documentation should improve understanding of those aspects influencing the safety of the disposal system, including natural (geological) and engineered barriers, and the expected development of the disposal system over time.

Article 4

General principles

1. Member States shall establish and maintain national policies on spent fuel and radioactive waste management. Without prejudice to Article 2(3), each Member State shall have ultimate responsibility for management of the spent fuel and radioactive waste generated in it.
3. National policies shall be based on all of the following principles:

CHAPTER 2

OBLIGATIONS

Article 5

National framework

1. Member States shall establish and maintain a national legislative, regulatory and organisational framework ('national framework') for spent fuel and radioactive waste management that allocates responsibility and provides for coordination between relevant competent bodies. The national framework shall provide for all of the following:
 - (a) a national programme for the implementation of spent fuel and radioactive waste management policy;

Article 8

Expertise and skills

Member States shall ensure that the national framework require all parties to make arrangements for education and training for their staff, as well as research and development activities to cover the needs of **the national programme** for spent fuel and radioactive waste management in order to obtain, maintain and to further develop necessary expertise and skills.

Article 9

Financial resources

Member States shall ensure that the national framework require that adequate financial resources be available when needed for the implementation of **national programmes** referred to in Article 11, especially for the management of spent fuel and radioactive waste, taking due account of the responsibility of spent fuel and radioactive waste generators.

Article 10

Transparency

1. Member States shall ensure that necessary information on the management of spent fuel and radioactive waste be made available to workers and the general public. This obligation includes ensuring that the competent regulatory authority inform the public in the fields of its competence. Information shall be made available to the public **in accordance** with national legislation and **international obligations**, provided that this does not jeopardise other interests such as, inter alia, security, recognised in national legislation or **international obligations**.
2. Member States shall ensure **that the public be given the necessary opportunities to participate effectively** in the decision-making process regarding spent fuel and radioactive waste management in accordance with national legislation and **international obligations**.

Article 11

National programmes

1. Each Member State **shall ensure the implementation** of its **national programme** for the management of spent fuel and radioactive waste (**'national programme'**), covering all types of spent fuel and radioactive waste **under its jurisdiction** and all stages of spent fuel and radioactive waste management from generation to disposal.
2. Each Member State shall regularly review and update its **national programme**, taking into account technical and scientific progress as appropriate as well as recommendations, lessons learned and **good practices** from peer reviews.

Article 12

Contents of national programmes

1. The national programmes shall set out how the Member States intend to implement their national policies referred to in Article 4 for the responsible and safe management of spent fuel and radioactive waste to secure the aims of this Directive, and shall include all of the following:
 - (a) the overall objectives of the Member State's national policy in respect of spent fuel and radioactive waste management;
 - (b) the significant milestones and clear timeframes for the achievement of those milestones in light of the over-arching objectives of the national programme;
 - (c) an inventory of all spent fuel and radioactive waste and estimates for future quantities, including those from decommissioning, clearly indicating the location and amount of the radioactive waste and spent fuel in accordance with appropriate classification of the radioactive waste;
 - (d) the concepts or plans and technical solutions for spent fuel and radioactive waste management from generation to disposal;
 - (e) the concepts or plans for the post-closure period of a disposal facility's lifetime, including the period during which appropriate controls are retained and the means to be employed to preserve knowledge of that facility in the longer term;
 - (f) the research, development and demonstration activities that are needed in order to implement solutions for the management of spent fuel and radioactive waste;
 - (g) the responsibility for the implementation of the national programme and the key performance indicators to monitor progress towards implementation;
 - (h) an assessment of the national programme costs and the underlying basis and hypotheses for that assessment, which must include a profile over time;
 - (i) the financing scheme(s) in force;
 - (j) a transparency policy or process as referred to in Article 10;
 - (k) if any, the agreement(s) concluded with a Member State or a third country on management of spent fuel or radioactive waste, including on the use of disposal facilities.
2. The national programme together with the national policy may be contained in a single document or in a number of documents.

Article 13

Notification

1. Member States shall notify to the Commission their national programmes and any subsequent significant changes.
2. Within 6 months of the date of notification, the Commission may request clarification and/or express its opinion on whether the content of the national programme is in accordance with Article 12.
3. Within 6 months of receiving the Commission's reaction Member States shall provide the requested clarification and/or inform the Commission of any revision of the national programmes.

4. The Commission, when deciding on the provision of Community financial or technical assistance for spent fuel and radioactive waste management facilities or activities, shall take into account the Member States' clarifications and progress regarding the **national programmes**.

Article 14

Reporting

1. Member States shall submit a report to the Commission on the implementation of this Directive for the first time by 23 August 2015, and every 3 years thereafter, taking advantage of the review and reporting under the Joint Convention.

2. On the basis of the Member States' reports, the Commission shall submit to the European Parliament and the Council the following:

- (a) a report on progress made with the implementation of this Directive; and
- (b) an inventory of radioactive waste and spent fuel present in the Community's territory and the future prospects.

3. Member States shall periodically, and at least every 10 years, arrange for self-assessments of their national framework, competent regulatory authority, **national programme** and its implementation, and invite international peer review of their national framework, competent regulatory authority and/or **national programme** with the aim of ensuring that high safety standards are achieved in the safe management of spent fuel and radioactive waste. The outcomes of any peer review shall be reported to the Commission and the other Member States, and may be made available to the public where there is no conflict with security and proprietary information.

CHAPTER 3

FINAL PROVISIONS

Article 15

Transposition

1. **Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 23 August 2013.** They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. The obligations for transposition and implementation of provisions related to spent fuel of this Directive shall not apply to Cyprus, Denmark, Estonia, Ireland, Latvia, Luxembourg and Malta for as long as they decide not to develop any activity related to nuclear fuel.

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive and of any subsequent amendments to those provisions.

4. Member States shall for the first time notify to the Commission the content of their **national programme** covering all the items provided for in Article 12 as soon as possible, but not later than 23 August 2015.

Article 16

Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 17

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 19 July 2011.

For the Council

The President

M. SAWICKI

B. Emergency Preparedness & Response

to protect the general public in case of a radiological emergency

(6) Council Decision 87/600/Euratom of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency [\(5\)](#) established a framework for notification and provision of information to be used by the Member States in order **to protect the general public in case of a radiological emergency**. Council Directive 89/618/Euratom of 27 November 1989 on informing the general public about health protection measures to be applied and steps to be taken in the event of a radiological emergency [\(6\)](#) imposed obligations on the Member States to inform the general public in the event of a radiological emergency.

1. See NTW Report EP&R: No (adequate) plans at all.
2. See Answer of the German Government, Bundestagsdrucksache 18/4497 from 23.05.2015: **It's expected that an emergency officer will reach the allowed level of 250 mSv per lifetime and operation in a short emergency operation at the experimental reactor BER II (10 MW) in Berlin.**

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