

**ENSREG Ad-hoc Working Group on EC
proposal for new Nuclear Safety Directive,
replacing *Community framework for the
nuclear safety of nuclear installations*
(2009/71/Euratom)**

SUMMARY REPORT

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SUMMARY REPORT

This report contains a summary of work performed by the Ad-hoc Working Group and its proposal to ENSREG position concerning the draft text of an EC proposal for a new Nuclear Safety Directive.

General context

The ENSREG Ad-hoc working group was established as a result of the concerns raised regarding the timing as well as the draft text of an EC proposal for a new Nuclear Safety Directive (NSD) at ENSREG's 22nd meeting of 23 January 2013. EC has submitted the new draft NSD to the Art. 31 group, according to the procedures of the Euratom Treaty but have provided an opportunity for ENSREG members to comment on its proposal. The Ad-hoc group mandate was to review the proposal for new NSD, to develop an ENSREG position and to provide added value, taking into account comments presented by ENSREG members in the work of the group.

Recognising both the advisory role of ENSREG to the European Commission and the expertise of its members provided by the EU Member States the Ad-hoc group mandate was to make urgent efforts to review this proposal for a new NSD. This review was to use the consolidated expert comments of the group to:

- Consider the draft text provided by the EC,
- Compare EC proposals with the existing European safety framework,
- Develop an ENSREG position regarding the needs and methods for strengthening of the European safety framework
- Provide underpinned advice on where the EC might develop their draft text prior to allowing it to make further progress through the Article 31 process.

Ad-hoc working group organization

ENSREG members were invited to participate in the ad-hoc group work on a voluntarily basis. The work has been conducted at two meetings with additional activities, plus a drafting meeting and communication of views and comments to the ad-hoc group's work on the proposed NSD in between the meetings (see attachment). The 1st two-day Ad-hoc Group Meeting was organized during 4-5 February and the 2nd on February 28, 2013.

ENSREG POSITION PAPER

Approach to a European Nuclear Safety Framework

This report presents the main conclusions of the ENSREG Ad-hoc group. The Ad-hoc group considers that the proposed new EC NSD would imply major modifications to the distribution of responsibilities for nuclear safety in proposing a transfer or share of some competencies from the national to a central level. For a European nuclear safety framework, the ENSREG Ad-hoc group identified three possible approaches:

- A decentralised concept (as is implicit in the current Nuclear Safety Directive) having good potential for further use and strengthening. Furthermore, existing and/or new cooperation mechanisms between the EU Member States may be applied.
- A two-tier level concept (as is displayed in the new EC proposal for NSD) with shared responsibility between national nuclear regulatory authority and the Euratom Community. This concept leads to a significant change – partial transfer of responsibilities from a national to a central level.
- A fully centralised concept with one European nuclear regulatory authority (and full transfer of responsibilities).

The ENSREG Ad-hoc group is of the view that the first concept will contribute to improve nuclear safety while having the potential for a broad consensus.

General Comments to proposed new Nuclear Safety Directive

The ENSREG Ad-hoc group was unable to consider and analyse all of the possible effects and consequences of the EC's new NSD proposals. Challenges included the limited time available and the lack of fully developed explanations and justifications for the new text.

However, following broad discussions of the whole text of the proposed EC NSD and detailed analysis of selected part of it, the Ad-hoc group is able to give general comments to the proposed text. The ENSREG Ad-hoc group also reviewed and suggested amendments to the ENSREG principles.

The group recognises that there are a number of significant additions compared with the existing NSD and several changes/amendments, in particular regarding “regulatory independence” and “transparency”.

Regrettably the proposed text of the EC has within it a great detail of prescription and guidance which reduces the flexibility of the European safety framework and may lead as a consequence to a reduction in safety with time rather than strengthening it. In addition, some areas of text reduce the principle within the present European approach of striving for continuous improvement and aiming for the goal of highest achievable safety standards. The group also noted that the draft EC text did not fully recognise the existence of other Directives that have similar or the same requirements and that are sought within the text of the new NSD amendment directive.

Given these facts and based on ENSREG principles (Attachment 1), the Ad-hoc group formulated alternative texts for four articles (Attachment 2) covering the following identified key areas:

- Competent regulatory authority
- Transparency
- Safety objectives
- Peer reviews

These proposals were formulated view the view of replacing articles of the EC NSD proposal. The alternative text does however not cover the remaining part of the EC NSD proposal but some, not exhaustive and not agreed by ENSREG, comments can be found in Attachment 3 as discussed in the Ad-hoc group.

Conclusions and recommendations

In line with the conclusions of the European council of March 2011, without assessing the need for a new directive, ENSREG Members are ready to assist in reviewing the existing legal and regulatory framework for the safety of nuclear installations. From this point of view the Ad-hoc group considers the following areas having key role for ENSREG participation in such process:

- It should be recalled that ENSREG is of the view that responsibilities with regard to nuclear safety shall remain with the Member States.
- ENSREG may consider topical peer reviews conducted between the Member States as the effective inter-regulatory instrument for continuously improving nuclear safety across Europe.
- In line with the principle of continuously improving nuclear safety, ENSREG proposes that the NSD sets safety objectives rather than detailed and fixed safety criteria.
- Regarding the competent regulatory authority, ENSREG emphasizes that the objective should be the independence from undue influence in the decision making rather than formal structural independence.
- ENSREG recognizes that transparency is wider than communication and information sharing and assists in improving nuclear safety.

Finally, in the opinion of ENSREG Ad-hoc group, if such an important step as introducing a new European Nuclear Safety Directive is taken, ENSREG should offer its full cooperation to further review and comment the proposed draft text.

List of attachments:

1. ENSREG Principles Amendment
2. Alternative proposals
3. Reflections from the Ad hoc group meeting