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37th Report of Session 2005–06

Managing nuclear safety and waste: the role of the EU

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- (Q) refers to a question in oral evidence
- (p) refers to a page of written evidence

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FOREWORD—What this Report is about

This Report considers the controversy surrounding a pair of draft Directives, known as the “nuclear package”, which has divided the opinion of Member States.

The nuclear package would harmonise how Member States ensure the safety of nuclear installations and the management of spent fuel and radioactive waste in the EU. Member States are divided between being significantly dependent on supply of nuclear power and being strongly opposed to its use. This Report seeks to analyse how this tension between pro and anti-nuclear views has shaped development of the nuclear package.

At the same time, we consider what possible added value Community involvement in the areas of nuclear safety and waste management could provide to EU citizens. Nuclear safety and radioactive waste management are currently the responsibility of national governments in conjunction with guidelines and peer reviews, organised by the United Nations International Atomic Energy Agency (IAEA). Although the IAEA was not willing to give us oral evidence, we received its views via correspondence reproduced in Appendix 1. The IAEA’s work is respected by Member States and plays an essential role in maintaining high nuclear safety standards across the EU. We believe that role should be maintained.

We explain why we do not think it would be desirable that the nuclear package as drafted be adopted. Instead, on the basis of the evidence we received, we recommend that the Council of Ministers should adopt a thematic strategy on the management of nuclear safety and waste. This should focus on achieving globally approved, transparent approaches to nuclear safety, and should require Member States to set out policies for the long-term management of their high level radioactive waste.

In our Report, we state that we are gravely concerned at the loss of confidence in national governments as a reliable information source on nuclear issues. The EU needs to take a lead in educating citizens about issues relating to nuclear power, how the safety of nuclear installations is maintained, and of the action taken and options available to Member States to manage the radioactive waste produced.

The recommendations made in the Report are summarised in Chapter 9.

Managing nuclear safety and waste: the role of the EU

CHAPTER 1: SETTING THE SCENE FOR THE NUCLEAR PACKAGE

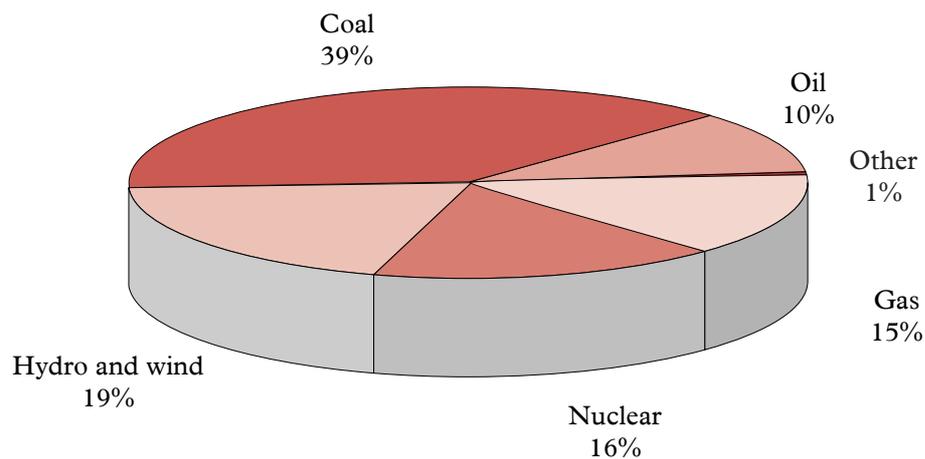
Pressures on energy choices

1. The enlarged EU is the world's leading nuclear generator. EU reactors produce 32 per cent of its electricity, a higher proportion than in North America, Japan or Russia. 13 of the 25 Member States use nuclear power, and after accession of Romania and Bulgaria this will grow to 15 out of 27 (Andris Piebalgs, Commissioner for Energy, Q 444).

FIGURE 1

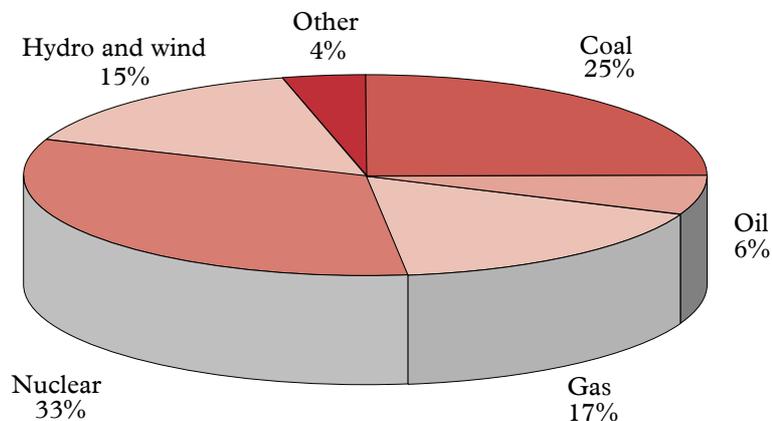
World, EU and UK Electricity Generation

World Electricity Generation

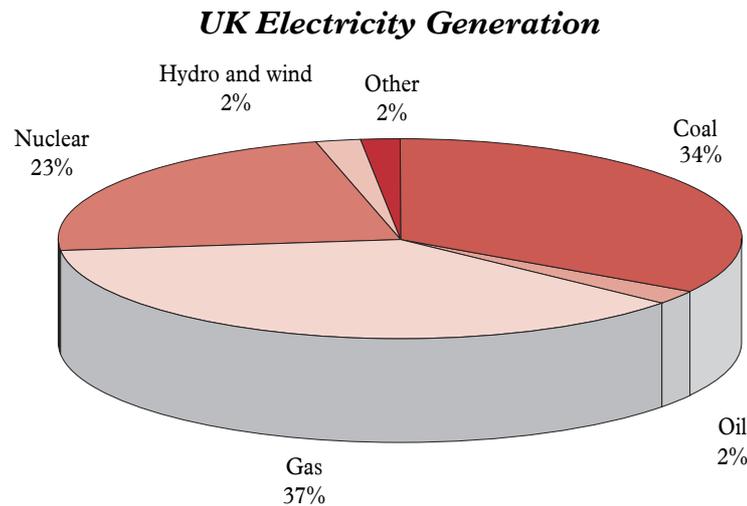


Source: "Nuclear Power in the World Today", World Nuclear Association, February 2006

EU Electricity Generation



Source: Electricity generation by fuel used, EU comparison, 2001, Office of National Statistics



Source: Electricity generation by fuel used, EU comparison, 2001, Office of National Statistics

2. Most reactors operating in Europe are old, having been generating electricity for an average of 22 years. Five of the ten new Member States operate older nuclear power plants based on Soviet design. At present, France, Finland and the Baltic States are contemplating new reactors, while Germany, Sweden, Belgium, Italy and Spain are planning to phase them out. The amount of energy that will be produced by nuclear power is set to decline in the EU under current energy policies.
3. This decline must be considered in the light of growing pressures on energy supplies globally. Mounting oil costs and increasing pressure to reduce fossil fuel use to combat climate change, coupled with concerns over the security of energy supply, have increased the urgency for governments to implement policies which will feed the growing global demand for energy. The Nuclear Industry Association, the trade association for the British civil nuclear industry, states that support is growing in the United Kingdom for new nuclear power stations to be built¹, but highlights that it is not the “concerns about the safety and the waste which are driving this improvement in public opinion, [but instead] it is much more to do with a growing awareness of concerns about the reliability and security of future electricity supplies ... and the environmental concerns over climate change”(Q 606).
4. Into this melting pot of uncertainty enters the nuclear package. On the surface it aims to regulate how nuclear installations should operate while ensuring a high level of safety and how radioactive waste and stocks of spent fuel should be managed in a safe and environmentally sound manner. The future of the nuclear package is however indelibly linked to the future of nuclear energy within the EU, and its reception is a litmus test for the current arguments within that debate.

¹ The response to the Nuclear Industry Association’s poll on whether Britain’s nuclear power stations should be replaced as they retire has reversed in recent years, with around 25 per cent in favour and 40 per cent opposed in 2001; and 42 per cent in favour and 28 per cent opposed to the proposition in 2005 (Q 606).

BOX 1

What is the nuclear package?

The nuclear package is a proposal by the European Commission to introduce new binding European legislation consisting of two draft Directives on the safety of nuclear installations and the safe management of radioactive wastes. The Commission submits that only a common approach at European level can guarantee the maintenance of a high level of nuclear safety in an enlarged EU. The package is controversial with Member States contesting the Commission's competence in this area and wanting to guard their national responsibilities. The enlargement of the EU has brought in new Member States with older Russian designed reactors with questions about their safety standards, which has heightened and complicated the debate.

The beginning of the nuclear package—the role of EU enlargement

5. In May 2004, 10 countries acceded to the EU, the majority of which were Central and Eastern European states. Many of those who joined were highly dependent on nuclear energy (Lithuania is the most dependent country in the world, relying on its nuclear installations to provide 80 per cent of its energy) and were operating old Soviet style-reactors.
6. Prior to accession, the European Community wanted to ensure that the nuclear installations of acceding countries met specific safety standards. However, no EU safety reference level existed against which the candidate countries' standards could be assessed. As the Commission described at the time, the EU was "in the rather paradoxical situation" whereby candidate countries were taking action to improve installations or, in some cases, close them, in order to join the EU; whereas Member States already within the EU did not have to take Community action to prove the safety of their nuclear power plants. Action on nuclear safety in other countries was "internationally acknowledged" whilst domestic EU action remained "limited"².
7. The Commission reacted by announcing that the EU should establish common safety standards for its nuclear installations. In January 2003 the Commission presented a draft Directive on nuclear safety (the "safety Directive"). At the same time, the Commission introduced a draft Directive on nuclear waste management (the "waste Directive"), and together the two proposals became known as "the nuclear package"³. The package was introduced before enlargement, but was soon being considered by a newly expanded Council of 25 Member States, each with a different attitude on the use of nuclear energy.

² COM (2002)605 final: Communication from the Commission to the Council and the European Parliament on Nuclear Safety in the European Union, 6 November 2002.

³ The proposals tabled on 30 January 2003 were: (COM(2003) 32 final): (i) Proposal for a Council Directive (Euratom) on the safe management of spent nuclear fuel and radioactive waste; and (ii) Proposal for a Council Directive (Euratom) laying down basic obligations and general principles on the safety of nuclear installations.

BOX 2

Aims of the European Commission

The main drivers behind the Commission's proposed nuclear package are:

- Safety has a Community dimension—nuclear incidents can impact across national boundaries. The Commission already assesses potential EU cross-boundary effects from any new nuclear installation before giving approval for the installation to operate.
- The Euratom Treaty requires it—Euratom has called for “uniform safety standards” to be implemented in the EU since its inception in 1957.
- An enlarged Union needs a common approach—the current system of each Member State operating its own set of safety rules is too complicated and confuses the public's understanding of how nuclear safety is regulated
- Candidate countries should meet a benchmark—Nuclear facilities in EU candidate countries need harmonising and uplifting to western standards, but there isn't a single defined western benchmark for which they can aim.
- Future energy policy goals—The Commission's 2000 Green Paper on Energy Supply⁴ identified a need for the nuclear option to be kept open in the EU. However the main obstacle to nuclear energy is public acceptance, which is influenced by anxieties on safety and the absence of clearly defined and established procedures for management of radioactive waste.
- Progress must be made on waste management—whilst France, Finland and Sweden have advanced plans for the long-term management of spent fuel and high level radioactive waste, other countries, including the United Kingdom which has 50 years of accumulated waste legacy, have not.

Hostility to the nuclear package

8. The first nuclear package was rejected by the governments of the Czech Republic, Finland, France, Germany, Hungary, Lithuania, Sweden and the United Kingdom primarily because they did not wish their national responsibility for nuclear safety to be compromised. Their opposition prevented the package from being adopted⁵ and in September 2004 the Commission tabled a revised version⁶. Apart from France, which shifted position and favoured adopting the amended package, the seven Member States opposed to the original package remained hostile to the Commission's proposals and do not accept the revised version.

⁴ COM (2000) 769: Green Paper—Towards a European strategy for the security of energy supply, November 2000.

⁵ In order to become law within the EU, the nuclear package requires the approval by qualified majority of the 25 Member States who comprise the Council of Ministers. The Council must have regard for the opinion of the European Economic and Social Committee, the European Parliament and a group of persons appointed by the Euratom Scientific and Technical Committee.

⁶ COM (2004) 526 final: (i) Amended proposal for a Council Directive (Euratom) laying down basic obligations and general principles on the safety of nuclear installations; and (ii) Amended proposal for a Council Directive (Euratom) on the safe management of spent nuclear fuel and radioactive waste.

9. Following the rejection of the original nuclear package by key Member States, the Council adopted a non-binding Action Plan which calls on Member States to work more closely within the review meetings held by the International Atomic Energy Agency (IAEA) in order to “strengthen transparency and co-operation”. The aim is for Member States to work better together to find common approaches to nuclear safety and to identify ways to enhance the safe management of waste (the Action Plan was submitted as evidence to us by the Government and can be read in full at p 95).

BOX 3

What is the IAEA ?

The United Nations International Atomic Energy Agency (IAEA) sets international guidelines and standards on nuclear safety as well as in other areas, including waste management. The IAEA is active in all countries in the world with nuclear capability, including all Member States and candidate states with nuclear installations.

The IAEA Convention on Nuclear Safety entered into force in 1996 and commits participating countries operating land-based nuclear power plants to maintain a high level of safety by setting international benchmarks. The Convention is an incentive instrument. It is not designed to ensure fulfilment of obligations by states through control and sanction but is based on their common interest to achieve higher levels of safety. The Convention obliges signatories to submit for peer review reports on the implementation of their obligations.

The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management was introduced in 1997. Requirements on States party to it include the obligation to establish and maintain a legislative and regulatory framework to govern the safety of spent fuel and radioactive waste management and the obligation to ensure that individuals, society and the environment are adequately protected against radiological and other hazards.

The Committee corresponded with the IAEA regarding the nuclear package. The correspondence can be read in Appendix 1.

10. Building on this Action Plan, the Council’s Atomic Questions Group (AQG) set up the ad hoc Working Party on Nuclear Safety (WPNS) tasked with breaking the deadlock on the nuclear package. The WPNS aims to report to the AQG by the end of 2006. Mr Riku Hutunnen, Industrial Counsellor at the Finnish Ministry of Industry, told us that the Finnish Presidency of the EU (1 July to 31 December 2006) would concentrate on discussions taking place within the WPNS rather than try and resurrect the nuclear package (Q 246). There are no signs that Germany, an equally sceptical opponent of the nuclear package, will seek any progress on the package during its Presidency at the start of 2007 (QQ 247–8). It is widely acknowledged that the package is dead in its current form (see evidence from Dr Bertrand Barré, past President of the European Nuclear Society and Vice-Chairman of the Euratom Scientific and Technical Committee, Q 633).

What our report seeks to achieve

11. In advance of the WPNS report, we thought it would be fruitful to consider the Commission's attempts at legislation within the bigger picture of whether there is a need to create new legislation for nuclear safety and waste; and, if so, at what level that legislation should be agreed. We also wanted to consider what effect legislation would have in the broader energy picture, both in the EU and globally. Our report therefore focuses not just on the nuclear package, but on the social, economic and political environment in which it is proposed.
12. We consider why the Member States and the Commission were unable to agree on nuclear waste and safety legislation and suggest what action the Member States and the Commission should take in the fields of nuclear safety and waste to ensure the best interests of EU citizens are protected.
13. Our approach to the current stalemate over the nuclear package was shaped by four over-arching options which we identified as possible recommendations to make regarding the nuclear package:
 - Support adoption of the Directives as currently drafted;
 - Recommend an alternative legislative approach;
 - Recommend a non-legislative approach; or
 - Recommend that the Community take no action with regard to Member States' management of nuclear safety and waste.
14. Our conclusions and recommendations have drawn on evidence heard from a wide range of witnesses, including the Commissioner for Energy, Andris Piebalgs; the Energy Minister, Malcolm Wicks MP; and the former Environment Minister, Elliot Morley MP⁷. We are particularly pleased that we received the views of many national governments within and outside the EU, including Lithuania, the Czech Republic, France, Ireland, Poland, Romania, Norway and Sweden. We take this opportunity to thank our many witnesses who assisted us in our inquiry through the submission of written and/or oral evidence.
15. We also set up a "nuclear webforum"⁸ to hear the views of the public on how nuclear waste and safety should be managed. We thank all those who submitted their views to us, as it enhanced our understanding of the public perception of the issues examined by our inquiry⁹.
16. **Our concluding position has been shaped by the facts and the perceptions we have encountered regarding nuclear energy in the EU. We have learnt much about this field and strongly believe that there is much for the public to learn also.**
17. We make this Report to the House for debate.

⁷ Mr Morley MP gave evidence on 15 March 2006 in his then position of Minister of State for Climate Change and Environment, Department for Environment, Food and Rural Affairs.

⁸ http://www.parliament.uk/parliamentary_committees/lords_s_comm_d/nuclear_inquiry.cfm.

⁹ See paragraph 23 for more on our nuclear webforum.

CHAPTER 2: A DIVIDED UNION—THE FUTURE OF NUCLEAR

A common EU energy policy

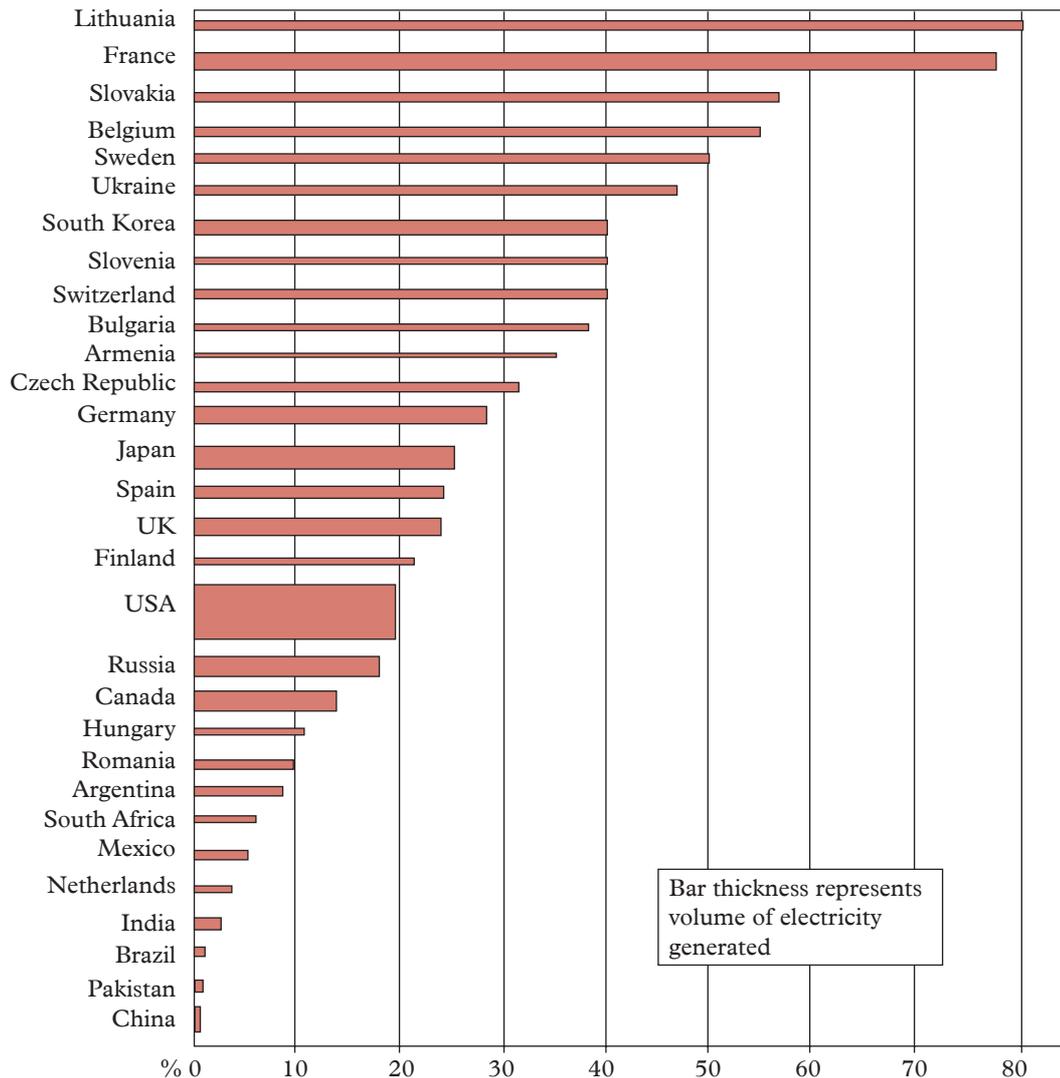
18. The European Commission opened the debate on a future common European Energy Policy with the publication of a “Green Paper” in March 2006¹⁰, but Member States have made clear that they would oppose the Commission interfering with national energy policies. The EU Energy Ministers’ agreement on 14 March 2006¹¹ underlined the need to “fully respect Member States’ sovereignty” on the fundamental questions of which type of energy each EU state relies on and which suppliers the energy comes from.
19. Moves to revive the use of nuclear power in the EU could be the trigger that divides the Member States over a future common energy policy. The Commission’s green paper says that “[energy] choices made by one Member State inevitably have an impact on the energy security of its neighbours and of the Community as a whole, as well as on competitiveness and the environment”; but the attitudes, use and approaches to nuclear power vary to an enormous degree across Member States. Some Member States, such as Austria and Ireland, do not generate any nuclear power, whereas other Member States, such as Lithuania and France, are almost wholly dependent on nuclear.

¹⁰ COM (2006) 105 final: Green Paper: A European Strategy for Sustainable, Competitive and Secure Energy, 8 March 2006.

¹¹ 7009/06 (Presse 67) Council conclusions of Transport, Telecommunications and Energy Council, 14 March 2006.

FIGURE 2

Nuclear electricity generation per country in percentage of total electricity generation (world 16%)



Source: "Nuclear Power in the World Today", World Nuclear Association, February 2006

The role of the European Commission

20. The European Commission has made clear that it considers that the nuclear option should remain open for those Member States who wish to use it. But Member States are divided as to whether a new league of nuclear reactors should be installed to replace the existing old reactors which are soon to be decommissioned. Some Member States like Germany and Spain are committed to phasing out nuclear power; others like the United Kingdom are considering how to proceed¹². Several others, including Finland and France, are making plans to build new reactors.

¹² A Report of the House of Commons Environmental Audit Committee has inquired into recent developments in domestic energy policy: *Keeping the lights on: Nuclear, Renewables and Climate Change*, 6th Report, Session 2005-06 (HC Paper 584).

Public perception and the legacy of Chernobyl

21. Unease and suspicion have dogged the public's attitude to nuclear energy ever since the dreadful consequences of the radioactive fallout of the Chernobyl disaster in 1986. Discussion of the possible expansion of nuclear energy is an emotive subject in a way treatment of other energy sources are not, for as Mr Huttunen of the Finnish Ministry of Trade and Industry remarked, "Nuclear energy is always an issue of feelings or what people think the world should look like. These views are not always based on pure facts" (Q 251).
22. The Eurobarometer survey¹³ conducted in February and March 2005 analysed EU public opinion on nuclear energy, and radioactive waste in particular, and revealed an underlying lack of knowledge concerning nuclear power, alongside a growing distrust of governments and the media on radioactive waste management issues. On average, 37 per cent of the EU public are in favour of nuclear energy, but support runs as high as 65 per cent in Hungary and as low as 8 per cent in Austria. A law has been passed in Austria prohibiting the operation of nuclear power stations, thus Austria does not generate any nuclear energy. 74 per cent of respondents claimed they were "not well informed" about radioactive waste, with almost eight out of ten respondents answering that they believed "all radioactive waste" to be "very dangerous".
23. Our nuclear webforum, launched as part of our inquiry, elicited a similar strong degree of distrust for nuclear energy and its associated waste, and the way in which it is managed. Responses received included that "it has always been impossible to get at the true rates of accidents and losses because the nuclear industry is surrounded by secrecy" and that moves for the EU to introduce legislative protection are to be welcomed given that "national governments have failed to do so".¹⁴
24. **Our analysis of the nuclear package has taken account of the current climate of mistrust and suspicion of nuclear energy and waste within the EU, and our conclusions and recommendations have been coloured by it.**

¹³ Special Eurobarometer 227, "Radioactive Waste", June 2005.

¹⁴ The full responses can be viewed at http://www.parliament.uk/parliamentary_committees/lords_s_comm_d/nuclear_inquiry.cfm or by contacting the House of Lords Record Office London SW1A OPW.

CHAPTER 3: WHAT THE SAFETY DIRECTIVE WOULD DO

25. The drive towards harmonisation led the Commission to conceive of the need for a common nuclear safety framework within the EU to standardise safety guidelines and make them more enforceable. The draft safety Directive which resulted (which together with the draft waste Directive comprise the nuclear package) would add a binding, European dimension to the way national regulators ensure the safety of their nuclear installations.
26. Adoption of the draft safety Directive would
 - set basic safety obligations and general principles for all Member States to comply with;
 - establish a committee of national safety authority representatives to review Member States' compliance (the European Commission would act as the secretariat); and
 - operate in addition to current peer reviews undertaken by the IAEA.
27. The IAEA is the common thread that links nuclear-generating Member States. National safety approaches have grown up over several decades and differ markedly across Member States but all Member States with nuclear installations have signed up to the guidelines on nuclear safety established by the IAEA.

No added value

28. The main criticism levelled at the safety Directive by witnesses opposed to it is that it would simply add no value to existing safety arrangements (for example, see evidence from the Government of Romania, p 193; and the Health and Safety Executive, p 109). The Nuclear Industry Association summed up the views of the great majority of our witnesses by saying the current adherence to IAEA safety standards through peer reviews worked very effectively and adding another layer of legislation to the system was unnecessary (p 142, Q 607).
29. Mr Malcolm Wicks MP, Minister for Energy in the Department of Trade and Industry in the United Kingdom, told us that “[the United Kingdom Government] are doubtful—to put it mildly—that an EU competence in this area would add practical value to where we are at the moment within the international framework, IAEA, peer group and all that in which we operate” (Q 402). Dr John Crofts, Director of Safety and Assurance at the United Kingdom Atomic Energy Authority, said, “If there is a problem with [IAEA standards], I could understand it but at the moment the system works well. If it ain't broke, don't mend it” (Q 77).
30. The overwhelming sense of the evidence we received was that the safety Directive would not add any value. Witnesses highlighted that the preamble to the safety Directive itself acknowledges that EU Member States already maintain very high nuclear safety levels (Dr Dave Whitworth, President of the Institution of Nuclear Engineers, Q 356; Mr Laurence Williams, Safety Director of the Nuclear Decommissioning Authority, Q 435; and the Nuclear Industry Association, p 142). We pressed our witnesses to provide evidence of any failure of a Member State to ensure the safety of its nuclear installations. Apart from the Irish government which identified “serious ongoing concerns regarding the operation of the United Kingdom nuclear

industry” (see Box 4 below), the vast majority of our witnesses told us nuclear installations within the EU operated at a safe level.

BOX 4

Ireland’s concerns over Sellafield

The Irish government are “firmly opposed to nuclear as a source of energy generation” and want to “bring about the safe and orderly closure” of the United Kingdom’s plant in Sellafield. Concerns are raised in relation to the potential hazards arising from a nuclear accident or incident, the impacts of radioactive discharges on the marine environment, concerns about the generation, management and disposal of radioactive waste and the risk posed by the associated transport of radioactive materials through the Irish Sea. Commissioner Piebalgs told us that the Commission has issued a warning to the operator of Sellafield because “the activities in Sellafield do not correspond for us to guarantee that nuclear safeguard operations are being properly done” (Q 447).

The Irish government believe the oversight of safety standards in nuclear facilities cannot rest solely with the national competent authority and consider that there is a need for Community-wide uniform standards of safety and Community oversight to ensure they are enforced. A full account of the Irish government’s position is provided in their written evidence (p 210).

31. Mr Tero Varjoranta, Director of Nuclear Waste and Material Regulation at the Finnish agency responsible for the management of nuclear safety and radioactive waste management, philosophised that safety could not be ascertained by more regulation. The excellent safety record amongst Finnish nuclear installations was to him due to the high regard for safety that had been instilled into the workforce: “You cannot create safety by laws. Safety comes from culture, attitudes, practices and understanding how things are run. You simply cannot ensure safety by laws” (Q 190).
32. Mr Thierry Dujardin, Deputy Director for Safety and Regulation at the Organisation for Co-operation and Economic Development’s Nuclear Energy Agency, told us bluntly that “we are not going to increase the level of safety in practice through any European Directive in comparison with what exists today” (Q 681). Mr Lawrence Williams, Safety Director of the Nuclear Decommissioning Authority, summed up the situation by saying that, in his eyes, “all the elements within [the] Directives are in the [IAEA] conventions and being delivered effectively through the nuclear safety and radioactive waste legislation in the United Kingdom and, I dare say, within all of our counterparts in Europe” (Q 435).
33. **We do not believe adoption of the safety Directive would improve nuclear safety standards within the EU. Witnesses did not provide any evidence of a need to improve safety standards within the EU which currently operate satisfactorily within the IAEA reporting system. Hence the case for the safety Directive is not made.**

Conflict with national regulators

34. Witnesses expressed deep concern that adoption of the safety Directive would interfere with and compromise national approaches to nuclear safety (see evidence from the Ministry of Economy of the Republic of Lithuania,

- p 202; and the Swedish Ministry of Sustainable Development, p 217). Adoption of a Community-wide safety approach could be likely to favour the more conservative and prescriptive approach followed in France and Germany rather than the flexible regulatory approach in operation in the United Kingdom which places the onus to ensure safety “firmly and squarely on the shoulders of the operator” (Mr Williams, Nuclear Decommissioning Authority, Q 396).
35. The effect of a change in approach can be debated. Dr Mike Weightman, HM Chief Inspector of Nuclear Installations, went as far as to suggest that it would undermine safety rather than increase it, because the impetus for operators constantly to seek new ways to improve their safety, as established under the United Kingdom system, would be removed (Q 395). On the other hand, States which operate in a different manner to the United Kingdom are still reviewed as safe by the IAEA and do not see any failings in their method (Dr Lucian Biro, Director of the National Commission for the Control of Nuclear Activities in Romania, Q 847). The Swedish Ministry of Sustainable Development held the view that safety regulations had to be dynamic in order to improve safety—safety regulations “should not be impeded by a complicated legislative regime” (p 216).
36. The danger which does exist is that the safety Directive would add an unnecessary layer of regulation which would create a burden on national regulators’ resources, adding complexity to “something which is already pretty lengthy, pretty heavy.” (Dr Bertrand Barré, Q 639; see also written evidence from the United Kingdom Atomic Energy Authority, p 22; and the Health and Safety Executive, p 111). The Nuclear Industry Association believed there to be a danger that adoption of the draft Directive could create “regulatory uncertainty and confusion and time consuming and disruptive reorganisation of perfectly adequate safety and waste handling systems” (p 142). The cost of adapting to the implementation of a new set of regulations could end up being passed on to the consumer (Nuclear Industry Association, Q 630). British Nuclear Fuels told us that “having to deal with an additional layer of “red tape” could even lead to a reduction in safety” (p 2).
37. **The safety Directive in its current form would most probably require extra regulators to impose its particular rules, in addition to the already stringent national safety procedures. There is a danger that existing national regulators would find themselves being asked to take on this extra burden without the necessary increase in resources. This therefore might actually have an adverse effect on safety.**

Adequacy of IAEA guidelines

38. A key question is whether compliance with the IAEA Convention on Nuclear Safety adequately ensures the safety of Member States’ nuclear installations. The majority of our witnesses considered the answer to be yes. Witnesses described the IAEA peer review system, whereby inspectors from other states review the safety of a state’s nuclear installations and make recommendations for improvement, as a sufficient and excellent way to maintain safe nuclear activity. The Health and Safety Executive considered that the “introduction of additional EU standards would be a wasteful duplication of the existing global mechanisms” (p 111).

39. IAEA activity is high. Romania, an EU candidate country, has intensive experience of peer review missions, having received eight regulatory missions to review its nuclear installations in three years (Dr Biro, Q 851). The French regulatory body holds the IAEA reviews in high regard and recently asked the IAEA to peer review all of its activity (Mr Jean-Luc Lachaume, Deputy Managing Director of the French Nuclear Safety Authority, Q 759). The British Nuclear Energy Society and the Institution of Nuclear Engineers shared the view that “it would be very difficult to achieve the comprehensiveness and flexibility of IAEA’s safety standards” in EU legislation (p 84). Dr Weightman, the HM Chief Inspector of Nuclear Installations in the United Kingdom, defended strongly the IAEA peer review system:

“Every three years we have a periodic review where we put a report together. All the other states can question us on that report both in writing and then at a review meeting that takes two weeks where we are subject to that Peer Review process ... We are held to account by our peers across the world and we take that seriously. That happens on nuclear safety, it also happens under the Joint Convention on Radioactive Waste and Spent Fuel Management and we have another one this year subject to that Peer Review.

In addition the IAEA has a series of services which the United Kingdom is helped with in terms of looking at other countries’ regulatory systems and regulatory bodies. This is called the International Regulatory Review Team system. In fact, in our consideration of where we are in the United Kingdom if there was a new bill, the Department of Trade and Industry have invited in the IAEA to have a look at us and say, “Let us have a look at you and your regulatory body”. That is proper Peer Review” (Q 407).

40. **We acknowledge the success of the IAEA Convention on Nuclear Safety in improving and upholding safety standards for nuclear installations globally. The IAEA’s work is respected by Member States and plays an essential role in maintaining high nuclear safety standards across the EU. We believe that role should be maintained. We see no need for Community peer reviews to take place on top of what the IAEA already undertakes and do not recommend that the safety Directive be adopted.**

Enforcement

41. Under the IAEA reporting mechanism, countries affirm adherence to IAEA guidelines by signing up to the joint conventions but there is no procedure in place to legally force countries to uphold IAEA standards. The nuclear package would change this by transcribing what Commissioner Piebalgs considers “the minimum conditions” of the IAEA Convention on Nuclear Safety into EU law (QQ 452–3). Adherence to the IAEA requirements would become legally binding upon Member States and would extend current safety standards to cover not just reactors (which the IAEA Conventions are concerned with) but all other types of nuclear installations as well.
42. Mr Roger Higman, Environmental Limits and Solutions Co-ordinator at Friends of the Earth, considered the ability of EU legislation to impose an enforcement mechanism to be an important and essential advantage over international conventions: “The particular thing [EU legislation] enables is a process of scrutiny and enforcement that is often lacking in international

guidelines because they are weak and do not have a regulatory effect. That is the particular advantage we highlight” (Q 147).

43. Many other witnesses did not see any problems arising from the IAEA’s inability to enforce compliance with its standards. Instead, the peer review exercised by States on each other maintained high standards of safety. According to Dr Sue Ion, President of the British Nuclear Energy Society, “the pressure to demonstrate compliance is very high” (Q 366) whilst Mr Chris Murray, Chief Executive of Nirex, a United Kingdom company specialising in radioactive waste management, considered peer pressure to be “a powerful thing” because at the end of the day ethical pressure was the only pressure that really worked (QQ 134–5). Mr John Crofts, Director of Safety and Assurance at the United Kingdom Atomic Energy Authority, reminded us that countries signed up to the IAEA Conventions have input into the IAEA documentation which then “rattles down” to countries so that “in a way there is an international regulation” (Q 46).
44. **We note the satisfaction of witnesses with the peer review system operated by the IAEA, which works on the basis of pressure from other States to comply with IAEA standards. The Convention on Nuclear Safety obliges States party to it to draw up reports on the implementation of their obligations and to submit these documents for peer review by all countries. The system is voluntary with the findings passed to the Member State governments or regulators to decide what action to take. As the process works effectively and has widespread confidence, we do not wish to suggest any changes that would destabilise it.**
45. **That said, there is the need to reassure the public that information on the remedial action taken by a State will be made publicly available and verified. We suggest that the IAEA, as the custodian of the system, should look at how best to take this observation on board. The IAEA needs to ensure that any required changes are supported by its Member States.**

CHAPTER 4: WHAT THE WASTE DIRECTIVE WOULD DO

BOX 5

What is radioactive waste?

The nuclear package and IAEA conventions define radioactive waste as a material with no further intended purpose. It is created as the by-product of nuclear reactions and must be very carefully stored and managed because the radiation it emits can be extremely harmful to living organisms.

46. Deciding how to manage intermediate and high level radioactive waste in the long-term is a question most countries with nuclear installations have yet to answer. All Member States have operations or interim measures in place to deal with low and intermediate level waste but no Member State has begun long-term management of high level waste. This includes the United Kingdom, despite having 50 years of accumulated waste legacy although France, Finland and Sweden have made headway in advancing plans.

BOX 6

How much waste does the EU produce?

The total quantity of radioactive waste for which a long-term management route is available in the EU equates to 37,000m³ annually. The vast majority (31,000m³) is low-level and short-lived radioactive waste. There is no long-term management route available for high level waste (3,000m³ annually) and spent nuclear fuel (approximately 3325 tonnes) per year.

47. The Commission wants to accelerate Member States' progress towards producing a clear, transparent response to the issue of how to deal with high level radioactive waste. The EU will enlarge further with the accession of Romania and Bulgaria and the Commission considers this an opportune moment to introduce a common EU framework on waste to benefit those countries seeking to meet an approved EU approach. Dr Biro told us Romania had started research into finding a repository site but would be looking very carefully at the experiences of other Member States in order to follow EU policy (Q 848).
48. The waste Directive would oblige Member States to:
- establish national management programmes with timetables for the long-term management of all radioactive waste, where possible giving priority to deep geological burial of waste as the most appropriate solution for long-term management of high level waste; and
 - provide more support and funding for research on waste management.

BOX 7**How is radioactive waste categorised?**

Radioactive waste is divided into three categories in the United Kingdom according to the concentrations of radioactive materials it contains and the way the waste has arisen:

- Low level waste—Mainly contaminated building material, but also including laboratory waste and the protective gear of workers who handle radioactive waste in industry, hospitals and universities etc. In the United Kingdom, this waste is compacted under high pressure and stored long term in concrete lined vaults at the national disposal site at Drigg, near Sellafield.
- Intermediate level waste—Mainly metals and graphite but also sludge from storage ponds and other contaminated liquids. Intermediate level waste mainly arises from the dismantling and reprocessing of spent fuel and from the general operation of nuclear plants. Intermediate level waste is contained in cement and put inside steel drums, which are then placed in an above-ground concrete store on an interim basis awaiting a final disposal solution.
- High level waste—Mainly radioactive liquids produced during reprocessing of spent nuclear fuel. The radioactive decay of high level waste produces intense heat as well as radioactivity which greatly complicate its storage and handling. High level waste is concentrated by evaporation and stored in double-walled stainless steel tanks encased in thick concrete walls which is then vitrified (encapsulated in glass). Irradiated fuel not planned for reprocessing is also categorised as high level waste.

49. The design of the waste Directive has been based on the successful examples of Sweden and Finland which, through a systematic approach to public consultation, have built up public support for disposal of radioactive waste in geologic repositories deep within the ground as the safest and most effective way of containing high level radioactive waste and spent fuel which may remain hazardous for thousands of years. However, only a handful of countries have begun investigation programmes into this technique, and no country has a high level waste repository in operation (see the written evidence from Nirex for details of Member States' investigation programmes, p 32).
50. Senior officials of the Organisation for Economic Co-operation and Development (OECD) Nuclear Energy Agency (NEA) reported to us that there are more than 80 near-surface disposal facilities worldwide either currently or formerly in operation, and there are some intermediate depth geological repositories for low and intermediate level waste. Dr Bertrand Barré, past President of the European Nuclear Society and Vice-Chairman of the Euratom Scientific and Technical Committee, highlighted that there has been a deep geological disposal in operation in Carlsbad in the USA since 1998 which accepts long-lived waste from the defence programme on a day by day basis. But still few EU countries are taking decisions as to whether or not to use deep geologic repositories.

BOX 8**What is the NEA?**

The Nuclear Energy Agency (NEA) is an intergovernmental, semi-autonomous body within the OECD. It was created in 1985 as the European Nuclear Energy Agency, with “the same kind of spirit” as the Euratom Treaty (Q 664) although the NEA and Euratom operate completely separately. Eighteen Member States belong to the NEA.

The NEA operates as a think-tank “to exchange best practices, to exchange feedback and to try to develop in common the best approach for the future” amongst member countries to nuclear energy issues (NEA, Q 664). The European Commission is a non-paying member and the IAEA acts as an observer.

51. Criticism was high of Member States’ failure to do enough to manage their high level waste. Governments were “obliged to do something better than always postponing the decision on waste” (Mr Lachaume, French Nuclear Safety Authority, Q 750). The Commission received praise for trying to make Member States address a problem which they are failing to tackle:

“It was very positive to have the Commission insist that we must be actually doing something on high level waste disposal and not always speaking about it or being content with safe but interim storage ... The waste is dragging so much in time, any kind of pressure on the Member States to say ‘Do something and stop just dragging your feet’—is probably positive” (Dr Barré, Q 633, Q 638).

52. **The Commission deserves praise for trying to tackle the problem of the EU’s high level radioactive waste. Efforts must be made to ensure that suitable waste solutions are derived. It is essential that Member States plan what those solutions should be and begin to prepare for their implementation.**

Too prescriptive

53. On the other hand, many Member States are, not surprisingly, opposed to the waste Directive because it would require them to take action in an area they have chosen not to do so. The United Kingdom Government have adopted a defensive attitude, describing the Commission’s attitude as “a top-down approach which is basically stipulating solutions without taking into account the different circumstances in different Member States, without engaging them and preparing the ground for these kind of approaches (Mr Elliot Morley MP, former Minister of State for Climate Change and Environment, Department for Environment, Food and Rural Affairs, Q 388).
54. The approach of the waste Directive is perceived to be too forceful given the emotive and contentious nature of the issue of radioactive waste. Mr François-Michel Gonnot, President of the French agency responsible for national radioactive waste management, remarked that the public does “not know anything about radioactive waste. They do not know if it is liquid, solid, gas, what kind of shape it can be, they do not know anything” (Q 14). A heavy-handed attempt by the Commission to instigate long-term plans for radioactive waste was criticised by witnesses as having the potential to feed the public imagination that radioactive waste is exceedingly dangerous and

the Commission's preference for deep geologic disposal came under fire for being too rigid. It "has the potential to undermine public confidence in the processes that Member States adopt to suit their own circumstances" (Mr Keith Parker, Chief Executive of the Nuclear Industry Association, Q 589).

55. **We share the concerns of witnesses that the waste Directive has been formulated in a heavy-handed manner which is incongruous with the sensitivity that discussion of radioactive waste management necessitates. Adoption of the waste Directive may run the risk of undermining national confidence in national waste programmes rather than facilitating it.**

Interim waste storage

56. High level waste produced by Member States' nuclear installations is currently held above ground in interim storage facilities. The danger with storage is, because it is so effective in the short-term, it can remove the impetus to apply a long-term solution. Interim storage could be used as an open-ended policy which negates the need to make a potentially expensive and politically contentious decision on long-term management. Dr Barré told us that "It is a fact that interim storage works, it is safe, and there is no technical reason why it cannot be extended for decades" (Q 657).

BOX 9

Spain

In 1999, the Spanish government made the decision to delay taking any decision about national long-term high level waste management until at least 2010. The interim period would be spent on research and development of disposal methods before a decision is made. In accordance with this approach, the Spanish parliament recently approved plans to build a central nuclear storage facility which will temporarily store spent nuclear fuel and high level waste from Spain's nine nuclear plants over the next 80 to 100 years¹⁵.

57. Our witnesses put forward a view that Spain's move to delay taking a decision on the long-term disposal of waste was made purely on political rather than technological reasons. A desire to have a decision on long-term waste policy taken at the European level would avoid the need for a national political debate on the issue. Responsibility for having taken a decision could be neatly transferred from the national government to the EU, thereby allowing national governments to avoid taking controversial decisions. As Mr Javier Reig, Head of the OECD NEA Nuclear Safety Division saw it, this was the reason why many Member States supported the waste Directive (Q 675).
58. The regrettable consequence of Member States' delay in implementing a long-term management plan has led to the situation whereby because the public do not see waste being disposed of, they do not think it can be disposed of. 75 per cent of EU citizens believe that because no disposal of

¹⁵ "Spanish MPs back temporary nuclear storage site", ENDS Europe Daily, 28 April 2006.

high level waste and spent fuel has taken place in the EU this is proof that there is no solution to the problem¹⁶.

59. **It is difficult to justify the use of nuclear power in the EU without addressing in an open and transparent manner the options for management of high level radioactive waste and allaying the public's anxieties about the ultimate fate and potential hazards from radioactive waste. Although we do not advocate adoption of the waste Directive as drafted, we do see a role for the Community in providing the impetus for Member States to take action towards the management of high level waste. This would begin to address the serious issues that affect public opinion.**

¹⁶ Special Eurobarometer 227, "Radioactive Waste", June 2005.

CHAPTER 5: MOTIVES BEHIND THE NUCLEAR PACKAGE

60. Safety standards already operate to a high level and radioactive waste is already safely stored in Member States. Adoption of the nuclear package would therefore bring little added value to these areas. The true significance of the nuclear package lies in its political worth as a tool to influence the nuclear debate in the EU.

The Commission's agenda—breaking down barriers

61. The Commission presented the nuclear package with the intention that it would affect the perception of nuclear energy in the EU. Dr Barré was clear that the Commission's motive was to create an environment which would foster the growth of nuclear power:

“... the intent and objectives of the nuclear package were originally very positive towards nuclear power and were meant to help remove roadblocks to its development in the Union, or at least within the Member States planning such development” (Q 632).

62. Commissioner de Palacio, the Commissioner responsible for the introduction of the original package in 2003, had believed the “adoption and implementation of the package would help relieve fears and facilitate public acceptance by addressing the issues of the safety of nuclear facilities throughout their life including their decommissioning and dismantling, and of the disposal of radioactive waste” (Dr Barré, Q 632).
63. Commissioner Piebalgs told us that “there are no answers as to what will happen with the storage of nuclear waste or what will be the safety requirements ... [and] this is the main bottleneck to using or not using nuclear power” (Q 456). The Commissioner has taken up the mantle of carrying forward the nuclear package at a time when there is growing pressure to determine whether or not Member States implement new nuclear build.
64. **We are extremely concerned that the Commission's underlying intent in introducing the nuclear package was to improve public perception of nuclear energy within the EU. Legislation should not be used as a tool to affect public opinion. Furthermore, energy policy choices are a matter of national responsibility and it would not be appropriate for Community legislation to be used to influence this choice.**

The reaction of Member States—protection of national interests

65. The wish to sustain the national status quo on nuclear is the main driver behind the stance each Member State has taken on the nuclear package. France supports the amended nuclear package as an opportunity to protect the future of the EU nuclear sector. The nuclear package is seen as “a good opportunity for future development of nuclear energy...[as] it is more and more difficult today to develop such an activity without the umbrella of [binding] EU legislation” (Mr Cyril Pinel, Assistant Director of the French Nuclear Safety Authority, Q 741).

BOX 10**France's 15 year deadline**

In 1991 a law was passed which provided that, over 15 years, France would undertake research regarding i) the separation and transmutation¹⁷; ii) the deep underground disposal; and iii) the storage and decommissioning of radioactive waste. Fifteen years have since passed and the government has recently introduced a bill into the French Parliament regarding the future management of radioactive waste. The French agency responsible for the management of radioactive waste has provided a summary of the bill which can be read in the evidence volume accompanying our report (p 183).

66. Dr Barré explained that France had nothing to lose from backing the package as most of its stipulations “were already implemented or in the process of being implemented in the national procedures and processes” in France (Q 633; see also Mr Lachaume, Q 750). In particular, research into the technicalities of deep geologic disposal is already under way at a site in Bure and the new waste management bill currently before the French Parliament will pave the way to a final high level waste site.
67. The real gain perceived by France is the security the nuclear package would give the French public that other Member States take nuclear safety and waste management seriously (Q 821). Ensuring that other Member States begin to take action to dispose of high level waste is seen as particularly necessary to protect the French nuclear industry. As Mr Gonnot, President of the French agency responsible for national radioactive waste management described it, “We definitely know if we keep on in this nuclear business, if we want to let new countries come into nuclear energy, we have to solve this problem of waste” (Q 831).
68. Romania, expecting to accede to the EU in 2007, is also keen to increase its production of nuclear energy and considers establishing a harmonised approach to safety within the EU would provide assurance of the future use of nuclear. Dr Biro told us that a nuclear accident in any Member State could “create a lot of problems for the nuclear industry in Europe and we need nuclear energy”—a harmonised safety framework is seen to be a further safeguard against such an event (Q 868).
69. We were told that Germany also thought the nuclear package would facilitate the use of nuclear energy because “it would create a global framework within which it would be easier to keep developing nuclear energy for those choosing to do so” (Q 780) but this would go against Germany’s national policy of phasing out nuclear power and therefore Germany opposed the package.
70. The view of the United Kingdom Government was quite unlike the view of other Member States. The Energy Minister, Mr Malcolm Wicks MP, asserted that implementation of the nuclear package “certainly would not make any impact [on the prospects for new nuclear build] in the United Kingdom” (Q 425). Although the Government were adamant that the nuclear package would not affect their nuclear policy, they strongly oppose the package on the grounds that it could interfere with their nuclear regulatory policy (see paragraphs 80–85).

¹⁷ Transmutation is an experimental physics technique to reduce the radioactivity of nuclear waste.

71. **Suspicion surrounds the Commission’s intentions that the nuclear package would be used to interfere in national nuclear policies. This has divided the opinion of the Council of Ministers. Member States without a clear-cut pro-nuclear policy fear that the nuclear package could be “the thin edge of the wedge” towards Community intervention in how Member States use nuclear power (Nuclear Industry Association, p 142).**
72. Adoption of the nuclear package would confirm the Community’s power to legislate in nuclear matters. The former Environment Minister, Mr Elliot Morley MP, was clear in his assertion that the Commission had proposed the nuclear package either “to establish or to clarify Commission and EU competence in this particular area” (Q 392).

BOX 11

Competence and subsidiarity

Competence

The Commission brought forward the nuclear package upon the legal basis or “competence” of Articles 31 and 32 of the Treaty establishing the European Atomic Energy Community (the Euratom Treaty). These articles allow for the adoption of basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation. The nuclear package raises several important issues of competence, principally:

- What is the extent of the competence of the Euratom Community to adopt legislation under Articles 31 and 32 of the Euratom Treaty?
- How can the European Court of Justice’s judgment in Case C-29/99¹⁸ regarding the accession of the Euratom Community to the Convention on Nuclear Safety assist in identifying the extent of the competence of the Euratom Community?
- What is the relationship of the Commission proposals to the IAEA’s Convention on Nuclear Safety and the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management and how can the declarations of competence made in the context of those conventions assist in identifying the extent of the competence of the Euratom Community?

Subsidiarity

Objections have also been made to the nuclear package on the grounds that it does not respect the subsidiarity principle which states that action should be taken at the Member State rather than Community level where possible. It has been argued that Member States are better placed to take measures to ensure nuclear safety and the safe management of nuclear waste on their territories. Moreover, critics of the proposals argue that the existing framework provided by the IAEA affords sufficient opportunity for coordination and review of standards at international level and that the Commission’s nuclear package is unlikely to add any value to the existing regulatory regime.

Full consideration of the competence and subsidiarity issues surrounding the nuclear package are outside the scope of our inquiry. We did, however, put general questions on competence to witnesses and their responses are reproduced in the evidence published with this Report. We also pursued the matter in more detail through written correspondence with the Commission, the DTI and Defra. The correspondence is reproduced in Appendix 2 of this Report.

¹⁸ Commission v Council, judgment of 10 December 2002.

73. Establishing the Commission's competence to legislate in nuclear safety and waste matters could establish a precedent for future legislation in these areas. Finnish witnesses expressed apprehension that this could be used by either the Commission or anti-nuclear Member States to steer future legislation towards the closing down of the nuclear industry, as easily as countries such as France and Romania believe it could be used to foster it. Mr Antti Kuusela, Senior Vice President of Pohjolan Voima, a privately owned group of companies in the Finnish energy sector, told us that "The Finns on the street are afraid of having the European Union saying what we can do and what we cannot do in our energy policy, how to produce energy, with what sources and how much with some sources. This is something that they are afraid of" (Q 287).
74. There are strong arguments against the nuclear package being an example of "creeping regulation", with the Community playing an ever stronger hand in the nuclear sector. Mr Cyril Pinel, Assistant Director of the French Nuclear Safety Authority, reminded us that any proposal from the Commission must be approved by a qualified majority of the Member States and could therefore be blocked by opposing Member States. Mr Pinel also doubted whether the Commission would have the technical competence or inspectorate available to develop more detailed legislation (Q 754).
75. The motives of the Member States' arguments can be debated endlessly; what is not in doubt is the mistrust and suspicion directed towards the Commission for bringing the nuclear package forward. Mr Lachaume of the French Nuclear Safety Authority told us that the Commission's intentions were perceived as being "very brutal" from the beginning and this impression persevered so strongly that some of the new Member States "kept the impression that the intentions of the Commission were unacceptable and they did not believe the Commission would change them. There was mistrust and this could not be changed" (Q 783).
76. **We note the concerns of Member States that adoption of the nuclear package could lead to "competence creep" into other areas of energy legislation. This suspicion has dogged the development of the nuclear package and is to be regretted. EU citizens expect legislation to be made in a clear and transparent manner but progress of the nuclear package has been marred by continual mistrust on all sides.**

CHAPTER 6: HARMONISING SAFETY

77. The Euratom Treaty calls for the establishment of “uniform safety standards”. At the same time, the Council of Energy Ministers has affirmed the sovereign power of national governments to manage their energy sectors. A compromise must be found which maintains the highest safety standards for EU citizens, but respects these two positions.

National vs Community: two sets of masters

78. Mr Pinel of the French Nuclear Safety Authority stated that “the first principle in the field of safety is the principle of national responsibility ... these Directives should not change this principle but build on this principle” (Q 742). Witnesses strongly supported this view. Mr Keith Parker, Chief Executive of the Nuclear Industry Association, said that the enforcement of IAEA principles should be the responsibility of the national regulatory authority which had a much closer relationship with plant operators than the Commission (Q 621). Dr Barré stated that national governments rather than the EU would have to cope with the damage and remedial action any nuclear accident caused therefore it was only fair that the people who would have to deal with the consequences should be in charge (Q 641).
79. Commissioner Piebalgs concurred with these views, stating equally strongly that the safety Directive would not compromise the role of the national regulators:
- “Under my leadership we have never proposed that there should be Community supervision over the national authorities. What we are saying is that there should be basic standards throughout the whole of the Union supervised by the Member State’s authority” (Q 446).
80. Witnesses still fear that the safety Directive would jeopardise the relationship between the operator and the regulator: “the major concern of all the European countries and the European regulators [is] that this main principle of national responsibility could be limited in some way or penalised by [the safety] Directive” (Mr Dujardin, OECD NEA, Q 681).
81. If an EU layer of safety regulation was established, nuclear operators would have to satisfy two, potentially opposing, sets of masters—the national regulator and an EU committee of regulators (see evidence from Dr Crofts, UK Atomic Energy Authority, Q 68; and Mr Huttunen, the Finnish Ministry of Trade and Industry, Q 212). This raises the concern, as expressed by Mr Williams, the Safety Director of the Nuclear Decommissioning Authority, of which body would have the ultimate authority if the national and EU regulatory layers differed in their opinions as to whether an installation was safe:
- “As soon as it becomes a Directive, especially the Directive which says there is going to be a committee of regulators to peer review each other’s performance, what do we do if one group of regulators or one group of experts who may be motivated by a desire to not have a nuclear industry challenges the particular Member State’s position?

That has two effects. One, it undermines the trust and cooperation between the senior regulators which has delivered enormous improvements to safety in Europe and the work over the last 20 years . More importantly it starts to

sow, in terms of seeds of doubt, as to who is accountable? Does the industry respond to the [national] Chief Inspector's desires or do they think, "Well, actually, it is no good talking to the Chief Inspector because these people in Brussels are going to make the decision" and ultimately they may end up in courts because it is a Directive and we could be brought under infraction proceedings" (Q 435).

82. Other witnesses, including the President of the British Nuclear Energy Society and the Nuclear Industry Association shared this view (Q 350, Q 602). Any safety legislation at the European level could serve to complicate the current regulatory system. On the other hand, we note the argument of Friends of the Earth that similar arguments were used when air quality standards were set by the EU and little confusion had arisen in that situation. Mr Higman told us "we can live with a multiplicity of different standards" (Q 157).
83. **We believe Member States should retain the ultimate national responsibility for the delivery of nuclear safety. It is essential that there is a clear line of accountability and action in each Member State for the regulation of nuclear safety and no additional regulatory layer should be introduced which would complicate the system and blur the lines of accountability.**

European vs international arena: a two-tier system

84. "Safety is world wide, it is not just the EU countries"—the view of Dr Weightman, HM Inspector of Nuclear Installations, summed up the opinion of all of our witnesses that securing nuclear safety must be a matter of concern to the international arena as much as the EU (Q 417). The focus should be on improving international safety guidelines and not on an EU layer of safety. Dr Barré told us "international norms and standards are to be defined really at a high level and there is no additional value in having a subset of standards at the European level" (Q 632).

BOX 12

Double standards—experience of the new Member States

Sceptics of the role of EU safety standards highlight the Community's requirement to secure the closure of old Soviet-style nuclear reactors in candidate countries as a condition of accession even though they meet international standards. The EU encouraged Lithuania to close down its Ignalina 1 and 2 reactors, and Slovakia to close its two reactors, Bohunice 1 and 2. Ignalina 1 closed in 2005, but Ignalina 2 is now due to close in 2009, while Bohunice 1 and 2 are due to shut down in 2006 and 2008. Bulgaria has closed two of its reactors, with two more to be shut down.

Dr Barré questioned the justification for the closure of plants in accession States. Two facilities in Bulgaria must be closed down even though they have been heavily rejuvenated at a cost of 300–400 million euros and "probably meet international standards" (Q 636). Dr Biro told us that the safety level at unit one of Cernavoda in Romania is second in the world after the Wolsang nuclear plant in South Korea (Q 847): "practically the EU requirements have no impact because we were already at the level which complies with all the regulations at the international level" (Q 850).

85. Mr Thierry Dujardin, Deputy Director for Science and Development at the OECD NEA, expressed deep concern that adoption of the safety Directive could create a “two-tier” system of safety standards. Formalising Member States’ safety requirements within an EU Directive could run the risk of “lowering the currency of the international standards in the IAEA framework ... putting at risk nuclear energy worldwide” (Q 676). Mr Javier Reig, Head of Nuclear Safety of the OECD NEA repeated this view, stating that a “regional approach to safety will disturb the international approach to safety. It is very difficult to explain to the public that in Europe we have a safety level which is higher than in Japan or the US” (Q 695).
86. **As demonstrated by the Chernobyl disaster, nuclear safety is a trans-boundary issue which affects countries globally. The EU must continue to stress this and use its position in the international arena to press for continual improvement in the safety of nuclear operations globally.**

Harmonisation through WENRA

87. Given that the EU is a union of Member States with much to be gained from the convergence of national approaches, witnesses do find favour with attempts to harmonise regulatory approaches, even if they oppose the way in which the safety Directive would seek to achieve this. We were interested to learn that the EU is progressing more or less towards convergence of best practice and regulation through the work of the Western European Nuclear Regulators’ Association (WENRA) (Dr Barré, Q 632).

BOX 13

What is WENRA?

WENRA is made up of the top nuclear regulators of 17 European countries, including all Member States with nuclear power plants plus Bulgaria and Romania (British Nuclear Fuels, p 1). It is examining what scope there is within Western Europe to harmonise by 2010 selected aspects of national nuclear regulation. WENRA will complete its work by the end of 2006, at the same time as the Council Working Groups will report on what progress can be made on the nuclear package.

WENRA was started prior to the 2004 enlargement of the EU. The EU-15 had to make a decision to agree to Lithuania joining the EU and had to judge whether Lithuanian power plants were safe. The national regulators were asked to advise the Member State governments and from this point the regulators decided to meet regularly in order to give common advice to all European governments (Q 686).

WENRA were invited to give evidence to our inquiry but declined on the basis that it is an informal association of the chief nuclear regulators in Europe and does not have a common position on the nuclear package.

88. At first glance, WENRA appears to be a regulators’ “club” but HM Chief Inspector of Nuclear Installations thought otherwise: “It is about continuous learning, it is a process whereby [national regulators] can get together and challenge each other, expose some of the issues that we face and talk round how we can best approach it (Dr Weightman, Q 409). The Safety Director of the Nuclear Decommissioning Authority agreed, stating that WENRA “is

not an EU institution; it has a membership of senior nuclear regulators who share experiences in an informal way” (Mr Williams, Q 410).

BOX 14

WENRA reference levels

WENRA has compiled Member States’ best use of IAEA standards into a list known as the WENRA reference levels which was presented to stakeholders on 9 February 2006. Stakeholders have until the end of 2006 to forward their comments on the reference levels to WENRA. Before the end of 2006, each member of WENRA will be expected to develop a national action plan for implementation of the reference levels by 2010 (Mr Lachaume, French Nuclear Safety Authority, QQ 771–3).

WENRA’s reference levels are based upon input from the OECD’s Nuclear Energy Agency (NEA) (Q 668). The NEA has played an important role in the compiling of information about the safety approaches of NEA member countries, assessing why different countries have taken different approaches, and trying to identify from different practices which are good practices. This is being used as the technical input into WENRA’s work because it “represents a consensus reached by the most developed countries” (Q 683).

89. Witnesses universally held WENRA’s work in high regard because its work is being undertaken from the grass roots up. It is the national chief regulators, the experts in their field, who are pulling together of their own accord to learn from each other in order to implement best safety practice as the common standard across Member States. WENRA, for all intents and purposes, comprises the committee of national regulatory bodies which would be set up as the European layer of safety scrutiny under the safety Directive. Member States opposed to the package therefore consider WENRA’s work to fulfil the harmonisation objective of the safety Directive and to negate the need for separate legislation.
90. The Commission and France take the stance that the work of WENRA cannot replace the need for binding EU safety legislation. Mr Lachaume of the French Nuclear Safety Authority advocated combining the work of the Commission and WENRA by pairing a “top-down” approach through introduction of a “light binding Directive” with the “more important” “bottom-up” approach provided by the work of WENRA (Q 748 and Q 790). Commissioner Piebalgs acknowledged WENRA’s work but did not think it could provide the same level of safety assurance as binding EU legislation (Q 445). If WENRA reached the conclusion that action was needed on safety within the EU then the Commissioner considered WENRA should move over to allow the Commission to step in to enforce the measures required based on “the best benchmarking developed by WENRA” (Q 446).
91. **The Western Nuclear Regulators’ Association (WENRA) is undertaking an important and timely task in examining at a technical level the ability of the EU to form common approaches to nuclear safety. It is not taking any position on political issues. We believe this is the right approach and recommend that the Commission and Council should take full account of WENRA’s findings when reported. Any future EU action on nuclear safety issues should be based on the work undertaken by WENRA.**

CHAPTER 7: DELIVERING LONG-TERM WASTE MANAGEMENT

92. Witnesses were clear that action must be taken now to implement a long-term solution to the management of Member States' high level radioactive waste. The British Nuclear Energy Society and the Institution of Nuclear Engineers told us that in order to “assure public acceptance for continued or even expanded deployment of fission power stations, the issue of safe disposal of long-lived radioactive waste has to be vigorously addressed” (p 84). Mr Chris Murray, Chief Executive of Nirex, said there is a palpable public wish to address the nuclear waste problem:
- “If you listen to the radio, to the media, there is a feeling that the waste has to be dealt with ... whether or not they build new power stations, the waste should be dealt with” (Q 113).
93. The political difficulty for a government of garnering support for a waste management policy is the main obstacle to the EU taking action on its waste legacy. Suitable waste solutions could be derived—the reason they have not been implemented is because of the lack of political and public acceptance of disposal sites (Dr Ion, President of the British Nuclear Energy Society, Q 352). Mr Hans Riotte, Head of Radiation Protection and Radioactive Waste Management at the OECD NEA, told us that “in principle there is wide international agreement on how to deal with [high level waste and spent nuclear fuel] ... The real challenges are societal challenges” (QQ 670–671). These “governance and societal issues” were described as “the near-final obstacle to public acceptance” of waste disposal programmes (British Nuclear Energy Society and Institution of Nuclear Engineers, p 84).
94. **It is of the highest importance that Member States take action to deal with the long-term management of radioactive waste and do not simply accumulate study after study. Citizens need reassurance that high level radioactive waste can be safely managed in the long-term. It is difficult to perceive how nuclear use in the EU could continue or expand if long-term methods are not seen to be available to manage the waste produced.**

The United Kingdom—from storage to disposal

95. The United Kingdom Government have faced much criticism for not having a disposal policy in place for intermediate and high level radioactive waste even though a large waste legacy has amassed since the United Kingdom began operating nuclear installations in the 1950s¹⁹. 470,000 cubic metres of waste are stored at temporary facilities at more than 500 locations around the United Kingdom. The former Environment Minister, Mr Morley MP, admitted that there had been “an enormous delay in deciding a long term strategy for nuclear waste” (Q 388). More needs to be done to store the waste securely before any attempt is made to dispose of it in the long-term:

¹⁹ The development of the Government's radioactive waste management policy has been examined in three reports of the House of Lords Science and Technology Committee: *Management of Nuclear Waste*, 3rd Report, Session 1998–99 (HL Paper 41); *Managing Radioactive Waste: the Government's consultation*, 1st Report, Session 2001–02 (HL Paper 36); and *Radioactive Waste Management*, 5th Report, Session 2003–04 (HL Paper 200).

“85 per cent of the radioactive waste in this country is in a potentially mobile state—it is not passively safe—and our drive is to get that waste out of a potentially mobile and hence hazardous position into a passively safe state” (Mr Williams, Nuclear Decommissioning Authority, Q 434).

BOX 15

What is the difference between storage and disposal?

The total volume of nuclear waste in the United Kingdom is 47,000 cubic metres when conditioned and packaged—enough to fill the Albert Hall five times over. This estimate includes waste that will arise in the next 100 years from existing nuclear power stations and their decommissioning.

Conditioning and packaging of waste is done to reduce its volume or transform it into a more passively safe state. Liquid type wastes can be dried and encapsulated into glass. Solid wastes can be encapsulated into concrete.

Radioactive waste could be disposed of straight away but at the moment in the United Kingdom there is no available disposal route for high or intermediate level wastes. In this absence the waste is put in secure storage. What to do with it in the longer term is the question currently being investigated by the Committee on Radioactive Waste Management (see paragraph 96).

Storage is an interim solution. It entails placing the conditioned and packaged waste in specially constructed buildings. Whilst such buildings may have a long design life, eventually they would need replacing if the waste was to stay for longer. There is no reason why radioactive waste could not be stored indefinitely. But it would require maintenance and eventual replacement of the buildings as well as the cost of indefinite supervision.

Disposal offers a permanent solution. There are a number of options with the leading ones being:

- Deep disposal—involving permanently burying the waste between 300m and 2km underground in an area of suitable geology. The rock acts as a protective chamber.
- Phased deep disposal—which is the same process except the waste will be retrievable
- Shallow burial—involving burying waste that is radioactive for only a short time just below the surface, isolated from the biosphere.

BOX 16**The United Kingdom's Waste Legacy**

The United Kingdom's waste inventory contains a wide range of high and low activity, and short and long lived radioactive waste. This inventory has built up since after World War II from military as well as civil nuclear operations. 2004 data record a total of 2.3 million m³ of radioactive waste in the United Kingdom inventory²⁰. This includes 1340m³ of high level waste, roughly equivalent to the volume of a room 11m tall by 11m wide and 11m long.

After the war, there was a strategic driver for the United Kingdom to have nuclear deterrent capability, and decisions were taken at that time without a focus on the waste that would be generated. Also, the United Kingdom developed its own design of the Magnox reactor, with each reactor built with incremental modifications which led to further waste being generated from non-standardisation of the technology. As a consequence, the United Kingdom now possesses a significant legacy inventory of radioactive waste that is greater than in many other countries, particularly those countries without a historical military programme such as Finland.

96. The Government's Committee on Radioactive Waste Management (CoRWM) is reviewing the options for managing high level waste. In April, CoRWM published interim recommendations which favour a strategy of interim storage of radioactive waste followed by deep geologic disposal with the option of future retrieval of the waste²¹. Coupled with Mr Williams' remarks above, this indicates that the United Kingdom approach will be better temporary storage first, deep disposal later.

BOX 17**The role of CoRWM**

The Committee on Radioactive Waste Management (CoRWM) is an independent committee which has been appointed by the Government to review the options for managing the United Kingdom's radioactive waste for which there is no agreed long-term solution. CoRWM will make recommendations to the Government in July 2006 which the Government will take into account when drawing up its policies.

CoRWM's priority task is to recommend what should be done with the wastes for which no long-term management strategy currently exists—mainly, high and intermediate level waste now in storage or likely to arise over the next century or two. The Committee is not examining the question of siting of a potential waste disposal site; so this question must begin to be considered after CoRWM has reported.

97. **We welcome the interim recommendations made by CoRWM towards delivering a United Kingdom strategy for the long-term disposal of high level radioactive waste. Such a strategy is long overdue. It will be essential for the Government to build upon CoRWM's final recommendations as a matter of urgency, and to ensure public views feed into the policy decision taken.**

²⁰ Nirex 2004 data.

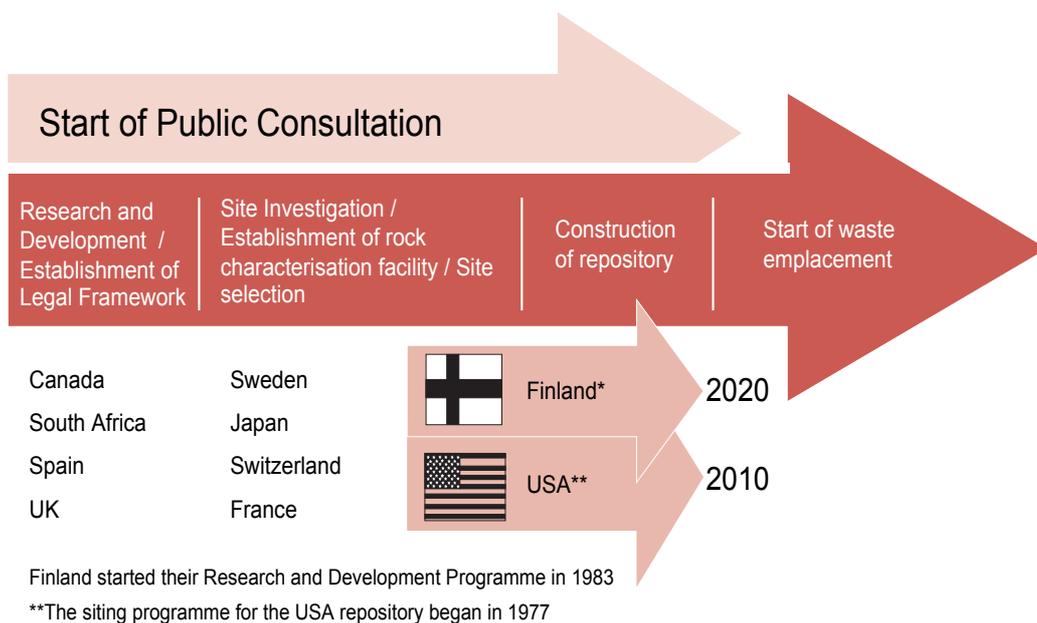
²¹ See www.corwm.org.uk.

Speeding up EU action—aiding the decision making

98. The process to research, locate, build and begin operating a deep geologic waste disposal site will be a long one. A United Kingdom disposal site may not be operational for decades because of the complex technicalities of construction and the lead time required for licensing and planning. Mr Murray, Chief Executive of Nirex, informed us that even if public communities were to volunteer today for a disposal site to be built in their locality, a disposal site would not open until 2025. Without the aid of volunteering, it would be unlikely that a site could be built and opened before 2040 (Q 108).

FIGURE 3

Timeline for implementation of long-term waste management policy



Source: British Nuclear Fuels

99. Witnesses were clear that, although the EU could play a role in hastening Member States towards deciding on a long-term management policy, action on the safe packaging of waste in anticipation of long-term disposal was a much more urgent issue. Mr Murray of Nirex told us that, in the United Kingdom, “what should happen, and the thing that does give concern, is that the waste should be packaged before [2025] and that is independent of finding a site” (Q 111). Dr Ion, President of the British Nuclear Energy Society, also saw a need for the United Kingdom to take further action on the waste being produced by the current generation of nuclear reactors, independently of the decision regarding the long-term waste legacy:

“... if [EU legislation] were to lead to a faster journey to an acceptable conclusion in the UK for long term rad[ioactive] waste disposition, then possibly [it might help], but timing-wise I am not sure it would make a big difference because ... the waste associated with new build is small volumetrically compared with what we have to deal with anyway and so I would possibly argue that you can put a gap between the two decisions. One

you have to deal with anyway; the other can take place without the final decision for rad[ioactive] waste in place” (Q 373).

BOX 18

How much waste would new nuclear power stations create?

A new build scenario in the United Kingdom would only add ten per cent of a much more easily managed waste to the total inventory and it would allow a fleet of power stations delivering ten gigawatts of carbon-free energy to operate for 60 years (Dr Ion, Q 358; see also Nuclear Industry Association, Q 592).

100. Friends of the Earth advocated EU legislation that would require Member States to store radioactive waste in a passively safe form, without necessarily hastening implementation of a particular waste solution (QQ 168–9). Dr Ion stated similarly that the EU could encourage the journey towards delivering a long-term solution without being prescriptive as to what the solution might be (Q 346). Mr Riotte of the OECD NEA advocated integration between storage and final disposal because “many countries feel they need to make this decision in a stepwise way which can be revised at every specific step. If you look at the technical response to this, most of today’s concepts are not straightforward disposal concepts, they are a combination of storage and disposal” (Q 671).
101. **We believe the EU could play a highly beneficial role in actively encouraging Member States to prepare for long-term management by ensuring their radioactive waste is packaged in a passive form. This would support Member States in their quest towards implementing a long-term waste management policy, and would foster confidence in EU citizens that the management of radioactive waste is taken seriously by Member States.**

Finland—en route to delivering a solution

Importation of radioactive waste

102. We were surprised that Finland opposed the nuclear package. Given that its work on radioactive waste disposal is recognised as a “gold standard” in the EU, the argument could be made that Finland should support the waste Directive in order to ensure that its best practice spreads to other Member States. Instead, as one of the Member States most developed in setting up a permanent disposal repository at Olkiluoto, our Finnish witnesses were acutely fearful that pressure would fall upon Finland to accept waste from other Member States (Mr Huttunen, Finnish Ministry of Trade and Industry, Q 214).

BOX 19**Finland—the construction at Olkiluoto**

Before 1996, Finland's Loviisa nuclear power plant shipped its spent nuclear fuel to Russia, but current Finnish law now forbids the export of nuclear waste. In May 1991 the government approved plans for a geologic repository. After twenty years of consultation and research investigations, the repository is to be sited at Olkiluoto, with the spent fuel packaged in copper canisters and placed in a deep repository in crystalline rock surrounded by bentonite clay backfill.

The Committee visited the construction site at Olkiluoto and received evidence from the nuclear operators who are responsible for it. Their oral evidence is reproduced in volume 2 of this Report.

103. The importation of waste would conflict with Finnish national law which bans the import or export of nuclear waste or spent fuel (Q 212). Thus, this legal barrier would have to be crossed before any waste could be transported from another Member State. However, the mere threat of the waste Directive opening the door to a possible revoking of national law has been enough for the Finnish government to veto the nuclear package. Securing public acceptance for the Olkiluoto repository has already been difficult for Finland to achieve; the possibility of being required to accept foreign waste would complicate the issue further before final decisions on the Olkiluoto waste disposal site have been taken.
104. **We note the Finnish concerns that implementation of a waste Directive could pave the way towards pressure to be exerted upon Member States to accept radioactive waste from other Member States. These are valid concerns and we recommend that the Commission and Council of Ministers act upon them. Due thought should be given to the explicit ruling out in any future waste legislation of the possibility of Member States being required to receive foreign radioactive waste. The option for implementation of a regional repository (a repository shared by Member States) should remain open but must be an issue upon which Member States rather than the Community decides.**

Flexibility and public consultation

105. The need for flexibility and national sensitivity to the implementation of a long-term waste management policy reverberated throughout the evidence we received. Finland and Sweden were highlighted as “absolute exemplary communities and societies” which demonstrated how successful “home-grown” waste management policies could be nurtured and implemented (Q 123). In Finland, local communities have been involved in the planning and siting of geologic repositories from such an early stage that they have competed to have repositories situated in their locality.
106. Finland's success has been built on keeping the public informed of every step in the decision-making process, and because the public has confidence that the consultation process will lead to effective results (Mr Varjoranta, Director of the Finnish agency responsible for nuclear safety radioactive waste management, Q 191). The Finnish Ministry of Trade and Industry told us that it is especially important that “decisions on final disposal of nuclear waste should be taken at a level that is as close as possible” to citizens due to

reasons of public acceptance (p 58). All of our witnesses were clear that “public engagement and involvement in the decision-making process is a very important part” of making any waste policy acceptable, and it is a process which takes time (Mr Stan Gordelier, Head of Nuclear Development at the OECD, Q 711; see also Dr Bayliss, United Kingdom Atomic Energy Authority, Q 57; and Dr Ion, President of the British Nuclear Energy Society, Q 353).

107. **We are impressed by the success of Finland and Sweden which have incorporated local consultation into every step of their decision making processes regarding the disposal of high level radioactive waste. The Finnish and Swedish systems are prime examples of how working with the public can generate interest and support in the implementation of waste policies. We are pleased that CoRWM in its interim recommendations to the Government on the way forward for disposal of the United Kingdom’s radioactive waste legacy has emphasised the key role of building public understanding through consultation and volunteerism.**

CHAPTER 8: PUBLIC PERCEPTION—ADDRESSING THE GAP

108. As the need to implement alternative energy sources grows, the lack of public understanding of nuclear power is an immediate concern to those who wish to keep the nuclear option open. Acceptance of the use of nuclear energy is as low as eight or nine per cent in some Member States and at best 65 per cent in Hungary (Q 445). Commissioner Piebalgs told us that the overall public acceptance level of nuclear energy (reported to be 37 per cent by the 2005 Eurobarometer) is simply too low (Q 459). He remarked that “if you would like to keep nuclear energy in the European energy mix you need to know that more than half of European citizens are in favour of it” (Q 470).
109. The 2005 Eurobarometer revealed that the public has a lack of confidence in national governments (down from 29 per cent in 2001 to 19 per cent) and the media (down from 23 per cent in 2001 to 13 per cent) as reliable sources of information on nuclear issues. Commissioner Piebalgs confirmed that public awareness about the nuclear industry in the EU is strikingly poor:
- “We face this very strange situation of nuclear power. Nuclear power has always been there but everybody has closed their eyes and tried to pretend that there is no nuclear power. One-third of power is produced by nuclear power stations in the EU. It was already there but everybody tried to turn a blind eye saying, “There is no nuclear power, what are you talking about?”” (Q 454).
110. **We are gravely concerned at the lack of confidence in national governments as a reliable information source on nuclear issues. Member States are failing to educate their citizens about the use of nuclear power, how the safety of nuclear installations is maintained, and of the action taken and options available to Member States to manage the radioactive waste produced.**

Implementing a nuclear strategy for the expanding Union

111. A non-binding version of the nuclear package would be attractive to some of our witnesses and would address the fears of some witnesses that the nuclear package is merely a tool through which the Commission could establish competence to introduce binding Directives. However, Mr Pinel of the French Nuclear Safety Authority reminded us that a number of Resolutions in the field of nuclear safety have existed since 1975 which have been of little use because people have not known about them (Q 742).
112. Most witnesses instead advocated a new approach by the Community which would signal that it takes seriously its responsibility to safeguard public health and the environment from nuclear radiation, particularly given plans to expand the EU to 27+ States; but that would not challenge national sovereignty in these fields. Mr Huttunen of the Finnish Ministry of Trade and Industry believed an integrated promotion of best practice, possibly through guidelines, would help Member States new to the EU to create a better safety culture (Q 223). Mr Kuusela of Pohjolan Voima, a group of companies in the Finnish energy sector, echoed this, and called on the EU to guide or point out the good practices used by Member States (Q 287). Dr Biro of the Commission responsible for nuclear safety in Romania, took the discussion a step further and suggested that “first stage

non-binding documents” could create “the same platform for all experts” which could be followed by discussion of binding documents (Q 857).

113. **We acknowledge the work undertaken by the Council to recommend an alternative way forward in the nuclear package debate. However we consider adoption of a non-binding version of the nuclear package would add little added value to the current regulatory system. Instead, we believe the EU should establish a new thematic strategy on the management of nuclear safety and waste which would establish broad objectives for the EU in these fields and suggest measures to achieve their goal.**
114. **The strategy’s objectives and associated measures should:**
- **Prioritise communication with the public to explain the use of nuclear generation in the EU, including the pros and cons of nuclear power, without bias;**
 - **Emphasise consultation with organisations to include the IAEA and WENRA in order to inform best Member States’ nuclear policies;**
 - **Endorse the work of the IAEA, but call upon the IAEA and States party to its Conventions to ensure that where peer review highlights a failure of a State to comply with a Convention, information on remedial actions and their verification is made publicly available;**
 - **Promote participation of Member States in the international nuclear arena in order to develop globally approved approaches to nuclear safety and waste management; and in particular to share best practice with candidate countries and countries bordering the EU, including Russia;**
 - **Encourage transparency in the activity of Member States by requiring safety reports made by national regulators to be made public though the Commission;**
 - **Call upon Member States to publish policies for the long-term management of high level radioactive waste; and to demonstrate the safe packaging of waste in a passive form in advance of long-term disposal; and**
 - **Require Member States to produce status reports annually to the Commission on steps taken to advance implementation of long-term waste management policies.**
115. **A strategy of this kind would represent a constructive addition to national policy making and we recommend that the Council of Ministers use this approach. Politicians and policy-makers alike must not lose sight of the imperative both for the safety of EU citizens and their environment to be protected from the potential hazards of nuclear technology and, at the same time, for the need to inform the public of the potential benefits they could gain from nuclear energy. Putting over these arguments must remain the ultimate common goal for the Commission and the Member States.**

CHAPTER 9: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Chapter 1: Setting the scene for the nuclear package

116. Our concluding position has been shaped by the facts and the perceptions we have encountered regarding nuclear energy in the EU. We have learnt much about this field and strongly believe that there is much for the public to learn also.

Chapter 2: A divided union—the future of nuclear

117. Our analysis of the nuclear package has taken account of the current climate of mistrust and suspicion of nuclear energy and waste within the EU, and our conclusions and recommendations have been coloured by it. Overcoming lack of public confidence in nuclear energy will be the biggest challenge faced by the Commission in seeking agreement on nuclear proposals among Member States.

Chapter 3: What the safety Directive would do

118. We do not believe adoption of the safety Directive would improve nuclear safety standards within the EU. Witnesses did not provide any evidence of a need to improve safety standards within the EU which currently operate satisfactorily within the IAEA reporting system. Hence the case for the safety Directive is not made.
119. The safety Directive in its current form would most probably require extra regulators to impose its particular rules, in addition to the already stringent national safety procedures. There is a danger that existing national regulators would find themselves being asked to take on this extra burden without the necessary increase in resources. This therefore might actually have an adverse effect on safety.
120. We acknowledge the success of the IAEA Convention on Nuclear Safety in improving and upholding safety standards for nuclear installations globally. The IAEA's work is respected by Member States and plays an essential role in maintaining high nuclear safety standards across the EU. We believe that role should be maintained. We see no need for Community peer reviews to take place on top of what the IAEA already undertakes and do not recommend that the safety Directive be adopted.
121. We note the satisfaction of witnesses with the peer review system operated by the IAEA, which works on the basis of pressure from other States to comply with IAEA standards. The Convention on Nuclear Safety obliges States party to it to draw up reports on the implementation of their obligations and to submit these documents for peer review by all countries. The system is voluntary with the findings passed to the Member State governments or regulators to decide what action to take. As the process works effectively and has widespread confidence, we do not wish to suggest any changes that would destabilise it.
122. That said, there is the need to reassure the public that information on the remedial action taken by a State will be made publicly available and verified. We suggest that the IAEA, as the custodian of the system, should look at

how best to take this observation on board. The IAEA needs to ensure that any required changes are supported by its Member States.

Chapter 4: What the waste Directive would do

123. The Commission deserves praise for trying to tackle the problem of the EU's high level radioactive waste. Efforts must be made to ensure that suitable waste solutions are derived. It is essential that Member States plan what those solutions should be and begin to prepare for their implementation.
124. We share the concerns of witnesses that the waste Directive has been formulated in a heavy-handed manner which is incongruous with the sensitivity that discussion of radioactive waste management necessitates. Adoption of the waste Directive may run the risk of undermining national confidence in national waste programmes rather than facilitating it.
125. It is difficult to justify the use of nuclear power in the EU without addressing in an open and transparent manner the options for management of high level radioactive waste and allaying the public's anxieties about the ultimate fate and potential hazards from radioactive waste. Although we do not advocate adoption of the waste Directive as drafted, we do see a role for the Community in providing the impetus for Member States to take action towards the management of high level waste. This would begin to address the serious issues that affect public opinion.

Chapter 5: Motives behind the nuclear package

126. We are extremely concerned that the Commission's underlying intent in introducing the nuclear package was to improve public perception of nuclear energy within the EU. Legislation should not be used as a tool to affect public opinion. Furthermore, energy policy choices are a matter of national responsibility and it would not be appropriate for Community legislation to be used to influence this choice.
127. Suspicion surrounds the Commission's intentions that the nuclear package would be used to interfere in national nuclear policies. This has divided the opinion of the Council of Ministers.
128. We note the concerns of Member States that adoption of the nuclear package could lead to "competence creep" into other areas of energy legislation. This suspicion has dogged the development of the nuclear package and is to be regretted. EU citizens expect legislation to be made in a clear and transparent manner but progress of the nuclear package has been marred by continual mistrust on all sides.

Chapter 6: Harmonising Safety

129. We believe Member States should retain the ultimate national responsibility for the delivery of nuclear safety. It is essential that there is a clear line of accountability and action in each Member State for the regulation of nuclear safety and no additional regulatory layer should be introduced which would complicate the system and blur the lines of accountability.
130. As demonstrated by the Chernobyl disaster, nuclear safety is a trans-boundary issue which affects countries globally. The EU must continue to stress this and use its position in the international arena to press for continual improvement in the safety of nuclear operations globally.

131. The Western Nuclear Regulators' Association (WENRA) is undertaking an important and timely task in examining at a technical level the ability of the EU to form common approaches to nuclear safety. It is not taking any position on political issues. We believe this is the right approach and recommend that the Commission and Council should take full account of WENRA's findings when reported. Any future EU action on nuclear safety issues should be based on the work undertaken by WENRA.

Chapter 7: Delivering long-term waste management

132. It is of the highest importance that Member States take action to deal with the long-term management of radioactive waste and do not simply accumulate study after study. Citizens need reassurance that high level radioactive waste can be safely managed in the long-term. It is difficult to perceive how nuclear use in the EU could continue or expand if long-term methods are not seen to be available to manage the waste produced.
133. We welcome the interim recommendations made by CoRWM towards delivering a United Kingdom strategy for the long-term disposal of high level radioactive waste. Such a strategy is long overdue. It will be essential for the Government to build upon CoRWM's final recommendations as a matter of urgency, and to ensure public views feed into the policy decision taken.
134. We believe the EU could play a highly beneficial role in actively encouraging Member States to prepare for long-term management by ensuring their radioactive waste is packaged in a passive form. This would support Member States in their quest towards implementing a long-term waste management policy, and would foster confidence in EU citizens that the management of radioactive waste is taken seriously by Member States.
135. We note the Finnish concerns that implementation of a waste Directive could pave the way towards pressure to be exerted upon Member States to accept radioactive waste from other Member States. These are valid concerns and we recommend that the Commission and Council of Ministers act upon them. Due thought should be given to the explicit ruling out in any future waste legislation of the possibility of Member States being required to receive foreign radioactive waste. The option for implementation of a regional repository (a repository shared by Member States) should remain open but must be an issue upon which Member States rather than the Community decides.
136. We are impressed by the success of Finland and Sweden which have incorporated local consultation into every step of their decision making processes regarding the disposal of high level radioactive waste. The Finnish and Swedish systems are prime examples of how working with the public can generate interest and support in the implementation of waste policies. We are pleased that CoRWM in its interim recommendations to the Government on the way forward for disposal of the United Kingdom's radioactive waste legacy has emphasised the key role of building public understanding through consultation and volunteerism.

Chapter 8: Public perception—addressing the gap

137. We are gravely concerned at the lack of confidence in national governments as a reliable information source on nuclear issues. Member States are failing to educate their citizens about the use of nuclear power, how the safety of

nuclear installations is maintained, and of the action taken and options available to Member States to manage the radioactive waste produced.

138. We acknowledge the work undertaken by the Council to recommend an alternative way forward in the nuclear package debate. However we consider adoption of a non-binding version of the nuclear package would add little added value to the current regulatory system. Instead, we believe the EU should establish a new thematic strategy on the management of nuclear safety and waste which would establish broad objectives for the EU in these fields and suggest measures to achieve their goal.
139. The strategy's objectives and associated measures should:
- Prioritise communication with the public to explain the use of nuclear generation in the EU, including the pros and cons of nuclear power, without bias;
 - Emphasise consultation with organisations to include the IAEA and WENRA in order to inform best Member States' nuclear policies;
 - Endorse the work of the IAEA, but call upon the IAEA and States party to its Conventions to ensure that where peer review highlights a failure of a State to comply with a Convention, information on remedial actions and their verification is made publicly available;
 - Promote participation of Member States in the international nuclear arena in order to develop globally approved approaches to nuclear safety and waste management; and in particular to share best practice with candidate countries and countries bordering the EU, including Russia;
 - Encourage transparency in the activity of Member States by requiring safety reports made by national regulators to be made public through the Commission;
 - Call upon Member States to publish policies for the long-term management of high level radioactive waste; and to demonstrate the safe packaging of waste in a passive form in advance of long-term disposal; and
 - Require Member States to produce status reports annually to the Commission on steps taken to advance implementation of long-term waste management policies.
140. A strategy of this kind would represent a constructive addition to national policy making and we recommend that the Council of Ministers use this approach. Politicians and policy-makers alike must not lose sight of the imperative both for the safety of EU citizens and their environment to be protected from the potential hazards of nuclear technology and, at the same time, for the need to inform the public of the potential benefits they could gain from nuclear energy. Putting over these arguments must remain the ultimate common goal for the Commission and the Member States.

APPENDIX 1: CORRESPONDENCE WITH THE INTERNATIONAL ATOMIC ENERGY AGENCY

Letter from Lord Grenfell, Chairman of the EU Select Committee to Dr Mohammed Elbaradei, Director General of the International Atomic Energy Agency, dated 2 February 2006

I am writing to you in my capacity as the Chairman of the UK House of Lords' European Union Select Committee. Sub-Committee D, which considers environmental and agricultural issues is currently holding an inquiry into the European Union's nuclear package, covering the management of nuclear waste and the safety of nuclear installations. It is in connection with this inquiry that I would like to request IAEA's input and views.

The terms of reference of the Committee's inquiry cover whether the current approaches of EU Member States are adequate in the areas above, and whether any EU action is required, and if so whether it needs to be legislative or non-legislative. I attach a copy of the Committee's written call for evidence that gives further background on the scope of the inquiry and its timescales.

Some of the evidence presented so far, which has been sceptical about the value of the Nuclear Package, has suggested that instead of introducing its own legislation, the EU should instead work through the IAEA to develop international nuclear safety standards. In addition, the press report issued by the IAEA on the 25th June 2002 warned very strongly against "regionalising" nuclear safety.

Given the above, and IAEA's key international status and role in developing international nuclear safety standards, I consider that you will certainly want to make the IAEA's up to date and official position known to the Committee. I would therefore be particularly grateful if you could reconfirm the IAEA's position on the EU's nuclear package and whether the IAEA's position has changed, in any respect, since the EU first published its proposals back in 2002 and the IAEA issued the press report I mentioned above. Any background explanatory material behind the IAEA's current position on political or regulatory matters that you could send me, which could be included as public evidence by the inquiry, would also be extremely helpful.

Another view expounded to us is that it may be the Commission's intention not to devise its own nuclear safety principles and standards, but to take the IAEA's and enshrine them in EU legislation. This would seem to avoid any anxiety about creating duplication and confusion, on which I would also welcome the IAEA's views.

My request has focussed on nuclear safety, but the nuclear package, as well as the Committee's inquiry, is also concerned with the management of spent fuel and radioactive wastes. As you will be aware, the nuclear package also proposed legislation requiring EU Member States to publish plans and timescales for their long-term disposal of nuclear wastes. I would be most grateful for any views or position statement from the IAEA on this aspect of the EU's nuclear package, which also could be used as evidence to the inquiry.

The timescale of the inquiry is tight with the aim being to finish collecting evidence by March, with the report finalised in May and published in June. Hence an early response from the IAEA would very much be appreciated.

Letter from Tomihiro Taniguchi, The Deputy Director General of the International Atomic Energy Agency to Lord Grenfell, Chairman to the EU Select Committee dated 6th March 2006

May I first thank you for your letter addressed to the Director General dated 2 February 2006 informing the IAEA about the inquiry of the Sub-Committee D of the UK House of Lords' European Union (EU) Select Committee on the European Union's nuclear package. The question of the proposed Council Directives has indeed already been the subject of discussion between the Agency and the European Commission in 2002, which resulted in statements by the Agency referred to in your letter.

Notwithstanding the above, I would like to refer to the role of the IAEA nuclear safety standards which are in the meantime recognized as globally applicable best practice. As you are aware, nuclear safety knows no borders and is best served through the development of a single set of standards that reflect such practice and are universally applied. In developing the global framework for nuclear safety, the interests of a wide range of national and international factors are taken into account whilst preserving the sovereignty, authority and ultimate responsibility of States.

Representatives of IAEA Member States from the EU regularly participate in the process for the development of IAEA safety standards by virtue of their membership in the relevant technical committees which review the safety standards. Many of them are also members of the Commission on Safety Standards, the penultimate forum in the IAEA endorsing the standards before they are approved by the Board of Governors as required. All draft Safety Fundamentals and Safety Requirements are submitted to the IAEA Board of Governors for approval. Thus, Member States are in a position to exchange information, practices, and ideas at the international level promoting an international understanding of and technical consensus on the issues involved. In turn, this process promotes nuclear safety worldwide. In addition it has to be noted that the architecture of the IAEA's safety committee structure allows for keeping the safety standards under review and therefore up to date. (Relevant publications explaining the structure and contents of the safety standards are attached.)

It is gratifying that the IAEA safety standards have also been very useful for most Member States in the self assessment that they conduct while preparing their national reports for the Review Meetings of the Convention on Nuclear Safety and the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management. I would also like to refer to the recent study conducted by the Western European Nuclear Regulatory Association (WENRA) to review and harmonize Nuclear Safety Standards in the areas of reactor safety. (WENRA has made its findings public during 9–10 February 2006 (www.wenra.org; link under publications to "Harmonization of reactor safety in WENRA countries"). The IAEA safety standards and national best practices were used by WENRA as reference levels for their study. It has been our view that any efforts to strengthen safety through regional standardization and co-operation should be commended. However, let me emphasize that duplicating the work of the IAEA's safety standards committees should be avoided in particular since the EU Member States actively participate in the development of the IAEA safety standards as noted earlier in this letter.

As regards the issue of the management of spent fuel and radioactive waste, the IAEA safety standards provide the technical bases for their safe handling and

disposal. The current world-wide practice of spent fuel storage (usually at Nuclear Power Plant sites) in most States is considered a temporary measure until a more suitable solution is found. The increasing amounts of waste require that a more permanent solution be adopted, and it would be useful to have a timetable for the management of radioactive waste as proposed in the draft directive. The IAEA has a project underway aimed at determining, mainly from the perspective of hazard, the most appropriate disposal solution for each major waste type. The linkage being developed between waste types and disposal options is taking into consideration the waste safety standards. The project also recognizes that national strategies need to address the number and type of activities generating radioactive waste within the country and the facilities available in accordance with the terms of the Joint Convention.

As it is unfortunately not possible to give oral evidence to the Committee, may I invite you to contact Mr Ahmad Karbassioun of the Department of Nuclear Safety and Security for any further clarifications you may need.

APPENDIX 2: CORRESPONDENCE WITH DEFRA, DTI AND THE EUROPEAN COMMISSION

Letter from Lord Grenfell, Chairman of the EU Select Committee to Mr Elliot Morley MP, Minister of State for Climate Change and Environment, dated 13 February 2006

We understand that your Department contributed to Lord Sainsbury's letter of 2 February responding to our call for evidence for the nuclear inquiry being undertaken by the Environment and Agriculture Committee of the House of Lords EU Select Committee (Sub Committee D). The inquiry is scrutinising the EU draft proposals for Directives on the management of radioactive waste and the safety of nuclear installations (COM(2004)526).

The Committee has a number of questions relating to the competence and compliance with subsidiarity of the proposed measures and consider that it would be expedient to deal with these by written correspondence, in advance of your oral evidence on 15 March. We have written to the DTI regarding the proposed nuclear safety Directive. This letter deals with the proposed waste management Directive. We would be grateful for your response on the following matters.

Competence

The Government's position

Your EM 12386/04 does not comment on the issue of competence. However, in your EM 8990/03 (on the original nuclear waste proposal) you indicated that Defra shared 'the reservations expressed by some other [Member States] regarding the legal base proposed' by the Commission. As we understand it, the points you make in EM 8990/03 relate principally to subsidiarity. You say that there is 'established Community competence with regard to the safety of radioactive waste management'.

What reservations do the Government have in respect of the proposed legal base for the Directive? Do the Government accept that the Community has the competence to adopt these measures?

Questions raised

Articles 31 and 32 of the Euratom Treaty grant competence to revise or supplement basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation. Secondary legislation has also been adopted in this field at European level.

Do you agree that there will be competence if the provisions of the proposed Directive concern the creation of basic standards which are aimed at protecting health? Is it possible to derive such basic standards from the articles of the Directive?

Some articles appear not to be concerned with the creation of standards but with the Community-level mechanism for ensuring that the standards set out are met by the Member States. Do Articles 31 and 32 confer competence to adopt supplementary legislation to ensure Member States' compliance with the basic standards? Or would other EURATOM articles provide a more solid base upon

which these provisions could be adopted? This is a matter on which we seek your views.

We note that the provisions of the nuclear waste proposal are closely linked to those of the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Material (JC), of which EURATOM is a member. Some appear to have been drawn from JC articles in respect of which competence was not asserted in the declaration made at the time of EURATOM's accession to the JC. Obviously the JC declaration of competence is not determinative of the extent of EURATOM competence. However, it is difficult to ignore the inconsistency, particularly in light of the ruling of the European Court of Justice in Case C-29/99 on the accession of EURATOM to the Convention on Nuclear Safety.

One possible explanation of the Commission's view that there is competence might be based on the distinction drawn by the ECJ in Case C-29/99 between the power to authorise the construction of nuclear installations and the power to establish, for the purposes of health protection, an authorisation system to be applied by Member States. Thus while EURATOM has no competence in respect of the former, the latter does fall within its competence. So even where EURATOM does not have competence in respect of specific articles of the JC to take action itself, it may still have competence to, in effect, require Member States to comply with those articles of the JC, as part of a broader regulatory framework. What conclusions do the Government draw from this case? Do you agree with the above interpretation of Case C-29/99 and the ECJ's approach to competence under the Euratom treaty?

Do you agree that an EC Treaty base would not be appropriate here? We understand that it has been suggested that Article 175 EC might be used instead, to reflect the environment aspect of the proposal and your views on this suggestion would be welcome. We note that although proposals were prepared for accession by both EURATOM and the EC to the JC, only EURATOM has acceded to date.

Finally, we would be grateful if you would clarify whether the Government objected to the legal base of the waste management proposal in the course of negotiations within the Working Group.

Subsidiarity

The Government's position

In EM 8990/03 you stated that 'the Commission has not yet made a convincing case for Community, rather than Member State, action with regard to the long-term management options and timeframes.' The new proposal removes the detailed timetabling provisions, leaving it to Member States to fix their own deadlines. We assume from the revised statement in your EM 12386/04 that you are now content with the provisions which have been inserted in their place and would be grateful if you would confirm the Government's position on this. In respect of long-term management of nuclear waste, we note that your objections appear to be based on the fact that CoRWM are currently conducting a review of radioactive waste management policy in the UK. Will the review procedures look into, among other things, deep geological disposal? What stage has the review reached? Are you able to draw any preliminary conclusions?

Questions raised

Do you agree that it is for the Commission to make the case that action is necessary at European level? Lord Sainsbury's letter refers to the international framework in place; do the Government accept that action at national level in the field of nuclear waste is often insufficient? The Commission, for its part, considers the international framework to be inadequate because it has no effective enforcement mechanism. It points out that legislation adopted by the Community will be more stringent than obligations under international conventions and is more likely to be observed by the Member States. Would you accept that this is not an unreasonable argument?

Lord Sainsbury points out that the proposed Directive 'would have little practical effect on the way [radioactive waste materials] are managed in the EU.' However, no evidence or explanation is provided to support this point of view. You refer in your EM to the requirement in the proposed Directive to study the possibility of giving priority to deep geological disposal, and consider that this runs counter to the current review procedures underway in the UK. In that case, does it not logically follow that the proposal may well have an effect on radioactive waste management in the EU? We have heard from witnesses that the UK is one of the worst offenders in terms of nuclear waste (due to its legacy of waste). Given the delays already experienced in the UK, is there not an argument for European-level intervention to ensure that action is taken?

The Government appear to be concerned about direct involvement in waste management by the Community. As we understand the position, the waste management programmes, detailing types and quantities of waste involved, the technology to be used for their management and the timetable for construction and operation of waste facilities would be prepared by the Member States. These programmes would then be peer reviewed by other Member States and the Commission. The result of the peer review process would be opinions and/or recommendations which would not be binding on the Member States. Is this also your understanding of the mechanism under the proposed Directive? In what sense do you consider that there would be direct involvement in national waste management by the Community?

We note that the Government accept that the ultimate goal of cooperation between Member States is to ensure that all EU countries with nuclear power programmes achieve harmonised approaches to the safety of radioactive waste management by 2010. What would be more effective to achieve this goal than binding legislation at Community level? The Council Conclusions to which the letter refers are useful, but how can they be viewed as sufficiently robust to enable harmonisation to be achieved within four years?

Informally, we understand that the attitude of the UK Government may be more open to Community-level regulation, given that the delay in progress on the Nuclear Package means that it is likely that the CoRWM review will be completed well in advance of the adoption of any Directive. Has there been a shift in attitude within the Government? What are your outstanding objections to the proposal?

We would be grateful if you would take advice on this and provide a detailed legal note addressing the many issues raised above. No doubt your Department will want to liaise with the DTI. However, it would be helpful to have the response from you on the issues relating to the waste management Directive above.

Letter from Mr Elliot Morley MP, Minister of State for Climate Change and Environment to Lord Grenfell, Chairman of the EU Select Committee dated 6th March 2006

Thank you for your letter of 13 February, setting out a number of questions that the Environment and Agriculture Committee of the House of Lords has raised regarding the above proposal from the European Commission.

The Committee has asked for a detailed legal note addressing these issues, which relate mainly to competence and subsidiarity, in advance of my oral evidence to the Committee on 15 March. While many of the Committee's questions do, indeed, relate to legal matters, some ask for the Government's policy position.

I attach a document that summarises the questions set out in your letter and provides a reply to each. I hope that the Committee will find this a helpful addition to the Government's evidence on this proposal that was included in Lord Sainsbury's submission of 2 February.

Response to questions contained in letter from Lord Grenfell dated 13 February 2006

Competence

What reservations do the Government have in respect of the proposed legal base for the Directive? Do the Government accept that the Community has the competence to adopt these measures?

1. In the Explanatory Memorandum to its original proposal (Jan 2003) the Commission states that the Euratom Treaty, in particular Articles 31 and 32, provides the legal basis for the proposal. Article 2(b) of the Euratom Treaty sets out that the Community shall 'establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied'. The Euratom Treaty lays down the procedure for establishing these standards at Article 31 and for supplementing them at Article 32. We expressed reservations regarding this proposed legal base in EM 8990/03, as it was difficult to see how the imposition of a method and timetable for long-term management of radioactive waste could be considered to be setting or supplementing the basic standards. It is still not entirely clear from the current proposed text how standards of the kind referred to above can be derived (see also 2 and 3 below).

Do you agree that there will be competence if the provisions of the proposed Directive concern the creation of basic standards which are aimed at protecting health?

2. Yes; Chapter III on Health and Safety, and, in particular, Articles 31–32 provide the legal basis for introducing (Euratom) Community measures establishing safety standards for the protection of workers and the general public. Directive 96/29/Euratom is the principal measure that introduces such standards (the basic safety standards Directive), but other measures could also be introduced under this legal base if they had the effect of setting such basic standards; basic standards are defined fairly narrowly in Article 30, however (doses, levels of exposure and contamination, health surveillance of workers), and this needs to be borne in mind when assessing the relevance of this legal base for the Directive.

Is it possible to derive such basic standards from the articles of the Directive?

3. The basic safety standards Directive sets specific standards for the protection of workers and the general public from the dangers of ionising radiation. The

proposed Directive does not supplement or alter these standards. It does, however, set out some general principles regarding radioactive waste that could be considered to be standards. For instance, Article 3 provides that 'Member States shall take the appropriate steps to ensure that the generation of radioactive waste is kept to the minimum practicable'. This mirrors the general safety requirement at Article 11(ii) of the Joint Convention.

Do Articles 31 and 32 confer competence to adopt supplementary legislation to ensure Member States' compliance with the basic standards? Or would other Euratom articles provide a more solid base upon which these provisions could be adopted?

4. By their nature, Community measures imposing obligations on Member States contain some reference as to the need to ensure compliance from individuals to whom the measure relates or by the Member States through reporting obligations. Such mechanisms exist already in the basic safety standards directive—which provides that Member States require undertakings to carry out specific actions, in addition to the general provisions on transposition at Article 55—and so no other Euratom treaty provision need be relied upon. This is clear from the overall objective expressed in Article 2(b) of the Euratom Treaty, which provides for the establishment of uniform safety standards and ensuring that they are applied.

What conclusions do the Government draw from [Case C-29/99 Nuclear Safety Convention]? Do you agree with [the Committee's] interpretation of the case and the ECJ's approach to competence under the Euratom Treaty?

5. Euratom competence under the IAEA Joint Convention is determined by Article 101 Euratom, which provides that the Euratom Community may enter into international obligations within the limits of its powers and jurisdiction. Thus individual treaty articles and secondary legislation will provide the basis for external competence and will set the limits within which the Euratom Community will have competence under the Joint Convention and the extent to which it is a Party to it. The Euratom Community's declaration of competence was therefore based on the perceived limits of Community competence at the time of accession.

6. If, as a result of the adoption of the Directives on the safety of nuclear installations or the management of spent fuel and radioactive waste relying on Articles 31 and 32, the scope of Euratom competence (or at least the interpretation of what is meant by those Articles and therefore what is covered by them) increases, the scope of its competence before the Joint Convention will increase accordingly. In such an eventuality, the declaration of competence may be outdated and may need to be revised (although whilst such revision is required of the Community in many international agreements, it is seldom done in practice). Consequently, reliance on some of the Joint Convention Articles in the proposed Directive does not necessarily mean that the Community has competence in respect of those Articles at present, but it will acquire such competence if the Directives were to be adopted.

7. The ECJ judgment indicates that the Community, whilst not having competence in respect of the design, construction and authorisation of facilities, does have competence in relation to the broader issue of radiological protection. This is logical given the ambit of Chapter III (Health and Safety) as based on the overall objective contained in Article 2(b) Euratom. It is not for the Government to disagree with this approach—it now forms part of Community law—but this finding does not necessarily mean that the Community has competence in relation to implementing measures (where Article 33 of the Treaty continues to allow Member States to adopt their own measures implementing basic standards, the

Commission's role being limited to making recommendations for harmonisation), and thus all aspects of the Joint Convention or for all matters within the scope of the proposed Directive.

Do you agree that an EC Treaty base would not be appropriate here?

8. An EC Treaty base of Article 174 was originally proposed for the Decision concerning EC accession to the Joint Convention. This was designed to cover the role that environmental impact assessment might play in any siting of a radioactive waste or spent fuel facility. Although in any event the correct base would have been Article 175 (concerning environmental measures rather than objectives), the idea of EC accession was abandoned by the Commission on the grounds that it was unnecessary, a view shared by the Government as the Euratom Community already had competence for siting and assessment issues through Article 37 Euratom and Article 44 of Directive 96/29 respectively.

9. As indicated above, Article 175 could provide a legal base where there is a requirement for an environmental impact assessment (EIA) prior to any decision to approve a nuclear facility. However, it is the Government's position that this seems unnecessary, given that EC regulation of radioactive waste disposal facilities already exists through their inclusion in the list of regulated activities annexed to the EIA Directive (85/337/EEC as amended) and it is the scope of Euratom involvement that is the real issue and the point of the proposed Directive. In addition, Article 175 could not be relied upon for any wider forms of assessment or monitoring by the Community. Consequently, with the exception of any EIA, it is the Government's view that the reason Euratom does not provide for the Community to propose Directives in these areas is because they are matters in which Member States are competent. Therefore it is not clear how the EC Treaty can assist.

Subsidiarity

The new proposal removes the detailed timetabling provisions. We assume from the revised statement in your EM 12386/04 that you are now content with the provisions [leaving it to Member States to fix their own deadlines] and would be grateful if you would confirm the Government's position on this.

10. The current proposal, which would allow Member States to decide their own time frames when establishing national programmes for the long-term management of radioactive waste, would cause fewer difficulties than the original proposal. It should be recognised, however, that national programmes may be subject to change due to unforeseen circumstances (e.g. the outcome of planning or regulatory reviews, consequent findings on the suitability of a proposed facility or site and, possibly, the outcome of discussions with the local communities involved). While it is encouraging that the Commission has amended its proposal in the light of the opinion of the European Parliament and the views expressed by many Member States, the Government nonetheless considers binding Community legislation in this area to be unnecessary and inappropriate.

Will the [CoRWM] review procedures look into, among other things, deep geological disposal? What stage has the review reached? Are you able to draw any preliminary conclusions?

11. Yes; CoRWM's current shortlist of options, which is being subjected to detailed appraisal in the run-up to their final recommendation in July 2006, includes:

- deep geological disposal;
- phased deep geological disposal;
- long-term interim storage;
- near-surface disposal of decommissioning waste.

CoRWM are due to announce their proposed recommendations in early May 2006 for a final round of consultation during May, but we cannot be sure of their final recommendation until it is delivered in July.

Do you agree that it is for the Commission to make the case that action is necessary at European level?

12. The role of the Commission is to propose to the Council the measures it considers to be necessary. An explanatory memorandum and regulatory impact assessment accompanying the proposal sets out the Commission's rationale for proposing Community action. In the case of the proposed Directives, there was insufficient support in the Council for binding Community legislation. The aim of the Action Plan being pursued under the Council Conclusions is to determine whether, and if so what, instruments in the framework of the Euratom Treaty could contribute more effectively to achieving nuclear safety and the safe management of spent fuel and radioactive waste.

Does the Government accept that action at national level in the field of nuclear waste is often insufficient?

13. In the UK, action at national level alone has been sufficient to ensure that all radioactive waste, including nuclear waste, is managed safely. Low-level waste is disposed of to the Drigg facility, while intermediate level waste (ILW) and high level waste (HLW) are currently in safe storage on nuclear sites. Some older, 'legacy' wastes are being conditioned and repackaged to make them suitable for placement in a long-term management facility. The primary responsibility for this rests with the Nuclear Decommissioning Authority.

14. In 2003, the Government decided that insufficient priority was being given to the issue of long-term management of ILW and HLW. That is being addressed through the Government's Managing Radioactive Waste Safely initiative, which includes the assessment of options for the long-term management of the UK's higher activity radioactive waste. The Government and the devolved administrations will decide policy and arrangements for its implementation in the light of CoRWM's recommendations. A parallel and complementary review of low-level waste (LLW) management policy is also under way.

The Commission points out that legislation adopted by the Community will be more stringent than obligations under international conventions and is more likely to be observed by the Member States. Would you accept that this is not an unreasonable argument?

15. This is a situation where the carrot may be more effective than the stick. Joint Convention review meetings, and other meetings under the international framework, promote an open exchange of experience between national regulatory bodies, including discussion of those areas where difficulties have been experienced or there may be room for improvement. This exchange of best practice is valuable in raising standards of radioactive waste management. If binding legislation were in place, the threat of infraction (whether real or imagined) would hang over the reviews that the draft Directive proposes should be carried out by the Commission's Committee of Experts. As a consequence, this

and other international exchanges could become more guarded and less productive.

You consider that the requirement in the proposed Directive to consider the possibility of giving priority to deep geological disposal runs counter to the current review procedures underway in the UK. Does it not logically follow that the proposal may well have an effect on radioactive waste management in the UK?

16. The proposed Directive would have little practical effect on the systems that are currently in place in the UK and other Member States to ensure the safe management of radioactive waste. Recital 14 of the draft Directive acknowledges that each Member State should remain fully responsible for the management of all spent nuclear fuel and radioactive waste under its jurisdiction. The proposal does, however, have the potential to impact on the process of policy development—and the fostering of stakeholder confidence that is essential to it—for the future long-term management of ILW and HLW. This process is a fragile and uncertain one, as we know from the experience in the 1990s (when a planning application for an underground laboratory near Sellafield was rejected). Action at the Community level that attempts to force the pace may, in practice, make it harder rather than easier to arrive at a solution that is capable of being implemented nationally.

Given the delays already experienced in the UK, is there not an argument for European-level intervention to ensure that action is taken?

17. It is by no means clear that a Directive of this sort could have prevented the collapse of the UK's disposal programme in the 1990s. Programmes do not always proceed as planned and there may be twists and turns, not least due to particular national circumstances. Intervention at the European level is unlikely to be able to address these difficulties—and could be counter-productive in terms of stakeholder engagement—although it may serve to focus Member States' attention on the issue of long-term management. The Government has already shown, through its policy programmes, that it recognises the need for action.

The result of the [Commission] peer review process would be opinions and/or recommendations, which would not be binding on the Member States. Is this also your understanding of the mechanism under the proposed Directive? In what sense do you consider that there would be direct involvement in national waste management by the Community?

18. The peer review of Member States' programmes by the Commission and experts from other Member States would of itself represent direct Community involvement. This review process is likely to be used to put pressure on Member States to bring their national programmes in line with Commission policies and views. Even if the opinions and recommendations flowing from this process would not be legally binding in themselves, they could provide the basis for the Commission to initiate infraction proceedings against Member States for non-implementation of the Directive. The Euratom peer reviews would thus be very different from the reviews carried out under the Joint Convention, which are carried out under strict rules of confidentiality and in a spirit of mutual trust and openness.

19. In addition, the drafting of national reports for the Joint Convention reviews, exchange of written questions and answers regarding those reports, and preparations for and attendance at review meetings involves the commitment of substantial resources by the regulatory bodies and Government departments involved. A separate Commission peer review process would add substantially to

the demand on limited resources with little obvious benefit in terms of the Directive's stated aim of protecting the safety of workers and the general public.

The Government accept that the ultimate goal of cooperation between Member States is to ensure that all EU countries with nuclear power programmes achieve harmonised approaches to the safety of radioactive waste management by 2010. What would be more effective to achieve this goal than binding legislation at Community level?

20. Pending any new legislation that may result from the work to be undertaken under the Action Plan, agreed pursuant to the Council Conclusions, the Government continues to support the international framework of the IAEA non-mandatory standards and peer review under the Convention on Nuclear Safety. It should be stressed that the Government is not alone in its view that binding legislation is not required. UK operators have no interest in the proposals and the regulator (HSE/NII) is of the view that it would detract from rather than enhance the levels of safety currently being applied in practice.

The Council Conclusions are useful, but how can they be viewed as sufficiently robust to enable harmonisation to be achieved within four years?

21. The aim of the Action Plan agreed pursuant to the Council Conclusions is to determine whether, as if so what, instruments in the framework of the Euratom Treaty could contribute more effectively to achieving nuclear safety and the safe management of spent fuel and radioactive waste. This process is well underway and the Working Party on Nuclear Safety is expected to report by the end of the year. It should be noted that it is not only the Council that is committed to putting the Action Plan in place but all Member States and the Commission are participating in the process.

The CoRWM review will be completed well in advance of any Directive. Has there been a shift in attitude [to Community level regulation] within the Government? What are your outstanding objections to this proposal?

22. There has been no change in the Government's attitude to the need for or value of binding Community legislation in this field. To reiterate the outstanding objections referred to in the replies given above:

- the proposal is, at best, only loosely related to its stated treaty base of establishing uniform safety standards to protect the health of workers and of the general public—it is more about furthering the Commission's policies and views on radioactive waste management practice;
- the proposal relates to an area where there is no Community competence—namely the way in which individual Member States are implementing their obligations under the Euratom Treaty and the basic safety standards Directive;
- the Government is not convinced that there is a case for binding Community legislation and believes that the Council should be allowed to conclude its work through the Action Plan on the Council Conclusions to determine what Euratom instruments are most appropriate in this field;
- the proposal would be more likely to discourage the open discussion of problems and the exchange of best practice between Member States than to enhance the safety of radioactive waste management by setting common standards;

- the Government is facing a critical period in the development of policy on the long-term management of higher activity radioactive waste and Community action that attempts to force the pace or direction of this process could be counterproductive, in particular in terms of stakeholder engagement;
- the peer reviews envisioned in the proposal would represent unwarranted Community involvement in national programmes and could provide the basis for infraction proceedings against Member States.

Letter from Lord Grenfell, Chairman of the EU Select Committee to Mr Malcolm Wicks MP, Energy Minister dated 13 February 2006

Thank you for your letter of 2 February responding to our call for evidence for the nuclear inquiry being undertaken by the Environment and Agriculture Committee of the House of Lords EU Select Committee (Sub Committee D). The inquiry is scrutinising the EU draft proposals for Directives on the management of radioactive waste and the safety of nuclear installations (COM(2004)526).

The Committee has a number of questions relating to the competence and compliance with subsidiarity of the proposed measure on the safety of nuclear installations and consider that it would be expedient to deal with these by written correspondence, in advance of your oral evidence to the Committee on 15 March. We are also writing to Defra regarding their legal position on the proposed measure for the management of radioactive waste and spent fuels. We would be grateful for your response on the following matters.

Competence

The Government's position

Your EM 12386/04 does not express any views on the competence of the Community to adopt the nuclear safety proposal. However, in your EM 8990/03 (in respect of the original proposal) you do give some details of your objections on grounds of competence. You indicate that you do not consider the judgment of the European Court of Justice in Case C-29/99 to have resolved the question of competence and also suggest that the Commission is seeking to include provisions based on provisions in the Convention on Nuclear Safety (CNS) for which competence was not claimed in that case. You question in particular whether there is competence to adopt the detailed rules for decommissioning set out in the original proposal.

The decommissioning rules have been removed from the new draft of the proposal and we assume that you are now content with the more limited decommissioning provisions which have been inserted in their place. We would be grateful if you would confirm the Government's position on this.

Questions raised

Articles 31 and 32 of the Euratom Treaty grant competence to revise or supplement basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation. The ECJ has confirmed, in Case C-29/99, that this is not limited to the creation of standards in respect of processes but also applies to the creation of standards in respect of the sources of radiation, i.e. measures can be adopted in respect of nuclear installations themselves.

Do you agree that there will be competence if the provisions of the proposed Directive concern the creation of basic standards which will apply to nuclear installations and are aimed at protecting health? Is it possible to derive such basic standards from the articles of the Directive?

Some articles appear not to be concerned with the creation of standards but with the Community-level mechanism for ensuring that the standards set out are met by the Member States. Do Articles 31 and 32 confer competence to adopt supplementary legislation to ensure Member States' compliance with the basic standards? Or would other EURATOM articles provide a more solid base upon which these provisions could be adopted? This is a matter on which we seek your views.

Do you agree that an EC Treaty base would not be appropriate here? Such a base might have been relevant in respect of decommissioning provisions; however, with their deletion, it seems that even if the proposal has an internal market purpose, this is probably merely incidental to the purpose of ensuring nuclear safety. Your views on this would be welcome.

We agree that some of the proposal's provisions appear to have been taken from articles of the CNS in respect of which competence was not claimed. Obviously the CNS declaration of competence is not determinative of the extent of EURATOM competence. However, it is difficult to ignore the inconsistency, particularly given the ECJ's ruling.

One possible explanation might be based on the distinction drawn by the ECJ in Case C-29/99 between the power to authorise the construction of nuclear installations and the power to establish, for the purposes of health protection, an authorisation system to be applied by Member States. Thus while EURATOM has no competence in respect of the former, the latter does fall within its competence. So even where EURATOM does not have competence in respect of specific articles of the CNS to take action itself, it may still have competence to, in effect, require Member States to comply with those articles of the CNS, as part of a broader regulatory framework. What conclusions do the Government draw from this case? Do you agree with the above interpretation which would support the Commission's view that the Community has the necessary competence?

Finally, we would be grateful if you would clarify whether the Government objected to the legal base of the nuclear safety proposal in the course of negotiations within the Working Group.

Subsidiarity

The Government's position

Your EM 12386/04 reiterates the views you expressed in EM 8990/03. We understand that you consider the proposal to breach the principle of subsidiarity on the grounds that it is unlikely to add any value to the existing nuclear safety regime. You also point to the Commission's lack of technical expertise in the field and the danger that a further level of regulation at EU level will increase the problem of scarcity of experts in the field of nuclear safety.

Questions raised

Do you agree that it is for the Commission to make the case that action is necessary at European level? We note your concerns regarding the absence of any 'added value' in the new proposal. In referring to the international framework in

place, the Government appear to accept that action at national level is often insufficient. The Commission, for its part, considers the international framework to be inadequate because it has no effective enforcement mechanism. It points out that legislation adopted by the Community will be more stringent than obligations under international conventions and is more likely to be observed by the Member States. Would you accept that this is not an unreasonable argument?

In your response to our call for evidence, you explain that ‘it is important not to have internationally legally binding standards for the safety of nuclear installations so that regulators may be free to ensure that the responsibility for safety remains with the operators of nuclear facilities within their jurisdiction’. Is there not some inconsistency in stressing the importance of international standards while at the same time refuting the need for these standards to be binding? Does it necessarily follow that because binding standards have been agreed responsibility for safety has been removed from national operators? Article 4 of the proposal makes it clear that responsibility for safety remains with the licence holder and that safety measures and controls will be agreed with the national regulatory body. Recital 11, which stresses that responsibility for the safety of nuclear installations will remain with States, is also important here. It seems that operators would be responsible for ensuring safety under the proposed Directive much in the same way as they are now under the IAEA framework. Could you clarify the Government’s position?

You express concern that the Commission, and ultimately the ECJ, will be able to interfere in national regulatory decisions because they would determine whether all reasonably achievable measures have been implemented to ensure a high level of safety (as required by Article 5). Would you agree that binding measures must be backed by some enforcement mechanism to ensure compliance with the measure and that if Member States sign up to basic standards it is their responsibility to comply with them?

You say that Community-level standards would ‘inevitably lead to a clash between the responsibility of Nation States for the safety of nuclear installations within their jurisdiction and the Commission’s responsibility for enforcing Euratom legislation’. But would there be a ‘clash’ as you suggest? The obligation on Member States is to implement the Directive by setting up a regulatory framework to ensure standards are observed; individual decisions in application of those rules would remain a matter for the national regulatory body. Action at Community level, in the form of infringement proceedings, would only be required where Member States fail to implement and enforce the agreed standards. The proceedings would be aimed at requiring the Member State to transpose correctly the Directive in national law.

We note that the Government accept that the ultimate goal of cooperation between Member States is to ensure that all EU countries with nuclear power programmes achieve harmonised approaches to nuclear safety by 2010. What would be more effective to achieve this goal than binding legislation at Community level? The Council Conclusions to which you refer are useful, but how can they be viewed as sufficiently robust to enable harmonisation to be achieved within four years?

Finally we have been informally advised that the position of the Government on the need for these proposals may have shifted slightly over recent months. It would be helpful to have your confirmation of your present position and a full explanation of any objections which the Government maintain on subsidiarity grounds.

We would be grateful if you could provide a detailed legal note addressing the many issues raised above.

Letter from Mr Malcolm Wicks MP, Energy Minister to the Clerk to Sub-Committee D dated 7th March 2006

I am responding to Lord Grenfell's letter of 13 February inviting detailed legal evidence on the European Commission's revised proposals for Council Directives dealing with the safe management of radioactive waste and spent fuel and the safety of nuclear installations.

I attach the responses in question and answer form.

Q1. The decommissioning rules have been removed from the new draft of the proposal and we assume that you are now content with the more limited decommissioning provisions which have been inserted in their place. We would be grateful if you would confirm the Government's position on this.

In the DTI's EM 8990/03 (in respect of the original proposal) we questioned whether there was competence 'to introduce Community legislation in all the areas covered by the Directive especially in respect of the detailed rules envisaged for managing decommissioning funds'. We assume that the Committee's reference to 'detailed rules for decommissioning in the original proposal' refers to the issue of decommissioning funds, for which there is no longer a specific provision in the new proposal. However, Article 9 of the new proposal 'requires Member States to ensure that adequate financial resources are made available from regulatory bodies and operators to support the safety of nuclear installations throughout their life.' This would not appear to be consistent with the establishment of the NDA under the Energy Act 2004 as the NDA is not a 'regulatory body' and it is not intended that the operators of public nuclear sites (e.g. BNFL, UKAEA etc) will, subject to State Aid clearance, contribute to the costs of decommissioning.

Consequently, as currently drafted the Government cannot support the more limited decommissioning funding provisions that have replaced the detailed rules envisaged in the original proposal. However, we would be happy to support proposals that require Member States to ensure that there are adequate resources to support the safety of nuclear installations provided that the proposals are not prescriptive as to the method of achieving this objective.

Separately to decommissioning funds, it is the view of Government that statements of the European Court of Justice in Case C-29/99 (in particular paragraphs 82 and 89) can be interpreted as a restatement of the existing case law that Chapter 3 Euratom should be viewed in terms of wider radiation protection (not merely dose limits as originally argued by the Council) but without giving the Community the scope to bring technological aspects of nuclear installations safety within its competence.

Q2. Do you agree that there will be competence if the provisions of the proposed Directive concern the creation of basic standards which are aimed at protecting health?

Yes; Chapter III on Health and Safety, and, in particular, articles 31–32 provide the legal basis for introducing (Euratom) Community measures establishing safety standards for the protection of workers and the general public. Directive 96/29/Euratom is the principal measure that introduces such standards (the basic safety standards Directive), but other measures could also be introduced under this legal base if they had the effect of setting such basic standards. However, basic standards are defined fairly narrowly in Article 30 (doses, levels of exposure and

contamination, health surveillance of workers), and this needs to be borne in mind when assessing the relevance of this legal base for the Directive.

Q3. Is it possible to derive such basic standards from the articles of the Directive?

The basic safety standards Directive sets specific standards for the protection of workers and the general public from the dangers of ionising radiation. The proposed Directive does not supplement or alter these standards. It does, however, set out some general principles regarding radioactive waste that could be considered to be standards. For instance, Article 3 provides that 'Member States shall take the appropriate steps to ensure that the generation of radioactive waste is kept to the minimum practicable'. This mirrors the general safety requirement at Article 11(ii) of the Joint Convention.

Q4. Do Articles 31 and 32 confer competence to adopt supplementary legislation to ensure Member States' compliance with the basic standards? Or would other Euratom articles provide a more solid base upon which these provisions could be adopted?

By their nature, Community measures imposing obligations on Member States contain some reference as to the need to ensure compliance from individuals to whom the measure relates or by the Member States through reporting obligations. Such mechanisms exist already in the basic safety standards directive—which provides that Member States require undertakings to carry out specific actions, in addition to the general provisions on transposition at Article 55—and so no other Euratom treaty provision need be relied upon. This is clear from the overall objective expressed in Article 2(b) of the Euratom Treaty, which provides for the establishment of uniform safety standards and ensuring that they are applied.

Q5. Do you agree that an EC Treaty base would not be appropriate here?

An EC Treaty base of Article 174 was originally proposed for the Decision concerning EC accession to the Joint Convention. This was designed to cover the role that environmental impact assessment might play in any siting of a radioactive waste or spent fuel facility. Although in any event the correct base would have been Article 175 (concerning environmental measures rather than objectives), the idea of EC accession was abandoned by the Commission on the grounds that it was unnecessary, a view shared by the Government as the Euratom Community already had competence for siting and assessment issues through Article 37 Euratom and Article 44 of Directive 96/29 respectively.

As indicated above Article 175 could provide a legal base where there is a requirement for an environmental impact assessment (EIA) prior to any decision to approve a nuclear facility. However, it is Government's position that this seems unnecessary given that EC regulation of radioactive waste disposal facilities already exists through their inclusion in the list of regulated activities annexed to the EIA Directive (85/337/EEC as amended) and it is the scope of Euratom involvement that is the real issue and the point of the proposed Directive. In addition, Article 175 could not be relied upon for any wider forms of assessment or monitoring by the Community. Consequently, with the exception of any EIA, it is Government's view that the reason Euratom does not provide for the Community to propose Directives in these areas is because they are matters in which Member States are competent. Therefore it is not clear how the EC Treaty can assist.

Q6. What conclusions do the Government draw from [Case C-29/99 Nuclear Safety Convention]? Do you agree with [the Committee's] interpretation of the case and the EC's approach to competence under the Euratom Treaty?

Euratom competence under the IAEA Joint Convention is determined by Article 101 Euratom, which provides that the Euratom Community may enter into international obligations within the limits of its powers and jurisdiction. Thus individual treaty articles and secondary legislation will provide the basis for external competence and will set the limits within which the Euratom Community will have competence under the Joint Convention and the extent to which it is a Party to it. The Euratom Community's declaration of competence was therefore based on the perceived limits of Community competence at the time of accession.

If, as a result of the adoption of the safety of nuclear installations or the management of spent fuel and radioactive waste Directives relying on Articles 31 and 32, the scope of Euratom competence (or at least the interpretation of what is meant by those Articles and therefore what is covered by them) increases, the scope of its competence before the Joint Convention will increase accordingly. In such an eventuality, the declaration of competence may be outdated and may need to be revised (although whilst such revisions are required of the Community in many international agreements, is seldom done in practice). Consequently, reliance on some of the Joint Convention articles in the proposed Directives does not necessarily mean that the Community has competence in respect of those articles at present, but it will acquire such competence if the Directives were to be adopted.

The ECJ judgment indicates that the Community, whilst not having competence in respect of the design, construction and authorisation of facilities, does have competence in relation to the broader issue of radiological protection. This is logical given the ambit of Chapter III (Health and Safety) as based on the overall objective contained in Article 2(b) Euratom. It is not for the Government to disagree with this approach—it now forms part of Community law—but this finding does not necessarily mean that the Community has competence in relation to implementing measures (where Article 33 of the Treaty continues to allow Member States to adopt their own measures implementing basic standards, the Commission's role being limited to making recommendations for harmonisation), and thus all aspects of the Joint Convention or for all matters within the scope of the proposed Directive.

Q7. Did the Government object to the legal base of the nuclear safety proposal in the course of negotiations within the Working Group?

The UK along with several other Member States expressed doubts about the proposed Treaty base for the Directive on nuclear installations safety, Chapter 3 of the Treaty establishing the European Atomic Energy Community (Euratom). Questions have also been raised as to whether measures on radioactive waste management and decommissioning funds could be regarded as a 'basic standard' of safety as defined in Article 30 Euratom.

Q8. Do you agree that it is for the Commission to make the case that action is necessary at European level?

The role of the Commission is to propose to the Council the measures it considers to be necessary. An explanatory memorandum and regulatory impact assessment accompanying the proposal sets out the Commission's rationale for proposing Community action. In the case of the proposed Directives, the Council was not convinced that the Commission had made the case for binding Community legislation.

Q9. We note your concerns regarding the absence of any 'added value' in the new proposal. In referring to the international framework in place, the Government appear to

accept that action at national level is often insufficient. The Commission, for its part, considers the international framework to be inadequate because it has no effective enforcement mechanism. It points out that legislation adopted by the Community will be more stringent than obligations under international conventions and is more likely to be observed by the Member States. Would you accept that this is not an unreasonable argument?

No, by referring to the international framework we do not accept that action at the national level is insufficient. In Government's view the international framework and action at the national level are complementary (based on the view of IAEA members, which the UK supports, that it is important not to have internationally legally binding standards so that regulators may be free to ensure that responsibility for safety remains with the operators within their jurisdiction). As currently drafted the proposal appears designed to change the basic principle, accepted internationally, that nuclear operators are primarily responsible for the safety of their installations.

Q10. Is there not some inconsistency in stressing the importance of international standards while at the same time refuting the need for these standards to be binding? Does it necessarily follow that because binding standards have been agreed responsibility for safety has been removed from national operators? Article 4 of the proposal makes it clear that responsibility for safety remains with the licence holder and that safety measures and controls will be agreed with the national regulatory body. Recital 11, which stresses that responsibility for the safety of nuclear installations will remain with States, is also important here. It seems that operators would be responsible for ensuring safety under the proposed Directive much in the same way as they are now under the IAEA framework. Could you clarify the Government's position?

The Government's position remains that Peer review can only be effective if the participants can come together in a spirit of trust and openness. This would not be possible under the Commission's proposals as national regulators would, in effect, become agents for the Commission in a process that could ultimately lead to court action against a Member State.

Furthermore, in its draft report to the Joint Convention on the Safety Of Spent Fuel And On The Safety Of Radioactive Waste Management, the Commission makes its position on direct involvement clear, stating:

'These [waste management] programmes would be peer reviewed by experts from other Member States and the Commission, detailing which types and quantities of waste are involved, which technology would be used for their management, and the timetable for construction and operation of the different facilities needed.'

Policy decisions on the future management of radioactive waste need to be taken as closely as possible to those who will be affected by such decisions, in a transparent way and with the involvement of all relevant stakeholders. This is done most appropriately at the national level, given the wide variety in radioactive waste streams, options for their management and regulatory and administrative frameworks in the Member States.

Q11. Would you agree that binding measures must be backed by some enforcement mechanism to ensure compliance with the measure and that if Member States sign up to basic standards it is their responsibility to comply with them?

Member States have no option whether to sign up to basic standards, as this is the subject of community law (Council Directive 96/29/Euratom of 13 May 1996

laying down basic safety standards for the protection of the health of workers and the general public against dangers from ionising radiation).

Q12. You say that Community-level standards would 'inevitably lead to a clash between the responsibility of Nation States for the safety of nuclear installations within their jurisdiction and the Commission's responsibility for enforcing Euratom legislation'. But would there be a 'clash' as you suggest?

Whilst 'clash' might be a strong word, the Government's position is that Peer review can only be effective if the participants can come together in a spirit of trust and openness. We believe that the spirit of trust and openness would be compromised under the Commission's proposals because national regulators would, in effect, become agents for the Commission in a process that could ultimately lead to court action against a Member State. It is essential that there should be no blurring of lines of responsibility as between the national regulatory authorities and a body of Commission officials to whom they would appear to be answerable.

Q13. We note that the Government accept that the ultimate goal of cooperation between Member States is to ensure that all EU countries with nuclear power programmes achieve harmonised approaches to nuclear safety by 2010. What would be more effective to achieve this goal than binding legislation at Community level?

Pending any new legislation that may result from the work to be undertaken under the Action Plan, agreed pursuant to the Council Conclusions, the Government continues to support the international framework of the IAEA non-mandatory standards and peer review under the Convention on Nuclear Safety.

It should be stressed that the Government is not alone in its view that binding legislation is not required. UK operators have no interest in the proposals and the regulator (HSE/NII) is of the view that it would detract from rather than enhance the levels of safety currently being applied in practice.

Q14. The Council Conclusions to which you refer are useful, but how can they be viewed as sufficiently robust to enable harmonisation to be achieved within four years?

The aim of the Action Plan agreed pursuant to the Council Conclusions is to determine whether, as if so what, instruments in the framework of the Euratom Treaty could contribute more effectively to achieving nuclear safety and the safe management of spent fuel and radioactive waste. This process is well underway and the Working Party on Nuclear Safety is expected to report by the end of the year. It should be noted that it is not only the Council committed to putting the Action Plan in place but all Member States and the Commission are participating in the process.

Q15. Finally we have been informally advised that the position of the Government on the need for these proposals may have shifted slightly over recent months. It would be helpful to have your confirmation of your present position and a full explanation of any objections which the Government maintain on subsidiarity grounds.

The Government set out its position in EM 8990/03 and EM 12386/04 and subsequently in its submission of evidence of 2 February. Government's position has not shifted from that set out and remains that: there is a provision in the text of the proposed Directive on nuclear safety (Article 4) stating that 'the safety measures and controls to be implemented in a nuclear installation shall be decided solely by the regulatory body and the licence holder'. The Commission would nevertheless still have considerable scope for interfering in national regulatory decisions. This is because it would be for the Commission, and ultimately the

ECJ, to determine whether Member States were ensuring that ‘all reasonably achievable measures’ are being implemented to ensure ‘a high level of safety’ (Article 5). Clearly, it might be possible to negotiate some improvements to the drafting of these provisions. Indeed, the bulk of Article 5 was taken out of the text that was considered by COREPER. But the adoption of any legal requirements at the Community level would be bound to lead to a blurring of lines of responsibility as between the national regulatory authorities and the Commission.

Letter from Lord Grenfell, Chairman to the EU Select Committee to Mr Andris Piebalgs, Commissioner for Energy dated 15th February 2006

I am writing to you in my capacity as the Chairman of the UK House of Lords’ European Union Select Committee. Sub-Committee D, which considers environmental and agricultural issues is currently holding an inquiry into the Commission’s draft proposals for Directives on the management of radioactive waste and the safety of nuclear installations (COM(2004)526).

The Committee has a number of questions relating to the legal base and compliance with subsidiarity of the proposed measures and consider that it would be expedient to deal with these by written correspondence, in advance of your oral evidence to the Committee on 20 March. We would be grateful for your response on the following matters.

Competence

Treaty base

Articles 31 and 32 of the Euratom Treaty confer competence to revise or supplement basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation. Do you consider that the proposed Directives concern the creation of basic standards which are aimed at protecting health?

Do Articles 31 and 32 confer competence to adopt measures to ensure Member States’ compliance with the basic standards (i.e. in addition to the basic standards themselves)?

Might other EURATOM articles also be appropriate here (e.g. articles 36, 38, 187 and/or 203)? If so, why were they rejected?

Did the Commission consider whether the EC Treaty might provide a relevant legal base for these proposals? If so, why was it decided to base the proposals on the Euratom Treaty only?

International conventions

To what extent have the provisions in the proposals been drawn from the two international conventions in this field, the Convention on Nuclear Safety (CNS) and the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Material (JC)?

The declarations of competence which accompanied the decision for EURATOM to accede to the CNS and the JC declared the Community competent in relation to some, but not all, of their provisions. How important do you consider the declarations of competence to be in identifying the limits of Community competence?

Some provisions in the proposals appear to be closely linked to provisions in the international conventions in respect of which competence was not claimed in the declarations of competence. On what basis does the Community now claim competence to adopt these provisions? How do you explain the apparent inconsistency?

Case C-29/99

Do you consider that the judgment in the European Court of Justice case C-29/99 *Commission v Council* supports the view that the Community has the power to adopt the measures proposed? If so, on what part(s) of the judgment do you rely for support?

Subsidiarity

The need for Community action

Do you agree that it is for the Commission to make the case that action is necessary at European level? If so, how has this burden been discharged in relation to the present proposals?

Do you consider that Member States are failing to deal adequately with nuclear safety and nuclear waste? If so, what evidence do you have to support this view?

Do you consider that the inaction of Member States, in dealing with nuclear waste in particular, precludes them from arguing that the proposals breach the subsidiarity principle?

Would the proposals add value to the existing peer-review mechanism under the international framework? What will be the difference between the mechanism proposed by the Commission and the current mechanism under the CNS and the JC?

The proposals

Some Member States have expressed concern that the Commission does not have sufficient technical expertise to participate in nuclear safety regulation. Does the Commission have the necessary expertise?

Do you agree with those Member States that argue that a further level of regulation at EU level will increase the problem of scarcity of experts in the field of nuclear safety? What will be done to limit this problem?

What do you consider to be the role of the Commission and the ECJ in ensuring that Member States adopt the measures required under the proposed Directives, e.g. under Article 5 of the nuclear safety proposal? How does the Commission intend to assess whether 'all reasonably achievable measures' have been implemented?

What is the status of the opinions and recommendations of the Committee of Experts established under Article 7 of the nuclear waste proposal? What happens if the Member States ignores the Committee's opinion?

Member States' reactions

What have been Member States' reactions to the proposals? Do Member States other than the UK have concerns relating to competence and subsidiarity? What is the substance of their concerns?

We would be grateful if you would take advice on this from your legal service and provide a detailed legal note addressing the issues raised above

Letter from Mr Andris Piebalgs, Commissioner for Energy, to Lord Grenfell, Chairman to the EU Select Committee dated 15th March 2006

Thank you for your letter dated 15 February 2006 regarding the proposal of Council Directives on the management of radioactive waste and the safety of nuclear installations.

Please find a comprehensive reply to your questions in the annex to this letter.

Answers to the House of Lords' Questions

(1) The proposed Directives do in fact concern the creation of basic standards which are ultimately aimed at protecting health. So the answer is yes. More specifically on health protection, the Council adopted on the basis of Articles 31 and 32 of the Euratom Treaty the Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation ('BSS', OJ 1996 L 159, p. 1). Articles 31 and 32 are to be interpreted in view of the objective in Article 2 (b), which is to establish uniform safety standards to protect the health of workers and the general public (please see relevant case-law, e.g. C-29/99).

(2) The answer is yes. The Community has full powers for ensuring compliance with the BSS: They derive from a number of provisions: Article 2 (b) of the Euratom Treaty gives the Community the power to establish BSS ... 'and ensure that they are applied'. The most important provision in this context is Article 141, which confers to the Commission the role of 'Guardian of the Treaty' by empowering it to issue reasoned opinions about failures of Member States to fulfil their obligations deriving from the Euratom Treaty and to bring the matter to the European Court of Justice.

(3) Articles 36, 38 and 187 Euratom could not be used as legal basis for the two amended proposals for Council directives in question 'nuclear package' because they don't provide a procedure for exercising powers ('legal basis' is the article that establishes the procedure to be followed); as for article 203, it is only used whenever an action is necessary for achieving a Community objective but the Treaty has not provided the powers (in the case of the nuclear package, the powers are provided by Articles 31 and 32, which are the right legal basis)

(4) The answer is no. According to Article 305 (2) of the EC Treaty, the Euratom Treaty is 'lex specialis' for adopting legislation in the nuclear field. The EC Treaty would only be considered if there was no suitable provision in the Euratom Treaty.

(5) The nuclear package is to a large extent inspired by the CNS (to which Euratom is a contracting party since 2000) and by the Joint Convention (to which Euratom has acceded in 2006). Many provisions of the nuclear package are modelled after the two Conventions.

(6) The declarations of competence presented under the 2 Conventions are to be understood for the purposes of the Conventions and are the result of the Court ruling in case C-29/99 (for the CNS) and of the political consensus reached at the Council.

In particular, on the occasion of the approval by the Council of the revised declaration of competences (for the CNS, after court ruling C-29/99) and on the occasion of the approval by the Council of the accession to the Joint convention,

Commission/Council joint statements were attached to the Council minutes that clarified in particular that ‘the declaration of competence is without prejudice to ... the exact nature and sharing of the Community and Member States competences, (and) any further analysis of the matter, taking into account developments since case C-29/99 was lodged at the European Court of Justice.’

In particular, the Commission considers that both declarations of competences are not complete and should be more comprehensive.

(7) In view of the answer to point 6, there is no inconsistency.

(8) The answer is yes. The Court ruling in case C-29/99 supports the competence for the nuclear package. Please see in particular points: 75, 76, 79, 80, and 82 (to sum up: the objective in Article 2(b) cannot be achieved without controlling the sources of ionising radiation—point 76).

(9) The answer is yes. The Chernobyl accident highlighted the need for coordinated action at Community level, in particular as far as emergency preparedness is concerned. Considerable progress was made in this field since. Experience shows that the risks resulting from the nuclear field cannot be kept within the boundaries of one Member State. The existence of binding Community legislation is therefore essential to ensure that the same level of health protection exists in Europe. This is consubstantial with the existence of uniform BSS under Articles 31–32 (laying down BSS is an exclusive Community competence!).

(10) At present, due to the lack of European legislation, the Community unfortunately has no mandate to verify nuclear safety in the Member States. Information available to it results from the information being made public by Member States e.g. in the framework of the international conventions, or through technical reports, etc. It is a fact that the level of nuclear safety varies from one Member State to another, as has been clearly highlighted by the reports recently published by WENRA.

(11) The answer is yes. In any case, the Community feels a clear responsibility vis-à-vis future generations concerning the issue of radioactive waste management.

(12) The clear added value of binding Community legislation compared with existing mechanisms under the international conventions is to be found in the enforcement means offered by the Euratom Treaty, in particular Article 141 of the Euratom Treaty (please also see answer to point 2).

(13) The Commission considers having the necessary capacity. Apart from the technical expertise already existing in the Commission, one should bear in mind in this context Article 31 (Group of Experts), Article 134 (Scientific and Technical Committee) and Article 135 (study groups) of the Euratom Treaty, under which the Commission receives technical and scientific advice. Furthermore, there is advice from the Committees provided for in both directives.

(14) The Commission did not observe a scarcity of nuclear safety experts at EU level. While there may be one in certain countries, there should be no problem in the EU as a whole. Legislation at European level may also set free some national capacity by centralising certain tasks.

(15) The question whether ‘all reasonably achievable measures’ have been implemented will be assessed on a case by case basis, in view of the best practices. In this context, it should be borne in mind that the safety directive was meant to be a ‘framework directive’ which constitutes a first attempt to legislate in this field. Implementation measures might therefore differ substantially in their form, but not in the substance.

(16) Opinions are not binding, so there is no mechanism of enforcement like in Article 141 of the Euratom Treaty. However, where the consequences of not following an opinion derive in a situation where a provision is being breached, Article 141 shall apply nevertheless. In any case—in view of the point raised in question 15—the fact of not following the opinion of the Committee could be an indication that the member state has not taken all reasonably achievable measures in a given case.

(17) Member States' reactions were mostly positive or indifferent. However, some Member States opposed the proposals for, amongst other, the following reasons :

- Some Member States want to keep as much national decision power as possible. For the proposal on decommissioning funding in particular, there would be no basis for Community action.
- There was the fear that some Member States would have to accept waste from others.
- There was also the fear that the directives could put pressure to close old nuclear plants.
- Member States have also argued that a process of public hearings should be completed before accepting any European legislation.

Since the adoption of Council conclusions on this file (June 2003), none of the Presidencies reopened discussions on the proposals.

APPENDIX 3: CALL FOR EVIDENCE

Sub-Committee D will be taking evidence on the two proposed instruments which seek to introduce EU legislation on the safe management of spent nuclear fuel and radioactive waste, and the safety of nuclear installations. The two proposals were originally introduced by the Commission to provide a common basis for managing these issues. The United Kingdom and a number of other Member States rejected the package; however the Commission has since produced revised proposals, which are still under consideration.

12386/04: amended proposal for a Council Directive (Euratom) on the safe management of spent nuclear fuel and radioactive waste, submitted by the Department of Environment, Food and Rural Affairs;

amended proposal for a Council Directive laying down basic obligations and general principles on the safety of nuclear installations, submitted by the Department of Trade and Industry (COM(2004)526).

The Sub-Committee seeks responses in particular to the following questions:

Member States and the EU

1. What action are Member States currently taking to a) manage spent nuclear fuel and radioactive waste; and b) ensure the safety of nuclear installations?
2. Are the current approaches of Member States in these two areas adequate?

Possible action

3. Are legally binding EU measures required in these areas? If so, what added value would an EU layer of legislation bring to existing arrangements?
4. Is there a role for a non-legislative approach, such as encouraging joint research between the Member States?

The Commission's proposals

5. What impact would implementation of the proposed Directives have on the management of spent nuclear fuel and radioactive waste and the safety of nuclear installations within the EU?
6. What, if any, subsidiarity issues do the proposed Directives raise?
7. Would implementation of the proposals encourage the use of nuclear power within the EU?

APPENDIX 4: SUB-COMMITTEE D (ENVIRONMENT AND AGRICULTURE)

Sub-Committee D

The members of the Sub-Committee which conducted this inquiry were:-

- Lord Cameron of Dillington
- Lord Haskins
- Lord Lewis of Newnham
- Lord Livsey of Talgarth
- Baroness Miller of Chilthorne Domer
- Earl Peel
- Lord Plumb
- Lord Renton of Mount Harry (Chairman)
- Lord Sewel

The Sub-Committee records its gratitude to Professor Richard Clegg for his services as Specialist Adviser.

Declaration of Interests

Members did not declare any relevant interests specific to this inquiry. A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

APPENDIX 5: LIST OF WITNESSES

The following witnesses gave evidence. Those marked ** gave both oral and written evidence; those marked * gave oral evidence only; those without an asterisk gave written evidence only.

The Ambassador of the Czech Republic

The Ambassador of the Republic of Lithuania

Mr Jorma Aurela, Senior Engineer, Energy Department, Ministry of Trade and Industry, Government of Finland*

Dr Bertrand Barré, past President of the European Nuclear Society and Vice Chairman of the Euratom Scientific and Technical Committee**

Dr Colin Bayliss, Director, Major Projects and Engineering Division, UK Atomic Energy Authority **

Dr Lucian Biro, Director of the National Commission for the Control of Nuclear Activities in Romania, Government of Romania**

Mr David Bonser, Main Board Director, British Nuclear Fuels plc**

Mr Giles Chichester MEP*

Dr John Crofts, Director, Safety and Assurance Division, UK Atomic Energy Authority **

Mr Arturas Dainius, Under-Secretary of the Ministry of Economy, Embassy of Lithuania**

The Department for Environment, Food and Rural Affairs, The Department of Trade and Industry, The Health and Safety Executive and The Nuclear Decommissioning Authority**

The Health and Safety Executive**

Mr Thierry Dujardin, Deputy Director for Science and Development, OECD Nuclear Energy Agency*

The Embassy of Ireland

The Embassy of the Republic of Poland

The Environment Agency

Mr Kim Fyhr, Senior Adviser, Energy Department, Ministry of Trade and Industry, Government of Finland*

Mr François-Michel Gonnot, President, Agence Nationale pour la Gestion de Déchets Radioactifs*

Mr Stan Gordelier, Head of Nuclear Development, OECD Nuclear Energy Agency*

Mr Jonas Grinevicius, Minister Counsellor, Embassy of Lithuania**

Dr Peter Haug, Director-General, FORATOM**

Mr Roger Higman, Environmental Limits and Solutions Co-ordinator, Friends of the Earth*

Mr Riku Huttunen, Industrial Counsellor, Energy Administration and Nuclear Energy Division, Ministry of Trade and Industry, Government of Finland*

Dr Sue Ion, President, British Nuclear Energy Society**

Mr Richard Ivens, Head of British Nuclear Fuels, Brussels**

Mr Simon James, Communications Manager, Nuclear Industry Association**

Ms Miranda Kirschel, Corporate Affairs Manager, Nuclear Industry Association**

Ms Miapetra Kumpula-Natri MP, Social Democratic Parliamentary Group, Parliament of Finland*

Mr Antti Kuusela, Senior Vice President, Pohjolan Voima*

Mr Jean-Luc Lachaume, Deputy Managing Director, L'Autorité de sûreté nucléaire*

Mr Harri Lammi, Energy Specialist, Greenpeace Finland*

Mrs Jane Lloyd, Manager, Technical Services Group, Major Projects and Engineering, UK Atomic Energy Authority**

Mrs Ann McCall, Director for Safety and Environment, Nirex**

Mr Elliot Morley MP, Minister of State (Climate Change and Environment), Department for Environment, Food and Rural Affairs**

Mr Chris Murray, Chief Executive, Nirex**

Mr Gerald Ouzounian, Head of the International Department, Agency Nationale pour la Gestion de Déchets Radioactifs*

Ms Sirpa Paatero MP, Social Democratic Parliamentary Group, Parliament of Finland*

Mr Keith Parker, Chief Executive, Nuclear Industry Association**

Mr Eero Patrakka, CEO, Posiva Oy*

Mr Claudio Pescatore, Deputy to Mr Riotte, OECD Nuclear Energy Agency*

Ms Berta Picamal, Institutional Affairs Manager, FORATOM**

Commissioner Andris Piebalgs, Commissioner for Energy, The European Commission*

Mr Cyril Pinel, Assistant Director, International Relations, L'Autorité de sûreté nucléaire*

Mr Javier Reig, Head of Nuclear Safety Division, OECD Nuclear Energy Agency*

Mr Hans Riotte, Head of Radiation Protection and Radioactive Waste Management, OECD Nuclear Energy Agency*

The Royal Norwegian Embassy

Mr Esko Ruokola, Section Head, Nuclear Waste Management, STUK*

Mr Martin Saarikangas MP, National Coalition Party, Parliament of Finland*

Mr Pertti Simola, President and CEO, Teollisuuden Voima Oy*

Mr Jouko Skinnari MP, Social Democratic Parliamentary Group, Parliament of Finland*

The Swedish Ministry of Sustainable Development

Mr Takanori Tanaka, Deputy Director for Safety and Regulation, OECD Nuclear Energy Agency*

Dr Derek Taylor, Adviser to the Director General for Energy and Transport, The European Commission*

Mr Pentti Tiusanen MP, Left Alliance, Parliament of Finland*

Mr Sami Tulonen, Head of Unit, Institutional Relations, FORATOM**

Ms Carmen Turturea, Counsellor for EU Affairs, Government of Romania**

Mr Launo Tuura, Director of Public Relations, Helsinki Energy*

Mr Oras Tynkkynen MP, Green Parliamentary Group, Parliament of Finland*

Mr Timo Väisänen, Executive Vice President, Treasury, Power Procurement, Fuels and Administration, Pohjolan Voima*

Mr Pim Van Ballekom, Assistant to Commissioner Piebalgs, The European Commission*

Mr Tero Varjoranta, Director, Finnish Radiation and Nuclear Safety Authority, STUK *

Mr Christian Waeterloos, Director, Directorate for Nuclear Energy, The European Commission*

Dr Mike Weightman, HM Chief Inspector of Nuclear Installations, The Health and Safety Executive**

Dr Dave Whitworth, President, The Institution of Nuclear Engineers**

Mr Malcolm Wicks MP, Minister for Energy, Department of Trade and Industry**

Mr Laurence Williams, Safety Director, Nuclear Decommissioning Authority**

Additional written information was received from:

- FORATOM
- Greenpeace
- Greenpeace, Finland
- OECD Nuclear Energy Agency
- Posiva Oy
- STUK
- TVO

It has not been printed but is available for inspection at the House of Lords Record Office (020 7219 5316).

We would like to take the opportunity to thank all our witnesses for their submissions to our inquiry.

APPENDIX 6: REPORTS

Recent Reports from the Select Committee

Ensuring Effective Regulation in the EU (9th Report session 2005–06, HL Paper 33)

Scrutiny of Subsidiarity—Follow-up Report (15th Report session 2005–06, HL Paper 66)

The Work of the European Ombudsman (22nd Report session 2005–06, HL Paper 117)

Annual Report 2005 (25th Report session 2005–06, HL Paper 123)

Ensuring Effective Regulation in the EU: Follow-up Report (31st Report session 2005–06, HL Paper 157)

EU Legislation—Public Awareness of the Scrutiny Role of the House of Lords (32nd Report session 2005–06, HL Paper 179)

Reports prepared by Sub-Committee D (Environment and Agriculture)

Session 2002–2003

Reform of the Common Fisheries Policy: The Current Crisis over Fish Stocks (2nd Report Session 2003–04, HL Paper 16)

Mid-Term Review of the Common Agricultural Policy: External Implications (10th Report Session 2003–04, HL Paper 62)

Progress of Reform of the Common Fisheries Policy (25th Report Session 2003–04, HL Paper 109)

Revision of the EC Bathing Water Directive (46th Report Session 2003–04, HL Paper 193)

European Waste Management Policy (47th Report Session 2002–03, HL Paper 194)

Session 2003–2004

The EU and Climate Change (30th Report Session 2003–04, HL Paper 179 Volumes I–II)

Session 2005–2006

The Future Financing of the Common Agricultural Policy (2nd Report Session 2005–06, HL Paper 7)

European Union Fisheries Legislation (7th Report Session 2005–06, HL Paper 24)

The United Kingdom Presidency: Defra's Priorities, (12th Report Session 2005–06, HL Paper 36)

Too much or too little? Changes to the EU Sugar Regime (18th Report session 2005–06, HL Paper 80-I and 80-II)