

# INLA JOINT WORKING GROUPS 1, 3 & 5 MEETING

**Achat Hotel Karlsruhe, Germany – 3<sup>rd</sup> May 2017**

**Minutes prepared by A. van Kalleveen, WG5 Secretary**

## **1. Legal Implications of the UK leaving the EU and Euratom**

### **Brexit and Brexatom – Questions and Issues, Stephen Tromans**

There was no debate on Euratom at the time of the EU referendum. The Parliament was dissolved yesterday [02.05.2017] on the topic of energy and climate change policy; it was stated that leaving Euratom should be avoided. Such statement is further developed in a Parliament report of 2<sup>nd</sup> May 2017 stating that the government failed to see the consequences on the nuclear industry and that it will put it at risk (report available at <https://publications.parliament.uk/pa/cm201617/cmselect/cmbeis/909/909.pdf>). The industry represented by the Nuclear Industry Association (NIA) shared its view in a report this month where it stated its wish to stay in Euratom (NIA report of May 2017 available at: <https://www.niauk.org/wp-content/uploads/2017/05/Exiting-Euratom-May17.pdf>). The White paper mentioned that Euratom is a priority to be discussed. The bill (great repeal bill) ensures that the body of existing EU environmental laws will continue to have effect in the UK, i.e. that the corpus of EU laws as enforced in the UK at the time of the Brexit will be preserved.

The current identified difficulties associated with the Brexit are the:

- volume of legislation: much legislation may not be applicable or may require amendment,
- proposed CJEU judgements will need to get Supreme Court status,
- different types of laws will need to be distinguished: laws directly applicable, directives transposed by primary legislation, other directives transposed by secondary legislation, principles (precautionary, polluter pay principle).

National pieces of legislation transposing the Euratom Treaty, in particular those emanating from Chapter III of the Euratom Treaty (Art. 30 and following), and the international treaties ratified by the UK will still be applicable. Nuclear safeguards remain the main area of concern because of its relationship to trade in nuclear materials and fuel cycle activities. Also the UK has the largest number of Safeguards inspections.

### **Brexatom into the abyss? Ian Truman**

Regarding the nuclear common market, there are still constraints under the World Trade Organization to which the UK is Party. In practice, French workers may still join the workforce on the Hinkley Point C project after the Brexit.

About nuclear safeguards (accountancy, containment, surveillance and inspection), at the highest level the safeguards agreement with the IAEA and the Non-Proliferation Treaty are essentially obsolete because Euratom is Party to them. The UK needs to renegotiate those.

As for nuclear cooperation agreements (NCA), they need to be looked at (nuclear transfers are different than commercial trade). They will have catastrophic consequences for the nuclear sector since there is no time to renegotiate the US and Australia agreement before the UK leaves Euratom. Legal prohibition on nuclear trade

requires 2 to 3 years to be put into place. For the supplies of ores, source materials and special fissionable materials, the UK will be a third state. It will be free of common supply policy when contracting with other third states.

In the field of European nuclear research the Joint European Thorus (JET) and the Mega Amp Spherical Tokamak (MAST) – European fusion research projects located in the UK, the Euratom Treaty may be used to block future nuclear projects within the community. Finally, Brexatom is a trigger for others to leave Euratom as well or to renegotiate treaty.

## **2. Nuclear New Build**

### **Impact of Contract Models on Nuclear Projects, Ahab Abdel-Aziz**

The WG3 Chair presented on the “Impact of Contract Models on Nuclear Projects”, which is one of the proposed WG3 topics for further study and preparation of a report for the upcoming INLA Congress in 2018. After providing an overview of the nuclear project risk profile and the unique and layered risk matrix inherent to nuclear projects, and describing prior project experience, he discussed the applicability of various contract models to the specific risk matrix of nuclear projects. He also discussed whether the collaborative type of contract model, such as an alliancing model, typical in UK infrastructure projects could be adapted successfully for nuclear projects.

The key messages from the presentation were that:

- Different contracting models are suitable for different kinds of projects;
- Contract forms either assume or expressly create project management and motivational models that must be matched to the nature of the project; and
- The right contract form for a project is the one that can incentivise the culture that is optimal for project success by the behaviours that lead to that success.

During the Q&A session, the members of all Working Groups provided their perspectives and experience on projects, and discussed whether it would be possible to implement an alliancing model, given their clients’ expectations for contracts in the industry.

### **WG3 proposed programme, Vanessa Jakovich and Magda Hanebach**

The WG3 co-secretaries provided an overview of the results of the 2015/2016 survey of WG3 members, which determined that there was strong support from employers for involvement of their members, and members were willing to provide regular support for WG3 activities (2-5 hours per month). The survey results also included project areas of interest for the WG members, which were used to formulate the topics of interest for INLA WG3 reports for the INLA Congress described later in the presentation.

The objectives of INLA WG3 were provided, being the promotion and pursuit, on an international level, of studies and knowledge of legal issues related to international nuclear trade and new build and the exchange of information with other INLA members, and a plan was put forth for implementation of the objectives in 2017. The plan included quarterly meetings by telephone/video conference, and the formation of subgroups to prepare reports for the 2018 INLA Congress.

Five topics of focus were identified for the reports:

- Peter Hall presented the topic of Industry Shifts and their Implications for Project and Enterprise Risk Management, including the impacts of the insolvency of

technology providers on the wider supply chain, both regionally and globally, and what lessons could be learned about proofing against these risks in the future. Collaboration with WG2 was also discussed in the area of nuclear liability risk.

- Magda Hanebach presented on the topic of Resource Management: Financial and Human Resources, including (i) with respect to financing and funding, access to new build finance and the legal and institutional obstacles thereto and recent trends in state-sponsored projects, and (ii) with respect to human resources, capacity building and workforce planning issues for both regulatory and operating entities.
- The third topic, Alternative Contracting Models, had been discussed by Ahab Abdel-Aziz in his first presentation.
- Rory Connor presented on the fourth topic, Power Sales and Market Risk Mitigation, including the effect of the move toward liberalisation of power markets on power projects, and the possibility of project financing in the future, as well as consideration of electricity market structures, grid balancing regulations and power purchase agreements.
- Vanessa Jakovich presented on the fifth and final topic, being SMR Development, and discussed government support models for R&D and commercial development and deployment of SMRs, collaboration with WG1 in respect of licensing of SMRs, and the application of nuclear liability and export control laws when dealing with factory fabricated models (potentially in collaboration with WG2 in relation to liability).

### 3. Licensing challenges

#### **FIDIC forms of contract: the experience of ITER, Karoly Tamas**

It came out of the presentation that:

- Nuclear needs standard forms of contract;
- FIDIC – due to its attributes – may be a candidate, especially if nuclear received public funding and the project was subject to public procurement;
- FIDIC may provide adequate tools to overcome public procurement constraints through effectively differentiated Variation and claim procedures combined with an ‘authorization to proceed’ mechanism and the negotiated procedure without prior publication with the incumbent Contractor;
- The ITER experience may become the Trojan horse for nuclear to FIDIC.

#### **The Trump Administration – Derailing (Nuclear) Administrative Action, Bill Horin**

The Trump administration is seeking to alter the United States regulatory landscape to reduce its burden (reducing costs, minimizing new regulations) through Executive Orders (a common practice by new Presidents). In addition, the administration is using an Executive Order to eliminate Carbon-reduction initiatives created by President Obama.

President Trump has not addressed nuclear energy directly. Rather, in a separate Executive Order, he spells out measures that Federal agencies are to take in order to assure energy independence for the United States. In that context nuclear power is mentioned along with other energy sources (coal, gas, hydro, etc.).

Whether these Executive Orders ultimately are implemented is still unanswered. There have already been court challenges to the order dealing with regulatory burden

reduction. And for those Executive Orders that require specific actions to be taken by Federal agencies before they can be implemented, court challenges are expected when agency actions are taken.

Executive Orders do not directly apply to the US Nuclear Regulatory Commission, as it is an "independent agency," rather than an agency of the Executive Branch. Nonetheless, the NRC has indicated that it will review the Executive Orders and consider acting consistently with their spirit and intent. Other actions by the nuclear industry include identifying regulations from all agencies that have an impact on nuclear generation and that would be appropriate for elimination under these Executive Orders.

Further to the discussion on slide 17 of Bill's presentation, the US nuclear trade association, Nuclear Energy Institute, has submitted on 10<sup>th</sup> May 2017 recommendations for regulatory improvements in accordance with Executive Order 13783, "Promoting Energy Independence and Economic Growth." Those recommendations were sent to seven different federal agencies, dealing with several topics, including trade, new reactor research, tax, energy policy, and nuclear power valuation in electric rate proceedings (there are available at [https://images.magnetmail.net/images/clients/NEI/\\_attach/NEI-Recommendations\\_EO-RegulatoryReview\\_combined.pdf](https://images.magnetmail.net/images/clients/NEI/_attach/NEI-Recommendations_EO-RegulatoryReview_combined.pdf)).

#### **4. Governance in nuclear energy**

##### **The Swiss experience in the phase-out referendum of November 2016, Reto Müller**

Five main ideas came out of the presentation:

- Switzerland has different instruments allowing citizens to participate directly in political issues (direct democratic participation). Participation rights were developed in several steps over a long time.
- Under the former nuclear energy act of 1959 five nuclear power plants (NPP) were built after governmental decision without democratic participation (parliament or referendum).
- Several people's initiatives tried to prohibit the use of nuclear power in Switzerland by amending the federal constitution (last time in November 2016). They all failed with one exception: From 1990 to 2000, new builds were prohibited by an (intertemporal) constitutional clause.
- The new nuclear energy act of 2003 (2003 NEA) introduces an optional referendum for construction/operation licenses of nuclear facilities (general licenses). For NPP, deep geological repositories (DGR) or research reactors the government needs Parliament's approval to grant a license. Any subsequent referendum constitutes a purely political decision that shall legitimate the ruling.
- After the Fukushima accident, the government and parliament have sought to prohibit decisions on new build by an amendment of the 2003 NEA that would limit the general license procedure (whereby referendum can be held) to the licensing of DGR and research reactors. In parallel, the government has sought to replace nuclear energy production (40 % of the energy production in Switzerland) by savings (13 % less consumption till 2035) and new renewable energies. The amendment will undergo federal vote at the end of May 2017 (optional referendum against the amendment of a federal act). [It turned out that

58.2% of Swiss citizens voted in support of the revisions to the Energy Act according to a World Nuclear News article of 22 May 2017].

### **Stakeholder's involvement in R&D disposal projects: the experience of JOPRAD, Alexandra van Kalleveen**

The objective was to share insight on the Euratom R&D project in radioactive waste management "Towards Joint Programming on Radioactive Waste Disposal" (JOPRAD), in particular on the role of civil society in the project.

The major outcomes of that experience are that the:

- view of civil society is represented at an early stage in the definition of a European R&D strategy for waste disposal and in the development of a disposal project (e.g. not only at the site selection level)
- civil society's approach on stakeholder's involvement in R&D is shared (e.g. recommendation not to have them participate only to non-technical topics)
- transparency of R&D is ensured

The Euratom Horizon 2020 Research Framework supports collaborative proposal: hence the need to involve civil society at project proposal level. The main benefit for the civil society is that through active participation in project meetings, it identified how civil society can be integrated in such a project. As for the other partners they benefit now from a report of the civil society that is to be made public. Based on that report other members of the civil society will be able to benefit from lessons learned.

### **News from the OECD-Nuclear Energy Agency, Ximena Vasquez-Maignan**

Ximena Vasquez-Maignan presented the latest NEA activities: the strategic plan for 2017-2022 which is the central element of the reform process, updates on the nuclear law committee and the establishment of three new working parties (Deep Geologic Repositories and Nuclear Liability, Nuclear Liability and Transport, Legal Aspects of Nuclear Safety). Kimberly Nick presented the educational and publication programmes.

### **News from other fora in radioactive waste management, Nuria Prieto**

Nuria shared news from the ENSREG group, and the outcomes of her participation as a member of the Waste WG. Regarding the implementation of the EU Waste Directive, during the last workshop organized by ENSREG WG2 (Oldbury, UK, 26-27 October 2016), some participants expressed that having an unique report covering the needs of the Joint Convention and the EU Waste Directive could have many advantages and this possibility should be further explored. The issue of the inventory is still pending as each State classifies its waste according to its need and that it is difficult to compare inventories. This topic will be further discussed within ENSREG. As for WENRA they have developed standards for future peer reviews.

Ulrike Feldmann announced the 15<sup>th</sup> Regional Conference of the German Branch of INLA to be held on 28-29 September 2017 in Bonn. The INLA board meeting will be held at same time.